



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Mr. Kevin Lackey
Director
Administrative Office of Courts
P.O. Box 117
Jackson, Mississippi 39205

SEP 23 2009

Dear Mr. Lackey:

We are writing this letter in reference to a matter arising out of the Jackson County Youth Court. It has come to our attention that beginning in November 2008, and continuing through a May 2009 hearing, the Youth Court held hearings in a child custody matter involving Cirila Baltazar Cruz, who does not speak English. Over the course of several months and in multiple hearings, the Youth Court appears to have failed to meet its responsibility to provide Ms. Cruz with appropriate language assistance. These hearings initially led to a finding of "neglect," which resulted in the removal of Ms. Cruz's newborn baby daughter from her custody. The most recent decision denies Ms. Cruz the right to visit her daughter while the child remains in foster care and directs the state's Department of Human Services to proceed with the permanent termination of Ms. Cruz's parental rights.

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* (Title VI) and its implementing regulations, 28 C.F.R. §§ 42.101–.112, and the anti-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3789d(c) (Safe Streets Act) and its regulations, 28 C.F.R. § 42.203, prohibit discrimination on the basis of race, color, and national origin by recipients of federal financial assistance from the Department of Justice (DOJ), including grants provided through DOJ's Office of Justice Programs. State courts, such as the Mississippi Courts, that receive federal financial assistance from DOJ must comply with Title VI, the Safe Streets Act, and their implementing regulations.

In order to satisfy Title VI's prohibition against national origin discrimination, recipients of federal financial assistance must, among other things, take reasonable steps to ensure meaningful access to their programs by limited English proficient (LEP) individuals. On June 18, 2002, DOJ issued final guidance to its recipients regarding LEP issues. *See* 67 Fed. Reg. 41,455 (copy enclosed). With regard to courts, the DOJ Title VI LEP guidance states that "every effort should be taken to ensure competent interpretation for LEP individuals during *all* hearings, trials, and motions during which the LEP individual must and/or may be present." *Id.* at 41,471 (emphasis added).¹

¹We note that the Youth Court also has a statutory obligation under Mississippi law to provide language assistance to LEP individuals. Miss. Code Ann. § 9-21-71 *et seq.* Section 9-21-79 requires a

The relevant facts, as we understand them, come from the Youth Court transcripts from four hearings (November 19 and December 17, 2008; January 28 and May 13, 2009), and a conversation with Ms. Cruz. Ms. Cruz's primary language is Chatino, an indigenous language from the Mexican state of Oaxaca. Ms. Cruz has stated that she spoke Chatino in her home and spent only one year learning Spanish in her primary school. She further stated that her cousin, Esteban Mendez, who served as her primary Chatino-Spanish interpreter, finished primary school in Oaxaca, where he learned Spanish. Mr. Mendez is a restaurant worker who has no legal experience or familiarity with the critical legal concepts that were discussed during the four Youth Court hearings.

The transcript makes clear that Ms. Cruz was not provided a Chatino-English interpreter. The following legend appears before each of the four hearings: "All responses from the mother were relayed to Mr. Mendez in Chatino, who then relayed the answers to [name of interpreter] [henceforth referred to as interpreter] in Spanish, who then translated the answers in English for the court." Moreover, it appears from the transcripts that the Spanish-English interpreters may not have been court-certified. The interpreter who volunteered to assist during the first two hearing acknowledged that she was not a certified Spanish-English interpreter. The record indicates that the interpreter at the third hearing worked for Ms. Cruz's attorney and that the interpreter at the fourth hearing works as a Spanish-English interpreter for a local private social services agency. In the context of court proceedings, the use of informal interpreters, including family members such as Mr. Mendez, typically would not be appropriate for a variety of reasons, including lack of expertise with legal matters. *See id.* at 41,462, 41,471.

It also appears from the transcript that Ms. Cruz was not provided either with simultaneous or consecutive interpreting during the hearings held in this matter. The court did not ensure that everything was interpreted for Ms. Cruz. Rather, much of what transpired in the courtroom was not interpreted. At one point, during the May 13 hearing, the judge acknowledged that "**I know it's kind of unfair sitting here when she doesn't understand what I'm saying**" Transcript (Tr.) at 122 (emphasis added).

We recognize that for some languages and in some areas, there may be an absence of certified interpreters. We further recognize that providing Ms. Cruz with a Chatino-English interpreter at her first hearing in November 2008 might have presented the court with challenges. Given, however, the seriousness of the charges pending against Ms. Cruz – neglect of her newborn child – and the potential for loss of her child, the Youth Court should have tried either to obtain a Chatino-English interpreter or, at a minimum, a certified Spanish-English interpreter for this first hearing. At the subsequent hearings, which were held in December, January, and May, the Youth Court had adequate time to attempt to procure the services of a Chatino-English interpreter. The transcripts of the hearings further indicate that the court relied on the parties to

court to determine the need for an interpreter and, once a need is identified, to mark the case file to ensure that an interpreter "will be present when needed in any subsequent hearing."

obtain interpreter services, and at no time sought to ensure that Ms. Cruz's rights under Title VI and the Safe Streets Act were protected.²

We do understand that resources are a concern across every court system. However, the U.S. Supreme Court articulated the need for recipients of federal funds to provide meaningful access to LEP persons thirty-five years ago in *Lau v. Nichols*, 414 U.S. 563 (1974). In 2002, DOJ issued its LEP Guidance, reiterating the requirement that recipients of federal funds make their programs accessible to LEP individuals. With the passage of time, the need to show progress in providing all LEP persons with meaningful access is amplified. The Youth Court, similar to all courts in Mississippi, has an obligation under Title VI to provide Ms. Cruz with appropriate language services in all proceedings in which she participates. The Civil Rights Division is concerned that Title VI may have been violated in this matter and is determining whether to commence a formal investigation.

Examples of Title VI compliance can be found in state courts that are providing interpretation free of cost to all LEP persons encountering the system (including parents of non LEP minors) in criminal or civil settings and in important interactions with court personnel, as well as providing translations of vital documents and signage. Attached for your information is a recent Memorandum of Agreement between the Department and the Maine Judicial System, which issued an order ensuring that interpreters will be provided at court cost to all LEP witnesses and parties in all court proceedings.

The Department of Justice conducts administrative investigations and also provides technical assistance to court systems regarding the provision of meaningful access. Should you have any questions or need additional clarification, please feel free to call Attorney Peter Gray, who is assigned to this matter, at (202) 305-0042.

Sincerely,



Loretta King
Acting Assistant Attorney General

Enclosures

²At the second hearing, the judge stated that she asked her court administrator to "have a translator present that translates in court." Tr. at 23. The transcript further states that the administrator sought to have a local Spanish-speaking police officer serve as the interpreter, but that he was not available. Nothing in the record indicates whether the Youth Court sought to obtain the services of a certified Spanish-English or Chatino-English interpreter.