June 14, 2016

Dear Colleagues:

I am writing today to make you aware of the attached Statement of Interest ("SOI") filed by the U.S. Department of Justice ("DOJ") and the U.S. Department of Education ("ED") in *T.R. v. The School District of Philadelphia*.[1] The United States is not a party in that case, but, through DOJ and ED, filed the SOI to explain to the court its interpretation of the correct legal standard governing the language-based discrimination claims of these Limited English Proficient ("LEP")[2] parents under Title VI of the Civil Rights Act of 1964 ("Title VI") and the Equal Educational Opportunities Act of 1974 ("EEOA"). The SOI addresses, among other matters, the extent to which individualized education programs ("IEPs") of children with disabilities must be translated for LEP parents under Title VI and the EEOA.

Title VI is a civil rights law that prohibits discrimination on the basis of race, color, or national origin in any educational program or activity that receives Federal financial assistance. In the SOI, the United States explains that there is longstanding case law and guidance establishing that national origin discrimination under Title VI includes language-based discrimination; thus, under Title VI, federally-funded recipients (including state educational agencies and school districts) must provide language assistance to LEP persons to ensure meaningful access to the benefits of the recipient's programs or activities. As further explained in the SOI, in 2002, DOJ issued guidance that clarifies how recipients could plan to meet their obligations to provide language access under Title VI.[3] The 2002 guidance indicates that an effective LEP plan includes the translation of "vital written materials" into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by a recipient's program.

Whether a document is "vital written material" depends upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. Accordingly, in the

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[1] Case No. 15-04782 (E.D. Pa.). The SOI, which was filed on January 25, 2016, is available at www.lep.gov/resources/EOS_SOI_Philly_012716.pdf.

[2] The term "LEP" as used herein refers to individuals who are limited in their English proficiency on account of their national origin, including but not limited to their ancestry, foreign birth, or home languages other than English. LEP students are also commonly referred to as English learners or English language learners.

[3] DOJ Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002), *available at* https://www.justice.gov/crt/about/cor/lep/DOJFinLEPFRJun182002.pdf.

SOI, the United States declares that a student's IEP is vital, and that other documents related to a student's special education program, as well as their regular education program, will also often meet these criteria because they will be vital to parents understanding their children's education placement, progress, and recommendations from the district.

Under Title VI, all vital documents, including a student's IEP, must be accessible to LEP parents, but that does not necessarily mean that all vital documents must be translated for every language in the district. For example, a timely and complete oral interpretation or translated summary of a vital document might suffice in some circumstances. A district must, however, be prepared to provide timely and complete translated IEPs to provide meaningful access to the IEP and the parental rights that attach to it. This is because a parent needs meaningful access to the IEP not just during the IEP meeting, but also across school years to monitor the child's progress and ensure that IEP services are provided.

Additionally, in the SOI, the United States also explains that the EEOA requires state educational agencies and school districts to take appropriate action to overcome language barriers of LEP parents and that "appropriate action" includes translations and oral interpretations for LEP parents.

The United States' SOI is not explaining the requirements in the Individuals with Disabilities Education Act ("IDEA") for translation. There is no comparable requirement in the IDEA or in the IDEA Part B regulations that IEPs must be translated under these circumstances. Under 34 CFR §300.322(e), the 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 with deafness or whose native language is other than English. Additionally, IDEA requires that certain notices to parents be provided in the parent's native language, unless clearly not feasible to do so. See 20 U.S.C. 1415(b)(4) (prior written notice); 20 U.S.C. 1415(d)(2) (procedural safeguards notice); see also 34 CFR §300.503(c) (notice in understandable language).

Instead, the SOI reiterates and clarifies that under Title VI and the EEOA, state educational agencies and school districts have independent responsibilities to provide LEP parents of children with disabilities meaningful access through timely and complete translation and oral interpretation.

If you have questions regarding this SOI, please contact Lisa Pagano at Lisa.Pagano@ed.gov. If you have questions regarding Title VI obligations, you may also send an email to OCR@ed.gov.

Best

Ruth

Ruth E. Ryder
Acting Director
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