

December 16, 2014

BY U.S. MAIL AND EMAIL

Office for Civil Rights
U.S. Department of Education
32 Old Slip, 26th Floor
New York, New York 10005

Re: New York City Department of Education's Denial of Language Services to Jessica Chavez, a Limited English Proficient Parent of a Child Receiving Special Education Services

Dear Sir/Madam:

New York Lawyers for the Public Interest ("NYLPI") is a legal organization that provides assistance and representation to parents of children with special education needs as they navigate the New York City public school system. We represent Jessica Chavez, a limited English proficient ("LEP") parent of a three-year-old boy, Derek, who receives special education services from the New York City Department of Education ("DOE"). The DOE has failed to provide Ms. Chavez language services despite its clear obligation to do so under federal, New York State and City anti-discrimination laws. In fact, a DOE staff member even made a discriminatory comment against Ms. Chavez when denying her language services, telling her that "this is the United States" and that Ms. Chavez "need[ed] to speak English." We file this complaint on Ms. Chavez's behalf for the DOE's direct and egregious violation of anti-discrimination laws.

Over two years ago, in June 2012, NYLPI and Advocates for Children of New York jointly filed a systemic complaint (the "Systemic Complaint") with the United States Department of Education, Office for Civil Rights ("OCR") on behalf of tens of thousands of LEP parents of children with disabilities for the DOE's failure to provide parents language services. The Systemic Complaint has not been resolved yet. Unlike the Systemic Complaint, this new individual complaint on behalf of Ms. Chavez is limited in scope in that it seeks relief for Ms. Chavez only and not for a broader class of complainants. The limited scope of this complaint should not be interpreted to mean that the broader relief sought in the Systemic Complaint is no longer necessary. To the contrary, Ms. Chavez's case illustrates why, two and a half years since the filing of the Systemic Complaint, the need for systemic remedies is ever more pressing, as the DOE continues to deny language services to LEP parents, thereby preventing them from playing a meaningful role in their children's education and denying educational benefits to students with disabilities.

I. Nature of Complaint and Jurisdiction

This complaint alleges that the DOE has denied, and continues to deny, Ms. Chavez access to translated written materials related to special education rights and services, and access to qualified interpreters during meetings and conversations related to special education. By denying Ms. Chavez language access, the DOE is discriminating against her on the basis of

national origin, in violation of Title VI of the 1964 Civil Rights Act (“Title VI”; 42 U.S.C. § 2000(d) et seq.) and its implementing regulations (34 C.F.R. Part 100 et seq.), as well as OCR’s decisions and policies. The DOE’s failure to provide Ms. Chavez language access also violates the Individuals with Disabilities Education Improvement Act (“IDEA”; 20 U.S.C. § 1400 et seq.) and its implementing regulations (34 C.F.R. Part 300); Section 504 of the Rehabilitation Act of 1973 (“Section 504”; 29 U.S.C. § 794 et seq.) and its implementing regulations (34 C.F.R. Part 104 et seq.); New York State Education Law (“NYS Education Law”; N.Y. C.L.S. Educ. § 1 et seq.) and its implementing regulations (8 NYCRR § 200, et seq.); and New York City Chancellor’s Regulation A-663 (“C.R. A-663”).

OCR has jurisdiction over this matter for the following reasons: The DOE is a Local Educational Agency in receipt of federal funding; the DOE operates the Committee on Pre-School Special Education (CPSE), which coordinates special education evaluations and services for children ages 3-5 in New York City, and the CPSE regional offices, including the regional office serving Ms. Chavez’s district, located at 1665 St. Marks Avenue, Brooklyn, New York 11233 (“CPSE Regional Office”); and the acts complained of are occurring on an ongoing basis.

We respectfully request that OCR accept this case for investigation.

II. Factual Background

Ms. Chavez has two sons, Derek, who is three, and Derwin, who is six. Derek has been diagnosed with a receptive/expressive language disorder and fine motor coordination disorder. He was evaluated for special education services by the CPSE in March 2014. In May 2014 the CPSE held an Individualized Education Program (IEP) meeting for Derek during which it recommended that he receive a 30-minute speech and language therapy session twice a week, and five hours a week of special education itinerant teacher services.¹ Unlike Derek, Derwin does not currently have an IEP, although he had one from 2011-2013.

Ms. Chavez’s primary language is Spanish. She has a very limited ability to read, write, speak or understand English. Without language services, she is unable to take part in meetings or understand documents that the DOE sends her. While not legally required or appropriate, Ms. Chavez is not even able to rely on her husband (Derek’s father) as an interpreter or translator because he too is a Spanish-speaker with very limited English proficiency. At no time has Ms. Chavez received Derek’s IEP, full set of evaluations, notices or other documents from the DOE in a language she can understand.²

¹ Although the recommendations on the IEP were to be implemented on September 1, 2014, there has been a delay in providing Derek his speech and language therapy sessions, and Derek still has not started receiving these sessions as of the date of the filing of this complaint.

² Nor has Ms. Chavez received translated documents from the DOE for Derwin.

a. DOE's Evaluation of Derek in February and March 2014

In late February and early March 2014, when Derek was two years and nine months old, the CPSE coordinated a series of evaluations of him to determine his eligibility for special education services through the DOE. At the time, Derek was receiving speech and language services through New York City's Early Intervention Program but was scheduled to age out of the program in August 2014, a few months after he turned three in May. As part of the CPSE evaluations, evaluators from Birch Family Services ("Birch") conducted a speech and language evaluation and a psychological evaluation of Derek, documented findings from observing Derek at play, and interviewed Ms. Chavez for Derek's family's social history. Birch provided written reports of the evaluations to the CPSE, which used the reports to determine and plan for Derek's special education services.

Although the DOE provided Ms. Chavez a translated three-page report summarizing the findings from Derek's various CPSE evaluations, it never provided her a translation of the full set of evaluation reports. The summary report Ms. Chavez received is not an adequate substitution for the detailed evaluations. For example, the full version of Derek's speech and language evaluation is itself six pages long and, among other things, gives the evaluator's detailed observations of Derek's behavior and recommendations, which are missing from the summary report. Without a translation of the full report, Ms. Chavez is unable to understand the details of the evaluations. These evaluations were crucial to the DOE's decisions regarding Derek's special education services because, unlike an older child, Derek has no record of performance from school or a history of interactions with teachers that can help determine his special education plan and goals. The failure to provide a translated version of the full set of evaluations has left Ms. Chavez frustrated and confused as to the basis of the DOE's decisions concerning Derek's special education services.

b. DOE Staff's Discriminatory Comments in April 2014

Following Derek's evaluations, Ms. Chavez went to her CPSE Regional Office in April 2014 to inquire about special education services for Derek and to discuss the evaluations. Based on the summary that was translated into Spanish, she believed (and still believes) the evaluations did not accurately describe the full extent of his disability and failed to adequately address his struggles with daily living skills. At the CPSE Regional Office she tried to communicate with a CPSE administrator, Arlene Allen, about her concerns, but Ms. Allen told her that there was no one in the office that day who spoke Spanish and could interpret for Ms. Chavez. In fact, Ms. Allen admonished Ms. Chavez to speak English, telling her: "This is the U.S. You need to speak English." Ms. Chavez was stunned, humiliated and angered by Ms. Allen's discriminatory remark.

c. The May 2014 IEP Meeting

On May 2, 2014, the CPSE held an IEP meeting for Derek to plan his needs and goals for the year. The meeting attendees included Ms. Chavez, Ms. Allen (identified on the IEP as the "CPSE Administrator/District Representative"), Guy Fleury (who identified himself as a DOE

staff member), Lori Vallejo (a Birch staff member), and Jennifer Uzhca (Derek's service coordinator for his Early Intervention services).

As the meeting began, Ms. Chavez asked if Ms. Uzhca (whom she knew spoke Spanish) could serve as an interpreter. Ms. Allen responded that Ms. Uzhca's role would be limited to just observing the meeting and that the interpreter had to be a DOE staff member, which Ms. Uzhca was not. Mr. Fleury (a DOE staff member) indicated that he would serve as an interpreter. During the meeting, however, he only gave a brief summary of the discussion for Ms. Chavez and did not interpret what each person said. For example, when Ms. Chavez asked why a special education pre-school program was not being recommended for Derek, Mr. Fleury responded only by indicating that Ms. Allen had said it was not possible. He did not, however, interpret for Ms. Chavez what exactly Ms. Allen had said about the CPSE's decision not to make that recommendation. Because his interpretation was so inadequate, Ms. Chavez could neither understand the substance of the discussion nor participate meaningfully in it. At one point, Ms. Chavez was so frustrated and confused by Mr. Fleury's obvious failure to interpret what each person said that she asked him if he was certified as an interpreter. He replied that he was not.

d. *Ms. Chavez's June 2014 Written Request for Language Services and the DOE's Denial of that Request*

Ms. Chavez was unhappy with Derek's evaluations and IEP (at least what she could understand of the documents). She believed that, based on the assessment and recommendation of Derek's developmental pediatrician, his IEP should have recommended that he attend a special education pre-school. Given Derek's severe speech and language impediment, Ms. Chavez felt it was particularly important for him to be in a special education pre-school program, where he would be exposed to language-rich experiences. Ms. Chavez wrote a letter in Spanish asking for a re-evaluation. She paid someone to translate the letter into English before providing it to the CPSE Regional Office on May 19, 2014 because she believed that the DOE would only accept correspondence in English. Indeed, no one had told her otherwise, and there had been occasions when she had called the CPSE Regional Office and was told that no one spoke Spanish there.

On June 3, 2014, Ms. Chavez went to the CPSE Regional Office to follow-up on her May 19th re-evaluation request. Ms. Chavez met with Geraldine Beauvil, a CPSE staff member.³ Another CPSE staff member, Ana Romero, served as an interpreter. Ms. Chavez told Ms. Beauvil that she disagreed with the IEP's failure to recommend a special education pre-school program for Derek. She tried to give Ms. Beauvil a letter from Derek's developmental pediatrician explaining his diagnosis and need for a special education program but Ms. Beauvil refused to take the letter. Ms. Beauvil also refused to take two other letters that Ms. Chavez had drafted and paid to have translated into English: a letter asking for a change in the district manager in Derek's case and another letter requesting a specific agency provide Derek his special education services.

³ The DOE's website lists Ms. Beauvil as the contact person for the CPSE Regional Office.

During the June 3rd meeting, Ms. Chavez also gave Ms. Beauvil a written request prepared by NYLPI seeking translated documents, including Derek's IEP, and interpretation services at all future meetings. (See attachment, Exhibit A.) Ms. Beauvil told Ms. Chavez that she would not provide her with translated documents because it would cost too much money.⁴

Because Ms. Chavez never received a translated IEP from the DOE, she was forced to ask a relative to read the IEP to her in Spanish. The relative was not a certified translator and had no familiarity with the IEP's complex and technical language. Ms. Chavez was not able to understand much of the IEP even when the relative did his best to translate it, which was especially frustrating to Ms. Chavez given that this was Derek's first IEP.

Following her June 3rd visit to the CPSE Regional Office, Ms. Chavez tried to communicate by phone with the CPSE on a number of occasions. Although the CPSE did have an interpreter on the line on some occasions, on other occasions a CPSE Regional Office staff member would simply tell Ms. Chavez that the office did not have a Spanish speaker available and then hang up on her.

On August 25, 2014, Ms. Beauvil acknowledged to Ms. Chavez's counsel at NYLPI that Ms. Chavez had requested a translated IEP in June 2014 and that the CPSE had informed her that it could not provide her one. Ms. Beauvil further indicated to counsel that she had informed Ms. Chavez in June that, while the DOE could not provide a translated IEP at the time, it was possible the DOE could provide one a few months later, in August or September 2014. Ms. Chavez disputes that the CPSE ever communicated this to her. Even assuming that it did, it is simply not acceptable that a parent should have to wait three or four months after an IEP meeting, possibly even after the services are to go into effect, to receive a translated version that he or she can understand. No parent, including Ms. Chavez, should have to wait months for the DOE to comply with its obligations under the law. Moreover, despite Ms. Chavez's June 3rd written request, Ms. Chavez *still* has not received a translated IEP or other translated documents from the DOE.

III. Legal Claims

Ms. Chavez asserts that the actions of the DOE constitute ongoing unlawful national origin discrimination in violation of Title VI and OCR policy. The actions of the DOE also violate the IDEA, Section 504, NYS Education Law and C.R. A-663. Specifically, Ms. Chavez asserts that the DOE has failed to provide her with language services to ensure she has the opportunity to meaningfully participate in Derek's special education plans and services.

⁴ Ms. Chavez also gave Ms. Beauvil a similar written request for language services for Derwin. As with Derek, she has not received translated documents from the DOE for Derwin.

a. *Title VI & OCR Policy*

OCR has long held that the denial of language access amounts to national origin discrimination in violation of Title VI. Under Title VI, “[n]o person in the United States shall, on the ground of race, color, or *national origin*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000(d) (emphasis added). The implementing regulations of Title VI pertaining to programs that receive federal financial assistance from the U.S. Department of Education further specify that a recipient, such as the DOE, may not

[d]eny an individual any service, financial aid, or other benefit provided under the program; (ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;... (vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

34 C.F.R. 100.3 (b)(1)(i)-(vi).

In particular, Title VI requires school districts to “take reasonable steps to ensure meaningful access to their programs and activities by LEP persons” in order to avoid discriminating on the grounds of national origin. *See, e.g.*, Dep’t of Justice, Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons With Limited English Proficiency; Policy Guidance, 65 Fed. Reg. 50,123, 50,124 (August 16, 2000); Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, *reprinted in* 65 Fed. Reg. 50121, 50121 (August 11, 2000). In order to fulfill its Title VI obligations, a recipient must engage in a balancing test involving the following four factors: “(1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people’s lives; and (4) the resources available to the grantee/recipient and costs.” Dep’t of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455, 41,459, 41,468 (June 18, 2002) [hereinafter “Federal Guidance”].

OCR policy has further articulated that the responsibility of districts to provide equal educational opportunity to national origin minority group children includes a school district’s “responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents.” DHEW, Office of the Secretary, Identification of Discrimination and Denial of Services on the Basis of National Origin (July 10, 1970). The memorandum also clarifies that in order for notice to be adequate it may have to be provided in a language other than English. *Id.* In 2000, OCR issued a policy statement mandating that school

districts adequately notify national-origin minority group parents so they could “make well-informed decisions about the participation of their children in the district’s programs and services.” U.S. Dep’t of Educ., Office for Civil Rights, *The Provision of an Equal Education Opportunity to Limited-English Proficient Students* (August 2000).

Prior OCR decisions provide additional guidance regarding a school district’s responsibility to ensure language access for LEP parents of children receiving special education services. In particular, OCR has interpreted Title VI to require that school districts use qualified interpreters and translators. *See, e.g., Amherst Public Schools, O.C.R. Complaint # 01-06-1226* at 6 (Feb. 22, 2008). Moreover, OCR has made clear that school districts must have a policy in place to assess the quality of staff who serve as interpreters. *See, e.g., Piner-Olivet Union School District, OCR Complaint # 09-08-1393* at 13 (Feb. 11, 2009); Dep’t of Justice, *Federal Guidance* at 41,459, 41468; Long Beach Unified School District, *Resolution Agreement for OCR Complaint # 09-09-1053* at 2-3 (May 29, 2009); Oakland Unified School District, *Resolution Agreement for OCR Complaint # 09-08-1198* at 2 (July 30, 2009). At a minimum, this means that bilingual staff serving as such must be able to communicate proficiently, have basic knowledge of technical concepts and terminology related to special education, as well as be trained on their role and the responsibilities of serving as an interpreter. *See, e.g., Long Beach*. School districts must also ensure that translation and interpretation is complete, accurate, and timely. *See, e.g. Amherst; Piner-Olivet*.

b. *Explicit Language Access Provisions in Federal & State Laws*

The following federal and state statutes and regulations provide additional guidance regarding the specific language access rights of and protections for LEP parents in the special education process.

The IDEA and its accompanying regulations explicitly recognize the need to provide language services to LEP parents throughout the special education process. *See, e.g., 20 U.S.C. § 1415(b)(4)* (requiring local educational agencies to implement “procedures designed to ensure that the notice...is in the native language of the parents, unless it clearly is not feasible to do so”); 34 CFR 300.322(e) (“[t]he public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents...whose native language is other than English”); 34 C.F.R. 300.503(c)(1)(ii) (requiring that prior notice of changes or refusals to change the educational placement of a child be “provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so”); 34 C.F.R. 300.322(f) (the school “must give the parent a copy of the child's IEP at no cost to the parent”).

Explicit New York State statutory and regulatory provisions similarly mandate that where a proceeding implicates their child’s identification, evaluation, or placement in special education, LEP parents have a right to language services. *See, e.g., 8 N.Y.C.R.R. 200.4(b)(6)(xii)* (“School districts shall ensure that...the results of the evaluation are provided to the parents in their native language or mode of communication, unless it is clearly not feasible to do so”); 8 N.Y.C.R.R. 200.5(d)(5) (“The school district must take whatever action is necessary to ensure that the parent understands the proceedings at the meetings of the committee on special education, including arranging for an interpreter for parents with deafness or whose native language is other than English”); 8 N.Y.C.R.R. 200.5(j)(3)(vi) (providing that during an impartial due process hearing,

“[a]t all stages of the proceeding, where required, interpreters of the deaf, or interpreters fluent in the native language of the student's parent, shall be provided at district expense”).

c. Parent Participation in the Special Education Process

In addition to explicit provisions regarding language access, every major law that impacts the education of children with disabilities foregrounds the primary role of the parent in developing and implementing his or her child’s education plan. There is an inextricable link between the ability to participate and the ability to communicate; without language services, parent rights involving consent and due process are rendered meaningless.

Section 504 and its implementing regulations contain compelling language regarding the role of parents in the special education process. In general, Section 504 prohibits programs receiving federal financial assistance from discriminating against a qualified individual with a disability “solely by reason of his or her disability.” 29 U.S.C. § 794(a). In the context of public education, Section 504’s implementing regulations require schools to provide a free appropriate public education to students with disabilities. 34 C.F.R. 104.33(a). In order to ensure this, the implementing regulations include evaluation and placement procedures that require school districts to meaningfully include parents in the decision-making process, stating in part: “[i]n interpreting evaluation data and in making placement decisions, a recipient shall...ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child.” 34 C.F.R. 104.35(c). Specifically, 34 C.F.R. 104.35(c) requires decisions about placement to be made “by a group of persons, *including persons knowledgeable about the child.*” (emphasis added). Parents are part of the group of knowledgeable persons for the purposes of this regulation. *See* 34 C.F.R. § 300.322(e). In order for a parent to meaningfully participate in the decision-making process, he or she must be able to understand and communicate with school staff.

Under the IDEA, schools are similarly required to obtain consent from parents for special education evaluations and services. 20 U.S.C. § 1414(a)(1)(D). Parents must also consent to the excusal of IEP team members 20 U.S.C. § 1414(d)(1)(C)(ii). According to federal and state laws and regulations, consent means that a parent is fully informed and understands the activity for which consent is sought in his or her own native language. 20 U.S.C. 1414(a)(1)(D); 34 C.F.R. § 300.9. The regulations state that schools must make reasonable efforts with documentary proof of efforts to obtain the required informed consent from parents. 34 C.F.R. § 300.300(d)(5).

Finally, New York has also recognized the compelling nature of parent participation throughout the special education process and has incorporated language access protections for LEP parents accordingly. The NYS Education Law requires the consent of parents in order to provide a special education program to a child. NYS Educ. Law § 4402. New York State regulations define informed consent as occurring when the parent has been fully informed and understands, in his or her native language, the activity for which consent is sought. 8 NYCRR § 200.5(al)(4). Schools must make reasonable efforts to obtain informed consent from parents for the initial provision of special education services, evaluations and reviews, and the school must have a detailed record of their reasonable efforts. 8 NYCRR § 200.5(b).

d. NYC DOE Chancellor's Regulation A-663

As evidenced by the development of Chancellor's Regulation A-663, the New York City Department of Education does not dispute the critical nature of its obligations to provide language services to LEP parents. A-663 mandates that "[e]ach school and office shall, consistent with this regulation, provide translation and interpretation services to parents who require language assistance in order to communicate effectively with the Department." CR A-663 (III)(A). Further, A-663 instructs that "[s]chools shall provide parents whose primary language is a covered language with a translation of any document that contains individual, student-specific information regarding, but not limited to, a student's: a. health; b. safety; c. legal or disciplinary matters; and d. entitlement to public education or placement in any special education, English language learner or non-standard academic program." CR A-663 (V)(B)(1).

* * *

Despite the strong language access protections included throughout local, state and federal law, the DOE continues to deny Ms. Chavez access to Derek's special education plans and services, in violation of its own regulation and of the aforementioned laws.

IV. Conclusion and Relief Sought

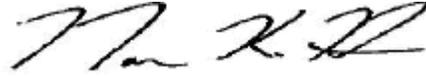
Ms. Chavez seeks a determination that the actions of the DOE constitute a violation of Title VI of the Civil Rights Act of 1964 and its accompanying regulations and policies. Ms. Chavez further seek an order directing the DOE to remedy these violations in the following ways:

1. Provide translated Spanish versions of all documents previously provided to Ms. Chavez, including Derek's IEP, full set of evaluations, notices and other documents.
2. For all documents provided to Ms. Chavez in the future, provide translated Spanish versions.
3. Provide qualified Spanish interpreters in all oral communications with Ms. Chavez, including during meetings, phone conversations, and in-person visits to DOE offices (including the CPSE Regional Office) or schools.
4. Provide translation and interpretation services in other circumstances, as needed, to ensure Ms. Chavez has equal access to her son's special education program.

Please inform us if you need additional information to begin your investigation of the DOE's

discriminatory and unequal treatment of Ms. Chavez.

Sincerely,

A handwritten signature in black ink, appearing to read "Navin K. Pant". The signature is fluid and cursive, with the first name "Navin" and last name "Pant" clearly distinguishable.

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cc: Robin Greenfield, Deputy Counsel, New York City Department of Education
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