

January 10, 2008

Peter Chan, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
JFK Federal Building – Room 1875
Boston, MA 02203

RE: 08-76828

Dear Mr. Chan:

This is a follow-up to the formal complaint that our organization filed on December 17, 2007 with your office, alleging that the Rhode Island Department of Human Services (“DHS” or “agency”) has failed to provide appropriate language interpreter services to Limited English Proficient (“LEP”) persons and is in non-compliance with a 1997 Resolution Agreement (“agreement”) in effect with OCR. I am writing to bring some additional information to your attention as your office initiates an investigation of this matter.

Shortly before filing our complaint with OCR, our office filed a state Access to Public Records Act (“APRA”) request with DHS to obtain agency records that documented DHS’ compliance with the 1997 consent agreement. We believe the agency’s response to that request provides further confirmation of the allegations in our complaint. The purpose of this letter is to briefly summarize the basis for this belief and to supplement the information provided in our initial complaint letter.

I have taken the liberty of enclosing our APRA request (Appendix A) and the agency’s letter in response (Appendix B). I have not included the many documents that were included with the response, as I assume you will separately obtain these materials as part of your investigation. Nonetheless, I hope that our summary of the materials, provided below, will be helpful to you in further analyzing the validity of our complaint and in considering the appropriate sanctions to be imposed.¹

1. The first provision in the 1997 agreement requires:

Conspicuous and continuous display within six months with notice to OCR, in all DHS offices, of a poster or posters, clearly stating, in English, Spanish, Portuguese and other appropriate languages where there are more than 100 persons statewide receiving benefits (hereinafter called “appropriate languages”), as follows:

¹ As was true with our initial complaint, our references in this letter to violations of only some of the provisions of the 1997 resolution agreement should not be taken as a concession that the response by DHS to our APRA request indicates compliance with those not cited.

- If you are applying for or receiving benefits and are not fluent in English, you do not have to bring your own interpreter to a Department of Human Services office;
- The Department will schedule interpreters or bilingual staff when necessary to communicate with you, unless, after being informed of your right to interpreter services, you express a clear preference to bring your own interpreter;
- The Department will schedule an interpreter or bilingual staff member to help you read English language notices, letters or other written information from DHS; and
- If you have problems obtaining interpreter or bilingual staff services at a Department office, please contact (insert name of DHS central office coordinator of interpreter services at (insert address and telephone number).

Our APRA request did not seek copies of these posters, but in a newspaper article following the filing of our complaint with OCR, an agency representative acknowledged that DHS was not in compliance with this provision. The article is enclosed as Appendix C.

2. The second provision in the 1997 agreement requires:

Initial and continuing dissemination within six months with notice to OCR to individual applicants and recipients of benefits of a written notice or brochure in English, Spanish, Portuguese and other appropriate languages containing the information set forth in Paragraph 1, above.

In response to our APRA request, DHS provided us ten sample pamphlets and booklets purporting to comply with this particular provision of the resolution agreement. We would make two points about those materials. First, despite the clear language of the provision, these materials have been translated only into Spanish. None of the materials sent us were translated into Portuguese or any other “appropriate” language. Yet, according to DHS’ own records, the agency’s caseload reflects that there are at least five languages – Spanish, Portuguese, Laotian, Cambodian and Russian – that should qualify as “appropriate” languages for interpreting and translating purposes under the 1997 agreement. (See Appendix D.) Secondly, as far as we were able to determine, some of the booklets and pamphlets failed to include *any* of the information that is supposed to be listed in accordance with the first provision of the agreement.

3. The fourth provision in the 1997 agreement requires:

Annual re-determination with notice to OCR of the appropriate languages to appear on the poster, notice and statement mentioned in Paragraphs 1, 2 and 3...

In response to our APRA request for a copy of the two most recent years’ re-determinations and notices, DHS provided us no documentation. Instead, the agency’s entire response to this request was as follows:

“Every year the Statewide Coordinator reviews the statistical data produced by InRhodes, DHS’ electronic case management system, to see which languages are required. We have not provided the Office of Civil Rights with a copy of such analysis, nor have they requested one.”

This response indicates clear non-compliance with the fourth provision of the agreement.

4. The fifth provision in the 1997 agreement requires:

Amendments of section 0124 of the DHS policy manual within six months with notice to OCR implementing Paragraphs 1, 2 and 3, stating that LEP persons do not have to bring their own interpreters to DHS offices and that DHS' provision of interpreters is not limited to the languages in which the above-mentioned poster and notices are printed.

Though hardly the most critical violation, we would note that the agency's current policy does not clearly state that "DHS' provision of interpreters is not limited to the languages" in which the poster and notices are printed.

5. The eighth provision in the 1997 agreement requires:

Designation by DHS within one month with notice to OCR of a Statewide coordinator of interpreter services to act as liaison with DHS district offices and with LEP persons, community groups and their representatives in evaluating the effectiveness of DHS policies and procedures for communicating with LEP persons and to resolve questions and complaints about the adequacy and availability of bilingual staff or interpreter services at DHS offices.

In response to our APRA request for documents disseminated during the past two years by the agency's coordinator of interpreter services to district offices and staff and to community groups and their representatives relating to evaluating the effectiveness of DHS policies and procedures for communicating with LEP persons, we received no responsive documents. Instead, the agency's entire response to this request was as follows:

"In compliance with the consent agreement, a designation of Statewide Coordinator was made. There was no requirement in the consent agreement regarding this, but please see response to number three above. Additionally, the Statewide Coordinator meets regularly with the Regional Manager of the local welfare offices to assess the needs."

We are puzzled by the response's reference to their being "no requirement in the consent agreement regarding this." The agency has clearly violated this provision of the agreement by failing to have the Statewide Coordinator pursue any liaison activities with LEP persons, community groups or their representatives as is explicitly required therein.

6. The tenth provision in the 1997 agreement requires:

Periodic annual review by the DHS central office, in consultation with district offices and staff, LEP persons, community groups and their representatives, to determine the current communication needs of LEP persons at each office and whether existing interpreter and bilingual staffing, outside interpreter services, and translated materials are meeting such needs or should be modified.

Page Four
Peter Chan
January 10, 2008

In response to our APRA request for any documents generated by or for the agency's past two annual reviews, as required by that provision, including any correspondence with community groups and their representatives to determine the "communication needs of LEP persons at each office and whether existing interpreter and bilingual staffing, outside interpreter services, and translated materials are meeting such needs or should be modified," we were provided no documentation of any annual consultation with "LEP persons, community groups and their representatives" as set out in this provision.

In sum, we believe that the response we have received from DHS in response to our APRA requests further demonstrates the agency's substantial non-compliance with various aspects of the 1997 resolution agreement and the need for strong sanctions and remedies by OCR to address these problems.

Thank you again for your attention to this matter. Please feel free to let me know if you have any questions about this.

Sincerely,

Steven Brown
Executive Director

Enclosures