



Advocates for Children of New York  
Protecting every child's right to learn

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June 20, 2012

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

*Sent Via Electronic Mail*

**Re: New York City Department of Education's Systematic Denial of Language Services to Limited English Proficient Parents of Children with Special Needs**

Dear Sir/Madam:

New York Lawyers for the Public Interest (NYLPI) and Advocates for Children of New York (AFC) are legal organizations that provide assistance and representation to parents of children with special education needs as they navigate the New York City public school system. Through our advocacy, we have repeatedly found that limited English proficient (LEP) parents with encounter language barriers that do not allow them full access to documents and meetings related to their children's special education. The New York City Department of Education's (DOE) failure to provide language services to the tens of thousands of LEP parents of children with disabilities<sup>1</sup> prevents these parents from playing a meaningful role in their children's education, and denies educational benefits to these students with disabilities, in direct violation of local, state and federal anti-discrimination laws. We file this systemic complaint on their collective behalf.

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<sup>1</sup> According to data released to us by the New York City Department of Education (DOE) in 2009, roughly 33% of students receiving special education services report speaking a language other than English at home. We have requested from the DOE, through both the Freedom of Information Law and informal means, more precise or current data regarding the number of LEP parents of children receiving special education services. The DOE has yet to provide the data requested.

## **I. Nature of Complaint & Jurisdiction**

We file this complaint alleging discrimination by the New York City Department of Education 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.; 34 C.F.R. Part 100 et seq.), against parents with limited English proficiency (LEP) whose children receive, or are eligible to receive, special education services. We respectfully request that the United States Department of Education’s Office for Civil Rights accept this case for investigation.

The Office for Civil Rights of the U.S. Department of Education (“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 schools and districts that have systematically denied parental access to language services; and the acts complained of are occurring on an ongoing basis. Substantively, this complaint alleges that the DOE has and continues to routinely deny LEP parents access to translated written materials related to special education rights and services, and access to qualified interpreters during meetings and due process proceedings related to special education. This complaint asserts that by denying such language access to LEP parents of children with special education needs, the DOE violates Title VI of the Civil Rights Act of 1964 (“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 prior U.S. Department of Education Office for Civil Rights (“OCR”) decisions and policies. The DOE’s failure to provide language access to LEP parents in the special education context 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”).

## **II. Factual Background**

The DOE routinely denies LEP parents of students with disabilities the right to participate in their children’s special education program, in direct violation of the DOE’s own policies and regulations, as well as state and federal law. As the stories of Nyuk Siem Looi and eighteen other LEP parents make clear, when LEP parents do not receive translation and interpretation services, they cannot understand or advocate for their children’s unique educational needs, and their children suffer collateral educational harms.

### ***a. Representative Parent: Nyuk Siem Looi***

Nyuk Siem Looi has two young boys, Danny and Calvin, who both receive special education services from the DOE. Both of her sons have been diagnosed with autism and are non-verbal, and they receive services in the DOE’s District 75, a segregated district to serve students with the most significant disabilities. Nyuk’s primary language is Cantonese and she has a limited ability to read, write, speak, or understand English well. Without language services, she is unable to take part in school meetings or understand the documents and notices that the school and DOE

send to her. Since her sons began receiving special education services, she has never received Individualized Education Programs (IEPs), evaluations, report cards, or notes related to Danny or Calvin's education in a language she could understand. This past May, after making numerous requests of the school, she finally received an interpreter for a meeting for the first time in ten years. Until that time, schools had always told her that it was her responsibility to bring an interpreter to the many important school meetings related to her sons' education.

Last fall, Calvin began attending a new school in District 75. In preparation for an IEP meeting for Calvin in September, Nyuk sent a letter requesting that the school provide her with an interpreter. After no response, she was forced to ask her social worker from a non-profit agency to come to the meeting to act as her interpreter. The social worker had to leave after only a half an hour, and for the rest of the meeting Nyuk could only understand about half of what the teachers were telling her about her son. They asked her questions about Calvin's IEP goals, and what she expected from his school program, but she could not answer them or ask any questions of her own. After meeting for another forty minutes without an interpreter, the teachers asked her to sign some forms. She told them she could not understand what the documents said, but the school staff pressured her to sign, saying that these were important documents that had to be completed that day. She insisted on understanding what the documents said before signing them. The teacher then found a teaching assistant ("TA") from the school who spoke Cantonese. The TA tried to orally translate the documents for her, but the vocabulary was complicated and Nyuk could only understand about half of what she was saying.

Danny started attending high school this past fall. He is non-verbal, so it is difficult for his teachers to understand his behaviors, especially since he is a new student. As his mother, Nyuk is more familiar with his non-verbal gestures and expressions, and would be able to explain them to the teachers. But when she goes to Danny's school, she cannot answer the questions the teachers ask her because she is not given any form of interpretation services, whether telephonic or in-person. She can only speak to them about very simple things in English because that is all she can understand. She feels anxious and scared every time she goes to Danny's school because she must guess what the teachers are saying to her. When she cannot explain things to the teachers, a lot of important information regarding her son's needs and behaviors is lost. Occasionally, she tries to bring her social worker with her to the school to act as an interpreter, but he is not always available, and she is delayed in communicating with the school about what her son needs. When she goes alone, she has to ask them to write things down in English so she can try to find someone to translate it for her later, which also causes delays in her ability to exchange information and make decisions.

Nyuk also has problems communicating with the school outside of IEP and other scheduled meetings. She no longer attends DOE workshops offered to educate parents about how to help their children with disabilities because the trainings she attended were all in English. Nyuk cannot understand or respond when her sons' teachers write her daily notes, nor can she communicate with school staff when they call her about important incidents. For example, this winter she received a call from the nurse at Danny's school, but could only understand the nurse was saying something about Danny's "hand" and a "cut." Nyuk was aware that Danny had a spot on the back of his wrist where the skin was irritated because he repeatedly scratched it. She asked the nurse for an interpreter, but the nurse responded that no one could speak her language

at the school and continued to speak to her in English. Eventually the nurse became too frustrated with their inability to communicate, told Nyuk “never mind,” and hung up. Nyuk was concerned that she had been unable to convey the reasons for the sore on Danny’s hand and that the nurse might think the injury was her fault and call the Administration for Children’s Services.

Because Nyuk has received documents only in English, she has difficulty finding out how her sons, Calvin and Danny, are doing in school. She cannot keep track of their performance and does not know whether they are meeting their academic goals. She is frustrated by not being able to fully understand or participate in the decisions being made about her sons’ education. She has talked to other Chinese parents who do not speak English well and whose children go to her sons’ schools and they have the same problem: the school does not provide translated documents or interpreters when they ask for them. She would like to be more involved, but because the schools are not giving her language services, she is frustrated, afraid to return to the school, and struggling to find a way to help Danny and Calvin.

Like Nyuk, thousands of LEP parents feel lost and frustrated as they try to navigate the DOE’s special education system without adequate language services. Below is a brief description of critical documents and meetings unique to the special education process, where LEP parents are routinely denied translated documents and quality interpretation.

**b. *DOE’s Failure to Provide Translated Documents Throughout the Special Education Process***

As a result of hundreds of interactions with LEP parents over the years, NYLPI and AFC have discovered that the DOE – almost without exception – fails to translate education-related documents for LEP parents who cannot otherwise understand such materials due to limited English proficiency. These documents include detailed, child-specific documents, as well as basic notices, flyers and other standardized materials.

The DOE routinely fails to provide LEP parents translated written materials including, but not limited to, special education-related meeting notices (Exh. K-6 – 7), notices of recommended placements (Exh. R-7), evaluations (Exh. A-7), Individual Education Programs (“IEPs”) (Exh. M-9 – 10.), Impartial Hearing Orders (Exh. Q), Behavior Intervention Plans (“BIPs”) (Exh. I-17 – 18), Functional Behavior Assessments (Exh. L-7), Related Service Authorizations (Exh. D-11), Nickerson letters (Exh. B-7), and other documents imperative to their ability to act as meaningful participants in the development and enforcement of their children’s educational plans (Exh. H-11 – 16). Below are a few examples of essential educational documents that the DOE routinely sends to LEP parents in English only.

Despite parents’ notice to the DOE that they are LEP, and in many cases despite repeated requests for documents in their native language, none of the nineteen parents supporting this complaint, who represent four boroughs of New York City, have ever received IEPs in a language they could understand. In addition, after decades of representing LEP parents of special education students across New York City, complainant organizations NYLPI and AFC

have only seen one IEP translated by the DOE into a language other than English.<sup>2</sup> This important legal document describes a child's annual special education progress, academic and social/emotional challenges, classification of disability, mandated class size, type of school, mandated therapies, and annual goals. Without translation of such document, an LEP parent is unable to understand, refer to, or enforce his or her child's legal entitlement to an appropriate education program. In addition, before 2011, the first page of every IEP had a space to enter the parent's "Preferred Language/Mode of Communication" and "Yes" and "No" boxes to check next to the statement, "Interpreter Required." (See, e.g., Exh. D.) In many instances, IEP teams failed to fill out this crucial information, or filled it out incorrectly. (See, e.g., Exh. S.) Even when this section correctly indicated that the parent spoke a language other than English, the parent still did not receive the IEP or any other documents in his or her native language. (See, e.g., Exhs. I, K, M, and R.)

Once the DOE finalizes a student's IEP, it must offer the parent a corresponding placement for the child through a Final Notice of Recommendation (FNR), which often states the parent's right to visit the recommended school site, explains her due process rights if she disagrees with the recommendation, and states that she must sign and return the FNR within a specific time period or her child's seat may be forfeited. (Exh. O-8.) Many LEP parents supporting this complaint have not received FNRs in their language. For example, LEP parent S.H. received an FNR for her son last May, 2011. (Exh. O-8.) Although S.H. speaks Spanish, she was sent the document in English, and while a statement written in Spanish at the top of the page directed parents to a website in Spanish, this website had no information specific to her son. (See also, Exhs. B, K, Q, R.) Unbeknownst to her, she missed the deadline for returning the FNR to the school. Luckily, there was still a seat for her son, but such confusion could result in a child losing an offered placement.

When parents do not receive an FNR for their child in time to begin the next school year, they are entitled to a P1-R or *Nickerson* Letter, which gives them the right to place their child in a state-approved private school at the DOE's expense. These letters instruct parents about how to find a private school that might be appropriate for their child, and are supposed to include a listing of the approved private schools authorized to accept children with *Nickerson* letters. LEP parent Camerina Herrera received a *Nickerson* letter in English when her son with an intellectual disability was not given an appropriate placement before the school year had started. (Exh. B-7.) The form letter did not contain any information specific to her son, and no one had explained to her that she would receive this important authorization or what action it required. Unfortunately, she did not understand her right to place him in a private school, so he remained in a class where he was the lowest performing academically and his behavioral needs were unaddressed. Her son went without the services on his IEP for more than a year. (See also Exhs. A, Q.)

When a child's school does not have a service listed on the child's IEP, the DOE may issue a Related Service Authorization (RSA), allowing the parent to find an independent provider at the DOE's expense. LEP parent Edith Rodriguez received an RSA in English for her daughter with emotional disturbance to receive occupational therapy, along with a transportation reimbursement voucher and the registry of independent providers. (Exh. D-11.) At the bottom of

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<sup>2</sup> This IEP was obtained as a result of repeated requests by an attorney.

the RSA was a sentence written in eight different languages: “If you need help understanding the enclosed information, please telephone the New York City Department of Education at \_\_\_\_\_.” The omission of any number to call for help in this space on this document is symbolic of the absence of support throughout the system for LEP parents. (See also Exh. Q.) In some cases, parents have received these authorizations entirely in English (See also Exh. R.).

If a special education student is suspended for more than 10 days, the DOE conducts a suspension hearing and then a Manifestation Determination Review (MDR) to determine whether the behavior that led to the suspension is a manifestation of the child’s disability. LEP parent Sobeyda Hidalgo received a suspension notice in English regarding her severely speech impaired son. (See Exh. Q.) Ms. Hidalgo was also sent information about the charges against her son, the possibility of an early resolution conference, the suspension hearing, his alternate school placement, and the manifestation determination review, all in English. Ms. Hidalgo did receive a due process notice in Spanish, but it was 48 pages long and was not specific to the suspension context. Much of the suspension-specific information, including bullets entitled, “PLEASE READ THE FOLLOWING POINTS (1-11) VERY CAREFULLY IN ORDER TO FULLY UNDERSTAND THE SUSPENSION PROCESS, YOUR RIGHTS AND WHAT IS EXPECTED OF YOU” was in English only. Ms. Hidalgo, like many parents supporting this complaint, is fortunate to have legal representation, and as a result was able to understand the paperwork after sending it to her attorney for translation. LEP parents of students with disabilities who have been suspended frequently call Advocates for Children and NYLPI because they have not received crucial information in a language they can understand and do not know why their child cannot attend school or what their rights are in the situation. (See also Exh. P)

The DOE regularly sends notices to parents regarding parent training workshops and tips on how to implement behavior intervention techniques in the home. Such notices and materials are frequently sent in English only. Even when the notice itself is translated, the workshop does not in fact provide interpreters, placing this information and training out of reach for LEP parents. For example, Edith Rodriguez received a letter from her daughter’s speech pathologist and over a page of activities to do over the summer; both the letter and the activities were written in English only. (Exh. D.) Ms. Rodriguez did not know this letter and activities existed until she gave the paperwork to her attorney. (See also Exhs. H, I, M.)

These examples represent only a fraction of language access violations; the DOE routinely denies LEP parents crucial information about their special education students’ programs, services, and rights. As is evidenced by the accompanying affidavits, LEP parents from across the city receive all types of school- and special education-related documents in English, including meeting notices; disability-specific advice for working with their children over the summer; letters from teachers about daily progress and difficulties; occurrence reports; transfer forms requiring parent signature; retention letters; consent forms for evaluation; and forms for consent to waive services. NYLPI and AFC have repeatedly had to translate these forms for parents so they can understand what is going on with their children’s educational programs.

In many cases, even when parents or their advocates attempt to enforce their rights by requesting translations of the documents, the DOE and individual schools have refused to comply. For

example, Ms. Germosen’s legal representative sent a letter on her behalf to her son’s school requesting Spanish translations of the DOE’s procedural safeguards notice, her son’s IEP, and his evaluations. (Exh. F.) Ms. Germosen received no response and continued to receive IEPs in English. In other cases, the DOE clearly had notice and did not dispute the parent’s limited English proficiency, but still failed to provide translated documents. (See also Exhs. H, I, and M.) Even simple notices are not consistently translated for the hundreds of LEP parents we have assisted over the years. (See Exhs. K, and P.)

The importance of these documents is indisputable – one need only review their language to understand the critical nature of their content. For example, [string reference to language from exhibits – e.g. “read very carefully”]. Often documents require a parent’s consent and signature, typically in order to provide, alter or remove special education programming or related services. (See, e.g., Exhs. O and P.)

*c. DOE’s Failure to Provide Qualified Interpreters Throughout the Special Education Process*

Along with failing to provide translated written materials, the DOE often either refuses or fails to affirmatively provide qualified interpreters to LEP parents at meetings related to their children’s special education services. However, LEP parents of students with disabilities require qualified interpreters at a variety of meetings and due process hearings with the DOE where their child’s education and legal rights are discussed and decided.

Every year, the DOE must invite families of each student with a disability to an IEP meeting, in which parents or guardians, teachers, therapists, a school psychologist, and a district representative (collectively the “IEP team”) discuss and create the child’s legally enforceable Individualized Education Program for the following year. In this important meeting, the IEP team discusses the student’s classification of disability; his present academic and social-emotional performance and needs; the progress he made towards his yearly goals; transition services for students 15 and older; the type of school and class the child will be placed in for the coming year; the related services the child needs; and many other considerations such as transportation, special technology, and whether the child needs programming during the summer. (See Exh. H.)

Parent participation is integral to the IEP meeting for myriad reasons. Parents are their children’s primary advocates to ensure measurable academic and social emotional progress every year; parents can share crucial information with the IEP team about how best to work with their children; and parents can provide important feedback to the team to assess the effectiveness of the children’s educational plans. Without qualified interpreter services throughout the meeting, LEP parents are not only unable to make these important contributions, but they are also excluded from the discussion and important decision-making about their children’s education.

When “interpreters” are provided at IEP and other meetings, these individuals are often untrained and lack neutrality, rendering them unqualified to interpret complicated information about a student’s educational needs. Special education terminology and vocabulary is uniquely complicated; in order to be qualified, an interpreter must understand and be familiar with such

vocabulary. In this way, the average teacher or teaching assistant may not be capable of providing interpretation at a meeting or other discussion. For example, Ms. Hernandez and Ms. Ramirez have attended IEP and other meetings where a staff member was assigned to interpret but did not speak enough Spanish to effectively communicate what the other IEP team members were saying. (See Exhs. C and O.) Similarly, Ms. Nuñez attended meetings with a school-based psychiatrist to discuss her son's medications where a therapist attempted interpretation using a Spanish-English dictionary. (Exh. L.)

In some situations, the "interpreter" has simply summarized meetings, rather than providing complete interpretation. (See Exhs. D, J, Q and S.) When parents like Ms. Hidalgo, Ms. Rodriguez, and Ms. Li are excluded from the discussion of their children's educational progress and programs and not asked, in their language, for their thoughts and feedback, they are less likely to share their unique insights, ask specific questions, and meaningfully contribute to their children's program. Without qualified interpretation in Spanish, Ms. Hidalgo was not told her son Richi was still reading at a kindergarten level in fifth grade, and Ms. Ramirez did not understand her daughter's lack of academic progress until four years after she entered DOE schools. (Exhs. C, D.) After this realization, Ms. Ramirez chose to bring her younger son to an IEP meeting for her daughter because she did not trust that the school would provide sufficient interpretation. (Exh. C.)

In still other situations, DOE "interpreters" have inappropriately violated their role as neutral interpreter by injecting their own beliefs or opinions while "interpreting" for the parent. (See, e.g., Exh. P.) For example, at Ms. Romano's first IEP meeting for her son, the social worker was the only person speaking to her in Spanish, but he was also reiterating and emphasizing the school's opinion that Ms. Romano's son needed a District 75 placement. (Exh. P.) Ms. Romano clearly remembers feeling pressured to accept the school's recommendation, even though she did not yet know what District 75 even was. (Exh. P.) This failure to ensure that impartial, accurate interpretation of the content of conversations leaves parents and teachers alike with an incomplete and inaccurate understanding of the discussion. The prevalence of these experiences among the parents supporting this complaint and the parents AFC and NYLPI have worked with for years establishes the DOE's failure to provide qualified interpreter services to LEP parents of special education students.

Even with notice that a parent's primary language is not English (e.g., the box on the first page of the child's pre-2011 IEP is checked "yes" where it asks whether the parent needs an interpreter), schools have denied the parent's request for interpreters or failed to provide interpreters. When Ms. Lopez realized the school was holding her son with an intellectual disability over a bruise on his arm he had not adequately explained, Ms. Lopez asked the principal for an interpreter. He said she would have to bring one herself. (Exh. A.) In these situations, parents are typically forced to bring children, other parents, or case workers from non-profit agencies to interpret for them. For example, for years Ms. Li has brought a social worker from an outside agency to provide interpretation because she, like Ms. Ramirez and others, experienced IEP and other meetings without interpretation and has left frustrated at her inability to communicate and understand crucial information about her son. (Exh. S.) In other situations, LEP parents are forced to meet with the school in the absence of any interpreter, or miss the meeting altogether. (See, e.g., Exh. K.)



When a child is evaluated for the provision of special education services (either initially, every three years, or at the request of his parent), the school social worker interviews the parent to create a “social history” to inform the IEP team about the child’s familial and health history. It is extremely important that social histories are accurate so they can properly inform the IEP team and practitioners working with the child of his unique circumstances and needs. Several parents supporting this complaint, however, have not been provided interpreters during the social history interview. (See Exhs. E, N.) These LEP parents struggle to understand the questions and convey important and intimate information in English, but without interpretation, they are not able to share their child’s complete social history.

The DOE also routinely fails to provide qualified interpretation services at due process proceedings where parents are challenging a child’s suspension or contesting the appropriateness of their child’s educational setting. The impartial hearing is an administrative proceeding in front of an impartial hearing officer to formally resolve disputes between the DOE and the parent regarding the child’s special education program. Interpreters are essential for the parent to hear arguments and testimony provided by the DOE, understand rulings by the impartial hearing officer, and share their testimony regarding their child’s education. However, parents supporting this complaint have faced impartial hearings without satisfactory interpretation, or without an interpreter at all. For example, after Ms. Hidalgo had requested an interpreter for the hearing to address her son’s inappropriate placement and to request a new placement and compensatory services, she arrived at the impartial hearing office to present her case and no interpreter was present. (Exh. Q.) Thankfully, her case settled at the hearing office and Ms. Hidalgo did not have to request an interpreter again and reschedule her hearing. When Ms. Hernandez attempted to testify at an impartial hearing, the interpreter assigned to the hearing did not speak enough English to interpret the crucial testimony Ms. Hernandez was presenting on her son’s educational history and his lack of progress. Ms. Hernandez and her attorney had to intervene repeatedly to request an accurate interpretation for the record. (Exh. O.)

As evidenced by Nyuk’s story and the other LEP parents’ experiences in the special education system, the DOE’s denial of translation and interpretation services excludes parents from participating in the development of their children’s individualized educational program.

### **III. Legal Claims**

Complainants assert 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, complainants assert that the DOE has failed to develop and administer a system by which limited English proficient parents whose children receive or are eligible to receive special education services are provided with language services to ensure they have the opportunity to meaningfully participate in their children’s education.

#### **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 routinely deny LEP parents access to their children's education, in violation of its own regulation and of the aforementioned laws.

**IV. DOE's System-Wide Failure**

Parents of children with disabilities are particularly vital participants in the development and successful implementation of their children's education plan, as mandated by various laws. These parents have more frequent and involved interactions with teachers and school staff, whether at IEP meetings, parent training workshops, or due process proceedings. Yet, despite this increased level of involvement, the nineteen LEP parents who have joined this complaint, as well as the hundreds of LEP parents the complainant organizations have helped over the years, are routinely denied access to effective communication. The breakdown is clearly occurring on a school level. The ad hoc implementation of policies by principals, combined with the absence of DOE training, monitoring, and oversight, amounts to a failed system for LEP parents. The DOE has not met its legal obligation to develop an effective system that ensures LEP parents of children receiving special education services received the language services to which they are entitled.

On January 22, 2010, New York Lawyers for the Public Interest filed a Freedom of Information Law (FOIL) request with the DOE seeking, among other data, "policies, guidelines, trainings, manuals, surveys, memoranda, letter, or e-mails concerning the Department of Education's provision of language access services to limited-English proficient parents of students with special needs." (See Exh. T). Beyond publicly available documents, such as the most recent version of Chancellor's Regulation A-663 and documents concerning English Language Learners,<sup>3</sup> the DOE did not issue any responsive documents regarding protocols or trainings.<sup>4</sup> Of

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<sup>3</sup> It is unclear why the DOE provided this information as it does not relate to the provision of language services for LEP parents of children in special education. Interestingly, the provided materials seem to reveal a clear understanding of the important role parents play in developing and selecting an appropriate English Language Learner (ELL) program for their child. A parallel packet of information and trainings for LEP parents of children kids eligible for, or already receiving, special education services would be a meaningful step toward ensuring parents' full participation in their children's education.

particular concern is the apparent absence of any kind of training for DOE staff, whether for bilingual employees serving as “interpreters” at meetings with parents, or principals and administrative staff responsible for implementing the policies such as Chancellor’s Regulation A-663. In addition to training on how to provide language services, the DOE failed to provide any documents regarding a process by which to assess staff serving as interpreters to ensure that such individuals are qualified to provide such interpretation. The DOE has apparently failed to ascertain whether its “interpreters” are able to communicate proficiently, or have basic knowledge of technical concepts and terminology related to special education. The DOE has also failed to ensure that its translation and interpretation for LEP parents at all levels of the DOE is complete, accurate, and timely. Finally, the DOE has not given parents a clear mechanism by which to make a complaint when they do not receive language services.

Although the DOE has created a “Language Access Policy,”<sup>5</sup> as per the Mayoral Executive Order, as well as issued Chancellor’s Regulation A-663, these policies’ lofty proclamations of language access fall short in reality for LEP parents. For example, the DOE’s Translation and Interpretation Unit’s (T&I Unit) website describes interpretation and translation services it can provide to schools “to enhance the organization’s ability to communicate with and better engage limited-English-proficient parents of New York City school children.” Yet, LEP parents of students with disabilities do not reap the benefits of such resources, as evidenced by the numerous parent experiences shared in this complaint. In the DOE’s “Parent’s Guide to Special Education Services for School-Age Children,” the DOE claims that at a parent’s request, “the IEP will be translated into your preferred language.”<sup>6</sup> In contrast to this assertion, parents and advocates are routinely denied translated documents when they make such requests. In addition, the T&I Unit website states that “[o]ver-the-phone interpretation services are available to all Department of Education personnel that come into contact with limited-English-proficient parents.”<sup>7</sup> Notwithstanding the availability of these telephonic interpretation services during business hours, many LEP parents can recall meetings where there was no interpreter present or a person with limited Spanish (for example) proficiency had to attempt interpretation. If the DOE utilized the services they claim to provide, more LEP parents of special education students would be afforded their right to meaningful participation in their children’s educational programs.

Even systems recently developed by the DOE appear to have neglected the importance of effective communication with LEP parents. In 2011, the DOE implemented a new, computer-based Special Education Student Information System (SEGIS), designed to streamline and ensure proper completion of each student’s IEP. While a worthy goal, the new SEGIS IEP is flawed in ways that are especially problematic for LEP parents. As described above, the first page of the old IEP had a full box for Parent Information and a specific space to enter the parent’s “Preferred Language/Mode of Communication.” The page also contained “Yes” and “No” boxes to check next to the statement: “Interpreter Required.” In the new IEP, however, there is no space to enter the parent’s name, and the space to enter “Parents Language(s) Spoken/Mode Communication”

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<sup>4</sup> The documents sent by the DOE in response to the FOIL request are on file at NYLPI.

<sup>5</sup> Available at: <http://schools.nyc.gov/RulesPolicies/languagepolicy.htm>.

<sup>6</sup> Available at: [http://schools.nyc.gov/NR/rdonlyres/0797E0DD-0BD0-4734-9D50-1F5453198287/0/Parent\\_Guide\\_English.pdf](http://schools.nyc.gov/NR/rdonlyres/0797E0DD-0BD0-4734-9D50-1F5453198287/0/Parent_Guide_English.pdf).

<sup>7</sup> *Id.*

is buried in the final pages of the IEP. Finally, there is no place to indicate whether an interpreter is required. If a school team wants to properly prepare for an IEP meeting with an LEP parent, they can no longer rely on last year's IEP to tell them whether to arrange for an interpreter.

To the extent that the DOE has policies or materials that relate to language access, the ground level implementation by principals and school staff is clearly inadequate. Whether ignorant or improperly advised, these gatekeepers prevent parents from accessing language services and enforcing their rights. Moreover, the DOE has missed system-wide opportunities to ensure oversight and the efficient provision of language services to LEP parents of students with disabilities. Based upon the information we have gathered through client experiences, a FOIL request, and meetings with DOE personnel, we believe the DOE lacks proper training, guidance, and accountability procedures to assess and correct deficiencies in the provision of language services to LEP parents.

## **V. Conclusion & Relief Sought**

As evidenced by the promulgation of Chancellor's Regulation A-663, the New York City Department of Education recognizes its legal obligation to provide language access. Yet, its implementation of such obligation is woefully inadequate. The DOE has failed to develop a system by which to train staff, distribute critical materials, or educate LEP parents about their rights. The results need no translation: the vast majority of the thousands of documents brought to our advocacy organizations by LEP parents of children with disabilities are in English. Based on our experience representing parents in meetings and hearings, we believe the qualifications and skills of "interpreters" currently being provided to parents by the DOE, if at all, are not being assessed in any way and are sub-standard.

The consequences of the DOE's failure to serve LEP parents are significant: LEP parents of children with special education needs are left without basic information and unable to participate in the crucial development of their child's education plan. Without language services, LEP parents do not have the ability to access due process rights and remedies when violations of the law have occurred. LEP parents report feeling isolated and humiliated, racked with concerns and doubts about whether their children are succeeding in school, or left without information and training on how to help their children's behavioral development at home. The children of LEP parents who are shut out of participating in their children's education often lose crucial educational time as they continue in inappropriate settings.

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

1. Create and fund a clear and comprehensive system to provide translation and interpretation services to LEP parents throughout the special education process. Such a system must ensure the parent's primary language is immediately and clearly identified in

the special education referral process, that such identification triggers all further correspondence and communication to be in the parent's primary language; all special education-related documents to parents in their primary language; and qualified interpreters for special education meetings. Additionally, the DOE must create and fund policies and systems to provide qualified interpreters at all stages of due process proceedings, including impartial hearings, and to translate all related documents.

2. Appoint a "Chief Language Access Coordinator" to oversee the DOE's provision of language services to LEP parents of children with special education needs and to serve as the point person for all outreach efforts and policy implementation. Appoint a "Language Access Coordinator" at each school and CSE to oversee the provision of language services at the school and network levels, and to receive and process a) translation and interpretation requests from parents and b) complaints from parents of failures to provide such language services.
3. Provide comprehensive training for school and network office staff on the aforementioned system to provide language services to LEP parents. Such training must include a statement regarding the DOE's obligation to provide such services, instructions for how to identify a parent's language needs, clear guidelines on how to request and pay for document translation or interpreter services, and information regarding contacts at the network and central DOE offices available to support the provision of such services.
4. Develop and distribute informational materials to LEP parents to inform them of their right to language services in the special education process (e.g. the parent brochure our organizations created in collaboration with the Division of Students with Disabilities & English Language Learners that was never distributed). Publicize the availability of language services to LEP parents, including through ethnic media, such as local radio and newspaper publications.
5. Assess the qualifications of all would-be interpreters and translators. Develop and implement trainings for any school-level staff serving as interpreters to ensure that LEP parents are provided with quality and ethical interpretation throughout the special education process, including special education-related meetings and due process proceedings.
6. Create and implement a system to monitor compliance of 1-5 above, which includes the following:
  - a. An audit to ensure that language services are being provided to LEP parents of children with special education needs, in a timely manner, whenever appropriate. Such auditing would include regular visits to schools, DOE offices that serve parents (e.g. Committees on Special Education), and due process hearing offices. Audits would also include, among other measures, the systematic surveying of LEP parents regarding their experience with language access and the systematic confirmation that signage advising parents of language services is posted in all areas that serve LEP parents;



- b. A mechanism to collect data on the need for language services, including the number of LEP parents with children in the special education system. Such system would track the number of requests for, as well as the provision of, translated documents and interpreters in the special education process in order to create benchmarks to improve the delivery of such services. Such requests would include those made to schools, in addition to those of other DOE offices. Such data would be made public on a regular basis, including by posting such information on the DOE website; and
- c. A clear and effective complaint procedure for LEP parents who encounter barriers in obtaining language services, including sufficient notice to parents of such recourse. Such complaint procedure will include a contact at the school and the CSE level, as well as a mechanism to ensure a timely response and resolution of all complaints.

Please inform us if you need additional information to begin your investigation of the New York City Department of Education.

Sincerely yours,

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