



Via electronic mail

August 31, 2023

Honorable Matthew J. Platkin
Attorney General of New Jersey
Office of the Attorney General
25 Market Street
Trenton, NJ 08625-0112
Attn: Christopher Weber, Chief, Deputy Attorney General
Education & Higher Education Section

Re: Interpretation for Limited English Proficient Parties in EDU Cases at OAL

Dear Mr. Weber:

As you are aware, Education Law Center (ELC) pursues justice and equity for public school students by enforcing their rights under state and federal laws. ELC writes to notify the Office of the Attorney General of our recent discovery that neither the New Jersey Department of Education (NJDOE) nor the New Jersey Office of Administrative Law (OAL) provides language interpreters in hearings for controversies and disputes arising under the school laws that are conducted at the OAL. As set forth below, we believe that the State of New Jersey has a clear legal obligation to provide such interpreters at no cost to the parties in those cases and we request your assistance in promptly rectifying this omission. We also ask that you inform us of the remedial steps taken, as well as the plan and time frame for any further corrective action, by no later than September 30. If the State of New Jersey contends that no such obligation exists, then we ask your office to explain the basis for that position.

The problem came to ELC's attention in one of ELC's own cases, in which we asked NJDOE to provide a Spanish language interpreter for a student's parent in an expulsion case that the agency is transmitting to OAL for hearing. Jennifer Simons, Director of NJDOE's Office of Controversies and Disputes, informed ELC that parties to a proceeding at OAL who need an interpreter must provide their own. She directed us to the [OAL's website](#), which states:

If you cannot speak English, you must bring someone who can interpret for you. You may bring a friend, acquaintance, or family

member as long as that person can speak both English and your language fluently. The OAL does not provide interpretation, except in the case of hearing-impaired parties. If you are hearing impaired and require an interpreter, please contact the OAL Clerk as far in advance of the hearing as possible.

OAL, “The Guide to Representing Yourself at an Administrative Hearing,” available at [New Jersey Office of Administrative Law | Hearings \(state.nj.us\)](http://www.state.nj.us/oal/hearings). In a subsequent communication, Director Simons directed us to the OAL regulations at N.J.A.C. 1:1-14.3, which state, in relevant part, “... any party at his or her own cost may obtain an interpreter if the judge determines that interpretation is necessary.”¹

Under N.J.S.A. 18A:6-9, the Commissioner of Education is charged with the obligation to hear and determine controversies and disputes arising under the school laws “without cost to the parties.” The Commissioner elects to do so by transmitting cases to OAL for hearing before an Administrative Law Judge (ALJ), who issues an initial decision and then returns each case to the Commissioner for a final decision. Providing an interpreter when necessary for a party’s participation in a school law proceeding is a cost that must be borne by the Commissioner to comply with the statutory obligation to avoid cost to the parties.

Further, both federal and state civil rights laws – Title VI of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, and the New Jersey Law Against Discrimination (NJLAD) – all of which prohibit discrimination on the basis of national origin, including language discrimination, should be relevant here. Federal guidance interprets federal law as requiring state educational agencies, such as NJDOE, to provide language assistance to parents or guardians who indicate they require such assistance. *See, e.g.*, U.S. Dept. of Justice, U.S. Dept. of Educ. (US ED), Office for Civil Rights, [Dear Colleague Letter](#), Jan. 7, 2015 (noting on page 39 that translation and interpretation obligations apply to both SEAs and school districts and that US ED has found noncompliance when translation and interpretation is not provided in disciplinary proceedings). NJDOE also clearly qualifies as a place of public accommodation under NJLAD, N.J.S.A. 10:5-5(l), with an obligation to prohibit discrimination on the basis of national origin that is comparable to federal anti-discrimination laws, and it is our understanding that OAL does as well.

¹ Because of obligations under the Individuals with Disabilities Education Act, NJDOE provides language interpreters to parents in special education proceedings. Those cases are transmitted to OAL by NJDOE’s Office of Special Education, not its Office of Controversies and Disputes.

Additionally, the [NJ Judiciary Language Access Plan \(Updated 2022\)](#) (LAP) commits to “ensuring equal access to the courts by providing free and qualified language access services to all court users who are Limited English Proficient (LEP) or who are Deaf or hard of hearing.” LAP at p.1. To the extent the LAP does not apply to administrative proceedings at OAL, we would ask for an explanation as to why it does not. As noted in the LAP, “New Jersey is one of the most diverse states in the nation, and more than 30% of the state’s population, more than two and half million people, speak a language other than English at home.” LAP at p. 7. The core values of the judiciary that are enhanced by providing language assistance – “independence, integrity, fairness and quality service, by safeguarding the rule of law and providing confidence in our justice system,” LAP at p. 5, are virtually identical to the values of OAL. Indeed, [OAL’s mission](#) is to “provid[e] the citizens of New Jersey with a forum for the fair and impartial resolution of contested cases by independent administrative law judges,” and [OAL’s purpose](#), when established in 1979, was “to create a central independent agency to conduct administrative hearings, thus promoting due process, expediting the just conclusion of contested cases, and improving the quality of administrative justice.”

Notably, OAL serves as the finder of fact for contested state agency cases, fulfilling a role that is comparable to New Jersey’s trial courts and one that requires the clear understanding of parties, testifying witnesses, and the ALJ who is making findings of fact for the agency head. Moreover, OAL proceedings often address critical issues, such as the constitutional right to public education, as in an expulsion case, or a denial of public entitlement benefits, as in a Supplemental Nutrition Assistance Program appeal. Given its mission, purpose, and function, we see no basis to distinguish OAL litigants from those in state courts when it comes to providing qualified language assistance services.

Finally, the current OAL policy on language interpretation does not adequately protect the integrity of those proceedings. Only trained and qualified professionals are appropriate for providing interpretation in legal proceedings. Not only does interpreting involve skills above and beyond speaking two languages, but interpreters must know appropriate technical terms and be trained in ethics and confidentiality. [Dear Colleague Letter](#), Jan. 7, 2015, at pp. 38-39 (noting on page 39 that US ED has found compliance issues when school districts “rely on students, siblings, friends, or untrained school staff to translate or interpret for parents”). The LAP confirms that the use of trained and qualified interpreters is critical, stating: “The use of bilingual individuals such as family members, friends, and law enforcement officers to interpret is an unacceptable solution for all but the most limited of situations.” LAP at p. 21.

For all of the above reasons, ELC has serious concerns that requiring non-English speaking litigants at OAL to provide their own interpreters subjects them to discrimination and unfair treatment that must be remedied. We have been impressed by the Attorney General's vigorous defense of the rights of New Jersey students to be free from discrimination based on gender identity and expression and ask that your office similarly ensure that the rights of students, parents, and other litigants are not constrained on the basis of national origin. We stand ready to work with your office, ask for your prompt attention to this matter and, as set forth above, request your description of the steps and time frame for remedying this problem by September 30.

Please do not hesitate to reach out to me at (973) 624-1815, ext. 200 or eathos@edlawcenter.org if you have any questions or would like to set up a meeting. Thank you for your anticipated cooperation in addressing this critical lack of required services.

Sincerely,



Elizabeth Athos, Esq.
Senior Attorney, Educational Equity

Cc: Acting Commissioner Angelica Allen-McMillan, Ed.D.
Acting Director and Chief ALJ Barry E. Moscovitz
Asst. Commissioner Hanifa Barnes, Esq.
Director Jennifer Simons, Office of Controversies and Disputes