IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

T.R., a minor, individually, by and through her parent, Barbara Galarza, and on behalf of all others similarly situated, BARBARA GALARZA, individually, and on behalf of all others similarly situated, A.G., a minor, individually, by and through his parent, Margarita Peralta, and on behalf of all others similarly situated, MARGARITA PERALTA, individually, and on behalf of all others similarly situated, Plaintiffs, v. THE SCHOOL DISTRICT OF PHILADELPHIA, Defendant.	Civil Action No. 15-04782-MSG

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

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INTEREST OF THE UNITED STATES

The United States respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517[1] to ensure that the national origin nondiscrimination protections of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d - 2000d-7, and its implementing regulations, 28 C.F.R. Part 42 and 34 C.F.R. Part 100 (Title VI), are applied properly. The United States has a critical interest in ensuring that recipients of federal financial assistance, such as the School District of Philadelphia (District), provide Limited English Proficient (LEP)[2] parents a meaningful opportunity to participate in the development of their children's education programs. That opportunity is guaranteed them by Title VI's prohibitions against national origin discrimination, as implemented by the U.S. Department of Education (ED), the U.S. Department of Justice (DOJ), and the courts.

The United States' interest in this case also concerns the application of the Equal Educational Opportunities Act (EEOA), 20 U.S.C. § 1701 *et seq*. Section 1703(f) of the EEOA prohibits state and local educational agencies from denying "equal educational opportunity to an individual on account of his or her…national origin" by failing to take "appropriate action to overcome language barriers that impede equal participation by students in instructional programs." 20 U.S.C. § 1703(f). As the agency charged with enforcing the EEOA, DOJ has a significant interest in ensuring that courts correctly interpret the statute. *See* 20 U.S.C. §§ 1706, 1709.[3] Given the critical role parents play in seeking and securing educational opportunities for their children, a district's failure to overcome the language barriers of an LEP parent through free

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[1] "The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." 28 U.S.C. § 517.
[2] The term "LEP" as used herein refers to individuals who are limited in their English proficiency on account of their national origin, including but not limited to their ancestry, foreign birth, or home languages other than English.
[3] The EEOA authorizes DOJ to bring civil actions and intervene in private actions. 20 U.S.C. §§ 1706, 1709. See examples of DOJ's EEOA cases at http://www.justice.gov/crt/educational-opportunities-cases#origin.

translation and oral interpretation denies the child an equal educational opportunity on the basis of national origin. LEP parents must be given a meaningful opportunity to understand regular and special education documents to identify the needs of their children, monitor their educational services, and enable their children's participation in the District's instructional programs. For example, without such access, neither the parents nor the District can ensure the language needs of English Learner (EL) students are addressed, as the EEOA requires.[4]

BACKGROUND

Plaintiffs allege that the District systematically denies meaningful access to information that LEP parents of children with disabilities need to understand to participate in their children's education. Compl. ¶ 1. These denials include failing to translate and sufficiently interpret critical documents provided to non-LEP parents, and inadequately interpreting communications with school staff. *Id.* ¶¶ 4, 57. Plaintiffs, two special education students, A.G. and T.R., and their LEP parents, bring claims under Title VI and the EEOA, and assert class claims as representatives of thousands of other similar students and parents in the District.

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, contains procedures for ensuring the unique educational needs of eligible students with disabilities are appropriately addressed. These procedures include the development of an Individualized Educational Program (IEP), which is a document reflecting the educational plan for the student. The IEP is developed jointly at an IEP team meeting of the student's parents, teachers, and school staff.[5] IEP team meetings are conducted at least annually[6] and often involve

[4] The United States is addressing only Plaintiffs' Title VI and EEOA claims.
[5] An IEP includes the student's present level of academic achievement and functional performance, measurable annual goals, progress measures and reporting, and the extent to which a student with a disability will participate in the general curriculum and extracurricular activities. *See* 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320.
[6] 20 U.S.C. § 1414(d)(4)(A)(i).

multiple documents, such as IEPs, IEP Team Meeting Invitations, Notices of Recommended Educational Placements (NOREPs)/Prior Written Notices, Procedural Safeguards Notices, Permission to Evaluate forms, and progress reports. *Id.* ¶¶ 6-7 (collectively, "IEP process documents," as defined by Plaintiffs). As of November 2013, 1,887 students with IEPs in the District indicated that their home language was not English. *Id.* ¶ 52. Yet only 487 IEP process documents were interpreted in non-English languages in the 2012-13 school year. *Id.* ¶ 53.

Despite this significant number of LEP families in the District's special education program, the complaint alleges that the District routinely fails to timely and completely translate documents used for students with disabilities. *Id.* ¶¶ 7, 55. Plaintiffs also allege that the District has refused to timely and fully translate report cards, progress reports, homebound forms, and pre-English Language class placement letters. *Id.* ¶¶ 6-7 ("regular education documents"). This means that non-LEP parents receive these documents in a language they can understand (English), but LEP parents do not. *Id.* Ms. Galarza, T.R.'s parent, asked the District to provide her with all documents in Spanish, but the District failed to provide several. *Id.* ¶¶ 63-69. At one of T.R.'s IEP meetings, the District provided Ms. Galarza with a 52-page draft IEP in English only. *Id.* ¶ 64. An interpreter was present via telephone but did not interpret much of the IEP. *Id.* Similarly, A.G.'s parent, Ms. Peralta, notified the District on three separate occasions that the family's home language was Spanish, but the District never provided her a translated IEP or other critical documents. *Id.* ¶¶ 72, 73, 75. She received a draft IEP with only the headings translated and only three of its 44 pages were orally interpreted at the meeting. *Id.* ¶ 75, Ex. B.

T.R.'s and A.G.'s parents filed due process complaints under the IDEA. A Hearing Officer held that they were denied meaningful participation in the IEP process due to the

District's failure to provide timely and complete translations of vital IEP process documents. *Id.* ¶ 13. The Hearing Officer ordered compensatory instruction for T.R. and A.G., but did not order relief regarding translations or interpretation for their parents after concluding that he lacked the power to order District-wide systemic change. *Id.* Plaintiffs sued, and the District moved to dismiss Plaintiffs' claims under Fed. R. Civ. P. 12(b)(6), making several incorrect arguments.

ARGUMENT

The District argues that the Plaintiffs' systemic claims, including those under Title VI and the EEOA, should be dismissed because the IDEA does not specify that all IEP process documents must be translated. However, the IDEA is not the only statute governing language access rights to educational documents. While the IDEA expressly includes certain protections for LEP parents during the special education process,[7] the IDEA does not override a district's independent obligations under Title VI and the EEOA.[8] These obligations include providing LEP parents meaningful access through translation and oral interpretation.

The District argues that LEP individuals are not protected by Title VI. To the contrary, for over forty years, courts and federal agencies have consistently held that a federally funded recipient must provide language assistance to LEP persons to ensure meaningful access to the benefits of the recipient's programs or activities and that the denial of such access constitutes national origin discrimination under Title VI. *See infra* Section I. This consistent federal guidance is entitled to deference as the District itself acknowledges. *See* Def.'s Mot. at 17 n.6. In arguing, however, that Plaintiffs fail to plead "plausible" systemic claims under Title VI or the EEOA, the District substantially misreads this guidance.

The District also argues that Plaintiffs cannot enforce the Title VI duty to provide LEP

[7] *See, e.g.*, 20 U.S.C. § 1415(b)(4); 20 U.S.C. § 1415(d)(2).
[8] Neither Title VI nor the EEOA requires exhaustion. *See* 42 U.S.C. § 2000d *et seq.*; 20 U.S.C. § 1701 *et seq.*

persons meaningful access because private actions to enforce the Title VI disparate impact regulations are barred. However, courts have held that claims of intentional discrimination by LEP individuals, such as the claims in this case, can be made under Title VI. Taking the allegations as true in the light most favorable to the Plaintiffs, as is required at the motion to dismiss stage,[9] Plaintiffs allege sufficient facts to establish a plausible claim that the District intentionally discriminates on the basis of national origin in violation of Title VI under the Third Circuit's deliberate indifference standard and the framework established in *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1977). Moreover, questions of intent, such as those raised by the District, are inherently fact-based determinations and thus are generally inappropriate for resolution at the motion to dismiss stage. *See Pryor v. NCAA*, 288 F.3d 548, 565 (3d Cir. 2002) ("[I]ssues involving state of mind (*e.g.*, intent) are often unsuitable for a 12(b)(6) motion to dismiss").

The District further argues that "discrimination based on English proficiency is not the same as discrimination based on national origin," relying heavily on *K.A.B. ex rel. Susan B v. Downingtown Area Sch. Dist.*, No. 11-1158, 2013 WL 3742413 (E.D. Pa. Jul. 16, 2013) and *Mumid v. Abraham Lincoln High School*, 618 F.3d 789 (8th Cir. 2010). Def.'s Mot. at 23-24. But neither case involved the denial of language access to LEP parents, or addressed *Lau v. Nichols*, 414 U.S. 563 (1974), its progeny, and decades of federal guidance about Title VI. These cases also did not consider the deliberate indifference and *Arlington Heights* approaches to establishing intentional discrimination under Title VI that Plaintiffs have pled here.

Finally, Plaintiffs have sufficiently alleged that the District is violating Section 1703(f) of the EEOA by failing to take appropriate action to overcome the language barriers of students

[9] *See Brown v. Card Serv. Ctr.*, 464 F.3d 450, 452 (3d Cir. 2006) (all statements of facts and appropriate inferences should be taken in support of the party opposing the motion to dismiss); *see also* Def.'s Mot. at 13.

with disabilities and their LEP parents. Failing to translate or provide adequate oral interpretation of regular education and IEP process documents impedes these students' equal participation in the District's instructional programs and thereby denies them equal educational opportunities on account of national origin.

I. Language-Based Discrimination Constitutes a Form of National Origin Discrimination Prohibited by Title VI

Under Title VI, "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Decades of federal case law and guidance interpreting Title VI and its regulations establish that language-based discrimination is unlawful discrimination based on national origin. As a federally funded recipient, the District had a clear obligation to take reasonable steps to provide LEP parents meaningful access to IEP process and regular education documents.

A. Courts Have Consistently Found that Language-Based Discrimination Constitutes National Origin Discrimination

Well-established federal judicial precedent holds that Title VI's prohibition against national origin discrimination covers discrimination against individuals who are limited in their English proficiency on account of their national origin, including their ancestry. Indeed, over 40 years ago in *Lau*, the Supreme Court held that Title VI requires language assistance services to ensure LEP individuals have meaningful access to a recipient's programs and activities, and that the denial of such access constitutes national origin discrimination. *Lau*, 414 U.S. at 564-68.

In *Lau*, a school district failed to provide language assistance to LEP students of Chinese ancestry. *Id.* at 564. The Court ruled that the school district's failure violated Title VI because "students who do not understand English are effectively foreclosed from any meaningful

education" without language assistance. *Id.* at 566-69. Finding national origin discrimination against the Chinese-speaking students "obvious,"[10] the Court explained that "[w]here inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students." *Id.* at 568 (quoting Dep't of Health, Educ., and Welfare, Identification of Discrimination and Denial of Services on the Basis of National Origin, 35 Fed. Reg. 11,595 (July 18, 1970) (1970 Memorandum)).[11]

Consistent with *Lau*, federal courts have repeatedly held that language-based discrimination constitutes national origin discrimination prohibited by Title VI. *See, e.g.*, *Colwell v. Dep't of Health & Human Servs.*, 558 F.3d 1112, 1116-17 (9th Cir. 2009) (denying challenge to federal agency's guidance on LEP access and noting that *Lau* concluded that "discrimination against LEP individuals was discrimination based on national origin in violation of Title VI"); *Serna v. Portales Mun. Schs.*, 499 F.2d 1147, 1152-54 (10th Cir. 1974) (school district's failure to rectify language deficiencies to provide LEP students with meaningful education violates Title VI); *U.S. v. Maricopa Cnty.*, 915 F. Supp. 2d 1073, 1079-80 (D. Ariz. 2012) (quoting *Lau* and relying on federal LEP guidance in case alleging discrimination against LEP prisoners); *Almendares v. Palmer*, 284 F. Supp. 2d 799, 806-07 (N.D. Ohio 2003) (denying motion to dismiss Title VI intentional discrimination claim where plaintiffs alleged food stamp program failed to ensure bilingual services despite knowing harm to Spanish-speaking individuals); *Jones v. Gusman*, 296 F.R.D. 416, 454 (E.D. La. June 6, 2013) (in case about prison

[10] The Court stated: "It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the regulations." *Id.* (footnote omitted).
[11] ED's predecessor agency, the Department of Health, Education, and Welfare (HEW), issued this memorandum.

conditions, noting that "longstanding case law, federal regulations and agency interpretation of those regulations hold language-based discrimination constitutes a form of national origin discrimination under Title VI") (internal citation omitted); *see also Yniguez v. Arizonans for Official English*, 69 F.3d 920, 947 (9th Cir. 1995) (en banc) (noting that "language is a close and meaningful proxy for national origin"), *vacated on other grounds sub nom, Arizonans for Official English v. Ariz.*, 520 U.S. 43 (1997).

B. Federal Regulations and Guidance Make Clear that Language-Based Discrimination is a Form of National Origin Discrimination

DOJ is responsible for coordinating federal agency compliance and enforcement under Title VI.[12] For 40 years, DOJ's regulations have required that federal funding recipients take reasonable steps to communicate with LEP persons in languages other than English to ensure meaningful access under Title VI. 28 C.F.R. § 42.405(d)(1) (1976).[13] These regulations require that recipients "take reasonable steps" to "provide information in appropriate languages" to LEP persons so that they are effectively "informed of" or able to "participate in" the recipient's program. *Id.* DOJ also has provided guidance to federal agencies on the standards that their funding recipients must follow to ensure programs are accessible to LEP persons.[14]

For over 45 years, ED has put school districts on notice that Title VI requires providing LEP parents meaningful access to information about school programs and activities. In its 1970

[12] *See* Executive Order No. 12250, Leadership and Coordination of Nondiscrimination Laws, 45 Fed. Reg. 72,995 (Nov. 2, 1980); Executive Order No. 13166, Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. Reg. 50,121 (Aug. 16, 2000) ("Exec. Order No. 13166"); *see also* 28 C.F.R. § 42.401; 28 C.F.R. § 50.3 (guidelines for federal agencies in their enforcement of Title VI).

[13] *See also Nat'l Multi Hous. Council v. Jackson*, 539 F. Supp. 2d 425, 430 (D.D.C. 2008) ("Longstanding Justice Department regulations also expressly require communication between funding recipients and program beneficiaries in languages other than English to ensure Title VI compliance.").

[14] *See* DOJ Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons With Limited English Proficiency, Policy Guidance, 65 Fed. Reg. 50,123 (Aug. 16, 2000); DOJ Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002) (2002 Guidance) (amplifying compliance standards from 2000 Guidance); *see also* Executive Order No. 13166.

Memorandum interpreting Title VI, ED explained that "[s]chool districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English." 35 Fed. Reg. 11,595. In 1974, the Supreme Court endorsed ED's 1970 Memorandum in *Lau*. *Lau*, 414 U.S. at 567. Congress then effectively codified *Lau*'s holding in Section 1703(f) of the EEOA. *See Castaneda v. Pickard*, 648 F.2d 989, 1008 (5th Cir. 1981) ("[T]he essential holding of *Lau* has…been legislated by Congress."). ED re-affirmed the principles in its 1970 Memorandum and *Lau* in 1979, 1985, 1990, 1991 and 2000.[15]

In 2015, DOJ and ED reminded districts of their "obligation to ensure meaningful communication with LEP parents in a language they can understand and to adequately notify LEP parents of information about any program, service, or activity of a school district…that is called to the attention of non-LEP parents." DOJ & ED Dear Colleague Letter: English Learner Students and Limited English Proficient Parents (Jan. 7, 2015) (January 2015 DCL), at 37.[16] The January 2015 DCL further reminds districts that "[u]nder Title VI and EEOA, for an LEP parent to have meaningful access to an IEP or Section 504 plan meeting, it…may be necessary to have the IEPs…or related documents translated into the parent's primary language." *Id.* at 27

[15] *See* Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs, 44 Fed. Reg. 17,162 (Mar. 21, 1979), *codified at* 34 C.F.R. Part 100 App. B (including LEP parents among the parties to whom schools are required to provide information in native languages); Policy Regarding the Treatment of National Origin Minority Students Who Are Limited English Proficient (Dec. 3, 1985 and reissued Apr. 6, 1990), *available at* www.ed.gov/about/offices/list/ocr/docs/lau1990_and_1985.html; Policy Update on Schools' Obligations Toward National Origin Minority Students With Limited-English Proficiency (Sept. 27, 1991), *at* http://www2.ed.gov/about/offices/list/ocr/docs/lau1991.html; The Provision of an Equal Education Opportunity to Limited-English Proficient Students (Aug. 2000) ("[w]hether a school district ensures that parents who are not proficient in English are provided with appropriate and sufficient information about all school activities" is a factor ED considers when assessing Title VI compliance), *at* http://www2.ed.gov/about/offices/list/ocr/eeolep/index.html).

[16] *Available at* http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf.

n.76.[17] The District concedes that this Court should defer to DOJ's guidance on a recipient's obligation to ensure meaningful access to LEP persons. Def.'s Mot. at 17 n.6.

II. The District Must Take "Reasonable Steps To Ensure Meaningful Access" and Its Misapplication of DOJ's 2002 Guidance Should Be Rejected

Because language-based discrimination is a form of national origin discrimination under Title VI, federally funded recipients must take "reasonable steps" to ensure "meaningful access" to their programs and activities for LEP persons. 28 C.F.R. § 42.405(d)(1); 2002 Guidance, 67 Fed. Reg. at 41,459; *see also supra* Section I.B. Indeed, the District does not dispute this obligation. Def.'s Mot. at 8, 17-18. However, the District misinterprets DOJ's 2002 Guidance regarding language access planning. The 2002 Guidance clarifies *how* recipients could plan to meet their obligations to provide language access under Title VI. 2002 Guidance, 67 Fed. Reg. at 41,457.[18] Recognizing that recipients could most effectively and efficiently ensure meaningful access by planning in advance for *how* they would provide translations and interpreters, and expand such services in ways that prioritize the greatest needs, the 2002 Guidance offers recipients a recommended planning process. That planning process, however, does not replace the Title VI duty to provide meaningful access to LEP individuals.

The District misinterprets this obligation and may not use the 2002 Guidance's four-factor analysis as a shield against LEP parents' Title VI or other claims that such access was denied. *See* Def.'s Mot. at 17-18. As the Guidance explains, recipients analyze these four factors to develop an LEP plan: (1) the number or proportion of LEP persons the recipient

[17] DOJ's enforcement of the Title VI and EEOA duty to provide meaningful access to LEP parents is illustrated by settlements requiring districts to translate IEPs and other IEP process and regular education documents in languages common among LEP parents in the District. These settlements provide further notice to districts of their Title VI and EEOA duties. *See, e.g.*, *Lau v. San Francisco Unified Sch. Dist.*, 4:70-cv-00627, ECF #199-1 (June 24, 2015); *Congress of Hispanic Educators v. Denver Sch. Dist.*, No. 1:95-cv-02313-RPM, ECF #56-1 (Sept. 28, 2012).

[18] The Guidance states that it is intended to "clarify existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons." *Id.*

serves or encounters in the eligible service population; (2) the frequency with which LEP individuals come in contact with the program, activity or service; (3) the nature and importance of the program, activity or service to people's lives; and (4) the resources available to the recipient. 2002 Guidance, 67 Fed. Reg. at 41,459. These factors help the recipient decide if its LEP plan needs to include translating materials into certain languages. *Id.* at 41,463. The District effectively concedes that some translations are needed, but argues that Plaintiffs' "systemic" claims should be dismissed because the 2002 Guidance does not require translating all the documents at issue in all languages represented by the class. *See* Def.'s Mot. at 16-18. The District's argument should be rejected because it misconstrues the four-factor analysis and the related concept of translating "vital written materials" discussed in the 2002 Guidance. *See* 67 Fed. Reg. at 41,463.

Given the importance of the District's educational programs, the large number of LEP parents in the District, and the frequency with which they need access to such programs, application of the four-factor analysis clearly requires "an effective LEP plan [that] includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipients' program." *Id.* at 41,463.[19] Whether a document is a "vital written material" depends "upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner." *Id.* That a document is "vital" means it must be accessible to LEP parents, but that does not necessarily mean it must be translated for every language in the District. *Id.* ("The languages spoken by the LEP

[19] Though resources are a relevant factor, the Guidance cautions that "[r]ecipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns." *Id.* at. 41,460.

individuals with whom the recipient has contact determine the languages into which vital documents should be translated."). As the Guidance recognizes, "reasonable steps may cease to be reasonable where the costs imposed substantially exceed the benefits." *Id.* For example, a timely and complete oral interpretation or translated summary of a vital document might suffice in some circumstances. *See id.* at 41,456, 41,460.

Because of its central role in the special education process, the legal rights that attach to it,[20] and the potential harm if a LEP parent cannot understand it in a timely manner, the child's IEP meets the Guidance's criteria for "vital written material." *See id.* at 41,463; *see, e.g., D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 557 (3d Cir. 2010) (An IEP is the "centerpiece of the IDEA's system for delivering education to disabled children") (internal quotation marks omitted). Other IEP process and regular educations documents also will often meet these criteria because they will be vital to parents understanding their children's educational placement, progress, and recommendations from the District. For example, a LEP parent unable to understand the information on the NOREP would not know that the District wants to change his or her child's placement. A LEP parent who does not understand an IEP progress report or a report card cannot assess a child's progress and whether additional services are needed. Any substantive dialogue at the IEP meeting requires the LEP parent to have meaningful access to these documents to understand the child's disabilities and the services the District proposes.

The District seeks to dismiss Plaintiffs' class claims for translated IEP process documents, arguing that the 2002 Guidance "makes clear that the need for translation must be determined on a case-by-case basis." Def.'s Mot. at 1, 2, 8. The District misconstrues the Guidance's reference to "case-by-case basis" and argues that a recipient's duty to translate can

[20] *See, e.g.*, 20 U.S.C. 1415(b)(6) and (c)(2) (due process complaint), (e) (mediation), and (f) (impartial due process hearing); 34 CFR §§300.151-300.153 (right of an organization or individual to file a State IDEA Part B complaint).

only be determined based on the particular factual circumstances of that LEP individual. *Id.* at 8, 17-18. The District further argues that Plaintiffs' systemic claims should be dismissed because it has "discretion to make such individualized determinations." *Id.* at 18. As is clear from the full context of the Guidance, the reference to "case-by-case basis" does not relieve the District from its duty to assess the needs of "each frequently-encountered LEP group" for translated documents at the broader "program or activity" level. 2002 Guidance, 67 Fed. Reg. at 41,463.

As the Guidance explains, after applying the four factors, a recipient may conclude that "some of its *activities* will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance." *Id.* at 41,455 (emphasis added). However, "[t]he flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed." *Id.* at 41,459. For example, "well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time." *Id.* at 41,461. After explaining this example, the Guidance concludes that "the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis." *Id.*

This Guidance on translating vital materials clearly contemplates a fact-specific analysis about various *categories* of documents for a range of programs based on the importance of the program and the frequency of the "LEP groups." *Id.* at 41,463. An LEP implementation plan sets forth which documents the District will translate and into which languages to ensure timely

access to vital written material. *Id.* at 41,464-41,465. Making a person-by-person determination of the four factors, as the District suggests, would be unworkable and deny LEP parents timely and meaningful access to vital material as each parent awaited the District's determination as to whether he or she met the criteria for translating documents that non-LEP parents timely receive. *Id.* at 41,461 ("To be meaningfully effective, language assistance should be timely.").

The due process hearings of the named Plaintiffs show how failing to ensure access to IEP process documents through translation can have serious adverse consequences. For example, each IEP of the named Plaintiffs was over 40 pages long. *See, e.g.*, Compl. ¶¶ 64, 75. With such lengthy and complex documents, the meeting may not afford enough time to orally interpret the documents and permit the LEP parent's meaningful participation. The Hearing Officer found that "[t]o the extent that meetings [were] devoted to reading documents out loud in [Guardian's native language], the requisite discussion did not happen at all." Compl. Ex. B at 11; *see also* Compl. Ex. A at 9 ("Reading a mostly English document in [guardian's native language] is not the dialogue contemplated by the IDEA."). As the Hearing Officer noted, "having the documents in an accessible form either during the meetings, or prior to the meetings when mandated is critical to meaningful participation." Compl. Ex. A at 9.

Moreover, a parent needs meaningful access to the IEP process and regular education documents not just during the IEP meeting, but also across school years to monitor the child's progress and ensure that IEP services are provided. For example, an LEP parent's ability to challenge an IEP is denied if the parent does not understand the IEP or related progress reports because they are LEP. Even if a qualified individual orally interprets the entire IEP at the meeting, a school district cannot reasonably expect the LEP parent to remember all terms of such a lengthy and technical IEP. Districts do not expect this of non-LEP parents when they provide

them a copy of the child's final IEP that they can refer to whenever they see fit. Thus, for these reasons, under Title VI, the District must be prepared to provide translated IEPs to provide meaningful access to the IEP and the parental rights that attach to it.

The District asserts that requiring it to translate "each and every IEP process document" would be "incredibly burdensome" for the "already financially strapped" District and that therefore Plaintiffs' claims should be dismissed. Def.'s Mot. at 20. This resource defense is the District's burden to prove and demands a fact-specific inquiry that is not appropriate for resolution at the motion to dismiss stage. At this stage in the litigation, the Court must take as true Plaintiffs' allegations that the District already has resources available for translation services, namely, the District's Translation and Interpretation Center and the Commonwealth's Trans Act service. Compl. ¶¶ 54, 60. Moreover, any factual dispute about costs must be considered in the context of the other factors, including the vital nature of the documents at issue.

Taking the District's misreading of the 2002 Guidance to its logical conclusion, an LEP plaintiff seeking to enforce his or her right to translation or interpreter services would have to conduct the recipient's four-factor analysis and prove that the LEP plan would have required translation. Such an approach would be unworkable and is not required by the 2002 Guidance. LEP individuals obviously lack access to information needed for this analysis, such as the resources available to the recipient, and should not have their claims dismissed at the complaint stage on this basis.

III. LEP Individuals May Enforce Title VI in Cases of Intentional Discrimination

The District cites *Alexander v. Sandoval*, 532 U.S. 275 (2001), to argue that Plaintiffs are barred from enforcing the regulations promulgated under Section 602 of Title VI. Def.'s Mot. at 25. However, *Sandoval* does not bar a private plaintiff from asserting an intentional

discrimination claim under Title VI. Taking the facts alleged in the light most favorable to the Plaintiffs, as is necessary at the motion to dismiss stage, *see supra* note 9, Plaintiffs allege sufficient facts to establish plausible Title VI claims of intentional discrimination. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The complaint alleges that the District is aware of the widespread need of LEP parents to obtain timely and complete translations of IEP process and regular education documents and that the provision of appropriate services to LEP students with disabilities depends on meeting this need. Despite this knowledge, Plaintiffs allege the District has "acted intentionally, repeatedly, and with deliberate indifference" by denying LEP parents meaningful access to these critical documents. *See* Compl. ¶ 98; *see also, e.g., id.* ¶¶ 51-76, 99-103. Questions of intent are fact-based and should generally not be resolved at the motion to dismiss stage. *See Pryor*, 288 F.3d at 565.

The District also seeks to dismiss Plaintiffs' "systemic claims" under Title VI and the EEOA, arguing that Plaintiffs fail to identify a District policy that violates these laws. Def.'s Mot. at 14-16. Although Plaintiffs allege sufficient facts to establish such a policy or practice, Plaintiffs' allegations on behalf of the named LEP parents and students with disabilities would alone overcome this motion to dismiss regardless of the broader allegations. Neither law requires evidence of a policy, pattern, or practice. *See* 42 U.S.C. § 2000d; 20 U.S.C. § 1703(f).

A. Neither Animus Nor Direct Evidence Is Necessary to Prove Discriminatory Intent

The Third Circuit has held that the "deliberate indifference" standard applies to assessing claims of intentional discrimination under Title VI. *See Blunt v. Lower Merion School Dist.*, 767 F.3d 247, 272 (3d Cir. 2014) (citing *S.H. v. Lower Merion Sch. Dist*, 729 F.3d 248, 263 (3d Cir.

2013)). In *S.H.*, the court adopted deliberate indifference instead of discriminatory animus as the intent standard in the Americans with Disabilities Act (ADA) and Rehabilitation Act (RA) context because the deliberate indifference standard was "better suited to the remedial goals of the RA and the ADA." *S.H.*, 729 F.3d at 264. *Blunt* held that this rationale also applied to Title VI, given that remedies available for Title VI violations are coextensive with those available under the ADA and RA. *See Blunt*, 767 F.3d at 272. To establish deliberate indifference under Title VI, Plaintiffs must show "(1) knowledge that a federally protected right is substantially likely to be violated," and (2) a "failure to act despite that knowledge." *S.H.*, 729 F.3d at 263.[21]

Plaintiffs can also prove international discrimination using the *Arlington Heights* framework, which sets forth a non-exhaustive set of considerations for evaluating evidence supporting a claim of intentional discrimination, including: the impact of the decision, the historical background of the decision, the sequence of events leading to the decision, whether the decision departs substantively and procedurally from regular practice, and contemporaneous statements by decision makers. *Arlington Heights*, 429 U.S. at 266-68. While statements exhibiting racial animus or hostility are indicative of discriminatory intent, they are not necessary for such a finding. *See, e.g.*, *Garza v. County of Los Angeles*, 918 F.2d 763, 778 n.1 (9th Cir. 1990) (Kozinski, J., concurring and dissenting in part), *cert. denied*, 498 U.S. 1028 (1991). As explained further below, the complaint alleges several of the other *Arlington Heights* factors so as to sufficiently a state a claim for intentional discrimination under Title VI.

Determining whether the District was motivated at least in part by discriminatory intent

[21] The Third Circuit did not adopt the more stringent deliberate indifference standard that applies to monetary damages claims under Title IX of the Education Amendments of 1972 in the student-on-student sexual harassment context. *See Davis v. Monroe*, 526 U.S. 629 (1999). Indeed, that heightened standard for financial liability is especially not appropriate in a class action case seeking only declaratory and injunctive relief, such as this case. *Davis*'s concerns about providing adequate notice to the district before holding it liable for monetary damages are not present in this case.

"demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Arlington Heights*, 429 U.S. at 266. The important starting point is whether an action "bears more heavily on one race than another." *Id.*; *Pryor*, 288 F.3d at 563 ("[T]he impact of an official action is often probative of why the action was taken in the first place since people usually intend the natural consequences of their actions.") (internal citations omitted). While impact alone is insufficient to establish intent, courts have found that "actions having foreseeable and anticipated disparate impact are relevant evidence to prove the ultimate fact, forbidden purpose." *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 464-65 (1979); *see also Richardson v. Penn. Dep't of Health*, 561 F.2d 489, 492 (3d Cir. 1977); *Flores v. Pierce*, 617 F.2d 1386, 1389 (9th Cir. 1980); *Almendares*, 284 F. Supp. 2d at 806-07; *South Camden Citizens in Action v. N.J. Dep't of Envtl. Prot.*, 254 F. Supp. 2d 486, 497 (D. N.J. 2003).

In *Almendares*, the court declined to dismiss a claim by LEP food stamp recipients that state officials purposefully discriminated based on their national origin by distributing program materials only in English. The court relied on plaintiffs' allegations that defendants knew the harm caused by their failure to translate this information but did not act. *Almendares*, 284 F. Supp.2d at 807-08; *see also South Camden*, 254 F. Supp. 2d at 497 (plaintiffs sufficiently alleged intentional discrimination under Title VI through "disparate impact, history of the state action, and foreseeability and knowledge of the discriminatory onus placed upon the complainants").

B. Plaintiffs' Allegations of Intentional National Origin Discrimination

Taking the facts alleged to be true, as is required at the motion to dismiss stage, Plaintiffs sufficiently allege that the District has "knowledge that a federally protected right is substantially likely to be violated," *S.H.*, 729 F.3d at 265, and that a failure to act would have a foreseeable negative effect on LEP families. According to the complaint, the District knows that large

numbers of LEP persons need access to IEP process and regular education documents, which are critical to a child's educational programs, and that failing to provide such access (e.g., timely, complete translations) can result in serious adverse consequences to a child with a disability and their LEP parents. Compl. ¶¶ 42, 52. These allegations suffice to show that the failure to provide such interpretation and translation has the clearly foreseeable impact of denying LEP parents the opportunity to participate in their child's education afforded to non-LEP parents.

Plaintiffs have adequately alleged that the District knew it needed to communicate with the parents of T.R. and A.G. in Spanish and yet denied them meaningful access to critical IEP process and regular education documents, including through "incomplete, inconsistent" oral interpretations of documents. *Id.* ¶¶ 57, 63, 72, 73. Plaintiffs allege that the District was aware other LEP parents had similar needs. *Id.* ¶ 52. Plaintiffs also allege that the Translation and Interpretation Center translates documents for nondisabled students, but has never translated an IEP fully, *id.* ¶ 54, and that the Commonwealth of Pennsylvania offers a translation program, TransAct, that the District "deliberately and inexplicably" has chosen not to use. *Id.* ¶ 60.

Taken as true, Plaintiffs' allegations establish the District is well aware of the needs of Spanish-speaking parents and has the ability to translate documents into Spanish, but has "systemically…denied" essential translation and oral interpretation services to LEP parents. *Id.* ¶ 3. According to Plaintiffs' complaint, the District is aware that class representatives and many other LEP parents and students with disabilities are detrimentally affected by its refusal to timely and completely translate vital IEP process and regular education documents and its insufficient interpreting at IEP meetings. *Id.* ¶¶ 1, 7, 58, 103. Thus, Plaintiffs have sufficiently alleged that the District continues its failure to act in deliberate indifference of its longstanding Title VI obligations and the harms to LEP parents and students with disabilities. *See S.H.*, 729 F.3d at

262-63; *Almendares*, 284 F. Supp.2d at 807-08.[22]

IV. The District Mistakenly Relies on *K.A.B.* and *Mumid*

The District argues that Plaintiffs have not adequately pled a claim of national origin discrimination under Title VI (or the EEOA) on the mistaken assumption that their LEP status "is not enough to show that they are part of a protected class." Def.'s Mot. at 24-25. Decades of federal case law and guidance make clear that the prohibitions on national origin discrimination protect LEP persons. Nor do *K.A.B.* and *Mumid* alter this longstanding precedent. Indeed, both cases overlook it entirely, and neither considers the well-established *Arlington Heights* framework or deliberate indifference approach to proving intentional discrimination.

Apart from the fact that these cases did not involve the provision of translation and interpreter services to LEP parents, it is respectfully submitted that they were incorrectly decided. In *K.A.B.*, an unpublished case with pro se plaintiffs, the court relied on *Mumid* to hold that "a policy that treats students with limited English proficiency differently than other students in the district does not facially discriminate based on national origin" and found that even if K.A.B. were a member of a protected class, the defendant had asserted a legitimate, nondiscriminatory reason for its inaction. *K.A.B.*, 2013 WL 3742413, at *10-11 (quoting *Mumid*, 618 F.3d at 795).[23] But neither case acknowledges *Lau* or the many other cases recognizing that

[22] *See also Faith Action for Cmty. Equity (FACE) v. Hawaii*, No. 13-00450, 2014 WL 1691622, *10-*14 (D. Haw. Apr. 28, 2014) (applying the *Arlington Heights* framework to LEP plaintiffs' Title VI claims for intentional national origin discrimination and denying defendants' motion to dismiss such claims); *Cabrera v. Alvarez*, 977 F. Supp. 2d 969, 978 (N.D. Cal. 2013) (quoting 28 C.F.R. § 42.405(d)(1) and finding LEP plaintiffs stated a Title VI claim of intentional discrimination when they alleged the recipient did not provide "language translation services").

[23] The other cases *K.A.B.* cites, *Soberal-Perez v. Heckler*, 717 F.2d 36 (2d Cir. 1983), *Frontera v. Sindell*, 522 F.2d 1215 (6th Cir. 1975), and *Carmona v. Sheffield*, 475 F.2d 738 (9th Cir. 1973), are inapposite to the facts alleged here. In *Soberal-Perez*, the court dismissed the Title VI claim against a federal agency because it was not a recipient of federal funding. Here, there is no question that the District is a recipient of federal funding. *Frontera* predates *Arlington Heights* and *S.H.*, and did not apply the intentional discrimination framework established in either of those cases. *Carmona* predates *Lau* and therefore is inapposite to this case.

discrimination on the basis of language constitutes national origin discrimination.[24] Indeed, a federal court recently declined to follow *Mumid* given "the absence of any discussion of the Supreme Court's decision in *Lau*." *Maricopa Cnty.*, 915 F. Supp. 2d at 1081.

In contravention of *Lau*, *Mumid* rejected plaintiffs' intentional discrimination claim because not all foreign born students were subject to the delayed testing, only those who were EL. *Mumid*, 618 F.3d at 795. But Title VI does not require that *all* members of the protected class be subject to discrimination. In *Lau*, only 1,800 of the 2,800 ELs of Chinese ancestry lacked language services, and the Court did not premise its holding on their being "foreign born." *Lau*, 414 U.S. at 564. *Mumid* erroneously limits "national origin" to "foreign born," when it is clear that discrimination against individuals based on their ancestry, language, or LEP status also constitutes national origin discrimination under Title VI. *See Lau*, 414 U.S. at 564, 568.[25]

Mumid also limits its analysis to whether the language-related policy at issue was facially discriminatory and whether plaintiffs could establish intentional discrimination under the framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), or through evidence of discriminatory animus. *Mumid*, 618 F.3d at 794-95 (*affirming Mumid v. Abraham Lincoln High School*, No. 0:05-cv-2176, 2008 WL 2811214, at *5-8 (D. Minn. Jul. 16, 2008)). None of these

[24] *See supra* Section I.A; *see also* Jan. 2015 DCL, at 25 n.64. In the January 2015 DCL, ED and DOJ reminded all school districts that "a policy of delaying disability evaluations of EL students for special education and related services for a specified period of time based on their EL status … [is] impermissible under the IDEA and Federal civil rights laws [i.e., Title VI and the EEOA]." *Id.* (explaining why *Mumid* does not affect these obligations).

[25] *See also Garcia v. Spun Steak*, 998 F.2d 1480, 1486 (9th Cir. 1993); *Gutierrez v. Mun. Court of Se. Judicial Dist., Los Angeles Cnty.*, 838 F.2d 1031, 1039 (9th Cir. 1988), *judgment vacated as moot*, 490 U.S. 1016 (1989) ("Commentators generally agree . . . that language is an important aspect of national origin. . . . Because language and accents are identifying characteristics, rules which have a negative effect on bilinguals, individuals with accents, or non-English speakers, may be mere pretexts for intentional national origin discrimination."); *FACE v. Hawaii*, No. 13-00450, 2014 WL 75113, at *7 (D. Haw. Feb. 23, 2015) ("'language is close[ly related to] national origin [and] restrictions on the use of languages may mask discrimination against specific national origin groups or, more generally, conceal nativist sentiment'") (internal citations omitted); *Reyes v. Pharma Chemie, Inc.*, 890 F. Supp. 2d 1147, 1158 (D. Neb. 2012) (Title VII "prohibit[s] the use of language as a covert basis for national origin discrimination"); *supra* Section I.A.

approaches is required to prove intentional discrimination under Title VI. In *Almendares*, a Title VI intentional discrimination case brought by LEP plaintiffs, the court rejected "defendants' theory that plaintiffs can only allege a claim of intentional discrimination by demonstrating that they were 'treated differently than similarly situated individuals.'" 284 F. Supp. 2d at 805. Unlike the court in *Mumid* and *K.A.B.*, the court in *Almendares* correctly recognized that LEP "[c]laims of intentional discrimination can be based on facially neutral laws or practices." *Id.* After concluding that the LEP-based policies did not facially discriminate based on national origin and the evidence lacked the requisite comparators required by *McDonnell Douglas*, the courts in *Mumid* and *K.A.B.* prematurely dismissed the Title VI intentional discrimination claims on summary judgment. Both courts failed to consider other well-established ways of proving such claims, such as the deliberate indifference approach or the *Arlington Heights* framework.

V. Section 1703(f) of the EEOA Requires Districts to Take Appropriate Action to Overcome Language Barriers of LEP Parents

The District moves to dismiss Plaintiffs' EEOA claim, arguing that they do not allege discrimination based on national origin adequately because their LEP status is insufficient to show that the alleged failure to overcome language barriers is "on account of national origin." Def.'s Mot. at 23-24 (relying on *K.A.B.* and *Mumid*). This Court should reject this incorrect argument for the reasons given in Sections I, II, and IV, and those below.

The text and history of Section 1703(f) of the EEOA make clear that "the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs" "den[ies] equal educational opportunity to an individual on account of his or her … national origin." 20 U.S.C. § 1703(f). Congress enacted the EEOA within seven months of *Lau* and recognized the "obvious" nexus

between language and national origin in Section 1703(f). *See Lau*, 414 U.S. at 564. At the time of the EEOA's passage, testimony also made Congress aware of the history of national origin discrimination in public schools based on language barriers.[26] There is no question that Section 1703(f)'s goal was to secure language assistance for LEP persons to prohibit denials of educational opportunities based on their national origin.

To state a plausible claim for national origin discrimination under Section 1703(f), LEP parents and students need only allege facts showing "(1) language barriers; (2) defendant's failure to take appropriate action to overcome these barriers; and (3) a resulting impediment to students' equal participation in instructional programs." *CG v. Pa. Dep't of Educ.*, 888 F. Supp. 2d 534, 575 (M.D. Pa. 2012) (internal citation omitted). Taken as true for purposes of the motion to dismiss, *see supra* note 9, Plaintiffs here allege sufficient facts establishing: 1) LEP parents' language barriers; 2) the District's insufficient translation and interpretation services; and 3) the resulting impediment to the students because their LEP parents cannot access the IEP process and regular education documents needed for equal participation. Compl. ¶¶ 54-59. Consistent with decades of EEOA cases,[27] *CG* did not require the LEP plaintiffs to also prove that the district's failure *intentionally* denied educational opportunity "on account of … national origin." *Id.*, 888 F. Supp. 2d at 574-76. Nor should this Court.

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[26] *See* Martin Gerry, Acting Director of the Office for Civil Rights for HEW, Testimony in *Bilingual Education Act: Hearings on H.R. 1085, H.R. 2490, and H.R. 11464 Before the Gen. Subcomm. on Educ. of the Comm. on Educ. and Labor*, 93rd Cong. 20 (1974).

[27] *See Castaneda v. Pickard*, 648 F.2d 989, 1008 (5th Cir. 1981) (evidence of intent is not required). The Supreme Court did not require evidence of intentional discrimination under Section 1703(f). *See Horne v. Flores*, 557 U.S. 433, 438-39, 454-59 (2009); *see also, e.g.*, *United States v. Texas*, 601 F.3d 354, 365-66 (5th Cir. 2010) (same); *Gomez v. Illinois State Bd. of Educ.*, 811 F.2d 1030, 1040-44 (7th Cir. 1987) (same). The District also cites *Deerfield Hutterian Ass'n v. Ipswich Bd. of Educ.*, 468 F. Supp. 1219, 1231 (D.S.D. 1979), which preceded these seminal cases, all of which recognized that LEP persons can sue under Section 1703(f). In *Deerfield*, the court denied the LEP plaintiffs' EEOA claim not because their LEP status was insufficient under Section 1703(f), but rather because the district "ha[d] cooperated fully in attempting to overcome language barriers" and "the plaintiffs …ha[d] resisted and ... failed to submit to the necessary testing" of their English proficiency. *Id.*

Relying on *Mumid* and *K.A.B.*, the District mistakenly injects an intent requirement into Section 1703(f). Def.'s Mot. at 23-24. However, *Mumid* did not add an intent requirement, and *K.A.B.*, in so finding, was incorrect. *See K.A.B.*, 2013 WL 3742413, at *12 (citing *Mumid*, 618 F.3d at 795). In fact, *Mumid* assumed that the language-based policy at issue would violate the EEOA, but did not reach the merits of that claim for other reasons. *See Mumid*, 618 F.3d at 795-96 (finding plaintiffs lacked standing because they had graduated or were too old to attend a public high school). The court in *K.A.B.* also mistakenly relied on a 1978 case from Michigan for the proposition that LEP plaintiffs must prove a district's failure to take action is "on account of … national origin." *K.A.B.*, 2013 WL 3742413, at *11 (citing *Martin Luther King Jr. Elem. Sch. Children v. Mich. Bd. of Educ.*, 451 F. Supp. 1324, 1332 (E.D. Mich. 1978) (*MLK Jr.*)). In *MLK Jr.*, the plaintiffs alleged that Section 1703(f) required language assistance for black students who spoke "Black English." *Id.* at 1330. The court discussed the "on account of … race" language in Section 1703 to support the conclusion that their "Black English" was a "language barrier." *Id.* The court denied the district's motion to dismiss the EEOA claim without requiring any allegations of intentional discrimination. *Id.* at 1326-27, 1330-33.

The EEOA requirement that a district take "appropriate action to overcome language barriers that impede equal participation of its students in instructional programs" covers the language barriers of students and parents because both impact student participation. 20 U.S.C. § 1703(f). Congress could have but did not limit Section 1703(f) to the language barriers of *students* only. As noted above, Section 1703(f) effectively codified *Lau*, which relied on the 1970 Memorandum. It is reasonable to assume Congress was aware of the Memorandum and deferred to HEW's determination that Title VI requires districts to communicate meaningfully with LEP parents. *See supra* note 26. Moreover, DOJ, which enforces the EEOA, has made

clear to districts that "appropriate action" includes translations and interpretations for LEP parents.[28] Because parents play a vital role in ensuring educational opportunities for their children, a district's duty to take "appropriate action" includes providing LEP parents access to information that enables their children's equal participation in instructional programs.[29] This information clearly includes the documents at issue here. Based on Plaintiffs' allegations, the District's failure to provide LEP parents meaningful access to IEP process and regular education documents compromises the special education and language services their children need to participate in school.

CONCLUSION

The District's motion to dismiss Plaintiffs' Title VI and EEOA claims should be denied.

Respectfully submitted,

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[28] *See, e.g.*, Jan. 2015 DCL, at 37-39.

[29] The purpose of the EEOA would be severely thwarted if Section 1703(f) did not require appropriate action to overcome LEP parents' language barriers. *See* 20 U.S.C. § 1701(a)(1). Courts generally avoid interpretations of civil rights laws that undermine their protections. *See Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 180 (2005) (finding Title IX's protections would unravel if the statute did not prohibit retaliation).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Statement of Interest of the United States of America has been filed electronically using the Court's Electronic Case Filing ("ECF") System, which sent a notice of filing activity to all attorneys of record. This document is available for viewing and downloading from the Court's ECF System.

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Dated: January 25, 2016