

March 12, 2014

Via CM/RRR and Fax

Texas Education Agency
1701 North Congress Ave.
Austin, TX 78701

RE: Systemic Complaint Against HISD for Denying Monolingual, Spanish-Speaking Parents of Students with Disabilities the Opportunity to Meaningfully Participate in the IEP Formulation Process

To Whom It May Concern:

Disability Rights Texas is a federally mandated protection-and-advocacy system for people with disabilities in the state of Texas. The agency files this complaint against Houston Independent School District (HISD) on behalf of three clients and the thousands of similarly situated, monolingual, Spanish-speaking parents of students with disabilities in the district who are being denied meaningful opportunities to participate in the IEP process.

In 2013, "Hispanic students made up 62.7 percent of the student population in HISD."¹ There were 127,483 Hispanic students out of 203,354 total students² and 115,391 students in Limited English Proficient (LEP), English as a Second Language (ESL), or Bilingual programs—56.7% of the student body.³ There were also 15,998 students in special education.⁴ Since "Hispanic students comprised 57.0 percent of the special education population," there were 9,119 Hispanic students in special education in 2013.⁵

██████████ (G.L.) is the Spanish-speaking parent of ██████████ (M.A.), a ██████████-grade student with a disability at ██████████ Elementary School in HISD. M.A.'s birthday is ██████████, and he lives with G.L. at ██████████.

¹ HOUS. INDEP. SCH. DIST., SPECIAL EDUCATION PROGRAM: IDENTIFICATION, PLACEMENT, AND ASSESSMENT REPORT, 2012-2013, at 10 (2013), available at http://bit.ly/HISD_Research.

² HOUS. INDEP. SCH. DIST., 2012-2013 FACTS AND FIGURES 1 (2013), available at <http://bit.ly/HISD2012-13>.

³ Following is the breakdown of students by program: LEP, 60,586 (29.8%); ESL, 13,915 (6.8%); Bilingual, 40,890 (20.1%). See also *Id.*

⁴ *Id.*

⁵ HOUS. INDEP. SCH. DIST., *supra* note 1, at 10, 26.

██████████ (R.A.) is the Spanish-speaking parent of ██████████ (G.C.), a ██████████-grade student with a disability at ██████████ Middle School in HISD. G.C.'s birthday is ██████████, and she lives with R.A. at ██████████.

██████████ (A.M.) is the Spanish-speaking parent of ██████████ (E.S.), a ██████████-grade student with a disability at ██████████ Elementary School in HISD. E.S.'s birthday is ██████████, and he lives with A.M. at ██████████.

The undersigned attorney and Disability Rights Texas represent G.L., R.A., and A.M. We request that TEA investigate for our clients individually—and for all similarly situated, monolingual, Spanish-speaking parents of students with disabilities in HISD generally—HISD's routine failure to provide the following:

1. Spanish-translated, written copies of each child's Individualized Education Programs (IEPs), under 34 C.F.R. § 300.322(f), TEX. EDUC. CODE ANN. § 29.005(d), and 19 TEX. ADMIN. CODE § 89.1050(e);⁶
2. Appropriate Spanish-language interpretation during IEP Team meetings, under 34 C.F.R. § 300.322(e);⁷ and
3. Timely written notice in the parent's native language, under 34 C.F.R. §§ 300.503(c), 300.29(a), and 19 TEX. ADMIN. CODE § 89.1015.⁸

These procedural violations “seriously infringe the parents’ opportunity to participate in the IEP formulation process, [and] clearly result in the denial of FAPE.”⁹

⁶ 34 C.F.R. §300.322(f) (“The public agency must give the parent a copy of the child's IEP at no cost to the parent.”); TEX. EDUC. CODE ANN. §29.005(d) (“If the child's parent is unable to speak English, the district shall: (1) provide the parent with a written or audiotaped copy of the child's individualized education program translated into Spanish if Spanish is the parent's native language[.]”); 19 TEX. ADMIN. CODE §89.1050(e) (“In the event TEC §29.005(d)(1), applies, the district shall provide a written or audio-taped copy of the student's IEP, as defined in 34 CFR, §300.324 and §300.320.”).

⁷ 34 C.F.R. §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.”).

⁸ 34 C.F.R. §300.503(c)(1) (“The notice required under paragraph (a) of this section must be—(i) Written in language understandable to the general public; and (ii) 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. §300.29(a) (“Native language, when used with respect to an individual who is limited English proficient, means the following: (1) The language normally used by that individual”); 19 TEX. ADMIN. CODE §89.1015 (“Reasonable time required for the written notice to parents under 34 Code of Federal Regulations (CFR), §300.503, is defined as at least five school days, unless the parents agree otherwise.”).

⁹ *Doug C. v. Haw. Dep't of Educ.*, 720 F.3d 1038, 1043 (9th Cir. 2013) (quoting *Shapiro ex rel. Shapiro v. Paradise Valley Unified Sch. Dist. No. 69*, 317 F.3d 1072, 1079 (9th Cir. 2003)) (internal quotation mark omitted).

I. HISD Chooses Not to Provide Written IEPs in Spanish, Appropriate Spanish Interpretation at IEP Team Meetings, and Prior Written Notice in Spanish.

A. HISD Chooses Not to Provide Written IEPs in Spanish

The Texas legislation that implements the Individuals with Disabilities Education Act (IDEA) states in the plainest of language precisely what school districts must provide to monolingual, Spanish-speaking parents: “a written or audiotaped copy of the child’s individualized education program translated into Spanish if Spanish is the parent’s native language.”¹⁰ HISD fails to comply with this regulation for all monolingual, Spanish-speaking parents in the district.

The IDEA plainly defines individualized education program or IEP as “a *written statement* for each child with a disability.”¹¹ The U.S. Supreme Court has confirmed that the IEP “consists of a *written document*.”¹² Thus, section 29.005(d) of the Texas Education Code confers on Spanish-speaking parents the right to receive a Spanish-translated copy of a written statement for each child with a disability.

Monolingual, Spanish-speaking parents of students with disabilities, including the three complainants, have consistently been provided the following: (1) an audio-cassette tape or CD of the entire Admission, Review, and Dismissal (ARD) meeting, which does not typically include a verbatim reading of each section of the IEP document; (2) a copy of the IEP in English; (3) a copy of the meeting minutes or deliberations in English; and (4) a copy of the prior written notice required under 34 C.F.R. § 300.503 in English.

Despite this practice, page one of each HISD *ARD/IEP Committee Report* states the following: “If the student’s parent is unable to speak English, HISD will: Provide the parent/adult student with an audiotaped copy of the student’s *ARD/IEP report* translated into Spanish, if Spanish is the parent’s native language.”¹³ See Exhibit 1. HISD thus portends to comply with TEX. EDUC. CODE ANN. §29.005(d) by giving an audio recording of the poorly translated ARD meeting to Spanish-speaking parents, but this sort of compliance is inadequate at best, and deliberately offensive at worst, since an audio recording of the ARD meeting is neither functionally nor logically equivalent to an audiotaped copy of the child’s individualized education program translated into Spanish.

To properly comply with TEX. EDUC. CODE ANN. §29.005(d), HISD must either provide monolingual, Spanish-speaking parents of students with disabilities a written copy of their child’s IEP translated into Spanish, or, if the parent cannot read Spanish, the district can provide an audio recording in which a person reads the written IEP verbatim in Spanish.

¹⁰ TEX. EDUC. CODE ANN. §29.005(d).

¹¹ 20 U.S.C. §1414(d)(1)(A)(i) (emphasis added); 34 C.F.R. §300.320(a).

¹² Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 182 (1982) (emphasis added).

¹³ See, e.g., HOUS. INDEP. SCH. DIST., ARD/IEP COMMITTEE REPORT FOR M.A., at 1 (Feb. 11, 2013).

HISD need not reinvent the wheel when it comes to providing Spanish-translated, written IEPs. HISD currently uses EasyIEP™ Web Based IEP Management (EasyIEP), a web-based software developed by Public Consulting Group (PCG), to develop IEPs for its special-education students.¹⁴ Jack Loftland, the PCG sales representative for Texas, confirmed that EasyIEP is available in Spanish and that it would be very easy to set up for HISD.¹⁵ HISD has elected not to purchase the Spanish version of the EasyIEP™ software, nor any other software that would allow them to translate written IEPs into Spanish.

Each monolingual, Spanish-speaking parent represented in this complaint has requested a copy of their child's IEP in Spanish and been denied:

G.L. attended an IEP Team meeting at [REDACTED] Elementary School on February 11, 2013. When she requested a written copy of M.A.'s IEP in Spanish, the district denied her request.

A.M. attended an IEP Team meeting at [REDACTED] Elementary School on September 3, 2013. When she requested a written copy of E.S.'s IEP in Spanish, district representative, Mary Kay Kinnett, Senior Manager of Special Education Services for HISD Elementary Schools, advised A.M. that written IEPs are only available in English. Ms. Kinnett further explained that this is why the district records the ARD meetings for parents whose native language is other than English and provides them with an audio copy of the meeting.

R.A. attended an IEP Team meeting at [REDACTED] Middle School on October 10, 2013. When she requested a written copy of G.C.'s IEP in Spanish, the district denied her request. When asked why a copy of the IEP would not be provided in R.A.'s native language, Toni Pompa-Rodriguez, Senior Manager of Special Education Services for HISD Middle Schools, explained that the district does not have the EasyIEP™ software available in Spanish so they cannot provide parents with written copies of IEPs in Spanish.

B. HISD Fails to Provide Appropriate Spanish Interpretation at IEP Team Meetings

At IEP Team meetings, HISD generally provides Spanish interpreters of mediocre proficiency. They are often persons who are inadequately trained, unqualified, or completely inappropriate to serve as an interpreter. These interpreters attempt to summarize the main ideas that are discussed by each team member and often cannot properly translate or explain, among other things, the unique terms of art, numerous initialisms and acronyms, significance of test results, or specific proposed goals in the student's IEP—all essential information that a monolingual, Spanish-speaking parent cannot fully understand without appropriate interpretation. If a parent is denied the opportunity to fully understand what is discussed during the meeting, they cannot effectively participate as a member of the ARD committee to formulate the child's IEP.

¹⁴EasyIEP™ Web Based IEP Management, PUBLIC CONSULTING GROUP, <http://www.publicconsultinggroup.com/education/products/easyiep/index.html> ("For more information about PCG Education's EasyIEP™ Web Based IEP Management product please contact us at info@publicconsultinggroup.com or 1-800-210-6113.").

¹⁵ Jack Loftland may be reached at [REDACTED].

G.L. attended an ARD meeting at [REDACTED] Elementary School on February 11, 2013. The English copy of the *ARD/IEP Committee Report* notes: “An interpreter was needed and used to assist in conducting the meeting for parent(s) with deafness or whose native language is other than English.” “Spanish” is typed on the line for *Language or mode of communication*, but the line for *Signature of Interpreter* is left blank.¹⁶ See Exhibit 1. The reason it was left blank becomes clear after listening to the audio recording of the IEP Team meeting: the “interpreter” introduces herself as a “[REDACTED]-grade teacher” at [REDACTED] Elementary School.¹⁷

Again, at an ARD meeting G.L. attended on November 12, 2013, the IEP notes that G.L.’s *Language or mode of communication* is Spanish, but the signature line for the interpreter is left blank.¹⁸ See Exhibit 2. The meeting was again interpreted by a teacher, Ms. [REDACTED], who is the reading intervention specialist at [REDACTED] Elementary School and by no means qualified to provide appropriate translation at an ARD meeting.¹⁹ See Exhibit 2. Ms. [REDACTED] again served as the interpreter during M.A.’s annual ARD meeting held on February 4, 2014.²⁰ See Exhibit 3.

A.M. attended an IEP Team meeting at [REDACTED] Elementary School on September 3, 2013. The copy of the *ARD/IEP Committee Report* shows that [REDACTED] signed her name on the line for *Signature of Interpreter*.²¹ See Exhibit 4. The meeting minutes reveal, however, that Ms. [REDACTED] is actually E.S.’s speech therapist—an active member of the ARD committee.²² See Exhibit 4. Ms. [REDACTED] could not adequately perform the duties of both a discussion-leading member of the ARD committee and a Spanish interpreter. For instance, when she led parts of the discussion during the ARD meeting, she could not continue in her role as interpreter. And while she served as interpreter, she could not participate as E.S.’s speech therapist and ARD committee member.

R.A. attended an ARD meeting at [REDACTED] Middle School on October 10, 2013. For this meeting, HISD contracted with an outside agency to provide professional translator services. When asked by our attorney, Sarah Beebe, who attended the meeting with R.A., why a translator had been brought in to translate this meeting and not other meetings R.A. has attended, Toni Pompa-Rodriguez, Senior Manager of Special Education Services for HISD Middle Schools, explained that the district hires professional translators whenever an attorney, or maybe an advocate, attends ARD meetings, but that otherwise, they rely on staff at the school to provide translation.

¹⁶ See HOUS. INDEP. SCH. DIST., *ARD/IEP COMMITTEE REPORT FOR M.A.*, at 1 (Feb. 11, 2013).

¹⁷ Audio Tape: Admission, Review and Dismissal Meeting for M.A. (Feb. 11, 2013) (on file with HISD).

¹⁸ See HOUS. INDEP. SCH. DIST., *ARD/IEP COMMITTEE REPORT FOR M.A.*, at 1 (Nov. 12, 2013).

¹⁹ *Id.* at 32.

²⁰ See HOUS. INDEP. SCH. DIST., *ARD/IEP COMMITTEE REPORT FOR M.A.*, at 38 (Feb. 4, 2014).

²¹ See HOUS. INDEP. SCH. DIST., *ARD/IEP COMMITTEE REPORT FOR E.S.*, at 1 (Sept. 3, 2013).

²² *Id.* at 27. The meeting minutes note that Ms. [REDACTED] led the discussion of two major issues: she “reviewed Speech portion of the FIE dated 8/23/2013” and “reviewed Speech IEP in the area of articulation.”

C. HISD Fails to Provide Prior Written Notice in Spanish

At least five school days before either proposing or refusing to change a student's IEP, the district must give written notice to the student's parents.²³ The federal regulation, 34 C.F.R. § 300.503, requires that the notice contain specific content,²⁴ be written in understandable language, and be provided in the parent's native language.²⁵ The regulation even covers what to do if the parent's native language is not a written language.²⁶

HISD attaches to the end of each *ARD/IEP Committee Report* a form document titled *ARD/IEP Supplement: Notice of Proposal or Refusal 34 CFR §300.503 & 300.300 18 TAC §89.1050*. The district attaches this notice without fail to every *ARD/IEP Committee Report*—intending for the notice to serve as prior written notice under 34 C.F.R. § 300.503. The district uses the following clause to circumvent the five-school-day timing requirement under 19 Tex. Admin. Code § 89.1015: “Your signature below indicates that you understand the contents of this Notice of Proposal or Refusal. I agree to waive the required five school days waiting period for the *Notice of Proposal or Refusal*.” The Prior Written Notice Supplement is never provided in Spanish, however.

A review of all recent IEPs provided to G.L., A.M., and R.A. reveals that the copies of IEPs they were provided following the ARD meeting are in English, as are the IEP Supplements that are meant to meet the Prior Written Notice Requirement of 34 CFR §300.503 and 300.300 and 18 TAC §89.1050.²⁷ See Exhibits 1 – 6. By providing each G.L., A.M., and R.A. with Prior Written Notice in English and not in their native language, HISD blatantly violated 34 C.F.R. §300.503(c)(1)(ii). G.L., A.M., and R.A., and all other similarly situated monolingual, Spanish-speaking parents of students with disabilities in HISD, are entitled to Prior Written Notice in their native language.

II. HISD's Procedural Violations Deny Monolingual, Spanish-Speaking Parents of Students with Disabilities Meaningful Participation in Formulating their Child's IEP and, Therefore, Deny FAPE to These Students

HISD's pattern of violating the procedural rights of monolingual, Spanish-speaking parents of students with disabilities violates the weightier, substantive right of such students to receive a free appropriate public education (FAPE). The IDEA prescribes procedural safeguards and guidelines that districts are required to follow to ensure that each student receives FAPE. Central to the IDEA

²³ 34 C.F.R. § 300.503; 19 TEX. ADMIN. CODE § 89.1015.

²⁴ 34 C.F.R. § 300.503(b).

²⁵ 34 C.F.R. § 300.503(c)(1) (“The notice required under paragraph (a) of this section must be—(i) Written in language understandable to the general public; and (ii) 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.”).

²⁶ 34 C.F.R. § 300.503(c)(2). (“The district must ensure that the notice is translated orally or by other means (such as sign language), that the parent understands the content, and that the district has written evidence of these facts.”).

²⁷ See HOUS. INDEP. SCH. DIST., ARD/IEP COMMITTEE REPORT FOR M.A., (Feb. 11, 2013 at 33; Nov. 12, 2013 at 36; and Feb. 4, 2014 at 37); HOUS. INDEP. SCH. DIST., ARD/IEP COMMITTEE REPORT FOR E.S., (Sept. 3, 2013 at 31; and Nov. 26, 2013 at 33); HOUS. INDEP. SCH. DIST., ARD/IEP COMMITTEE REPORT FOR G.C. pg. 41 (Oct. 10, 2013).

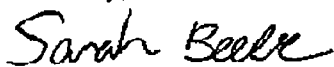
is the IEP Team. Congress intended for parents to play a major role in crafting the student's IEP as an active member of the IEP Team,²⁸ but HISD's practices diminish the ability of monolingual, Spanish-speaking parents to meaningfully participate in the IEP formulation process. Without the valuable input of these parents, the IEP Team cannot craft an IEP that meets the requirements of the IDEA, and an IEP that fails to meet the requirements of the IDEA also fails to ensure FAPE.²⁹

III. Proposed Resolution:

- (1) HISD should train all staff, teachers, and administrators on the legal requirements of providing the following to monolingual, Spanish-speaking parents of students with disabilities:
 - a. Written copies of their child's IEPs in Spanish;
 - b. Appropriately qualified, Spanish-language interpreters during ARD meetings; and
 - c. Prior Written Notice in Spanish.
- (2) HISD should implement new policies and procedures to ensure that monolingual, Spanish-speaking parents of students with disabilities are given the same opportunity as English-speaking parents to meaningfully participate in the IEP formulation process. This includes providing Spanish-translated, written copies of IEPs, hiring appropriately qualified, Spanish-language interpreters, and providing prior written notice in Spanish.
- (3) HISD should purchase and implement an IEP software program that will allow them to provide written IEPs and Prior Written Notice to monolingual, Spanish-speaking parents of students with disabilities in Spanish.
- (4) HISD should provide to the named complainants—and to all similarly situated, monolingual, Spanish-speaking parents of students with disabilities—all IEPs and Prior Written Notice from the past three years translated into written Spanish.

Thank you for your attention to this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



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SB/cc

²⁸ 20 U.S.C. §1400 (c)(5)(B). ("Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by strengthening the role and responsibility of parents and ensuring that families of such children have *meaningful opportunities to participate* in the education of their children at school.") [emphasis added].

²⁹ 34 C.F.R. §300.513(a)(2)(ii).

CC: Hans Graff, Assistant General Counsel
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