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TITLE VI CIVIL RIGHTS NEWS @FCS

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Dear Colleague,

With this Fall issue of **Title VI Civil Rights News @FCS**, we bring you an updated format and a wide array of new information. For those new to this service, the Federal Coordination and Compliance Section (FCS) of the Civil Rights Division provides this Newsletter to highlight noteworthy Title VI developments from across the government as part of the Justice Department's coordination responsibilities under Executive Order 12250 and in commemoration of the 50th Anniversary of the Civil Rights Act of 1964.

This issue includes answers to a number of the frequently asked questions we receive from federal employees and advocates alike. This segment will appear in future issues of the Newsletter, so feel free to provide us with your Title VI questions at FCS.CRT@usdoj.gov. This issue also includes recent agency agreements, findings, settlements, and developments.

Also, we look forward to welcoming Vanita Gupta as the Acting Assistant Attorney General for the Civil Rights Division (Press Release: <http://go.usa.gov/fKzF>). We plan to continue working with Molly Moran as she takes her new position as Deputy Associate Attorney General.

In the words of Attorney General Eric Holder, may your work “always be guided by the pursuit of justice and aimed at the North Star.”

Deeana Jang
Chief

Federal Coordination and Compliance Section, Civil Rights Division



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Title VI Civil Rights News @FCS

AGENCY TITLE VI AGREEMENTS, SETTLEMENTS AND FINDINGS

AGENCY TITLE VI AGREEMENTS, SETTLEMENTS AND FINDINGS



ED-OCR Addresses Disparities in Minority Educational Opportunities with Resolution Agreement:

On August 18, 2014, OCR issued a Resolution Letter formally accepting the Resolution Agreement signed by the School District to resolve a Title VI compliance review assessing whether the Lynchburg City School Division discriminates against black students by failing to provide them with the same resources and educational opportunities that it provides to white students to prepare them for postsecondary education and/or careers.

Letter: <http://go.usa.gov/wgTA>
Agreement: <http://go.usa.gov/wgTJ>

Findings of Title VI Noncompliance in Advanced Placement and Gifted and Talented Programs Results in Resolution Agreement:

On July 24, 2014, OCR issued a Letter of Findings (LOF) to close the investigative phase of its compliance review of the Elk Grove Unified School District, CA, after obtaining a signed Resolution Agreement to address OCR's finding of

noncompliance. The LOF explained OCR's findings of noncompliance under Title VI, based on disparate impact on the basis of race with respect to access to the District's Gifted and Talented Education program (GATE) and honors and Advanced Placement (AP) courses. The Elk Grove Unified School District is the fifth largest school district in California, serving over 60,000 students at 64 schools. The district also serves the fifth largest black student population in California, with over 9,000 black students.

Letter: <http://go.usa.gov/wgJH>
Agreement: <http://go.usa.gov/wgJH>

Resolution Agreement Provides LEP Families with Improved Access to Orleans Parish Schools:

On July 23, 2014, OCR issued a Resolution Letter formally accepting the Resolution Agreement signed by the Orleans Parish School Board (OPSB) in order to resolve a complaint alleging that OPSB discriminates against limited English proficient (LEP) parents, specifically, Vietnamese and Spanish speakers whose children attend Einstein Charter School, Einstein Charter Extension and Benjamin Franklin High School, on the basis of their national origin, by failing to: translate important documents and notices pertaining to students' education and safety into LEP parents' native languages; and provide qualified interpreters to LEP parents during school events, teacher conferences, and at school front offices.

Letter: <http://go.usa.gov/wgBe>
Agreement: <http://go.usa.gov/wgKx>

Resolution Agreement Ensures LEP Families Are Provided Robust Protections from National Origin Discrimination:

On July 9, 2014, the Departments of Education and Justice issued a Resolution Letter accepting a comprehensive Resolution Agreement with the Jefferson Parish Public School System (District) to resolve complaints alleging that: the District's policies and practices regarding the documentation needed for student registration, enrollment, and graduation discriminated against national origin minority students; the District does not provide national origin-minority parents with limited English proficiency the information provided to other parents in a language they understand; and that the District failed to take prompt and effective action to respond to harassing conduct creating a hostile environment for Latino students based on national origin, of which the District knew or should have known.

Letter: <http://go.usa.gov/wgKj>
Agreement: <http://go.usa.gov/wgK5>
En Español: <http://go.usa.gov/wgKV>

ED-OCR Resolves Complaint Alleging Hostile Work Environment for Hispanic Staff and Students:

On April 25, 2014, OCR resolved a Title VI complaint alleging the Adams County 14 School District (District) is a hostile environment for Hispanic staff and students. The complaint further alleged that the District fails to communicate effectively in a language and manner that with parents who are limited English proficient (LEP) can



AGENCY TITLE VI AGREEMENTS, SETTLEMENTS AND FINDINGS

understand. OCR's investigation found: that a hostile environment existed for Hispanic staff and students; that the District administration and school board had notice of the hostile environment; and that the District administration and school board failed to take action to eliminate and remedy the hostile environment. Additionally, OCR found that the District does not effectively communicate with LEP parents in a language and manner that they understand.

Letter: <http://go.usa.gov/wgk4>

Agreement: <http://go.usa.gov/wgkP>



Department of Justice and New Jersey Department of Corrections Enter Into Agreement to Improve Language Assistance Services for Limited English Proficient Inmates:

The Federal Coordination and Compliance Section of the Civil Rights Division has reached an agreement with the New Jersey Department of Corrections (NJDOC) to resolve allegations that the NJDOC denied or inadequately provided medical and mental health services, disciplinary and other administrative hearings, education classes and treatment programs to limited English proficient inmates. The memorandum of agreement memorializes, and incorporates by reference, the language access policies and procedures NJDOC has implemented.

Agreement: <http://go.usa.gov/fKS5>



HHS-OCR Reaches Agreement with Hurley Medical Center over Discrimination in the Reassignment of Medical Professionals Based on Patient Preference:

The HHS Office for Civil Rights reached an agreement with Hurley Medical Center, a public safety net hospital, to resolve allegations that Hurley assigned a nurse based on the racial preference of a patient. The agreement establishes that the assignment of hospital staff on the basis of discriminatory preferences by patients violates Title VI.

Agreement: <http://go.usa.gov/wg8d>

HHS-OCR Reaches Agreement with Mee Memorial Hospital to Expand Language Services to Include Indigenous Language Speakers:

The HHS Office for Civil Rights reached an agreement with Mee Memorial Hospital to expand and improve access to LEP individuals, including indigenous language speakers. The agreement sets forth remedial steps that Mee Memorial Hospital will take to ensure meaningful access to its programs, services and activities for LEP individuals.

Agreement: <http://go.usa.gov/wg8F>

POLICY DEVELOPMENTS



CA Courts Take Another Step Toward Meaningful Access for LEP Litigants in Civil Proceedings:

On September 28, 2014, California Governor Jerry Brown signed a statute into law that, among other things, removes the requirement to charge limited English proficient (LEP) litigants for interpreter costs in civil proceedings, sets forth an intention to provide interpreters consistent with federal legal requirements, and clarifies that state courts may provide interpreters free of charge regardless of the income of the parties. This statute is major step forward to resolving the Federal Coordination and Compliance Section (FCS) and the U.S. Attorney's Office, Central District of California (USAO) investigation of a complaint, filed by the Legal Aid Foundation of Los Angeles, alleging a failure to provide LEP individuals with meaningful access in civil proceedings and court operations. The California state court system has made a commitment to resolve the complaint voluntarily and FCS and USAO are negotiating the terms of that compliance. As part of the process to define the terms of voluntary resolution, FCS and USAO have sought input from court officials and staff, legal practitioners, advocates, and other stakeholders. The California state court system has also sought feedback from stakeholders on



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Policy Developments

its draft language access plan through several public hearings, stakeholder meetings, and through a formal public comment process held July 31-September 29, 2014. The draft plan identifies the steps the court system will take to provide free language services to LEP individuals in all civil proceedings and court operations.

Information about the language access plan process: <http://go.usa.gov/wgkz>
Final text of AB1657 as enacted: <http://go.usa.gov/wg8C>



Department of Education Issues Guidance Urging Schools to Ensure Equity of Services and Facilities Pursuant to Title VI of the Civil Rights Act of 1964:

On October 1, 2014, the Department of Education's Office for Civil Rights (ED-OCR) issued guidance urging schools to monitor policies and facilities to ensure that they are distributed to students in compliance with Title VI of the Civil Rights Act of 1964. The guidance notes that while students need not have identical resources, they must have equal access to comparable programs, materials and facilities under Title VI. Data shows that African American students are four times more likely to attend schools where their teachers do not meet all the requirements for state teaching certifications and that schools with higher concentrations of minorities are more likely to have temporary classrooms in portable buildings. ED-OCR advises that

schools collect data on course offerings; gifted and preschool programs; athletics; teacher credentials; and access to librarians, psychologists and guidance counselors. Where Title VI disparities are found, schools should "take prompt and effective steps to eliminate any unjustified inequities." Under the guidance, schools are asked to involve law enforcement only as a last resort in school discipline, and reduce suspensions and expulsions, which tend to disproportionately affect minority students.

Letter: <http://go.usa.gov/wggh>
Guidance: <http://go.usa.gov/wg2W>
En Español: <http://go.usa.gov/wg2F>

Department of Education Releases Guidance on Charter Schools' Obligations under Civil Rights Laws:

The Office for Civil Rights at the Department of Education released guidance on May 14, 2014, concerning the applicability of federal civil rights laws to charter schools. The guidance provides a reminder that charter schools are subject to the same federal civil rights obligations as all other public schools, and highlights some of the legal requirements related to admissions, student discipline, students with disabilities, and English language learners.

Letter available in English and Spanish: <http://go.usa.gov/wgT3>



Departments of Education and Justice Release Guidance on Non-Discrimination in Enrollment Procedures on the Basis of Immigration Status:

The Department of Education and the Department of Justice released guidance on May 8, 2014, regarding schools' enrollment procedures and the obligation to enroll all residents of school age regardless of their race, color, national origin, immigration, or citizenship status.

Letter and related materials available in English, Spanish, Arabic, Chinese, Korean, Tagalog, and Vietnamese: <http://go.usa.gov/wgTT>

Departments of Education and Justice Release Letter on *Schuetz v. Coalition to Defend Affirmative Action Decision*:

The Department of Education and the Department of Justice issued a Dear Colleague Letter concerning the U.S. Supreme Court ruling in *Schuetz v. Coalition to Defend Affirmative Action*. The letter provides information about the *Schuetz* decision and reiterates the Departments' support for the voluntary use of race and ethnicity to achieve diversity in education.

Letter: <http://go.usa.gov/wgTm>
En Español: <http://go.usa.gov/wg2F>



Frequently Asked Questions

FREQUENTLY ASKED QUESTIONS

How does the Department of Justice provide counsel, direction, and assistance on Title VI enforcement to federal agencies?

The Department of Justice (DOJ) is charged, through the Attorney General's delegated authority under [Executive Order 12250](#) (EO 12250) and the regulations entitled *Coordination of Enforcement of Non-discrimination in Federally Assisted Programs* (Coordination Regulations) [28 C.F.R. Part 42 Subpart F](#), with ensuring that federal agencies effectively and consistently enforce Title VI of the Civil Rights Act of 1964 (Title VI) and similar provisions in federal grant statutes. 28 C.F.R. § 42.401. The Coordination Regulations delegate the Attorney General's Executive Order 12250 authority to the Assistant Attorney General for the Civil Rights Division (AAG) who "may issue directives or take other such actions... necessary to [e]nsure that federal agencies carry out their responsibilities under Title VI." 28 C.F.R. § 42.412(a)-(b). Under this authority, the AAG enforces and interprets Title VI by establishing legal standards; reviews and approves proposed agency regulations implementing Title VI (final regulations must be approved by the Attorney General); provides counsel and technical assistance to agencies on their Title VI investigations and compliance reviews; provides Title VI training; and issues Title VI guidance. The Federal Coordination and

Compliance Section is the Section within the Division that provides Title VI assistance and oversight to agency civil rights offices.

How does the Department of Justice work with federal agencies to ensure that Title VI is interpreted and enforced consistently?

One way that DOJ ensures consistent and effective interpretation and enforcement of Title VI is to review and approve all agencies' proposed and final Title VI implementing regulations, including amendments to existing regulations, prior to publication. DOJ may also review other types of agency Title VI documents. For instance, FCS often collaborates with other agencies in the development of Title VI policy guidance documents interpreting Title VI in specific areas. In addition, FCS develops guidance regarding implementation of Title VI and related statutes and executive orders. FCS has issued this guidance in a range of formats in the past, including notice-and-comment rulemaking; Frequently Asked Questions and Answers; tips and tools; promising practices documents; and correspondence to federal agencies, recipients, or beneficiaries. FCS also offers training for federal agencies that have Title VI responsibilities and provides less formal assistance through ongoing technical assistance, including legal and policy guidance to federal funding agencies. On an almost daily basis, the FCS staff answer questions presented by staff from other federal agencies. FCS also provides hands-on assistance to individual agencies, including legal counsel on novel

issues or complex investigations. For more information, see: [August 19, 2010, Executive Order 12250 Memo to Federal Agencies from the Assistant Attorney General](#).

Does a recipient's denial of services or benefits to someone because of his/her limited ability to speak, read, or understand English constitute national origin discrimination under Title VI?

Title VI's prohibitions against national origin discrimination includes discrimination against individuals on the basis of their limited English proficiency. The Supreme Court held in *Lau v. Nichols*, 414 U.S. 563 (1974), that Title VI requires that limited English proficient (LEP) individuals be provided with "meaningful access," and that a denial of such language assistance services constitutes national origin discrimination. Therefore, recipients of federal financial assistance are required to take reasonable steps to ensure meaningful access to their program and activities by LEP populations. For more information please read [this FAQ](#) from the Federal Interagency Website on LEP, www.lep.gov.

How do I determine whether an entity is a recipient or subrecipient for the purposes of Title VI?

A Title VI recipient is an entity that receives, directly or indirectly, financial assistance from a federal agency to operate a "program or activity." [42 U.S.C. § 2000d-4a\(1\)\(A\)](#). A recipient voluntarily enters into a relationship with the federal government and receives federal

THE FEDERAL COORDINATION AND COMPLIANCE SECTION

Ensuring Consistent and Effective Title VI Enforcement Across the Federal Government

assistance under a condition or assurance of compliance with Title VI and/or other nondiscrimination obligations. [28 C.F.R. § 42.102\(f\)](#). A recipient is not an ultimate beneficiary who enjoys the benefits of participation in a program or activity operated with federal financial assistance. *Id.* The primary recipient is “any recipient which is authorized or required to extend federal financial assistance to another recipient.” [28 C.F.R. § 42.102\(g\)](#). When a primary recipient extends federal financial assistance to another entity, that entity is a subrecipient. The primary recipient and any subrecipients must comply with Title VI and its implementing regulations. For example, a state agency, such as the Department of Children and Family Services, receives a substantial portion of its funding from the federal government. The state agency, as the primary recipient, in turn, funds local social service organizations, in part, with its federal funds. The local organizations receive federal financial assistance, and therefore must comply with Title VI and its implementing regulations. It should be noted that Title VI does not apply to the federal

government and a federal agency cannot be a “recipient” as the Title VI definition of “program or activity” does not apply to programs that are “conducted directly by a federal agency using its own budget.” *Halim v. Donovan*, 951 F. Supp. 2d 201, 207 (D.D.C. 2013).

Should a recipient use automatic or machine translation software or applications like Google Translate or Bing Translator, to provide language access to limited English proficient individuals?

Generally, no. Automatic or machine translation software or applications cannot provide the level of translation required for meaningful access. It may be used limitedly to establish the general concept or essence of written text, or used by a qualified translator to check materials before a formal translation, or in extremely time sensitive or emergency situations where no other alternative is available. Machine translation should not be used alone, absent human quality control, when materials are vital to an individual’s rights or

benefits, or when the source materials contain non-literal language (e.g., slang, metaphor), lack clear grammar or structure, contain abbreviations or acronyms, or are overly complex, technical, or wordy. For more information, read GSA’s [Lost in Translation](#).

Does Title VI protect individuals from discrimination in the workplace?

Title VI applies very narrowly to employment discrimination claims. While Title VI was not meant to be the primary federal law prohibiting employment discrimination, it does forbid employment discrimination by recipients in certain situations. Title VI applies to the recipient’s employment practices if the recipient receives federal financial assistance and a “primary objective” of the federal funding is to provide employment. [42 U.S.C. § 2000d-3](#). Title VI may also apply where a recipient’s employment practices negatively affect the delivery of services to ultimate beneficiaries (i.e., individuals and/or entities that Title VI is intended to protect).



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