

Handout 18: Limited English Proficiency & the Courts

U.S. Department of Justice
Civil Rights Division
Deputy Assistant Attorney General
Washington, D.C. 20530
December 1, 2003

Dear: Director of State Court and/or State Court Administrator,

Our office is writing to advise you of guidance that may impact on your procedures and policies regarding the provision of language services to persons with limited English proficiency (LEP).

Most, if not all, state court systems receive, either directly or through individual sub-units, federal financial assistance from the Department of Justice (DOJ) or another federal agency. As you may know, recipients of such federal financial assistance must comply with various civil rights statutes, including Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000, et seq., and the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. §3789d(c) (the "Crime Control Act"), which together prohibit discrimination on the basis of race, color, national origin, sex, and religion in programs that receive federal financial assistance. Under Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), each federal agency that extends federal financial assistance is required to issue guidance clarifying the obligation of their recipients to ensure meaningful access by LEP persons to their federally assisted programs and activities.

On June 18, 2002, the Department of Justice issued guidance to its recipients regarding the requirement to take reasonable steps to provide meaningful access to LEP individuals. (67 FR 41455). While the guidance is still relatively new, the Title VI implementing regulations are not. The DOJ guidance suggests four factors that should be considered to determine when language assistance might be required to ensure meaningful access, and in identifying cost-effective measures to address those identified language needs. Those factors are:

1. The number or proportion of LEP persons in the eligible service population;
2. The frequency with which LEP individuals come into contact with the program;
3. The importance of the program or activity to the LEP person (including the consequences of lack of language services or inadequate interpretation/translation); and
4. The resources available to the recipient and the costs.

In addition, the guidance discusses the value and possible format of written language assistance plans, options for identifying language services and ensuring competency of interpretation and translation services, together with DOJ's insights on when translations of certain vital documents should be considered and an Appendix which includes examples in the court setting.

It is beyond question that America's courts discharge a wide range of important duties and offer critical services both inside and outside the courtroom. Examples range from contact with the clerk's office in a *pro se* matter to testifying at trial. They include, but are not limited to: matters involving domestic violence, restraining orders, parental rights and other family law matters;

eviction actions; alternative dispute resolution or mediation programs; juvenile justice matters; judicial diversion programs; matters affecting driving privileges; actions having potential impact on immigration status; criminal actions; and more. Each is a critical encounter to participants in the judicial process. Where those participants are also LEP persons, the provision of reasonable and appropriate language assistance may be necessary to ensure full access to your courts, and to preserve the importance and value of the judicial process.

The DOJ guidance is mindful that all recipients, including courts, are asked to make increasingly difficult decisions on how to allocate scarce resources. For this reason, our guidance and that of our sister federal agencies identify cost considerations as a factor to consider when identifying when and at what level of expertise language assistance should be provided. For instance, voluntary public tours of courthouses are not considered so important that a court should consider providing language services for civil rights reasons. Moreover, the DOJ guidance recognizes that the size of the LEP population served, the frequency of interaction, and the consequences of those interactions are also important factors to consider in determining the right mix of language assistance for individual jurisdictions and different types of services. For example, courts in areas with significant LEP populations in a particular language group would likely have more resources immediately available in that language (such as a pool of interpreters dedicated to the courts) than will courts in jurisdictions with few LEP individuals in that language group (which may choose to contract on an as-needed basis with interpreters for those language groups).

For your convenience, we have enclosed the following materials for you to review and share with your staff:

- The DOJ LEP Guidance, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The Appendix to this guidance includes a section, beginning on page 41471, on the application of the law in this area to courts.
- A document entitled, "Language Assistance Self-Assessment and Planning Tool for Recipients of Federal Financial Assistance," which is a two-part document intended to assist organizations that receive federal financial assistance in their strategic planning efforts to ensure that program goals and objectives are met. This document may be particularly helpful with regard to contacts that courts have with LEP individuals outside of the courtroom.

These and other helpful materials, including examples of recently developed judicial policies and procedures on language assistance, are also available on our LEP website, www.lep.gov.

I hope that this information is helpful to you. If you have any questions, please feel to call Luis A. Reyes, Counselor to the Assistant Attorney General, at (202) 353-2816, or Merrily Friedlander, Chief of the Coordination and Review Section of the Civil Rights Division, at (202) 307-2222.

Sincerely,

Loretta King Deputy Assistant Attorney General