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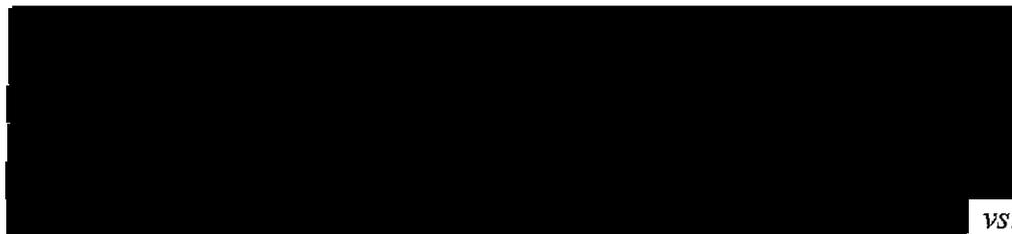
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April 28, 2011

VIA FACSIMILE (202) 453-6021
AND UNITED STATES MAIL

Office for Civil Rights
District of Columbia Office
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

Re:



Durham Public Schools

To Whom It May Concern:

Please consider this letter a Complaint filed on behalf of English language learner (“ELL”) students and their families against Durham Public Schools (“DPS” or “the District”).¹ Complainants allege that DPS has discriminated against them on the basis of national origin and has engaged in practices that have the effect of discrimination in violation of Title VI of the Civil Rights Act of 1964 (“Title VI”) and its implementing regulations. 42 U.S.C. § 2000d; 34 C.F.R. pt. 100. The Complainants file this complaint in their individual capacities and on behalf of all other similarly situated students and their parents.

As set forth in detail below, Complainants maintain that they have limited access to language interpreters, do not receive translated copies of important school documents, and often experience a hostile environment where they are made to feel unwelcome and unwanted in their neighborhood schools. DPS’s actions and omissions have resulted in a denial of the Complainants’ right to equal access to educational benefits and activities in violation of federal law.

¹ The contact information for the District is as follows: Durham Public Schools, 511 Cleveland Street, P.O. Box 30002, Durham, NC 27702, (919) 560-2000.

Statement of Jurisdiction

Durham Public Schools is a recipient of federal funding and is therefore subject to the anti-discrimination prohibitions of Title VI. Complainants allege that the discriminatory acts complained of herein occurred within 180 days of the filing of this complaint and/or are of an ongoing and continuing nature. The Office for Civil Rights has personal and subject matter jurisdiction over this matter and the Complaint is timely filed.

Claims

I. DPS Does Not Provide Non-English Speaking Parents with Sufficient Access to Information in Violation of Title VI.

Under Title VI, school districts that receive federal financial assistance are prohibited from discriminating against or otherwise excluding students from participating in activities or receiving educational benefits on the basis of race, color, or national origin, 42 U.S.C. § 2000d. The protections provided by Title VI and its implementing regulations have been interpreted to extend to students with limited English proficiency (“LEP” also referred to as “ELL”).² School districts are thus required to provide national origin minority LEP students with education benefits and opportunities equal to those provided to other students.³ This includes the duty to provide LEP parents with the same information about school activities and functions as that given to English speaking

² *Lau v. Nichols*, 414 U.S. 563 (1974); *Castaneda v. Pickard*, 648 F.2d 989 (5th Cir. 1981); see also Office for Civil Rights, U.S. Dep’t of Educ., Policy Update on Schools’ Obligations Toward National Origin Minority Students with Limited-English Proficiency (LEP students) (Sept. 27, 1991) (hereinafter “Sept. 1991 Policy Memo”), available at <http://www2.ed.gov/about/offices/list/ocr/docs/lau1991.html>; Office for Civil Rights, U.S. Dep’t of Educ., Office for Civil Rights Policy Regarding the Treatment of National Origin Minority Students Who are Limited English Proficient (Apr. 6, 1990) (reissuing OCR’s Dec. 3, 1985 Title VI Language Minority Compliance Procedures) (hereinafter “Apr. 1990 Policy Memo”), available at http://www2.ed.gov/about/offices/list/ocr/docs/lau1990_and_1985.html; Dep’t of Health, Educ., and Welfare, Identification of Discrimination and Denial of Services on the Basis of National Origin (May 25, 1970) (hereinafter “May 1970 Policy Memo”), available at <http://www2.ed.gov/about/offices/list/ocr/docs/lau1970.html>.

³ See Sept. 1991 Policy Memo (affirming OCR’s policy of applying the standards of the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1703(f) to determine whether a recipient has complied with the implementing regulations of Title VI).

parents.⁴ “Notification must be sufficient so that parents can make well-informed decisions about the participation of their children in a district’s programs and services.”⁵

DPS currently employs only five interpreters who share the responsibility for serving fifty-three schools.⁶ According to the District’s website, there are 6,080 DPS students who speak a language other than English at home, approximately 75% of whom are classified as limited English proficient.⁷ Of those students, 5,316 are primary Spanish speakers.⁸

These statistics show that there are at least 6,080 households that are unable to communicate directly with their children’s schools and only five employees who are qualified to assist them. Essentially, each interpreter is responsible for providing language assistance to over 1,200 households.

The real life consequences of this inadequate ratio play out daily in schools across the District. Parents report that they will call their children’s schools and request a Spanish speaker. Front-line staff who are unable to communicate in Spanish typically, and abruptly, end the conversation without offering any assistance or information.⁹ For example, [REDACTED], the mother of a Rogers-Herr Middle School student, has attempted to call the school at various times throughout the current school year to discuss her daughter’s education. [REDACTED] reports that during these attempts, she has never

⁴ See May 1970 Policy Memo (“School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.”).

⁵ Office for Civil Rights, U.S. Dep’t of Educ., *The Provision of an Equal Education Opportunity to Limited-English Proficient Students* (revised Aug. 2000), available at <http://www.2ed.gov/print/about/offices/list/ocr/eeolep/index.html>.

⁶ See <http://www.dpsnc.net/programs-services/esl/interpreters> (last visited Apr. 20, 2011).

⁷ ESL Quick Facts 2010-2011, <http://www.dpsnc.net/programs-services/esl/esl-quick-facts> (last visited Apr. 5, 2011).

⁸ *Id.*

⁹ The process for obtaining an interpreter in DPS is something of a mystery. Other than during the enrollment process, the District does not routinely distribute information as to how to obtain interpreter services. Although the District’s website offers some direction, those instructions are available only in English. See <http://www.dpsnc.net/programs-services/esl/interpreters> (last visited Apr. 20, 2011). Consequently, parents who are non-English speakers or have limited English proficiency may not even know that school interpreters are available, much less how to access those services.

been offered the assistance of an interpreter and her calls are summarily dismissed. Parents who visit the school in person receive no better treatment.¹⁰

In other circumstances, bilingual employees, primarily support and custodial personnel, are asked to stand-in for qualified interpreters. This leads to miscommunication and privacy violations as the impromptu "interpreter" has little knowledge of the terms and concepts particular to the program and has not been trained in confidentiality requirements. Thus, on most days and on most occasions, there is no one to assist the parent who is trying to interact with the public education system.

Not only are parents unable to communicate with school staff about daily activities, they are largely excluded from important school events. [REDACTED], the mother of a current Durham School for the Arts student and monolingual Spanish speaker, reported that she has attended several open houses and other school-wide events where there is no interpreter available. Consequently, over the course of several school years, she has been unable to participate in the events in the same manner as English speaking parents. The mother of [REDACTED], has experienced similar difficulties at Rogers-Herr Middle School. Parents are unable to communicate with staff, learn about the school, or ask questions regarding their children's education.

At some schools, it is common practice to convene parent/teacher "cattle calls" for Spanish speaking families who are assembled at the same time to wait their turn with an interpreter. In February 2011, several LEP families spent long hours waiting at Durham School for the Arts just to be sent home without the opportunity to meet with the teacher and interpreter.

The parent of Durham School for the Arts student [REDACTED] was alarmed to learn that her daughter had been struggling academically and behaviorally for most of the school year. In approximately February 2011, the parent arranged for a private interpreter on her own and requested a conference with [REDACTED] English as a Second Language ("ESL") teacher. Upon learning the extent of her daughter's difficulties, the parent asked why the school had not contacted her earlier. In response the teacher stated: "because you don't speak English." The teacher further commented that she could not be expected to send letters or notices to [REDACTED] mother if the parent did not speak English.

DPS's failure to provide adequate interpreter services also has a discriminatory impact on LEP families as it relates to safety concerns. In March 2011, the gas pipes broke at Durham School for the Arts and the entire school population was evacuated.

¹⁰ Similarly, [REDACTED] mother physically visited RMS to obtain documents. When she asked if anyone spoke Spanish, school staff members told her "no," and treated her in a rude and dismissive manner.

Spanish speaking parents attempted to call the school to obtain information without success. According to [REDACTED], an LEP parent, the school later sent a recorded message home to families regarding the incident, but that information was provided in English only.

Similarly, when a bomb threat was received at a building adjacent to Rogers-Herr Middle School last fall, Spanish speaking parents were unable to obtain any information regarding the crisis situation. [REDACTED] did not find out about the threat until after the school day ended and her daughter told her about the incident. Although someone from the school had called her earlier that day, [REDACTED] did not fully understand what the school employee was saying because she was speaking in English. When [REDACTED] stated that she did not understand English, the school employee hung up on her. To date, the parent has never received an adequate explanation of what occurred or how similar situations will be handled in the future.

II. DPS Has Failed to Develop and Implement a System that Ensures that Important School Documents are Translated into the Parent's Native Language.

Despite the presence of a large monolingual Spanish speaking community, DPS has failed to develop and implement a system by which written documents are routinely translated and provided to LEP parents. Although DPS claims that it translates parent information into Spanish, several families, including those of [REDACTED] report that they have not received translated documents conveying even the most basic information. Parents do not receive translated report cards. Parents do not receive translated teacher notes. Parents do not receive translated progress reports. Parents do not received translated notice of school activities, although these activities are brought to the attention of English proficient parents.

Of particular concern, LEP families report inadequate or absent translation even when their children are faced with disciplinary suspension or expulsion. Some families receive no notice at all. Others receive notice in English, which they cannot understand. In other situations, the documents are so poorly translated as to be unintelligible to the native reader. The District has also resorted to a hybrid approach meaning that the boilerplate form language is provided in Spanish but the critical content regarding the disciplinary allegations is written in English. See, e.g., Educational File of [REDACTED] (standard suspension notice preprinted in Spanish but specific information as to disciplinary allegations written in English).¹¹

¹¹ When Northern High School student [REDACTED] was suspended for two days, his LEP parents received written and oral notification in English only.

To be sufficient process, District disciplinary procedures must meet the basic requirements of notice and hearing. Due process demands that students and parents be given written notice containing a statement of the charges and an opportunity to be heard. *Goss v. Lopez*, 419 U.S. 565 (1975). The District's system of incomplete and inconsistent written notice does not meet this standard and discriminates against national origin minority individuals who do not speak or understand English.

III. DPS Has Created and Tolerated a Hostile Environment for Latino Students, Violating their Right to Obtain a Safe and Nondiscriminatory Education.

School districts have a general duty under Title VI to provide students with a nondiscriminatory educational environment.¹² "A recipient violates Title VI if one of its agents or employees, acting within the scope of his or her official duties, has treated a student differently on the basis of race, color, or national origin in the context of an educational program or activity without a legitimate, nondiscriminatory reason so as to interfere with or limit the ability of the student to participate in or benefit from the services, activities or privileges provided by the recipient."¹³ A school district is also deemed to have violated Title VI if it creates, encourages, accepts, tolerates, or leaves uncorrected a hostile environment based on race, color, or national origin.¹⁴

Latino students in DPS have reported being harassed and taunted by school staff and faculty on the basis of their national origin and/or limited English proficiency status. In certain situations, DPS has also created or maintained a hostile environment that prevents children from fully participating in the educational program. According to several parents and students, their concerns have been largely ignored when attempting to raise these matters with the schools.¹⁵

For example, teachers at Northern High School routinely engage in ethnic name calling of students with no repercussions. In one situation, a group of Latino students

¹² *Notice of Investigative Guidance*, 59 Fed. Reg. 11,448, 11,449 (Mar. 10, 1994).

¹³ *Id.* at 11,448.

¹⁴ *Id.* at 11,448 - 11,450.

¹⁵ Even if students and parents have not raised these issues with school staff, DPS is still responsible for providing a nondiscriminatory education environment. According to the investigative guidance provided to the Office for Civil Rights, a school district will be deemed to have constructive notice of the discriminatory conduct "[i]f the alleged harasser is an agent or employee of a recipient, acting within the scope of his or her official duties (i.e., such that the individual has actual or apparent authority over the students involved)." 59 Fed. Reg. at 11,450.

were called "Eses" by their teacher while being collectively accused of theft. "Ese" is a derogatory slur, intended to imply gang or criminal affiliation.¹⁶

██████████, an ELL student at Northern High School, has been repeatedly targeted because of his Hispanic ancestry and limited English proficiency. On one occasion, in mid-November 2010, a teacher removed ██████████ from class in response to an allegation of a minor discipline infraction, forcibly pushed him against a wall, and suggested that ██████████ "go back to his own country."¹⁷ Following this incident, in mid-January 2011, the same teacher advised ██████████ to sit next to ██████████, a bilingual student, during the screening of an instructional video. The video was not captioned for Spanish and ██████████ was deputized to translate for ██████████.¹⁸ Ironically, the students were later reprimanded for talking and were taken out of the classroom by the teacher into the hallway. As had occurred in the previous incident, the teacher commented that "y'all not gonna do nothing here . . . why don't you go back to where you came from."

At Rogers-Herr Middle School, students report that they were singled out by a substitute science teacher because of their Hispanic ancestry in early December 2010.¹⁹ Latino students from three separate periods, including ██████████ ██████████, indicated that all students were asked to stand at the beginning of the class. Students were then directed to sit one by one, with the exception of youngsters with Hispanic surnames who were left standing for an extended time then seated last. The same odd scenario was repeated in second and fourth periods. Some students observed that the teacher was videotaping the Latino youngsters with his cell phone. A parent of one of those students complained to the

¹⁶ See *id.* at 11,449 ("racially based conduct by a teacher, even an 'off-duty' teacher may have a greater impact on a student than the same conduct by a school maintenance worker or another student").

¹⁷ The physical dimension of this teacher's harassment evidences the severity of the hostile environment to which DPS students are subjected to based on their national origin and status as ELL students. See *id.* at 11,449 ("To determine severity, the nature of the incidents must be . . . considered. Evidence may reflect whether the conduct was verbal or physical and the extent of the hostility characteristic of the incident.").

¹⁸ ██████████ receives little English language support in his core academic courses. Because there is no interpreter available in his classes, he attempts to copy written English phonetically from the board to be translated on his own with use of a computer program.

¹⁹ As the U.S. Department of Education has recognized, school districts should be even more conscientious about providing safe and nondiscriminatory learning environments for "younger, less mature children," as they are "generally more impressionable than older students or adults," and "an incident that might not be considered extremely harmful to an older student might nevertheless be found severe and harmful to a younger student." 59 Fed. Reg. at 11,449.

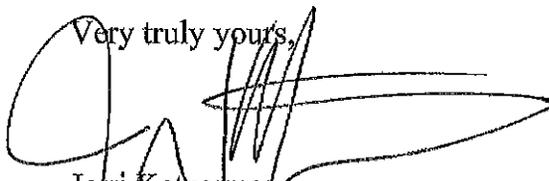
school and questioned the reason for the videotape.²⁰ Although the school promised to look into the situation, the parent has never received a response.²¹

Latino students have also been subjected to discrimination in the school enrollment process. Take for example the situation of [REDACTED]. [REDACTED] is an eighteen year old student of Hispanic origin who attempted to register at Hillside High School in early January 2011. [REDACTED] presented proof of residency per DPS policy, but was asked to produce additional documentation in the form of a passport and immigrant visa – something never requested of non-Latino students. A school staff member made several derogatory comments to the student, asking her “how can you be here without a passport or visa,” and then concluding that “you must be an illegal.” As the United States Supreme Court has long held, entitlement to public education is not dependent upon immigration status. *Plyler v. Doe*, 457 U.S. 202 (1982). The staff member had no lawful reason to make these inquiries of [REDACTED], particularly given they are not made of other students. This matter was brought to the attention of the District’s ESL coordinator although, to our knowledge, there has been no investigation or resolution despite DPS’s legal duty to investigate and eliminate such conduct.

A hostile learning environment denies LEP students the opportunity to fully participate in education programs. Students cannot focus on their education if they feel unsafe, unwelcome, and unsupported. The existence of a hostile environment is illegal and blatantly violates the District’s obligation to provide a public education for all.

Conclusion

Based on the above, Complainants respectfully request that the Office for Civil Rights accept jurisdiction over their claims and initiate an investigation into the allegations contained herein.

Very truly yours,

Jerri Katzenman
Director of Educational Advocacy
**licensed in Arizona and Washington*

Encl.

²⁰ The school did not have an interpreter available to take the parent’s complaint. The complaint was translated by the child who had been the victim of the inappropriate interaction.

²¹ Under Title VI, a recipient has a legal duty to investigate and eliminate the discriminatory conduct and harassment once it has received notice of a hostile environment. *See* 59 Fed. Reg. at 11,450.