

Sent via email and regular mail

January 27, 2015

Ms. Anurima Bhargava
Chief
Educational Opportunities Section
Civil Rights Division
Department of Justice
anurima.bhargava@usdoj.gov

Ms. Anurima Bhargava
Chief, Educational Opportunities Section
Civil Rights Division
United States Department of Justice
601 D Street, N.W., Ste. 4300
Washington, DC 20004

Re: *D.M.R. by and through R.R....on behalf of themselves and all other similarly situated v. The Ohio Department of Education, Office for Exceptional Children; Toledo Public Schools, Columbus City Schools, Dublin City Schools, Groveport-Madison Local Schools, South-Western City Schools, Westerville City Schools, and Whitehall City Schools.*

Dear Ms. A. Bhargava:

This Complaint is submitted on behalf of parents and children who have a limited understanding of English against seven school districts in Ohio and the Ohio Department of Education (“ODE”) and its Office for Exceptional Children. Complainants allege that ODE and the school districts have discriminated against them on the basis of national origin and have engaged in discriminatory practices, violating their obligations under Title VI of the Civil Rights Act of 1964 (“Title VI”) and its implementing regulations, 42 U.S.C. § 2000d, 34 C.F.R. pt. 100, and 28 C.F.R. § 42.104(b)(2); the Equal Educational Opportunities Act of 1974 (“EEOA”), 20 U.S.C. § 1703(f); and Title III of the No Child Left Behind Act of 2001 (“NCLB”); 20 U.S.C. § 6842 *et seq.* Further, parents of children with disabilities allege ODE and the school districts

violated their obligations under the Individuals with Disabilities Education Act (“IDEA”) and its implementing regulations, 20 U.S.C. § 1400 and 34 C.F.R. pt. 300.

Complainants file this Complaint in their individual capacities and on behalf of all other similarly situated students and parents. The Complainant class is: students enrolled in the seven named school districts and their parents who understand little to no English, and who are denied access to educational programs as a result. As set out below, this Complaint centers on the failure of the Ohio school districts and the ODE to ensure participation in and access to the educational programs they operate because they have failed to provide translation of important educational documents and have failed to provide appropriate interpreter services.

I. INTRODUCTION

Complainants file this Complaint before the U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section. Complainants allege that the named school districts and the Ohio Department of Education have discriminated against them on the basis of national origin.

The discriminatory practices include failing to provide parents and children who have a limited English proficiency (LEP) with qualified interpreters at meetings with school officials, teachers, and other educational providers. The school districts have also failed to provide translated documents that are regularly and routinely a part of both general education and special education. ODE has similarly failed to provide important documents (e.g., complaint forms and information about due process) in the parents’ native language and has failed to have an effective means of communicating with parents who call ODE for assistance. Further, ODE has failed to bring the named, as well as all other school districts in Ohio, into compliance with the requirements of the law. In this case, ODE has failed to ensure that LEP parents and students are provided with translation and interpretation services to access the education programs.

Complainants file this Complaint in their individual capacities as LEP parents and children with and without disabilities, and on behalf of all similarly situated individuals in the named school districts. Additionally, Complainants file this Complaint in their individual capacities and on behalf of all LEP parents and children who receive special education services.

II. STATEMENT OF JURISDICTION

The school districts and ODE are all recipients of federal financial assistance and are therefore subject to the anti-discrimination prohibitions of Title VI, the EEOA, and Title III of the NCLB, as set forth in this Complaint. Further, the named school districts and ODE receive federal financial assistance to provide special education services to eligible students and are therefore required to comply with the requirements of the IDEA. Complainants allege that the discriminatory acts complained of herein occurred within 180 days of the filing of this Complaint or are of an ongoing and continuing nature.

Claimants have not filed a lawsuit raising these claims in state or federal court. This Complaint has not been investigated by another federal, state, or local civil rights agency, through any of the school districts' internal grievance procedures, or through an administrative complaint filed with ODE, including due process proceedings.

The school districts involved in this case are considered a "program or activity" under federal law. Congress passed the Civil Rights Restoration Act of 1987 and specifically included local educational agencies as a program or activity, any part of which is deemed to have received federal financial assistance. *See* 42 U.S.C. § 2000d-4a(2).

III. PARTIES

A. The School Districts.

Seven (7) school districts are the subject of this Complaint. The seven districts, Toledo Public Schools, Columbus City Schools, Dublin City Schools, Groveport-Madison Local

Schools, South-Western City Schools, Westerville City Schools, and Whitehall City Schools are all public school districts in the state of Ohio.

1. Toledo Public Schools.

Toledo Public Schools is located in the city of Toledo on the western end of Lake Erie. Toledo Public Schools had an average daily enrollment of 21,333 students during the 2012-2013 school year, making it the fourth largest district in Ohio. Of those students, 2,262 or 10.6% were Hispanic and 428 or 2.0% were LEP. The district is under the leadership of Superintendent Dr. Romules Durant and a five-member board of education. Toledo Public Schools' headquarters is located at 420 E. Manhattan Boulevard, Toledo, Ohio 43608. Toledo Public Schools estimates a total operating budget of \$324,731,113 for fiscal year 2015.

2. Columbus City Schools.

Columbus City Schools, established in 1845, is the state of Ohio's largest school district, serving the needs of more than 51,000 students in 116 schools. The district is under the leadership of Interim Superintendent J. Daniel Good, Ph.D., and a seven-member board of education. Columbus City Schools' headquarters is located at 270 E. State Street, Columbus, Ohio 43215. For fiscal year 2014-2015, the board of education proposed a total budget appropriation of \$1,267,140,733. The district's 2012-2013 report card indicated an enrollment of 3,976 Hispanic students or 8% of total enrollment, and 6,031 or 12.2% Limited English Proficiency students.

3. Dublin City Schools.

The Dublin City School District consists of 47 square miles and parts of Columbus, Hilliard, Upper Arlington, Delaware County, and Union County, Ohio. The 2013-14 enrollment exceeded 14,500 students. The district is under the leadership of Superintendent Todd F. Hoadley, Ph. D., and a six-member board of education. Dublin City Schools' headquarters is

located at 7030 Coffman Road, Dublin, Ohio 43017. The total estimated operating budget for fiscal year 2014-2015 is \$179,527,959. Of the 10 largest districts in the state, only Columbus and South-Western have a higher percentage of English Language Learners (“ELL”) than the 8.9% in the Dublin City School District. More than 1,270 ELL, speaking more than 60 different languages, are enrolled. The district’s 2012-2013 report card indicated an enrollment of 651 Hispanic students or 4.6% of total enrollment, and 1,397 or 9.9% Limited English Proficiency students.

4. Groveport-Madison Local Schools.

The Groveport-Madison Local School District was first formed in 1848. Today, the district covers approximately 42 square miles southeast of Columbus, Ohio. The district is under the leadership of Superintendent Bruce Hoover and a five-member board of education. Groveport-Madison Schools’ headquarters is located at 5940 Clyde Moore Drive, Groveport, Ohio 43125. The total estimated operating budget for fiscal year 2015 is \$67,712,375. There are 5,822 students in K-12. The district’s 2012-2013 report card lists 229 or 4.1% Hispanic students and 216 or 3.9% Limited English Proficiency students enrolled.

5. South-Western City Schools.

The South-Western City School District is located in the southern gateway of Columbus, Ohio and serves approximately 20,000 students. The 119 square-mile district encompasses most of the southwestern quadrant of Franklin County, including a substantial portion of the City of Columbus. South-Western City Schools is the second largest school district in the county and the sixth largest in Ohio. The district is under the leadership of Superintendent Dr. Bill Wise and a six-member board of education. South-Western City Schools’ headquarters is located at 3805 Marlane Drive, Grove City, Ohio 43123. The district had a total forecasted operating budget of \$218,642,300 for fiscal year 2014. The South-Western City Schools’ English as a Second

Language (“ESL”) program is the third largest in the State of Ohio, serving more than 2,200 students. Approximately 11% of its students are Limited English Proficient.

6. Westerville City Schools.

Serving a culturally and economically diverse 52-square-mile area in northeastern Franklin and southern Delaware Counties, Westerville City Schools educates approximately 14,500 students and is the 11th largest district in Ohio. The district is under the leadership of Superintendent John R. Kellogg and a five-member board of education. Westerville City Schools’ headquarters is located at 936 Eastwind Drive, Westerville, Ohio 43081. The district had a total operating budget of \$156,587,041 for fiscal year 2014. The district’s 2012-2013 report card lists 721 or 5.2% Hispanic students and 1,433 or 10.3% Limited English Proficient students enrolled.

7. Whitehall City Schools.

Whitehall City Schools is located in southeast Columbus in Franklin County, Ohio. Whitehall City Schools has an average daily enrollment of approximately 3,000 students. Whitehall City Schools is under the leadership of Superintendent Brian D. Hamler and a five-member board of education. Whitehall City Schools’ headquarters is located at 625 S. Yearling Road, Whitehall, Ohio 43213. The district had a total forecasted operating budget of \$31,414,011 for fiscal year 2014. The district’s 2012-2013 report card lists 502 or 17% Hispanic students and 507 or 17.2% Limited English Proficient students enrolled.

B. The Ohio Department of Education (“ODE”).

The Ohio Department of Education oversees the State’s public education system, which includes public school districts, joint vocational school districts, and charter schools. ODE is governed by the State Board of Education. However, day-to-day administration of ODE is the

responsibility of the Superintendent of Public Instruction, Dr. Richard A. Ross, who is hired by the State Board of Education.

As a state receiving federal funds for general education and special education, Ohio is obligated to ensure compliance with Title VI, the EEOA, the NCLB, and the IDEA. ODE is the state designated body that oversees the named school districts. Any failure of the school districts to comply with these federal laws is also the failure of the Ohio Department of Education to bring the named districts into compliance.

1. The Ohio Department of Education, Office for Exceptional Children.

The purpose of the Office for Exceptional Children is to provide leadership, assistance, and oversight to school districts and other entities that provide differentiated instruction for students with disabilities and gifted students. Among its responsibilities, the office administers state and federal funds; coordinates and administers programs to improve outcomes for students with disabilities and gifted students; implements a statewide monitoring and complaint-resolution system designed to assess district/educational agency compliance with applicable federal and state laws and regulations; and provides technical assistance to school districts and educational agencies around issues of compliance with the IDEA. The office is under the direction of Sue Zake, Ph.D.

C. Individual Complainants' Statements of Fact.¹

In each of the seven school districts, non-English-speaking and limited-English-speaking parents are not being communicated to by the school district in a language they are able to understand. Both oral and written communication to the parents is almost always in English.

¹ Individual Complainants are referred to in pseudonym and their letters are redacted to protect their confidentiality. A listing of Complainants' full names, contact information, and un-redacted letters can be provided to the U.S. Department of Justice upon request. Due to the transient nature of many of the complainants, Disability Rights Ohio and Advocates for Basic Legal Equality will provide current contact information on request.

Further, interpreters are rarely provided for phone conversations or meetings with school officials. When interpreters are provided, they are often unqualified to interpret accurately. In each of the named districts, parents of children with disabilities are not being communicated to about their child's disability or progress in a language they can understand. In all seven districts, this failure of communication has prevented parents from participating in and supporting the education of their children. The students are thus being denied the same educational opportunities being provided to students with English-speaking parents. Therefore, the parents named below are bringing the complaint on their own behalf as parents, and on the behalf of their children.

1. Toledo Public Schools ("TPS").

In Toledo Public Schools, six families are complaining on behalf of their LEP children and on their own behalf as parents. Each parent has at least one child who has been identified as an English Language Learner ("ELL"). All of the parents speak Spanish as their primary language and understand little to no English.

J.E. has three children in the elementary grades of TPS. Written communications from TPS to J.E. have all been in English. TPS has failed to provide interpreters for J.E. for parent-teacher conferences. J.E. has been forced to have her son interpret for TPS during her telephone calls to the schools. (Letter of J.E., attached as exhibit A).

R.H., the mother of four children in TPS schools, reports that all written communication from TPS comes in English, even though TPS assigned an interpreter to her when she registered her children in TPS. An interpreter has been provided for parent-teacher conferences, but R.H. is unable to call the school and communicate with them in Spanish. Additionally, TPS asked for copies of her immigration documents. (Letter of R.H., attached as exhibit B).

D.J. has four children in TPS schools. All written communication she has received from TPS has been in English. Telephone calls from TPS are in English only, there are no interpreters provided at parent-teacher conferences, and the schools where her children are enrolled do not have anyone to talk to D.J. in Spanish. Additionally, her oldest child has an Individualized Education Plan ("IEP") with no disability specified because Toledo Public Schools did not obtain a translation of his earlier Evaluation Team Report ("ETR") (from Puerto Rico) and did not do an ETR during the summer of 2014 as planned. The Spanish-language ETR states her son has an IQ of 83. (Letter of D.J., attached as exhibit C).

O.M. has one child in a TPS school. She has never received any written communication from TPS in any language other than English. She states that "it is very difficult for me as a mother if there is no one in the school who can explain if something is happening at the school with my son." An interpreter is not provided for parent-teacher conferences at the school and her son, an 11-year-old, ends up interpreting. When O.M. calls the school, there is occasionally an interpreter available, but not always. This often prevents her from communicating with the school. (Letter of O.M., attached as exhibit D).

M.O. has two children enrolled in TPS schools. All TPS written communication has been in English. She has not received telephone calls in Spanish from the schools nor has she been able to talk to anyone at the schools in Spanish when she calls. TPS has not provided interpreters for parent-teacher conferences, and when her son was suspended at TPS she was "not able to defend him." (Letter of M.O., attached as exhibit E).

A.P. has three children enrolled in TPS schools. All communication in writing from the school is in English. The school does not make calls to her in Spanish, and if she calls the school there is no one there who speaks Spanish. No interpreters are provided by TPS at parent-teacher

conferences. A.P. believes she needs more access to interpretation and translation so she can “understand more about the education of [her] children.” (Letter of A.P., attached as exhibit F).

TPS has failed to ensure that Complainants receive necessary translation and interpretation services so that they can access the educational program.

2. Columbus City Schools (“CCS”).

In Columbus City Schools, six families are complaining on their own behalf as parents and on behalf of their children because the school district has failed to communicate with them in a language they understand. Each parent has at least one child that qualifies for special education in CCS.

R.R. has one son that qualifies for special education in CCS. While her son had an IEP when enrolled at a private school, when he was later transferred to a CCS school, the school refused to evaluate him or place him in a special education class. R.R. received no notice in Spanish of the school’s decision not to evaluate or provide these services to her son. He was only eventually evaluated when a teacher requested the same. Through all of her meetings with the school, R.R. has only been provided an interpreter once, and her son’s final IEP has never been translated to Spanish. Because the document has only been presented to her in English, she was not able to notice the failure to provide for speech therapy in the IEP for several months, effectively denying her the ability to participate and consent to the proposed plan. (Letter of R.R., attached as exhibit G).

M.C.A. is the mother of one child with disabilities in CCS. She receives almost all special education documentation concerning her daughter in English. The few special education documents that are translated into Spanish are translated so poorly that M.C.A. is not able to understand them, preventing her from being involved in her child’s education. (Letter of M.C.A., attached as exhibit H).

Similarly, C.G. is only provided with IEP documents about his son in English. C.G. has had to seek help from outside agencies to translate the documents just to be able to understand what his son's school is communicating to him. At meetings, C.G. has been unable to receive assistance from an interpreter, preventing him from being able to fully understand and participate. (Letter of C.G., attached as exhibit I).

D.J.V. has also never received any notification in Spanish concerning her son. She was never informed about her right to receive in-hospital or at-home educational services while her son was going through chemotherapy. When D.J.V. receives IEPs, evaluation team reports ("ETRs"), or other progress reports or documents, they are always in English. This prevents D.J.V. from being able to communicate with the school and participate in her son's education. (Letter of D.J.V., attached as exhibit J).

A.M.S. is the mother of a daughter who has had an IEP in Columbus City Schools for years, but A.M.S. has never received her daughter's IEP information in her native language. A.M.S. has also never received qualified interpreters during school meetings. As a result, A.M.S. and her family have been unable to understand her daughter's educational needs and goals, adequately express their concerns, or provide needed medical information and authorization to the school. A.M.S. wants to take a greater role in her daughter's education and believes that had she been provided with the needed interpretation and translation services, her daughter would have progressed more in school. (Letter of A.M.S., attached as exhibit K).

Likewise, L.B.R. and D.P.M are not given any documents in Spanish about their two sons, both of whom qualify for special education services. Despite numerous evaluations, reevaluations, and denials to place their children in special education classes, L.B.R. and D.P.M received no notifications or information in Spanish, which hindered their ability to advocate for

their family. When the school does provide interpreters, the interpreters are often interpreting for many parents at the same time. As a result, L.B.R. and D.P.M. are often rushed and not able to fully understand the details from the limited translations that they do receive. The lack of adequate interpreter services and advance notice in Spanish has prevented L.B.R. and D.P.M. from fully participating in their sons' educations. (Letter of L.B.R. and D.P.M., attached as exhibit L).

CCS has failed to ensure that Complainants receive necessary translation and interpretation services so that they can access the educational program.

3. Dublin City School District.

In Dublin City Schools, two families are complaining on their own behalf as parents and on behalf of their children because the school district has failed to communicate with them in a language they understand. Each parent has at least one child that qualifies for special education in the district.

N.D. does not receive any documentation relating to her child, in Spanish. While she is provided an interpreter in meetings, she is not provided a full translation of the paperwork, only a condensed summary. Furthermore, the interpreter provided does not accurately or fully translate what is happening. This prevents N.D. from understanding the status of her child's education and fully participating in decisions. (Letter of N.D., attached as exhibit M).

Even more alarming, S.B.S. must fill out paperwork for her daughter entirely in English whenever she attends an IEP meeting. Furthermore, when S.B.S. receives documentation before meetings, it is so close to the time of the meeting that she does not have time to review it regardless of the language it is in. This failure to notify and obtain consent in her native language is preventing S.B.S. from participating in her daughter's education. Likewise, while S.B.S. is provided an interpreter at meetings, the interpreter is only available for a few hours at a time.

The time is too short for S.B.S. to feel capable of facilitating her daughter's development. (Letter of S.B.S., attached as exhibit N).

Dublin City School District has failed to ensure that Complainants receive necessary translation and interpretation services so that they can access the educational program.

4. Groveport-Madison Local School District.

In Groveport-Madison Local School District, two families are complaining on their own behalf as parents and on behalf of their children because the school district has failed to communicate with them in a language they understand. Each parent has at least one child that qualifies for special education.

V.C., the parent of four children with disabilities, only receives her children's IEP documents, progress reports, and ETRs in English. To prepare for the IEP meetings, she is forced to rely on friends and strangers to translate those documents into Spanish. Furthermore, the interpreters provided by the school during meetings do not interpret well, often leaving V.C. confused and unable to understand or participate in the education plans for her children. (Letter of V.C., attached as exhibit O).

I.C. has only been provided with reports and documentation about her son in English. This has prevented I.C. from understanding what was happening in her son's education. She was not adequately notified when services were taken away from him. If I.C. had been properly notified she could have been an active participant in her son's education and had the opportunity to advocate for his educational needs. (Letter of I.C., attached as exhibit P).

Groveport-Madison Local School District has failed to ensure that Complainants receive necessary translation and interpretation services so that they can access the educational program.

5. South-Western City Schools.

In South-Western City Schools, two families are complaining on their own behalf as parents and on behalf of their children because the school district has failed to communicate with them in a language they understand. Each parent has at least one child that qualifies for special education in the district.

J.G.H. is the mother of two children with disabilities. She has received a 504 plan and an IEP evaluation for both of her children. However, all of the documentation J.G.H. receives has been in English. She feels that she has been unable to understand or be involved in the education of her children because of the school's failure to provide the reports in Spanish. (Letter of J.G.H., attached as exhibit Q).

Likewise, S.P has one daughter that qualifies for special education. She only receives documentation, including ETRs and IEPs, in English. This prevents her from understanding her daughter's needs and progress and from being a full participant in her education. (Letter of S.P., attached as exhibit R).

South-Western City Schools has failed to ensure that Complainants receive necessary translation and interpretation services so that they can access the educational program.

6. Westerville City School District.

In the Westerville City School District, I.F. faces similar difficulties in communicating with her child's school. All of the ETRs, IEPs, and other documents that I.F. receives are in English. I.F. has trouble reading these documents and staying informed about her child's education. I.F. is not provided with an interpreter during IEP and parent meetings. Nor has I.F. been able to independently secure an interpreter, because the notice of the meetings is usually not given to her far enough in advance to schedule the interpreter. The lack of notice and failure to

provide interpreters has diminished I.F.'s ability to advocate for her son. (Letter of I.F., attached as exhibit S).

Westerville City School District has failed to ensure that Complainants receive necessary translation and interpretation services so that they can access the educational program.

7. Whitehall City School District.

In Whitehall City School District, two families are complaining on their own behalf as parents and on behalf of their children because the school district has failed to communicate with them in a language they understand. Each parent has at least one child that qualifies for special education.

C.G. has a son that qualifies for special education services. She only receives documents and notices about her son in English. Furthermore, C.G. has never been provided an interpreter for the IEP meetings. This has prevented her from being able to prepare for and participate in meetings. (Letter of C.G., attached as exhibit T).

Similarly, L.M.G. only receives progress reports and notices from the school about her son in English. She has been unable to be active in her son's education and help him get the IEP that he needed. (Letter of L.M. G., attached as exhibit U).

Whitehall City School District has failed to ensure that Complainants receive necessary translation and interpretation services so that they can access the educational program.

IV. CLAIMS

A. ODE and the seven school districts have violated Title VI of the Civil Rights Act of 1964 ("Title VI") by failing to provide interpretation and translations to LEP parents.

Title VI of the Civil Rights Act forbids programs that receive federal assistance, including all of the named school districts, from discriminating against individuals on the basis of race, color, or national origin. 42 U.S.C. § 2000d. Additionally, recipients of federal funds

cannot administer programs in ways that “have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.” 34 C.F.R. § 100.3(b)(2).

The Title VI protections have consistently been applied to individuals with limited English proficiency. In 1974, the Supreme Court held that a school district violated Title VI by refusing to provide education services to non-English speaking students. *Lau v. Nichols*, 414 U.S. 563 (1974). In that decision, the Court essentially affirmed a 1970 Department of Education memorandum that instructed school districts to take steps to provide adequate instruction to non-English speaking students and to provide notice to non-English speaking parents even if that requires translating notices to their native language. “Identification of Discrimination and Denial of Services on the Basis of National Origin” (May 25, 1970), *available at* <http://www2.ed.gov/about/offices/list/oer/docs/lau1970.html>; *see also Lau*, 414 U.S. at 567-68. A school district is in violation of Title VI if it denies access to its programs to students or parents on the basis of their English proficiency.

All seven named school districts are in violation of Title VI for their failure to communicate with LEP parents in a language they can understand. The school districts have denied non-English speaking parents their right to meaningfully and effectively participate in the education process by failing to translate important documents or provide adequate interpretation services in meetings. Parents who do not understand English do not receive the same written and oral information as other parents, which prevents them from understanding the services being provided to their children and having the opportunity to object and give their informed consent. Interpreters are rarely provided in parent-teacher conferences and other meetings between parents and school officials in all seven districts. Also, parents across the districts are often

unable to communicate by phone because the schools do not have someone to speak to the parent in a language other than English. This denial discriminates against students and parents who do not speak English as these parents are not provided with the same information or opportunity to participate as English-speaking parents are. As such, the school districts have violated Title VI of the Civil Rights Act.

The failure of the school districts to communicate with LEP parents is especially alarming in the context of special education. In every named district, Complainants have children enrolled in a special education program. Special education in the United States is built on the notion of parental involvement. The system in Ohio is designed for constant communication between the parents and the school, and the opportunity for their input. Parents who speak English are afforded this opportunity, while parents who speak little to no English are not. Commonly used documents that inform parents of their child's disability and education, such as IEPs, ETRs and progress reports, are not provided to parents in a language that the parents can understand. This prevents LEP parents from understanding and participating. Meanwhile English-speaking parents are able to understand the documents and information, and therefore do have that opportunity. The problem is compounded by the lack of the consistent provision of competent interpreters for IEP meetings, which prevent the parents from communicating with the school in a meeting designed to solicit their input. In every stage of the special education program, the named school districts are consistently failing to communicate with LEP parents, thus denying them the opportunity to understand, let alone participate in their child's education.

Therefore, the opportunities offered to English-speaking parents are vastly different than the opportunities offered to non-English speaking parents in Ohio. The Ohio school districts' refusal to translate critical documents and provide adequate interpreters during meetings and

teacher-parent conferences has caused LEP parents to consistently receive fewer protections and opportunities than their English-speaking counterparts. According to *Lau* and the Department of Education Memorandum, LEP children and parents must be afforded the same opportunities as English speaking children and parents under the Civil Rights Act. *Lau*, 414 U.S. 563; 1970 Department of Education Memo. Because school districts across Ohio and ODE have failed to provide similar services to English speaking and LEP parents, they have violated Title VI of the Civil Rights Act.

B. ODE and the seven school districts have violated the Equal Educational Opportunity Act (“EEOA”) by failing to provide interpretation and translations to LEP parents.

The Equal Educational Opportunity Act was passed by Congress in 1974. Pub. L. 93-380, Title II, § 204, Aug. 21, 1974, 88 Stat. 515. In relevant part it states that “[n]o State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.” 20 U.S.C. § 1703(f). While the United States Supreme Court in *Horne v. Flores*, 557 U.S. 433 (2009), held that under the EEOA courts could not dictate the form of bilingual education and that monetary costs may be considered in programming, the conduct here clearly denies students an equal educational opportunity due to a complete or almost complete lack of communication.

The seven named school districts have failed to overcome language barriers facing their students by not communicating meaningfully with non-English-speaking and limited-English-speaking parents and guardians. By not providing parents with written or oral translations of important notices and documents the school districts are denying an educational opportunity to those students. LEP parents are not able to participate in the education of their children, while English-speaking parents are. This failure by the districts reinforces language barriers that

{00150454-4}

prevent students and parents who do not speak English from receiving the same educational opportunities as English-speaking parents. Thus, the seven named school districts and ODE have violated the requirements of the EEOA.

C. ODE and the seven school districts have violated Title III of the No Child Left Behind Act (“NCLB”) by failing to provide interpretation and translations to non-English speaking parents.

Title III of the No Child Left Behind Act, 20 U.S.C. § 6811 et seq., appropriates funding to supplement services to LEP² students. In return for that funding, NCLB requires recipients to perform certain minimal activities, including providing notice to parents about their child’s identification as LEP, how the child’s needs will be met, parental rights in the program, and how parents can be involved in the education of their children. 20 U.S.C. § 7012(a). The law requires that notice of the minimal activities be provided in a language the parents can understand and that the recipient be engaged in outreach activities to parents of LEP children. 20 U.S.C. § 7012(c), (e). Further, if a child has a disability, NCLB requires that parents are provided with

² In most of this complaint, LEP is referred to generally as students and parents who have a limited proficiency in English. As applied to Title III, LEP has a specific statutory definition:

The term “limited English proficient”, when used with respect to an individual, means an individual--

(A) who is aged 3 through 21;

(B) who is enrolled or preparing to enroll in an elementary school or secondary school;

(C)(i) who was not born in the United States or whose native language is a language other than English;

(ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual--

(i) the ability to meet the State's proficient level of achievement on State assessments described in section 6311(b)(3) of this title;

(ii) the ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) the opportunity to participate fully in society.

20 U.S.C. § 7801(25).

notice of how the recipient will meet the student's special education program, including progress on meeting the student's IEP. 20 U.S.C. § 7012(a)(7).

As described in the above statements of fact, ODE and the seven school districts subject to this Complaint have failed to provide the requisite notice to Complainants in a language they can understand. This has resulted in the Complainants' inability to understand their rights, to participate in the education of their children, and to determine whether their children are receiving an appropriate public education.

D. ODE and the seven school districts have violated the Individuals with Disabilities Education Act ("IDEA") by failing to provide interpretation and translations to LEP parents

The IDEA requires school districts to comply with robust procedural safeguards designed to protect parental and student rights to a free appropriate public education. Those safeguards require both general and specific notice to parents about their rights in special education and specific notice of actions the school district proposes or refuses to take in serving children with disabilities. The safeguards also require school districts to obtain parental consent throughout the special education process. These safeguards are in place, in part, to ensure that parents are fully informed of their rights and about the services provided to their children, and to meet a central requirement of IDEA - meaningful parental participation in the process. Because ODE and the school districts named in this complaint have failed to provide information to parents in a language they can understand, the districts have failed to comply with critical aspects of the IDEA.

1. The IDEA requires school districts to provide notice to and obtain consent from parents in the parents' native language.

In each named district, Complainants are not being provided notice and consent in a language they can understand as required by the IDEA. The children from these districts qualify

as students with disabilities, and the parents understand little to no English. Under the IDEA, every school district that receives federal funding is required to provide important documents, including notice of procedural safeguards, to parents in a language they can understand. 20 U.S.C. § 1415(d)(2). The act also requires that parents receive prior written notice whenever a school refuses or proposes to initiate or changes an identification, evaluation, or educational placement of the child. 20 U.S.C. § 1415(b)(3). Notice is also required to inform parents about upcoming meetings, including IEP meetings, concerning their child's education. 34 C.F.R. § 300.501(b)(2); 34 C.F.R. § 300.322. The notices required by the IDEA must be written in a language understandable to the general public and provided in the native language of the parent "unless it clearly is not feasible to do so." 20 U.S.C. § 1415(b)(4); 34 C.F.R. § 300.503(c).

Additionally, the IDEA requires informed consent from parents before their child is initially evaluated, provided services, or reevaluated. 20 U.S.C. § 1414(a)(1)(D); 34 C.F.R. § 300.300. For a parent to give informed consent, the parent must have been "fully informed of all information . . . for which consent is sought, in his or her native language, or through another mode of communication." 34 C.F.R. § 300.9. Consent under the statute also requires that the parent agree to the proposed activity in writing and that the parent understands that consent can be revoked at any time. *Id.* Thus, the IDEA requires school districts to effectively communicate with parents, to ensure both that parents have notice of their rights and that parents are fully informed before consenting to services for their children in the native language of the parents. In this case, Complainants are uninformed of their important rights in the special education process and the services being provided to their children because ODE and the school districts have failed to provide them notice and obtain their informed consent in their native language. As shown in the statement of facts above, almost all communication to the parents is in English.

2. The IDEA requires that parents have the opportunity to meaningfully participate in their child's education.

The named school districts are violating the IDEA by failing to give parents the opportunity to meaningfully participate in their child's education. The IDEA requires that parents have the opportunity to be involved in the special education process for their child. Parents have a right to participate in meetings regarding the identification, evaluation, educational placement, and provision of a free and appropriate public education ("FAPE") to their child. 34 C.F.R. § 300.501(b)(1). Additionally, parents must be provided prior notice when a school district proposes or refuses to change significantly the provision of special education services to a student to ensure that parents are able to fully participate in the decision. 34 C.F.R. § 300.501(b)(2); 34 C.F.R. § 300.322. Parents are also an integral part of the IEP team, and have the right to provide input and participate in many different decisions and processes regarding their child. Parental rights include, but are not limited to the ability to: consent to evaluations of their child, 20 U.S.C. § 1414(c)(3); participate in IEP meetings, 20 U.S.C. § 1414 (d)(1)(B)-(C); have notice of and consent to changes to their child's IEP, 20 U.S.C. § 1415(b)(3), (d)(1); and examine all records pertaining their child 20 U.S.C. § 1415(b)(1), (f).

The Supreme Court has repeatedly recognized that "the core of the [IDEA] . . . is the cooperative process that it establishes between parents and schools." *Schaffer v. Weast*, 546 U.S. 49, 53 (2005); *see also Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 205-06 (1982) ("It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process as it did upon the measurement of the resulting IEP against a substantive standard." (internal citation omitted)); *Honig v. Doe*, 484 U.S. 305, 311 (1988) ("Congress repeatedly emphasized

throughout the [IDEA] the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness.”). Thus, parents must have the opportunity to be involved in the determination and provision of services for students with a disability.

In Ohio, LEP parents are being denied effective and meaningful participation in their child’s education because they are not able to communicate with the schools. Parents are not being notified in their native language about procedures, evaluations, services, and rights in the special education process; nor are they being given the opportunity to give informed consent. During IEP meetings, many parents are not provided an interpreter. Those that do have an interpreter often express concern that the interpreter is not accurately translating what is being said. Additionally, parents report that interpreters are only present for portions of the IEP meeting, effectively depriving those parents of participating in the meeting. The failure to provide adequate interpreters in meetings is excluding LEP parents from, and thereby denying them meaningful participation in, the IEP process, contrary to the requirements of the IDEA. Therefore, in Ohio, LEP parents are precluded from being involved in their child’s IEP because the school districts consistently fail to communicate with them in a language they understand.

3. The IDEA requires the provision of critical special education documents in a parent’s native language.

ODE and the school districts have failed to ensure that critical special education documents are translated into Spanish. Documents that explain their child’s eligibility, the services being provided to their children, and whether their children are making progress, are provided to Complainants in a language they cannot read or understand, effectively precluding them from participating in and accessing the educational program.

One of the most important documents generated in the special education process is the ETR, used to determine whether a child is a “child with a disability,” and if so, the nature of the disability and the educational needs of the child. *See* 34 C.F.R. § 300.301. When the document is not translated into a parent’s native language, parents who do not speak English are deprived of fully participating in the resolution of important issues considering their child.

The IEP is another critical document for a child in special education. It is defined as “a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with [34 C.F.R.] §§ 300.320 through 300.324.” 34 C.F.R. § 300.320(a). It contains large amounts of information about the child, including information about the child’s levels of academic achievement and levels of functional performance as well as written, measurable goals and objectives for academic, functional, and social skills. The IEP describes in detail the educational placement and services to be provided to the child.

As explained in the attached Complainants’ letters, ETRs, IEPs, and other critical special education documents are routinely not translated for the parents. Complainants are not provided notice about what services their children are receiving, whether they are appropriate, or how to address concerns they have about the education of their children. Parents are simply unable to read and understand the critical information contained in these special education documents. Therefore, they lack knowledge of the system and are deprived of access and participation in their child’s education. This denial of access violates the requirements of the IDEA.

V. REQUEST FOR RELIEF

Complainants respectfully request that the Department of Justice, Educational Opportunities Section accept jurisdiction over their claims and initiate an investigation into the allegations contained in this Complaint. Complainants request that the ODE and the named

school districts be required to adopt policies and procedures that ensure meaningful access of LEP individuals by requiring, at a minimum:

1. Identification of LEP Parents.

School districts and buildings must identify LEP parents and provide assistance to these parents once identified. Such efforts may include home language surveys, interaction between parents and staff, and taking into account that ELL students, whom districts have an obligation to identify, also may have LEP parents.

2. Provision of Information to LEP Parents.

School districts and buildings must provide teachers and school staff information that would put them on notice of the need to arrange for services and assistance for LEP parents.

3. Appropriate Identification of Language Needs of LEP Parents.

School districts and buildings must appropriately identify the language needs of their LEP parent population.

4. Appropriate and Effective Location for Registration and Identification of LEP Parents.

School districts must establish a location for registration and identification information of LEP parents in order to prevent inconsistencies and delays in registration and the identification of LEP parents.

5. Parental Notification.

School districts and buildings must notify the LEP parents of the availability of language assistance services and that they are free of charge. The notice of the availability of the language assistance services must also be provided in a language that the parents will understand.

6. Staff Members Providing LEP Services.

School districts must ensure that individuals who provide language assistance services are trained or qualified to provide these services to LEP parents.

7. Availability of Interpreters/Translators and Written Translations.

In order to adequately notify LEP parents of school activities which are called to the attention of other parents and provide meaningful access to school programs and activities by LEP parents, school districts must provide notices and other items of communication in an understandable language to LEP parents. For LEP parents of students with disabilities, critical special education documents must be provided in a language the parents can understand. At a minimum, the ETR, IEP, prior written notice, general notice, progress reports, and any document requiring the written informed consent of a LEP parent should be translated into the parent's language.

8. Trained and Qualified Interpreters/Translators.

School districts shall provide language assistance for LEP parents effectively, with appropriate and competent staff or appropriate and competent outside resources. Interpreters and translators must be qualified and should have knowledge in both languages of any specialized terms or concepts, and understand the expected reading level of the audience. Interpreters and translators should be provided training on ethics and the importance of maintaining confidentiality. No student should be relied on to provide translation or interpretation services for another student, parent, or guardian except in emergency situations.

9. Notice to Staff and Staff Training regarding LEP Services.

School districts should provide meaningful access for LEP parents by informing school staff about the procedures for obtaining language assistance services. Training staff members

who have direct contact with LEP parents about the procedures for obtaining assistance for LEP parents may also be necessary to provide meaningful access.

10. Compliance and Oversight by ODE.


The Ohio Department of Education should be required to provide the necessary monitoring and oversight to ensure that school districts in Ohio meet the minimal requirements of federal law to ensure that LEP parents have access to the educational program. Further, the ODE should be required to provide its critical documents (such as complaint procedures and policies) in a language the parents can understand and ensure an effective means of communication for parents that call.

11. Oversight by the U.S. Department of Justice.

The U.S. Department of Justice should provide monitoring and oversight to ensure that ODE and school districts in Ohio meet the minimal requirements of federal law to ensure that LEP parents have access to the educational program.

Respectfully submitted,

DISABILITY RIGHTS OHIO



Kristin E. Hildebrant
khildebrant@disabilityrightsohio.org
50 W. Broad Street, Suite 1400
Columbus, Ohio 43215-5923
(614) 466-7264 - phone
(614) 644-1888 - fax

ADV. FOR BASIC LEGAL EQUALITY, INC.

Robert A. Cole / by Kelt

Robert A. Cole
bcole@ablelaw.org

Mark Heller / by Kelt

Mark Heller
mheller@ablelaw.org

525 Jefferson Avenue, Suite 300
Toledo, OH 43604
(419) 255-0814 - phone
(419) 259-2880 - fax