



DEPARTMENT OF HEALTH & HUMAN SERVICES

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JAN 13 2017

Nancy Buckner, Commissioner
Alabama Department of Human Resources
50 Ripley Street, P.O. Box 304000
Montgomery, Alabama 36130

Re: Title VI Review of Alabama Department of Human Resources
OCR Reference No.10-116910

Dear Commissioner Buckner:

The U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) has completed its investigation of the language access policies and practices of the adoption, foster care and child protective services programs (hereinafter collectively referred to as the child welfare program) of the Alabama Department of Human Resources (ADHR). ADHR, a recipient of substantial financial assistance from HHS, is required to comply with Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations. 42 U.S.C. § 2000d et seq., 45 C.F.R. § 80. OCR began its investigation when the U.S. Department of Justice, Civil Rights Division, referred for OCR's review ADHR's actions in a parental termination case involving Juan Gomez,¹ a Guatemalan Akateco-speaking father. During this investigation, OCR investigated another similar complaint concerning ADHR's failure to provide meaningful access to limited English proficient (LEP) persons and, as a result of both complaints, has investigated the steps ADHR has taken to address the serious systemic problems identified.

OCR finds that ADHR has failed to ensure its county offices take reasonable steps to provide LEP persons meaningful access to its critical child welfare program services, in violation of Title VI.

LEGAL AUTHORITY

OCR enforces Title VI and its implementing regulations, which prohibit discrimination on the basis of race, color or national origin in programs and activities receiving Federal financial assistance from HHS. ADHR receives Federal financial assistance from HHS through the Social Services Block Grant and Title XX of the Social Security Act² and, therefore, must comply with Title VI. If ADHR is not complying with Title VI and fails to correct the noncompliance by voluntary means, OCR has jurisdiction under Title VI to effect compliance by: (1) terminating Federal financial assistance; or (2) any other means authorized by law.³

STATEMENT OF FACTS

¹ We use pseudonyms throughout this letter for individuals.

² 42 U.S.C. § 1397, et seq., Title IV-B and Title IV-E programs.

³ 42 U.S.C. § 2000d-1, 45 C.F.R. § 80.8(a).

In this investigation, OCR obtained policy documents and other data related to the manner in which ADHR administers its child welfare program through its county offices, reviewed child welfare program individual case data, researched census and other reliable sources of demographic data, and reviewed how and when child welfare program staff utilized language access services, which include oral interpreter services and translated materials. OCR also conducted four onsite investigations of ADHR county offices and interviewed numerous individuals who had knowledge and familiarity with Mr. Gomez's case or the child welfare program's language access policies and practices, including ADHR officials and staff and third parties in ADHR's service areas. OCR also reviewed the history of its own prior interactions with ADHR, which resulted in an agreement with ADHR designed to ensure meaningful access by persons with LEP to ADHR's foster care and adoption programs.

Based on that investigation, OCR finds the following facts.

Background on the Administration of Child Welfare Programs in Alabama

ADHR is the state agency responsible for administering social welfare programs that promote family stability and provide for the safety and self-sufficiency of Alabama's residents.⁴ ADHR carries out these programs on the county level through local offices, which have front line responsibility for administering local child welfare programs that include child protection, foster care, and adoption services.⁵

ADHR directs and supports county programs by creating statewide policies and procedures for administering child welfare programs. These policies and procedures include requirements to provide services to those individuals who are LEP, including language assistance services. These policies and procedures must also comply with Federal law and Administration for Children and Families' (ACF) guidelines.

ADHR's child protective services are provided in response to a report of child abuse/neglect. Child protective services are directed toward preventing or remedying the abuse/neglect of children who are unable to protect themselves and must be individualized and needs-based. Thus, ADHR county offices have the responsibility to plan and deliver child protective services based on a comprehensive assessment of individual and family needs that occurs through an individualized service planning process. If existing services are unable to meet child/family needs, child welfare staff is responsible for developing needed resources/services. In addition, ADHR's regulations require the county office to make all reasonable efforts to preserve and reunify families. Reasonable efforts include taking systematic, prompt, purposeful, and decisive action to maintain

⁴ State of Alabama, Department of Human Resources, Annual Progress and Services Report, 2013, 4, http://dhr.alabama.gov/services/Child_Protective_Services/Documents/2013%20APSR%20.pdf.

⁵ County offices serve as agents of ADHR. See *Ex parte Department of Human Res.*, 716 So.2d 717, 718 (Ala.Civ.App.1998) ("The county departments of human resources serve as agents of the State Department of Human Resources; the State Department is empowered to designate the county as its agent and to assist the counties in their various duties when necessary. See § 38-6-2, Ala.Code 1975; Admin. Rules 660-1-2-.01(g) and 660-1-2-.02."); *State Dep't of Human Res. v. Estate of Harris*, 857 So.2d 818, 819 n. 1 (Ala.Civ.App.2002). Therefore, although the findings in this letter refer to specific actions of Etowah County ADHR and other county offices, these actions are attributable to ADHR and we therefore make our findings with respect to ADHR as a whole.

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children in a permanent and stable living arrangement with their own family. ADHR's county offices therefore work with the child and the parents or caretaker through direct counseling or referral to appropriate helping professionals or agencies to keep the family unit together, when possible. If removal of the child from the home is necessary, ADHR petitions the court for custody and makes plans for substitute care of the child.

ADHR's policies are consistent with the Adoption and Safe Family Act of 1997,⁶ which requires child welfare agencies to make reasonable efforts to prevent the unnecessary removal of a child from his/her home and make it possible for a child to return home. After a child is placed in out-of-home care, child welfare staff must continue to make reasonable efforts to work with the child and the parents to prepare them for the time when the child may be returned home, unless a juvenile court has determined that reasonable efforts are not required. County offices must maintain detailed documentation of reasonable efforts made in all case records, case plans, and court reports.

Background and Facts Related to OCR's Prior Investigation of ADHR

In 2003, OCR received a complaint referral from the U.S. Department of Justice, Civil Rights Division, to determine whether ADHR engaged in discrimination against a LEP Guatemalan mother on the basis of national origin in violation of Title VI. In response to the complaint, OCR found that ADHR subjected the Guatemalan mother to disparate treatment when it removed her child from her custody, placed the child into foster care, refused to reunify the mother with her daughter, limited her visitation rights, and failed to provide her with effective language assistance.

Based on these findings, OCR broadened the scope of the review to determine compliance of ADHR's foster care and adoption program statewide. OCR conducted reviews of Calhoun, Jefferson, Limestone, Madison, and Morgan Counties to determine whether ADHR took reasonable steps to ensure meaningful access to its foster care and adoption programs by persons with limited English proficiency. During the course of the reviews, OCR compiled documentation, interviewed key ADHR county personnel and community representatives, examined records, and analyzed demographic data.

OCR's broadened investigation of the 2003 complaint found that there were a significant number of Hispanics in the county areas who did not speak English well or at all and that those individuals came into contact with ADHR on a daily to weekly basis. The investigation found the following compliance concerns:

- ADHR staff acknowledged using friends, family members, and other third parties to interpret for its LEP clients.
- The counties reviewed did not have written language access policies.
- ADHR personnel had not received training on cultural competence, the use of interpreters, or the need to provide interpreter services to LEP individuals.

⁶ 42 U.S.C. § 671(a)(15). The Adoption and Safe Families Act of 1997 requires that state child welfare agencies make reasonable efforts to preserve and reunify families when doing so would not compromise the health and safety of children. Guided by those principles, state child welfare agencies are obligated to work with biological parents to ameliorate factors that would otherwise limit a parent's ability to maintain the child safely at home. Ala. Code § 12-15-301.

- ADHR staff did not use interpreters when interacting with LEP individuals.
- ADHR had not translated vital documents into Spanish.

OCR concluded that these practices failed to ensure meaningful access by persons with LEP to ADHR's foster care and adoption programs, and that ADHR must take reasonable steps to ensure compliance with Title VI. Consequently, OCR proposed suspending its investigation and refrain from making formal findings in exchange for a written agreement in which ADHR would identify specific steps it would take to voluntarily resolve the compliance concerns relating to the five counties and expand its corrective measures to each of the counties in the State. ADHR committed, through a written voluntary resolution agreement, to develop and implement policies and procedures to resolve the compliance concerns and ensure that effective language assistance services would be provided to LEP individuals throughout the ADHR county offices.

In August 2005, the ADHR Commissioner documented ADHR's obligation to provide language assistance in all of ADHR's programs and developed a Title VI language access plan that provided for training staff on ADHR's language access policies and procedures, the proper use of language assistance services, prohibition on the use of family and friends of LEP individuals as interpreters, and translation of vital documents – all of which were agreed upon as reasonable steps to ensure meaningful access by persons with LEP. ADHR also instructed agency leaders to ensure ADHR programs accommodated the language needs of the diverse populations in Alabama.

In March 2008, OCR closed its compliance review based on ADHR's immediate implementation of its language access plan (in Calhoun, Jefferson, Limestone, Madison, and Morgan counties), as well as based on ADHR's commitment to address the Title VI compliance concerns and systemic issues, as well as implement its language assistance plan, in the remaining 62 counties.

Background and Facts Related to Juan Gomez

Juan Gomez and Marta Mendez are the biological parents of Maria, a minor child. Ms. Mendez also had five older children of whom Mr. Gomez is not the biological father. Mr. Gomez and Ms. Mendez were LEP and their primary language was Akateco, a Mayan dialect spoken in Guatemala, their country of origin.⁷

In May 2005, ADHR placed Ms. Mendez's children in child protective services following allegations of inadequate supervision by Ms. Mendez and a report of alleged abuse of one of her children by one of her older children. ADHR required Ms. Mendez and her older children to participate in services that ADHR offered. ADHR subsequently found that Mr. Gomez had not committed any wrongdoing and did not require him to participate in any services. Mr. Gomez continued to live in the household with Maria and Ms. Mendez until Ms. Mendez passed away in October 2005. Upon Ms. Mendez's death, Maria, who was two years old at the time, was placed by ADHR in an unlicensed home of a non-relative couple employed by a private group home where Maria's siblings were placed. Shortly after Maria's removal, Mr. Gomez requested that ADHR return Maria to his custody. ADHR denied his request and failed continuously to make the reasonable efforts required by its policies and the Adoption and Safe Family Act to reunify the family. For example, ADHR required that Mr. Gomez establish

⁷ Ethnologue, *Akateco*, <http://www.ethnologue.com/language/knj/view>.

paternity through DNA testing even though: Mr. Gomez is identified as Maria's father on her birth certificate and admitted to being her father; ADHR's practice is to accept the paternity on a child's birth certificate; and the Adoption and Safe Family Act presumes paternity if the parents were married after the child's birth and the father consents to have his name on the birth certificate.

In addition, even though there was undisputed evidence of Mr. Gomez's paternity of Maria, and ADHR determined that Mr. Gomez had not abused Maria, ADHR refused to work with him to develop a reunification plan. It was not until one year later, when DNA testing confirmed Mr. Gomez's parentage by 99.99%, that ADHR developed and implemented a case plan to reunify Mr. Gomez with his daughter Maria.

Once paternity was established, Mr. Gomez filed a petition for custody of his daughter. But despite the requirements of its policies and the Adoption and Safe Family Act of 1997, ADHR opposed the petition, stating that Mr. Gomez posed a safety risk to Maria because he was an alcoholic and he physically abused Maria and her siblings. Mr. Gomez was unable to rebut these charges because ADHR social workers insisted that he communicate using Spanish interpreters, even though they were aware that Mr. Gomez's primary language is Akateco and that he was not proficient in Spanish.⁸ Maria's older brothers, whom ADHR identified as the source of the physical abuse charges, denied stating that Mr. Gomez was abusive to them or others.

To regain custody of his daughter, Mr. Gomez was required to participate in parenting skills classes, alcohol treatment, and individual counseling, but ADHR did not make reasonable efforts, such as providing adequate language assistance services, to ensure Mr. Gomez could participate meaningfully in these programs. Moreover, ADHR amended Mr. Gomez's service plan several times to include additional requirements, including English-as-a-second-language classes and housing. Mr. Gomez also experienced delays in receiving referrals for services because the ADHR office in Etowah County, where he resided, had a limited network of providers that offered services in languages other than English. When Mr. Gomez finally received ADHR referrals for required services, the interpreter services arranged by ADHR were ineffective. For example, Mr. Gomez was subject to a psychological examination facilitated by a Spanish interpreter who reported that communication with Mr. Gomez was difficult because he did not speak the same language as Mr. Gomez.

The psychologist admitted in his report to ADHR that his evaluation was hampered by "significant language limitations" in Mr. Gomez's "expressive language in Spanish." The psychologist cautioned that the results of Mr. Gomez's evaluation "have to be considered with some reservation and as tentative, due to the language difference." To determine the full extent of Mr. Gomez's ability to parent, ADHR eventually referred him to individual counseling with a bilingual Spanish counselor, who also struggled to communicate with him. Because ADHR did not identify an alcohol treatment program that had the necessary language assistance services, Mr. Gomez was never referred for treatment. Instead, he was required to submit to random urine toxicology screens, which he passed.

Although ADHR policies and procedures include requirements to provide language assistance services to individuals who are LEP, visits between Mr. Gomez and Maria were a source of stress

⁸ OCR interviewed the case worker who confirmed that Mr. Gomez and Ms. Mendez spoke a native Guatemalan language, not Spanish. The case record also has notes that reference their primary language as "other than Spanish."

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for both father and daughter because, as a result of her placement with English-speaking caregivers, Maria lost her ability to communicate in Akateco and ADHR failed to take reasonable steps to ensure Mr. Gomez could communicate with his daughter. For example, even though Maria spoke English and ADHR was fully aware that Mr. Gomez could not communicate in either English or Spanish, ADHR purchased software to teach Maria Spanish. Consequently, ADHR effectively required Mr. Gomez to communicate in a language in which neither he nor Maria was proficient, and he and Maria were never able to communicate effectively. Contact between Maria and Mr. Gomez was limited to supervised visits once a month and Maria's caregivers were always present. During these monthly visits, Maria spent almost the entire visit talking to her caregivers in English.

In 2009, ADHR also identified housing as a barrier to reunification, even though ADHR had determined in 2007 that Mr. Gomez's same housing situation was appropriate when he and his second wife adopted an infant relative. After ADHR changed its determination and concluded that Mr. Gomez's same housing was now not suitable, ADHR failed to assist Mr. Gomez in locating suitable housing in violation of its own policies.

Again in contravention of its policy, which requires ADHR to make reasonable efforts to prevent the unnecessary removal of a child from home and make it possible for a child to return home, in May 2009, ADHR instead petitioned a juvenile court to terminate Mr. Gomez's parental rights of Maria, who was then six years old, in part because Mr. Gomez had not demonstrated improvement in his ability to speak and understand English. Specifically, ADHR's petition stated, "[s]ince Maria's placement in foster care, Mr. Gomez has not acquired adequate English skills to allow him to communicate with his child." The petition also alleged that, "[r]eturning her to the home of the father where she would be unable to communicate with other members of the household due to the language barrier would be emotionally troubling and cause her to regress." But any concerns about language barriers did not prevent ADHR from placing Maria, a child from an Akateco-speaking household, into a home with English-speaking foster parents.

The trial court granted the request, but Mr. Gomez challenged the termination, stating that ADHR had failed to make reasonable efforts to reunify him with Maria. The Alabama Court of Civil Appeals reversed the termination, finding that ADHR failed to present the clear and convincing evidence required for termination. Specifically, the Court of Civil Appeals found that ADHR did not demonstrate that Mr. Gomez was unwilling or unable to care for Maria. The Appeals Court also concluded that his inability to communicate in English was not insurmountable and was an insufficient basis to support a termination of parental rights. The Appeals Court explained that ADHR and the trial court improperly "relied on the communication barrier between the father and the child as a basis for terminating the father's parental rights." A.S.T. v. Etowah County Dept. of Human Res., 36 So. 3d 572, 576 (Ala. Civ. App. 2009).

The Appeals Court remanded the case to the lower court for further proceedings. Although the lower court directed ADHR to work with Mr. Gomez toward reunification, which included reinstating visits with Maria, ADHR did not take steps to reunify Maria with her father. Instead, ADHR restricted contact between Mr. Gomez and Maria based on statements from Maria's caregiver, who reported that Mr. Gomez was exhibiting "bad" behavior during visits with Maria, such as failing to give Maria her medications and allowing Maria to eat junk food during visits with her father. The notes from the Comprehensive Behavioral Services counselor who observed visits between Mr. Gomez and Maria, however, provided a different perspective with regard to the

quality of the interaction between father and daughter. The counselor indicated the interaction between Mr. Gomez and Maria was positive and that bonding was occurring. This counselor also indicated that both father and daughter were making better efforts to communicate. The counselor observed that Maria's caregivers were not supportive of the plan to return her to her father. When visits between father and daughter were terminated by Maria's caregivers in May 2010, the counselor reported that Maria was distressed and asked the counselor why she was not visiting her "Poppy." Notes from Maria's counseling sessions also indicated the termination of the visits left Maria confused and overwhelmed as she missed visiting her father.

In May 2010, Maria's caregivers filed a petition in probate court to adopt her. Although ADHR policy requires the filing of an appropriate pleading to contest and object to the adoption proceeding when the agency is actively engaged in reunification efforts, the ADHR caseworker instead advised the agency's attorney to take a "passive role" in the proceedings. ADHR also did not notify the probate court of the directive from the Alabama Court of Civil Appeals for ADHR to engage in reunification efforts. During the adoption proceedings, the same ADHR case worker testified that Mr. Gomez demonstrated limited parenting abilities and his contact with his daughter was limited and sporadic. Three months later, the court entered an order denying Mr. Gomez's motion to contest the adoption. The court's decision was based in part on the testimony of the ADHR social worker. The adoption was finalized shortly thereafter when ADHR did not file an appeal on behalf of the agency and Mr. Gomez.

DISCUSSION AND ANALYSIS

Title VI Legal Framework

For LEP persons, lack of proficiency in English, and the use of non-English languages, is a direct outgrowth of, and is integrally tied to, their national origin.⁹ Under Title VI, recipients of federal funding are obligated to take reasonable steps to provide meaningful access to their programs for individuals who are limited English proficient.¹⁰ Meaningful access is necessary to ensure recipients do not delay or deny services to persons with LEP. As a result, a recipient's failure to provide adequate language assistance services to LEP persons could subject individuals seeking access to a recipient's programs to discrimination on the basis of national origin.

ADHR Fails to Take Reasonable Steps to Ensure Meaningful Access to Its Programs

Based upon its analysis of ADHR's practices and procedures in multiple counties as well as the specific facts of Mr. Gomez's case, OCR finds that ADHR has failed to take reasonable steps to ensure meaningful access by Latino persons with LEP to ADHR's child welfare program services. The investigation of Mr. Gomez's case specifically highlights the manner in which individuals and families have been harmed by these failures. As a result, Latino parents are at greater risk for loss

⁹ "Nondiscrimination in Health Programs and Activities; Final Rule," 81 Fed. Reg. 31376, 31387 (May 18, 2016). *See, e.g.*, 29 CFR 1606.1 (defining national origin discrimination to include actions based on an ancestor's place of origin and an individual's "physical, cultural or linguistic characteristics").

¹⁰ *See Lau v. Nichols*, 414 U.S. 563 (1974) (a school district with a large number of non-English speaking students of Chinese origin was required to take reasonable steps to provide the students with a meaningful opportunity to participate in federally funded educational programs.).

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of parental rights because ADHR continuously fails to address language barriers that directly impact their ability to participate in services and maintain custody of and reunification with their children. Thus, OCR finds that ADHR is administering its child welfare program in a manner that discriminates against persons based on their national origin, in violation of Title VI Implementing regulations. 45 CFR §80.3(b)(2). As noted earlier, OCR previously conducted an extensive investigation of ADHR concerning this issue, and the evidence gathered in this investigation highlights the systemic failure of ADHR to resolve these issues.

OCR's investigation found that ADHR's child welfare program comes into daily contact with large numbers of Latino LEP persons who are eligible for its programs and services. OCR also found that ADHR previously identified in its language access plan reasonable steps to ensure meaningful access by persons with LEP to its programs, but that ADHR is not effectively implementing that plan. In addition, ADHR has failed to develop additional Program Operational Instructions, as is required by the plan. OCR identified several implementation failures, including inadequate training of ADHR staff, inadequate assessment of the communication needs of LEP populations, inadequate language assistance services, inadequate translation of vital materials, and inappropriate use of volunteers and family. These and other failures indicate that, despite updating its language access plan in 2012, ADHR continues to fail to undertake reasonable steps to ensure meaningful access for LEP individuals to its programs, resulting in the delay or denial of child welfare services to its Latino customers.

(a) ADHR Does Not Adequately Train Child Welfare Staff in County Offices

Although ADHR developed a statewide language access plan for the department as a whole, which included staff training requirements, OCR found many inconsistencies in the actual practices within the child welfare program from county to county and even between staff members within the same offices. For example, the language access plan states that the "LEP requirements/services have been or will be incorporated into all aspects of Department staff orientation training or program specific training," but the administrative letter that distributed the plan to county ADHR offices only required county offices to take steps to ensure staff read the PowerPoint training presentation. This letter did not require that someone train staff in person on the plan, assess their knowledge, or allow staff to ask questions and share information. The PowerPoint training also does not incorporate county-specific information, such as the frequently spoken LEP languages or language resources within each office service area or community. There also is no specific requirement for ongoing training beyond the claim that LEP requirements would be incorporated into program specific training.¹¹ OCR's interviews revealed that some staff members were not aware of ADHR's LEP policies for providing language assistance. Staff also stated that they have not received training on ADHR LEP policies and many do not know how to identify LEP client's language needs.

OCR's interviews also revealed that county ADHR staff members were not adequately trained on

¹¹ ADHR's new version of its LEP Plan, updated in January of 2012, is substantially similar to the 2005 version but does require an annual training activity, which will be monitored. Alabama Department of Human Resource, Language Assistance Plan, Section VIII: Training, January 2012, http://dhr.alabama.gov/services/Family_Assistance/Documents/Language%20Assistance%20Plan_2012.pdf. (2012 LEP Plan).

ADHR's language access plan. One staff member stated that she had not received any training. Other ADHR staff made inconsistent statements about receiving training and/or indicated that they were unfamiliar with aspects of ADHR's language access plan, such as how to identify language needs, respond to a phone call from an LEP individual, request translation of documents, and under what circumstances they could use family and friends of LEP individuals as interpreters. This lack of training contributes to the administration of this program in a manner that has the effect of delaying or denying access to ADHR programs by Latino persons with LEP based on national origin.

The impact of these failures is evidenced by the facts concerning ADHR's treatment of Mr. Gomez. While ADHR staff who worked on his case did not directly state that they treated Mr. Gomez differently because of his national origin, at least one person stated that there was a bias against Mr. Gomez due to his inability to speak English. Specifically, Mr. Gomez's primary caseworker stated to OCR and testified during court proceedings that his failure to learn English demonstrated a lack of commitment to his daughter. The primary caseworker took exception to the fact that Mr. Gomez failed to learn to speak English after living in the United States for more than eleven years. She also stated that she believed that Maria would have a better future with English-speaking caregivers.

Although ADHR claimed that there is no requirement that parents speak English, OCR found that Mr. Gomez's inability to speak English was used at various times by ADHR to justify its denial of services and attempt to terminate his parental rights. For example, ADHR's petition to terminate Mr. Gomez's parental rights specifically referenced his failure to learn English as justification. In addition, OCR's review of ADHR case files in Etowah County showed that other Hispanic/Latino families were consistently required to take English language courses as part of their reunification plans.¹²

(b) Communication Needs of LEP Populations are not Properly Assessed

While ADHR's current language access plan provides that all staff will be issued language identification cards, OCR found inconsistent use of this resource and other failures to adequately assess language needs within the ADHR child welfare program. For example, ADHR's original and current language access plans require that posters placed in the lobbies of ADHR county offices and the ADHR website notify individuals seeking services of the availability of free interpreter services. However, OCR's investigation found that the notice policy was not consistently implemented in the ADHR county offices OCR visited. The first office visited did not have the posters; those found in subsequent offices appeared so new as to have been posted only after OCR notified the first ADHR County Director of the lack of posters. ADHR child welfare staff OCR interviewed admitted that they did not compensate for the lack of posters by informing LEP individuals orally about the availability of free interpreter services. In fact, OCR found that, in some instances, LEP parents were advised in writing to provide their own interpreter when visiting an ADHR office.

¹² In these cases, because English language courses were made part of reunification plans for Hispanic/Latino LEP persons, even though the failure to speak English was not connected to the parents' loss of custody of their children, it appears ADHR used language as an identifier for treating LEP Hispanic/Latino persons differently based on national origin.

Moreover, ADHR case records and staff interviews revealed that social workers interpret head nodding from a LEP person as showing comprehension and agreement with the caseworker's question or statement in English. Other caseworkers admitted to making language assessments based upon an individual's physical appearance, rather than the use of language identification cards or asking the individual for their language preference. ADHR caseworkers also admitted to assuming that Hispanic/Latino-looking clients need Spanish interpreters, regardless of the fact that ADHR is fully aware that some people of different ethnicities look Hispanic/Latino or that some Hispanics/Latinos speak non-English languages other than Spanish. OCR also found situations in which ADHR's faulty assessment of language needs led to the denial of needed interpreter services or the provision of interpreter services in an incorrect language.

The current ADHR child welfare program practices to assess and provide language assistance services to LEP individuals are inconsistent and inadequate to satisfy the requirement that reasonable steps be taken to ensure that those individuals have meaningful access to ADHR's child welfare services.

(c) Service Providers Offer Inadequate Language Assistance Services

Although OCR worked with ADHR to ensure its language access plan included reasonable steps to ensure its clients had access to language assistance services, ADHR's current language access plan does not identify how LEP individuals can access competent language assistance services provided or identified by ADHR, including services provided by third parties. For example, OCR found that ADHR does not have specific program operational instructions that address the competence of interpreters used by LEP clients to communicate with ADHR. As a result, ADHR has no method to monitor or assess the proficiency of contracted bilingual providers it uses to provide services to LEP families. ADHR refers LEP clients to "bilingual" providers as long as the individual provider self-identifies as being bilingual, but ADHR does not verify or monitor the providers' competency in the non-English language.

Interviews and ADHR case records demonstrate that providers alleged to have competency in Spanish were unable to effectively communicate with LEP-Spanish clients and had difficulty assessing LEP clients' needs. In several cases, these providers were unable to provide accurate psychiatric diagnoses of LEP clients due to language barriers. Despite these barriers, ADHR used the flawed assessments to make determinations about LEP parents' ability to safely care for their children. In Madison County, for example, a LEP father expressed his frustration over the services received from a bilingual mental health counselor. The father stated that he had difficulty communicating with the counselor because she was not proficient in Spanish. The parent stated that he was more proficient in English than the provider was in Spanish. The LEP father stated that, because of the language barrier, sessions with the counselor were lengthy and ineffective.

Similarly, ADHR relied on the findings of a psychological evaluation to support its claim that Mr. Gomez was an unfit parent. ADHR ignored, however, the psychologist's warnings that he was uncomfortable with his own assessment of the father's verbal I.Q. because of the poor communication between the Spanish-English interpreter and Mr. Gomez, whose primary language is Akateco and who is not proficient in either Spanish or English. ADHR also ignored the psychologist's statements that Mr. Gomez's long work history could indicate a higher I.Q.

Furthermore, OCR found that, when referring LEP clients to providers for required reunification services, ADHR relied wholly upon bilingual providers. This raised compliance issues for two reasons: ADHR failed to ensure the bilingual providers it used could competently communicate with their LEP clients; and ADHR had no procedures to ensure that those providers could obtain and utilize competent interpreters when communicating with LEP clients. OCR determined that ADHR's predominant reliance on bilingual providers inappropriately resulted in delays of service to LEP clients. For example, if no bilingual providers were available to LEP clients needing referrals, they had to wait long periods for interpreters or were referred to bilingual providers a great distance away. In one instance, child welfare program staff told a LEP father that he would have to travel outside of his county to receive bilingual rehabilitation services. OCR also found evidence that reunification services were delayed for some Latino families because the county ADHR offices failed to find bilingual counseling services. ADHR acknowledged that there are limited providers that offer services in non-English languages. ADHR's current practices concerning bilingual service providers delay and deny required services and delay reunifications for LEP families. Utilization of interpreters would be reasonable in many circumstances and, in many cases, eliminate unreasonable delay in delivery of services.

(d) ADHR's Child Welfare Program Fails to Provide LEP Parents Vital Translated Materials

ADHR acknowledged in its language access plan the importance of translating material with vital information in order to ensure meaningful access to its programs. ADHR's child welfare program, however, does not consistently translate vital materials and information provided to Hispanic/Latino LEP parents. OCR's investigation revealed that the ADHR child welfare program does not have a formal process in place for requesting the translation of important documents and forms. Furthermore, OCR determined from case records and statements of ADHR social workers that ADHR staff are unfamiliar with any process for requesting translation services to make vital written material available to LEP clients. In fact, OCR determined that staff have provided critical notices of abuse and neglect, individual service plans, Parent's Bill of Rights, court reports and referrals written only in English to LEP parents. All of these communications directly impact a parent's ability to address issues critical to the unity and well-being of their family. The testimony from social workers and the evidence gathered in this investigation also demonstrate that the child welfare program did not provide a sight translation¹³ of these vital English documents by a qualified oral interpreter in lieu of written translations. Other staff stated that, in instances when they successfully requested translation services, LEP parents often experienced delays of several weeks before receiving the translated copies of vital materials and information, such as case plans, which are promptly given to non-LEP parents at the conclusion of service planning meetings.

OCR's review of case files also found the written translations performed by bilingual staff were not accurate and, in some instances, incomplete.¹⁴ For example, in Marshall County, a LEP parent

¹³ A sight translation can be defined as the reading of a text by the interpreter from the source language into the target language, simultaneously, in a manner in which the content of the document can be easily understood by the audience.

¹⁴ Because interpretation and translation require distinct skills, individuals who may be competent to serve as oral interpreters from English to a target non-English language may not have the skills necessary to provide a translation of

was sent a notice in Spanish which informed her about an upcoming court hearing to terminate her parental rights; however, the translated document was fragmented and ambiguous. For example, the first paragraph of the document stated the following: “*0 judicial revision 0 permanency that hears 0 termination of parental rights that hears that this is to notify you that the act previously mentioned of the minors court will be supported on the date and time following: the 12-21-10 in 9:00 es.*” The paragraph is meant to inform a LEP parent about the date and time of the termination hearing, but anyone reading this in English or Spanish would find it difficult – if not impossible – to appreciate that their parental rights are about to be terminated. In Morgan County, case notes revealed that the case worker used “Google Translate” to inform a parent that she was required to take her child to a doctor’s appointment; however, the translation was incomplete and vague.

ADHR staff stated that they have used self-identified bilingual staff or online translation websites¹⁵ to translate materials for LEP parents. OCR reviewed several examples of these translations and found that many were inaccurate or incomplete. OCR’s interviews of three out of four individuals who self-identified as bilingual English/Spanish revealed that they were not fluent in Spanish, which raises concern about ADHR’s commitment to ensure the people they use to serve as interpreters or translators can provide LEP clients with meaningful access to ADHR services.

(e) Volunteers, Family, and Bilingual Staff are Used Inappropriately as Interpreters

Guidance issued by the Department of Justice and HHS long has discouraged the use of family and friends as interpreters as well as volunteers when a provider cannot verify their competence to serve as interpreter or determine whether a conflict of interest exists. ADHR’s current language access plan allows volunteers to serve as interpreters to the extent that ADHR staff find that they are competent. ADHR did create a form to be used by volunteer interpreters that discusses competency and ethical standards, but the staff interviewed by OCR was not aware of the form.¹⁶ Without the use of this form, or a similar safeguard, volunteer interpreters used by ADHR would not have been informed of their role as interpreter, which is to interpret accurately and completely and consistent with ethical obligations in that role.

OCR also found that child welfare program staff generally disregard or do not know ADHR’s policies regarding the use of family and friends of LEP individuals as interpreters. Under those policies, family and friends may be used to interpret only if there is an emergency or the client wishes to use them. But staff routinely uses minor children, family members and friends as interpreters in non-emergency circumstances without giving consideration to concerns regarding

an English document into that target non-English languages. See *Taniguchi v Kan Pac. Saipan, Ltd*, 132 S. Ct. 1997, 2003-2004 (2012) (“[T]he ordinary or common meaning of ‘interpreter’ does not include those who translate writings. Instead, we find that an interpreter is normally understood as one who translates orally from one language to another ...”).

¹⁵ The current ADHR website, <http://www.dhr.state.al.us>, uses Google Translate, a service that should not be used to translate content unless a human translator checks the translation. Further, as the option to “View this page in Spanish” is located at the bottom of the ADHR page and is written only in English, it is unclear how a LEP individual who has difficulty reading English would be able to use this feature.

¹⁶ 2012 LEP Plan, Attachment D, page 27.

competency, confidentiality and potential conflicts of interest, as required by ADHR's LEP Plan.¹⁷ For example, OCR found that a bilingual man accused of domestic violence served as an interpreter for his spouse, the target of his abuse. In other instances, children who were suspected of being abused or neglected served as an interpreter for the parent who may have been the perpetrator. Staff also stated that they have used law enforcement to communicate with LEP parents in cases where the officer was given access to information that could be used to support a criminal investigation against the parent.

ADHR's language access plan does not discuss the use of bilingual employees and the child welfare program has not created specific program operational instructions to ensure the competency of bilingual employees used as interpreters and translators. OCR's interviews revealed that bilingual employees have not received interpreter training and only one was proficient in the target language. Other ADHR staff that self-identified as bilingual English/Spanish had difficulty communicating with a native Spanish speaker.

(f) Delays/Denials Result from ADHR's Failure to Provide Timely Language Assistance Services

ADHR's failure to implement its language access plan and ensure language assistance services are provided creates delays in the provision of child welfare services, including family reunification. OCR's interviews found that the child welfare program practices lead to the delays and denials of timely reunification services because some workers were reluctant to work with LEP parents because of language barriers. One child welfare program worker acknowledged that her contact with a LEP parent was mostly restricted to written communication because she believed that using a telephonic interpreter service was a nuisance. Another ADHR caseworker stated she did not know how to deal with calls from LEP individuals, and so she would ask each of them to come into her office rather than call her. OCR's review of case records found that interpreter services are not provided at case plan reviews, which are important meetings where ADHR staff and clients discuss progress or difficulties in complying with a reunification plan.

Even when child welfare program staff tried to provide interpreter services, LEP clients experienced delays in receiving these services. For instance, a LEP family's reunification plan was delayed for over six months because the county office had difficulty locating bilingual counseling services for the LEP parents. Another LEP parent was informed that, because of his language needs, there was going to be a delay in referring him to rehabilitation services. In that case, the parent was advised that he might have to go to another city to attend rehabilitation services. OCR's review of Marshall County found that the program's failure to secure bilingual counseling services for LEP parents for over six months caused a delay in reunification with their children. In one case, the attorney for a LEP child welfare program client filed a motion with the court because his client was not receiving needed rehabilitation services. The ADHR child welfare program responded by stating that they did not have services in Spanish and the LEP client would need to learn English in order to obtain needed reunification services.

In sum, OCR's investigation, and visits to Etowah County and several other counties with large LEP populations, revealed that Latino national origin minority parents face significant barriers to

¹⁷ 2012 LEP Plan, page 5.

reunification with their children, have difficulty participating in services, and are at greater risk for loss of parental rights because ADHR has continuously failed to address the systemic issues previously identified by OCR by taking reasonable steps to ensure meaningful access to ADHR programs by persons with LEP.

(g) ADHR Departed from its Standards and Procedures in its Treatment of Mr. Gomez

Based on Mr. Gomez's limited English proficiency, ADHR consistently failed to follow its own established standards and procedures in ways that directly impacted Mr. Gomez's ability to access ADHR services and become reunified with his daughter and defend his parental rights. For example, ADHR failed to develop a plan for reunification until paternity was proven, despite Mr. Gomez's admission of paternity and the Alabama birth certificate identifying Mr. Gomez as Maria's father. Indeed, an ADHR Supervisor admitted that "we do not routinely do the DNA test" when the mother says a particular individual is the father. Similarly, even after paternity was established, ADHR continued to deny Mr. Gomez services routinely provided to other similarly-situated parents. For example, after the Agency's petition to terminate Mr. Gomez's parental rights was overturned on appeal and the juvenile court ordered the agency to seek reunification, the case remained with the ADHR Termination of Parental Rights Unit instead of being returned to the Reunification Unit. An ADHR Supervisor admitted that normal procedure is to offer family services up to the date of termination.

Three ADHR staff members stated to OCR that they considered ADHR's treatment of Mr. Gomez to be unfair or inadequate. One staff member told OCR that the primary caseworker seemed to have no interest in helping Mr. Gomez. Two of these persons attempted to intervene while ADHR was still managing the case. Additionally, Mr. Gomez's former caseworker stated that she was removed from Mr. Gomez's case because she refused to file the petition to terminate Mr. Gomez's parental rights when she felt that ADHR had not done enough to assist Mr. Gomez and to provide services in a language he could understand. The case worker pointed to ADHR's deviations from its procedures and told OCR that she believed that ADHR denied Mr. Gomez the opportunity to be a father to Maria.

ADHR admits that it failed to provide Mr. Gomez with services that would have enabled him to regain custody of his daughter. In interviews with OCR, a senior level ADHR official acknowledged that ADHR mishandled Mr. Gomez's case. The official admitted that Mr. Gomez was not provided the caliber of services that the law requires and that ADHR routinely provides to other similarly situated parents.

These failures are additional evidence of the types of systemic discrimination found through the rest of OCR's investigation. Along with OCR's other findings, they indicate that ADHR fails to take reasonable steps to provide meaningful access to individuals with limited English proficiency to the critical child welfare services offered by the agency.

CONCLUSION AND REMEDY

OCR finds that ADHR has failed to take reasonable steps to ensure meaningful access to its programs by Latino persons with LEP and, thus, ADHR is administering its programs in a manner

Nancy Buckner, Commissioner
Alabama Department of Human Resources

that has the effect of delaying or denying access to its programs and services on the basis of national origin, in violation of Title VI and 45 C.F.R. § 80.3(b)(2).

ADHR has **thirty (30) calendar days** from the date of this letter to respond and **sixty (60) calendar days** from the date of this letter to negotiate an acceptable Settlement Agreement with OCR that adequately resolves the issues identified in this letter. To this end, we are enclosing a draft Settlement Agreement. OCR has already addressed some corrective actions with ADHR and will continue to be available for technical assistance throughout the process of finalizing a Settlement Agreement.

We hope to be able to work with you and other officials in an amicable and cooperative fashion. Please contact Timothy Noonan, Regional Manager, (404) 562-7859, to discuss settlement. If compliance has not been secured by the end of the sixty day negotiation period, OCR is authorized to initiate formal enforcement action by commencing administrative proceedings, or by other means authorized by law. These proceedings could result in the termination of Federal financial assistance to the ADHR's child welfare program or the referral of this matter to the United States Department of Justice for litigation.

ADVISEMENTS

We wish to advise you that this determination is not intended, nor should it be construed, to cover any other issues regarding civil rights compliance that may exist but were not specifically addressed during our investigation.

Please note that this Letter of Findings is a public document and all personally identifying information will be redacted and the letter posted on the Civil Rights Division's and OCR's website. We will provide a copy of this letter to any individual or entity upon request, and will share it with the complainants and other affected individuals who participated in our investigation.

ADHR may not intimidate, threaten, coerce or retaliate against any person because he or she has testified, assisted, or participated in any manner in an investigation, proceeding or hearing held in connection with an OCR compliance review.

Under the Freedom of Information Act, OCR may be required to release information about this case upon request by the public. In the event that OCR receives such a request, OCR will make every effort, as permitted by law, to protect information that identifies individuals or that, if released could constitute a clearly unwarranted invasion of personal privacy.

Thank you for your cooperation in this matter.

Sincerely,

/s/

Timothy Noonan
Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services

Enclosure: Draft Settlement Agreement

cc: Christine Stoneman, Principal Deputy Chief
Federal Coordination and Compliance Section
Civil Rights Division,
U.S. Department of Justice

Joyce Vance, United States Attorney
Northern District of Alabama