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To: Public Education Clients and Friends

By: Lucas J. Repka and Kristine M. Roddick, Esquires

Districts Not Obligated To Provide Translated Transcripts *Here's Our Bulletproof Analysis*

On July 24, 2009, the Commonwealth Court of Pennsylvania (Docket No. 2406 C.D. 2008) held that school districts are not obligated to provide a pro se parent with a translated version of due process hearing transcript. Under the Commonwealth Court's recent analysis, a school district avoids the expensive proposition of providing translated versions of due process hearing transcripts to non-English speaking parents.

Facts of the Case

The parent of a student filed a due process complaint challenging the appropriateness and/or implementation of student's gifted individualized education program.

Upon the parent's request, the School District provided an interpreter throughout the entire due process hearing to assist the parent, whose native language is Mandarin Chinese. Following three days of hearings, the hearing officer found in favor of the School District on all substantive issues, but directed the School District to translate his decision and order into Mandarin Chinese for the parent's benefit.

Shortly after receiving the translated decision and order, the parent submitted written requests to the Office for Dispute Resolution (ODR) and the School District for a translated copy of the entire due process hearing transcript, which were declined. The parent filed exceptions to the hearing officer's determination with

the Special Education Due Process Appeals Review Panel (Appeals Panel), and again requested a translated version of the hearing transcript.

Without permitting the School District to respond to the parent's request, and in the absence of any proceedings, the Appeals Panel granted the parent the requested relief. Specifically, the Appeals Panel ordered the School District to provide the parent with a translated version of the hearing transcript and provided the parent with additional time to amend her exceptions upon receipt of the translated transcript. The cost to provide a translated transcript was in excess of \$40,000. The School District immediately appealed to the Commonwealth Court.

Issues Presented

In its appeal, the School District raised three issues: (i) whether the District is required by law to provide a translated transcript; (ii) whether the Appeals Panel was vested with

the authority to order the School District to provide the translated transcript; and, (iii) whether the parent submitted a timely and proper request for the translated transcript. The Commonwealth Court agreed with the School District that no authority existed under Pennsylvania or Federal law requiring the provision of a translated hearing transcript, and that the Appeals Panel lacked the authority to order the provision of the translated transcript.

Based on the Court's determination on the first two issues, the Court declined to address the third issue.

No Legal Authority

In addressing whether the School District was legally required to provide a translated version of the due process hearing transcript, the Court acknowledged that the constitutionally protected rights afforded by due process in administrative hearings include the right to be heard which, in certain circumstances, includes

continued...

the right to assistance from an interpreter during the proceeding itself.

Noting that there was no dispute over the interpretive services provided to the parent during the hearing, the Court stated that Pennsylvania and Federal statutes do require the provision of interpretive services in administrative or other proceedings, but not to the provision of translated transcripts upon the completion of those proceedings.

The Court further directed that generally parties have no right to transcripts, whether translated or in English, provided to them at no cost. The sole exception to this rule exists where a party has been determined to be indigent. In sum, the Court concluded that there is no Federal or Pennsylvania Constitutional, statutory, or regulatory authority for the provision of a free transcript – translated or otherwise – of an administrative proceeding to a non-indigent party.

Appeals Panel's Authority

The Court also determined that the Appeals Panel lacked the authority to require the School District to provide Parent with a translated transcript of the due process hearing. In so doing, the Court noted that the Appeals Panel's only stated authority for its order was the Pennsylvania Special Education Dispute Resolution Manual (July 2005 ed.) (Manual).

Upon examination of the aforementioned Manual, the Court determined that the Manual is not a Pennsylvania regulation, but instead, is at best, a statement of ODR policy. As such, the Court concluded that the Manual does not hold the force of law, and, therefore, the Appeals Panel lacks the authority under the law to order the District to provide a

translated version of the due process hearing transcript to the parent.

The Court continued on in a footnote to explain that ODR, by its own Manual, may obligate itself to provide translated transcripts upon request.

More specifically, the Court stated, "We emphasize, tangentially, that the ODR is free to assume the obligation to provide a free transcript, and/or a translated transcript, of its own policy articulated by its Manual. We further note that this case does not address, expressly or impliedly, the ODR's obligation to adhere to its own Manual policy statements in regards to that provision."

"We further note that ... its own plain language as excerpted by the District in its brief clearly indicates that ODR offers to provide 'one free copy of the transcript' to a proceeding to a parent who timely requests one, and that ODR itself expressly assumes the responsibility to receive requests for translated transcripts, while assigning only 'other accommodations,' such as a translator at a hearing, to a Local Education Agency (LEA) such as the District in this matter. As such, ODR's own refusal to entertain and fulfill [Parent's] request for a translated transcript in this matter, as well as the Appeals Panel's order, appear to contradict on their face the express voluntary policy obligations set forth in ODR's Manual...."

The Bottom Line

While the School District is obligated to provide a competent translator /interpreter during the complete duration of an administrative hearing, the School District does not have to provide a non-English speaking parent with a translated version of an administrative hearing transcript.

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