

April 12, 2011

VIA FACSIMILE 919.560.2422
AND FIRST CLASS MAIL

Dr. Eric J. Becoats
Superintendent
Durham Public Schools
511 Cleveland Street
P.O. Box 30002
Durham, NC 27702

RE: Language Access at Durham Public Schools

Dear Dr. Becoats:

We are writing on behalf of English language learner students and their families who have experienced ongoing and pervasive discrimination while attending Durham Public Schools (“the District” or “DPS”). These children and parents report that they have limited access to language interpreters, are unable to read and understand important school documents, and, most alarmingly, that students often experience a hostile environment where they are made to feel unwelcome and unwanted in their neighborhood schools. The overwhelming majority of these students and their parents are Latino.

The law is clear: recipients of federal funding may not discriminate against individuals on the basis of national origin. 42 U.S.C. § 2000d. Nor may recipients engage in practices that have the effect of subjecting individuals to discrimination. 42 U.S.C. § 2000d-1; 34 C.F.R. § 100.3(b)(2). In order not to discriminate, a recipient must take reasonable steps to ensure that non-English speaking students have a meaningful opportunity to participate in federally-funded education programs. 20 U.S.C. § 1701(a); *Lau v. Nichols*, 414 U.S. 563 (1974). This includes access to programs as well as appropriate language-assistance services to limited English proficient (“LEP”) individuals. 20 U.S.C. § 1703(f). DPS has failed to comply with its legal obligations to ensure that language minority children and their parents have equal access to public education. A summary of our specific concerns is provided below.

I. Limited Access to Language Interpreters

It is our understanding that the District currently employs three interpreters who share the responsibility for serving fifty-three schools. 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. ESL Quick Facts 2010-2011, <http://www.dpsnc.net/programs-services/esl/esl-quick-facts> (last visited Apr. 5, 2011). Of those students, 5,316 are primary Spanish speakers. *Id.*

These statistics show that there are at least 6,080 households that are unable to communicate directly with their children's schools and only three employees who are qualified to assist them. 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.¹

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 peculiar 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 regarding daily activities, they are largely excluded from important school events. At one school, it is common practice to convene parent/teacher "cattle calls" of Spanish speaking families who are assembled at the same time to wait their turn with an interpreter. Parents have

¹ 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. 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.

spent long hours waiting just to be sent home without the opportunity to meet with the teacher and interpreter.²

The lack of adequate interpreter services implicates important safety concerns as well. All parents should expect to have an effective means of communicating with their child's school in the event of an emergency. Durham's Spanish speaking population reports otherwise. Just last month, the gas pipes broke at Durham School for the Arts and the entire school population was evacuated. Spanish speaking parents attempted to call the school to obtain information without success. Although the school later sent a recorded message home to families regarding the incident, that information was provided in English only. Similarly, when a bomb threat was received at a building adjacent to Rogers-Herr Middle School, Spanish speaking parents were unable to obtain any information regarding the crisis situation, causing considerable distress in many households.

Parents and schools must have an effective means of communication, without which parents cannot fully participate in the educational process. As these illustrations show, the District's decision to employ only three qualified interpreters for the entirety of its Spanish speaking community falls far short of facilitating effective communication.

II. Inadequate Translation

It has long been the policy of the United States Department of Education that a recipient of federal education dollars must provide parents whose English is limited with notices and other information in a language they can understand. *Policy Update on Schools' Obligations Toward National Origin Minority Students with Limited-English Proficiency*, Office for Civil Rights 1991. This standard is generally met when a recipient translates important written documents into the language of each frequently encountered LEP group eligible to be served or likely to be affected by the program, service, or benefit.

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. Parents do not receive

² The parent of a DSA student was alarmed to learn that her daughter had been struggling academically and behaviorally for most of the semester. When asked why the school had not advised her earlier of the problems, the ESL teacher responded "because you don't speak English." This exchange occurred with the assistance of an interpreter provided by the parent.

translated report cards. Parents do not receive translated teacher notes. Parents do not receive translated progress reports. Parents do not receive translated notice of school activities, even when those activities are brought to the attention of English proficient parents.³

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.

To be sufficient process, District disciplinary procedures must meet the basic requirements of notice and hearing. Due process demands that students and parents must be given written notice containing a statement of the charges and an opportunity to be heard.⁴ *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 individuals who do not speak or understand English.

III. No Child Left Behind ("NCLB") Parental Notification Requirements

Every local educational agency using funds provided under Title III of the No Child Left Behind Act ("NCLB") to provide a language instruction educational program must implement an effective means of outreach to parents of LEP children. 20 U.S.C. § 7012(e). Each district must inform parents about how they can be active participants in assisting their children to learn English, achieve at high levels in core academic subjects, and meet the same challenging state academic content and student achievement standards that all children are expected to meet. *Id.* The local educational agency must also provide parents with information as to the method of instruction used in the District's English as a

³ Although the District claims that "[i]mportant parent information is translated into Spanish ... [including] handbooks, report cards, board policies, free and reduced lunch forms, Exceptional Children Services forms, and many more," in reality, very few materials are produced and distributed in the parent's native language. See <http://www.dpsnc.net/programs-services/esl/how-does-dps-support-esl-student-achievement> (last visited Apr. 8, 2011).

⁴ Due process generally requires that a formal hearing be held prior to the imposition of a long-term suspension of ten or more days or permanent expulsion.

Second Language (“ESL”) programs, including information about other programs or teaching methodologies, if available. 20 U.S.C. § 7012(a)(3).

Parents of LEP students attending Durham Public Schools uniformly report that they have never received any of the required Title III parental notifications. Indeed, a study of the District publications available on-line reveals that no such template or sample forms are available for review.⁵ In enacting Title III Congress made its intent known – parents are to be knowledgeable partners in the provision of English language instruction. *See, e.g.*, 20 U.S.C. §§ 6812(6), 7012(c). Without the notices required by Title III, parents cannot make informed decisions regarding their children’s education or work with school administrators and faculty to ensure that the child receives all of services required to succeed academically.

Although not specifically mandated by NCLB, we note with concern that the average student teacher ratio in ESL classes in the District is approximately 50:1. *See* <http://www.dpsnc.net/programs-services/esl/how-does-dps-support-esl-student-achievement> (last visited Apr. 5, 2011). The maximum number of students per general education class allowed under North Carolina state law is 24:1 for Kindergarten through Grade 3, 29:1 for Grades 4-9, and 32:1 for Grades 10-12. Student achievement and the goals of NCLB are greatly undermined when English language instruction occurs in a learning environment almost twice the size as its general education counterpart.⁶

IV. Hostile Environment

In certain situations, DPS has created or maintained a hostile environment that prevents children from fully participating in the educational program. Parents and students note that their concerns have been largely ignored when attempting to raise matters with staff.

⁵ Nor were we able to locate on-line any comprehensive information regarding DPS’s ESL program, a description of the assessment tools used to measure students’ English proficiency and progress, or a contact for more information. Of the five documents offered under the “English as a Second Language” website link, only one was produced in a language other than English. *See* <http://www.dpsnc.net/programs-services/esl> (last visited Apr. 8, 2011).

⁶ Over the course of numerous interviews, some students have advised that their ESL classes are overcrowded and that students of varying levels of proficiency are grouped together without regard to ability. This appears to have resulted in all of the LEP students in the class receiving the same English instruction regardless of their proficiency level, and without addressing the individual English language skill needs of each student.

Take for example the situation of C.A.H. C.A.H. is an eighteen year old student of Hispanic origin who attempted to enroll in Hillside High School. C.A.H. presented the proof of residency documents called for under District policy, but Hillside staff requested that she produce a passport and immigrant visa – something never requested of non-Latino students. During the enrollment process, a school staff member made several derogatory comments asking her “how can you be here without a passport or visa” 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 C.A.H., 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.

We are particularly concerned about the atmosphere at Northern High School where teachers routinely engage in ethnic name calling of students with no repercussions. In one situation, a group of Latino students were called “Eses” by their teacher while being collectively accused of theft. “Ese” is a derogatory slur, intended to imply gang or criminal affiliation.

Other students report similar treatment. For example, F.C.M. is a limited English proficient student at Northern High School. On one occasion, a teacher removed F.C.M. from class in response to an allegation of a minor discipline infraction, forcibly pushed him against a wall, and suggested that F.C.M. “go back to your own country.” Following this incident, in mid-January 2011, the same teacher advised F.C.M. to sit next to a bilingual student, S.R., during the screening of an instructional video. The video was not captioned for Spanish and S.R. was deputized to translate for F.C.M.⁷ 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. Latino students from three separate periods indicated that all students were asked to stand at the

⁷ F.C.M. 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.

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 school and questioned the reason for the videotape. Although the school promised to look into the situation, the parent has never received a response.⁸

A hostile learning environment denies LEP students the opportunity to fully participate in their educational 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.

REQUEST FOR RELIEF

We call on Durham Public Schools to take immediate steps to redress the inequities that exist in its system as follows:

1. Establish a process for determining the language needs of LEP parents;
2. Secure adequate interpreter and translation resources within the District to meet the language needs of LEP parents and students;
3. Develop District procedures for the timely and competent provision of translation and interpreter services and provide training of district staff regarding these procedures;
4. Ensure District staff has access to these interpreter and translation resources in a timely manner;
5. Provide notice to parents about the availability of translation and interpreter services and how to request them;
6. Require translations of documents containing essential information;
7. Prior to conducting a parent-teacher conference, individual education program meeting, or a disciplinary hearing, notify parents of the availability of interpreters and provide qualified interpreters upon request;
8. Prohibit the use of students or unqualified staff to provide translation or interpreter services except in the event of an emergency;
9. Create a catalog of district-level and school-level translated documents on the District website for both staff and LEP parents;

⁸ 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.

Superintendent Eric J. Becoats

April 12, 2011

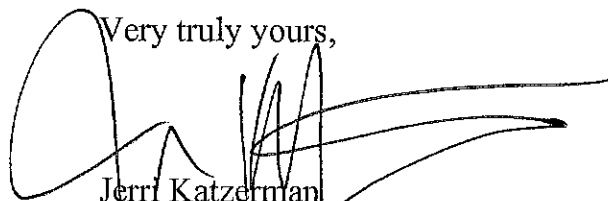
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10. Reduce ESL class size to levels mandated by state law for general education classes;
11. Undertake an immediate investigation into the Student allegations of hostile environment; and
12. Provide mandatory sensitivity training for all staff, including information regarding appropriate interactions with LEP parents.

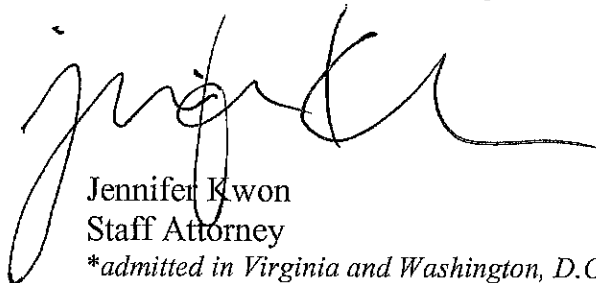
We welcome the opportunity to meet with you and resolve these matters in an amicable fashion. To that end, we ask that you kindly respond within ten (10) business days. If we are unable to reach an agreement, we will be filing a complaint with the United States Department of Education's Office for Civil Rights.

Thank you for your attention. We look forward to your prompt response.

Very truly yours,



Jerri Katzerman
Director of Educational Advocacy
**admitted in Arizona and Washington*



Jennifer Kwon
Staff Attorney
**admitted in Virginia and Washington, D.C.*