



OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION
 Special Education
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Request for Special Education Citizen Complaint

<p>Send To: Douglas H. Gill, Ed.D. Assistant Superintendent Special Education, OSPI PO BOX 47200 Olympia, WA 98504-7200</p> <p>Date Sent: _____ 1/19/16 _____</p>	<p>And to: State of Washington, Office of the Superintendent of Public Instruction (OSPI) Name of school district/agency subject to this complaint : * Office of the Superintendent of Public Instruction (OSPI)</p> <p>Date Sent: ___ 1/19/16 _____</p> <p>* You must provide a copy of this complaint to the school district superintendent or public agency's chief officer.</p>
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This complaint is being filed pursuant to WAC 392-172A-05025 and 392-172A-0540 by S. James Rosenfeld, Distinguished Practitioner in Residence, Seattle University School of Law, on behalf of himself and the following members of his Special Education Law Seminar (EDUL-350-A) for the Fall 2015 semester. The complaint alleges a systemic violation by OSPI of state and Federal laws and regulations governing the provision of special education as described below.

Section I

Names of Complainants

S. James Rosenfeld

 Name of Complainant

Signature of Complainants

X _____
 Signature of Complainant

Student Complainants

Joanna Adu
 Florian Forsting
 Sarah Freedman

Mary Griffin
 Ramya Ramanathan
 Frederick Sinkevich

Section II: Complainant Information

This complaint is being filed pursuant to WAC 392-172A-05025 and 392-172A-0540 by the previously identified individuals, members of the Special Education Law Seminar (EDUL-350-A/2015) at Seattle University School of Law under the supervision of Professor S. James Rosenfeld. The complaint alleges a systemic violation by OSPI of state and Federal laws and regulations governing the provision of special education as described below, as documented in the OEO Feasibility Study for Foreign Language

Educational Interpreter Training and Certification, “Providing Language Access Services for Limited English Proficient Parents in Washington Schools,” submitted in January 2015 to the Washington State Legislature pursuant to SSHB 1709 (OEO Report).

The following individuals, parents in the indicated school districts, affirm that the violations documented in the OEO Report referenced below are continuing:

Name	School District	Language
Nasteho Omar	Kent	Somali
Lul Ige	Seattle	Somali
Saido Ismail	Kent	Somali
Hiss Mohamed	Federal Way	Somali
Hinda Omar	Federal Way	Somali
Layla Omar	Kent	Somali
Bulugo Ali	Seattle	Somali
Gabriela Avila	Seattle	Spanish
Sunae Ivy	Yelm	Korean
Vieng Heng	Federal Way	Cambodian

Section III: Allegation Information

A. Statement of the violation(s):

We believe that the Office of the Superintendent of Public Instruction (OSPI) has knowingly permitted, and continues to permit, a systemic violation of Part B of the IDEA by failing to require that Washington State schools assure the provision of language services needed by parents of students with disabilities having limited English proficiency (LEP parents). Without these language services (interpreting, translating and sight translating), LEP parents cannot knowledgeably participate in and consent to each of the critical procedural milestones specified in IDEA – identification, eligibility determination, IEP development or dispute resolution – thereby denying these children a free appropriate public education. The systemic absence of these language services is clearly documented in the attached report of the Office of Education Ombuds (OEO) [*Providing Language Access Services for Limited English Proficient Parents in Washington Schools* (Jan. 2015)] by both testimony of LEP parents and school personnel throughout the state.

B. Facts upon which the allegation is based:

OSPI has systemic responsibility for administration and oversight of Washington State’s special education program. In its application to the U.S. Department of Education, Office of Special Education Programs, under Part B of the Individuals with Disabilities Education Act, as amended [IDEA], for Federal fiscal year 2015 (and prior years), Washington State “provides assurances that it has in effect policies and procedures to meet all eligibility requirements of Part B [of IDEA], including specifically that “[c]hildren with disabilities and their parents are afforded the procedural safeguards required by 34 CFR Secs. 300.500 through 300.536 and in accordance with 20 U.S.C. 1412(a)(6); 34 CFR 300.121.” The State’s application also includes an assurance that the “State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriate and adequately prepared and trained, including that those

personnel have the content knowledge and skills to serve children with disabilities as noted in 20 U.S.C. 1412(a)(14)(A)-(E); 34 CFR Sec. 300.156.

Among the most important mandates of IDEA – perhaps the most important mandate – is the requirement that parents participate in the provision of educational programs to their children. IDEA, at 20 U.S.C. 1415, Procedural safeguards, provides in paragraph (b)(4) that all written prior notices to parents concerning the initiation or change, or refusing to initiate or change, the identification, evaluation or educational placement of a child, or the provision of a free appropriate public education of a child, be “in the native language of the parents, unless it clearly is not feasible to do so.”¹ More specifically, 34 CFR 300.322(e), *Use of interpreters or other action, as appropriate*, directs the public agency to “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.*” [Emphasis supplied.]

As recognized by the U.S. Supreme Court in *Board of Education of the Hendrik Hudson Central School District v. Rowley*,² these directives were established by Congress as part of the structural integrity of IDEA, intended to assure that eligible children received the free appropriate public education envisioned by the statute. While the statute vests primary responsibility for the provision of a child’s education to state and local agencies, it does not leave a child without other protection: “Congress sought to protect individual children by providing for parental involvement in the development of state plans and policies . . . and in the formulation of the child’s individual educational program.”³ It should be beyond dispute, therefore, that LEP parents who are not provided the language services necessary to participate in the special education process for their children – from identification through placement – cannot participate in or provide the informed consent envisioned by IDEA.

The widespread lack of necessary language services throughout Washington State was documented by and to OSPI in 2014, when the Washington State legislature directed OEO to investigate the feasibility of developing a state foreign language education interpreter training program to serve the needs of LEP parents. As part of that investigation, two surveys of existing services were conducted: (1) OSPI conducted a survey of state school personnel, created in conjunction with OEO, to ascertain current practices on a state-wide basis, and (2) Open Doors, a Seattle-area nonprofit, conducted nine parent focus-group meetings of 99 LEP families throughout the state. Both surveys documented that the needs of LEP parents were not being met.⁴ To be clear, by virtue

¹ 20 U.S.C. Sec. 1412(14), **Personnel qualifications**, provides in paragraph (A) **In general**: “The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this subchapter are appropriate and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.”

20 U.S.C. Sec. 1412(14)(E), **Rule of construction**, provides, in relevant part: “Notwithstanding any other individual right of action that a parent or student may maintain under this subchapter, nothing in this paragraph shall be construed . . . to prevent a parent from filing a complaint about staff qualifications with the State educational agency as provided for under this subchapter.”

² 458 U.S. 176 (1982).

³ 458 U.S. 176, at 209.

⁴ “The majority of respondents from schools and districts stated that they do not believe they have adequate access to trained interpreters and translators to meet all of the needs of their LEP families.” OEO Report at 19.

of OSPI's own previous survey (see below), there is already ample data to support this complaint: LEP parents are routinely not being informed of their rights to, or being provided, the language services to which they are entitled.

C. What documents do you believe should be reviewed regarding this allegation?

Data documenting the allegation is set forth in Part IV and Appendix D of the OEO Report. Specifically, OEO and OSPI partnered to create and send a survey to school personnel in Washington that focused on language access for families with limited English proficiency. They received 157 responses from districts across the state. The individuals responding on behalf of districts represented a range of positions, from IT specialists to bilingual specialists, special education teachers to superintendents. The largest numbers of responses came from principals, supervisors, and program directors. Every ESD in Washington participated in the survey. In summary, school personnel reported that the need for language access services is largely going unmet, an admission confirmed by 99 LEP families themselves in nine different language community meetings held throughout the state by OEO and Open Doors, a Seattle-area nonprofit. The OSPI survey results are set forth in Appendix D.2 of the OEO Report; the results of the community survey are set forth in Appendix D.1.

D. What would you like to see changed?

1. OSPI should require all state school districts to create or adopt, effective Jan. 1, 2017, a language access policy, procedures, and materials regarding LEP parents' rights for dissemination to school employees and parents.

ESSB 6052.SL directs the Washington State School Directors Association (WSSDA) to create a model policy and procedures for language access by LEP parents.⁵ However, the legislation contains no explicit requirement that school districts adopt the WSSDA model policy, or any other. In fact, Sec. 501(5)(b)(ii) of the legislation recognizes that there may be districts that do not adopt the WSSDA or any other comparable policy.⁶ Given the fundamental importance of language services for LEP parents, it seems beyond dispute that all Washington State school districts should be required to have policies, procedures and materials concerning their availability and provision.

2. OSPI should take steps to assure that, by no later than September 1, 2017, qualified language service providers and necessary translating services are provided to the nine language groups who comprise the overwhelming majority of the LEP population.

Although precise numbers are difficult to determine, the OEO Report indicated that approximately 236 different languages are spoken by families in the state's public schools, but the overwhelming majority (71%) are spoken by less than 100 families. So, for example, it appears possible to provide required language services to the overwhelming majority of LEP families by serving the following language groups: Spanish, Russian, Vietnamese, Somali,

⁵ Sec. 501(5)(a).

⁶ The subsection directs OSPI to "[m]aintain and have available upon request a list of school districts that have adopted and **not adopted** the Washington state school directors' association's model policy." [Emphasis supplied.]

Chinese (all dialects), Ukrainian, Korean, Tagalog, and Arabic.⁷

3. OSPI should require that language service providers for LEP parents are sufficiently familiar with educational terminology and practice to ensure that LEP parents can meaningfully participate in the educational process.

While there is no legal requirement that a school district provide *certified* interpreters for meetings with LEP parents, at the very least school districts should require interpreters to be familiar with educational practice and terminology, comparable with standards expected in legal and medical settings. This is especially true for LEP parents of special education students. For example, IEPs are complex documents, and a clear understanding of the details of the contents is critical to parents making informed decisions for their children's education. Any individual selected by a school district should be sufficiently familiar with the terminology and process of special education to knowledgeably facilitate parental participation and to accurately interpret the contents of an IEP in more than summary fashion. If a school district is aware a parent does not speak English, the burden is on the district to provide a suitably fluent interpreter.⁸

4. To assure compliance with these objectives, OSPI should withhold IDEA, Part B funding of any school district that does not comply by Jan. 1, 2018, and itself directly provide, or otherwise assure the provision, of the services.

As was stated in b., above, by accepting IDEA, Part B funding, an SEA (OSPI) provides assurances that statutory requirements will be met. Enabling LEP parents to exercise their procedural rights, through the provision of language services, is a critical and necessary component of these statutory requirements. It seems only reasonable, therefore, that any school district that fails to provide the language services must be denied its Part B funding, and that those funds should be used by OSPI to provide, or assure the provision of, those services.⁹

⁷ OEO Report, pp. 8-9. Only Spanish has more than 100,000 speakers. Only 19 languages have between 1,000 and 11,00 speakers and 47 have between 100 and 1,000 speakers. The balance, 169 languages have 100 or fewer speakers.

⁸ In the Matter of Grandview School District, Cause No. 2010-SE-0008 (Oct. 13, 2010) (Wacker), at 32-33. To the same effect, A.G. v. In the Matter of the Philadelphia School District (PA ODR File No. 15166-13-14) at 16 (2015):

"However, the IDEA requires schools to facilitate meaningful parental participation in the IEP development process. Unlike the strict translation rules, meaningful participation requires inquiry into the Parent's ability to participate in meetings without translation. In this case, it is not possible for the Parent to meaningfully participate in meetings concerning the provision of FAPE to the Student unless the documents presented at that meeting are fully translated.

"The purpose of an IEP meeting is to develop an IEP for the student. This requires more than a recitation of an IEP. Rather, it requires a conversation about the Student's needs, and what program and placement will satisfy those needs. Reading a mostly-English document in Spanish is not the dialogue contemplated by the IDEA. The Parent's ability to follow along in documents while participating in the required dialogue is essential."

⁹ In Letter to Kane, 65 IDELR 303, 115 LRP 27162 (Apr. 13, 2015), OSEP was asked whether the SEA is obliged under 34 CFR 300.227 to take action . . . after a factual determination has been made that a local educational agency (LEA) is unable to establish and maintain programs of a free appropriate public education (FAPE) for a child or group of children. It responded that the SEA "must use the payments that would otherwise have been available to an LEA . . . to provide special education and related services . . . if the SEA determines that the LEA or State agency – (ii) is unable to establish and maintain programs of FAPE that meet the requirements of this part."