

EXECUTIVE ORDER 13166
LIMITED ENGLISH PROFICIENCY RESOURCE DOCUMENT:
Tips and Tools from the Field

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U.S. Department of Justice
Civil Rights Division

From the Executive Office of the President Office of Management and Budget 2002 Report:

“The benefits of language-assistance services for particular LEP individuals, while not readily quantifiable in dollar units, can be significant.

Improved access to a wide variety of services – ranging from the delivery of healthcare and access to food stamps to motor vehicle licensing and law enforcement – can substantially improve the health and quality of life of many LEP individuals and their families.

Moreover, [it] may increase the efficiency of distribution of government services to LEP individuals and may measurably increase the effectiveness of public health and safety programs.”

<http://www.whitehouse.gov/omb/infoereg/lepfinal3-14.pdf>

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Introduction: Overview of the Document and of the Federal Limited English Proficiency Initiative

Over the last few years, the Coordination and Review Section (COR) of the Civil Rights Division of the Department of Justice (DOJ) has spent considerable time meeting with, training, and learning from individuals working in sectors ranging from the justice system to the nonprofit and social service providers, to federal, state, and local government, regarding the provision of language assistance to limited English proficient (LEP) individuals. We have done so because we are charged with coordinating enforcement and implementation of certain federal civil rights laws that require entities that receive financial assistance from federal agencies, as well as federal agencies themselves, to ensure that they are taking reasonable steps to provide meaningful access for LEP individuals.

In June of 2002, DOJ issued guidance relating to language assistance pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq. (Title VI) and its accompanying regulations. The guidance focused on recipients of DOJ financial assistance (primarily law enforcement agencies, departments of corrections, courts, domestic violence service providers, and entities having a law enforcement or juvenile justice mission). That guidance has served as a launching point for COR's training efforts and discussions with federal, state, and other partners on the subject of language assistance. Often these interactions and trainings have become opportunities for sharing tips and tools from the field based on the experiences of recipients and communities working with LEP populations. Sharing anecdotes of community solutions that have been positively received, as well as sharing information about some of the drawbacks of certain approaches, offers entities opportunities to make great strides in developing their own solutions to language access concerns.

DOJ believes that this exchange of experiences more broadly is a useful tool for enhancing access for LEP persons. This document furthers that sharing.

What Will You Find In This Document?

To develop this document, COR reviewed information collected in informal surveys of court personnel, social service providers, police departments, 911 call centers, several DOJ components (e.g., the Executive Office for United States Attorneys, the Federal Bureau of Investigation, and the Office of Justice Programs), to determine how these organizations have responded to the call for meaningful access for LEP individuals. This document lists many of the tips, tools, and practices identified in our surveys. We highlight some agencies that have taken an innovative approach or applied a strong policy or strategy to a particular aspect of language services.

This document does not endorse or suggest that any particular program is legally required. Nor would we presume to state that this project has encompassed all of the current innovations in this area; local innovation will certainly produce additional successful practices. Moreover, variations in size, resources, mission, and populations served mean that different approaches will work for different agencies. The examples are, as described, consistent with the goal of the DOJ LEP Guidance and with Title VI and regulatory requirements, but the Department has not conducted an extensive review of the agencies providing these examples, nor has it reviewed how all of the policies and practices are being implemented in practice. While we strove to provide as comprehensive an approach as possible, you might find that certain types of interactions with LEP individuals are not fully covered by these tips. Language access coordinators and decision-makers should consult the DOJ LEP Guidance, discussed below, in conjunction with this document. More work will be done to continue to seek out additional resources and strategies for communicating effectively with LEP individuals.

For more information on the work of the Coordination and Review Section of the Civil Rights Division, click on <http://www.usdoj.gov/ct/cor>.

What Is the Legal and Policy Background?

This document is part of a broader effort by the Department to share existing language access resources, practices, and tools for recipients. It is inspired by, and reflects the work of, entities in the field that focus on 911 call response, law enforcement, courts, and domestic violence, as well as some federal program managers. The framework and grounding for choosing the tips and highlighting particular aspects of the recipient programs is Title VI, the Title VI regulations, and policy guidance issued by DOJ in this area.

Under Title VI and federal agency regulations implementing Title VI, recipients of federal financial assistance have a responsibility to take reasonable steps to provide LEP individuals with meaningful access to their programs and activities. Title VI and its accompanying regulations prohibit recipients from discriminating on the basis of race, color, or national origin. Discrimination on the basis of national origin can occur if a recipient does not provide appropriate language assistance to LEP individuals because these individuals, whose language is usually tied to their national origin, will not have access to the same benefits, services, information, or rights that the recipient provides to everyone else. Thus, in certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate Title VI and its regulations prohibiting national origin discrimination.

To access Executive Order 13166, click on: <http://www.usdoj.gov/ct/cor/Pubs/eolep.htm>;
You can access the DOJ LEP Guidance for recipients at: <http://www.usdoj.gov/ct/cor/lep/DOJFinLEPFRJun182002.htm>.

Executive Order 13166, titled “Improving Access to Services for Persons with Limited English Proficiency,” required two things. First, it required federal agencies to take reasonable steps to provide meaningful access for LEP people to federally conducted programs and activities (essentially, everything the federal government does). Second, under the Executive Order, every federal agency that provides financial assistance to non-federal entities must publish guidance on how those recipients can provide meaningful access to LEP persons and thus comply with Title VI and Title VI regulations.

On December 18, 2002, the Assistant Attorney General for Civil Rights sent a letter to DOJ recipients of federal financial assistance and representative organizations, providing them with a copy of the DOJ LEP Guidance and asking them to spread the word about the need to provide meaningful access to LEP individuals. To view this document, click on: <http://www.usdoj.gov/ot/cor/Pubs/BoydDec13LEPArtltr.htm>. A copy of an article for newsletters can be found at: <http://www.usdoj.gov/ot/cor/Pubs/BoydLEPArt.htm>, or go to <http://www.lep.gov>.

Pursuant to Executive Order 13166, DOJ published final guidance for its own recipients on June 18, 2002. 67 Fed. Reg. 41455. DOJ’s LEP Guidance assists recipients with fulfilling their legal responsibilities to provide meaningful access to LEP persons. This policy guidance provides a description of the four factors recipients should consider in fulfilling their responsibilities to LEP persons. DOJ uses these factors in evaluating whether recipients are in compliance with Title VI and its regulations. These four 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 benefit, service, information, or encounter 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 of providing various types of language services.

The DOJ LEP Guidance should be used in conjunction with this document. Appendix A to the guidance provides additional information on how some DOJ recipients of federal financial assistance, such as law enforcement, correctional institutions, courts, and domestic violence programs, can apply the four-factor analysis. See 67 Fed. Reg. 41466-41472. The

guidance also discusses the value and possible format of written language assistance plans, presents options for identifying language services and ensuring competency of interpretation and translation services, and provides DOJ's insights on when translations of certain vital documents should be considered.

Providing high quality and accessible services, benefits, information, and access to the justice system for LEP individuals requires resources but is often critical. Moreover, often the costs of failure to provide appropriate language access can be even higher than the costs of providing a qualified interpreter, translator, or bilingual staffer. Convictions can be overturned and defendants released for inaccurate interpretation

during interrogation, evidence development, or testimony. Victims and witnesses may be unable to provide law enforcement and emergency responders with accurate information, resulting in additional human and financial costs. Poor translations may require expensive revisions and reprinting, or result in inaccurate information exchange. Thus, in addition to the legal requirement to provide meaningful linguistic access, recipients and others have many additional incentives to avoid initial non-compliance.

<http://www.lep.gov> is the website of the Federal Interagency Working Group on LEP. The website is intended to serve as a clearinghouse that contains useful information, guidance, demographic links, and resources for recipients, agency representatives, community members, and other stakeholders. This website is frequently updated to provide new tools that will facilitate language access.

In addition, there are many productive steps that the federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of providing language services

without sacrificing meaningful access for LEP persons. To that end, DOJ has provided and will continue to provide assistance and guidance in this important area. DOJ has established and oversees a Federal Interagency Working Group on LEP, which has developed a website, <http://www.lep.gov>, to assist in disseminating this information.

The Civil Rights Division is also working closely with DOJ funding components to ensure that language access measures are considered in the funding and monitoring of recipient programs and activities. The Office for Civil Rights (OCR) of the Office for Justice Programs (OJP) is responsible for ensuring that recipients of financial assistance from OJP and the Office of Community Oriented Policing Services (COPS) comply with civil rights laws that prohibit discrimination on the basis of national origin, including limited English proficiency. Since the DOJ LEP Guidance was issued, OCR has provided training to representatives from hundreds of organizations funded by OJP and COPS on providing services to their LEP communities. OCR has also recognized the value of the information exchanged during these

For more information on the work of the Office for Civil Rights of the Office of Justice Programs, click on <http://www.ojp.usdoj.gov/ocr>.

interactions and has passed along some of these tips and tools from the field to the Civil Rights Division and incorporated them into its training presentations. OCR conducted a number of compliance reviews of law enforcement agencies regarding their level of services to LEP persons. Through these reviews, OCR was able to see a number of promising approaches to providing services to LEP populations up close and gauge their effectiveness through interviews with the affected LEP communities.

The Civil Rights Division is committed to providing the necessary LEP training and technical assistance to all interested stakeholders. These services are provided primarily by the Division's Coordination and Review Section (COR), which is responsible for

coordination and implementation of the LEP initiative throughout the Executive branch. To date, COR has conducted over 50 LEP trainings at the federal, state, local, and community levels, and will continue to do so as the need requires. COR has also worked with the United States Department of Health and Human Services and the Food and Nutrition Service of the United States Department of Agriculture to develop a video on the application of Title VI to LEP access issues, including vignettes regarding emergency 911 services, law enforcement, foodstamps, and healthcare. To request a training session on LEP, brochures, a copy of the video, or for other technical assistance, please call COR at (202) 307-2222. TDD: (202) 307-2678.

Additional technical assistance tools include brochures which can be found on <http://www.lep.gov> and a LEP video, which is an excellent companion to COR's general Title VI video. The LEP brochures and video were created in partnership with the Food and Nutrition Service of the Department of Agriculture, and the Office for Civil Rights of the United States Department of Health and Human Services.

With this background, we invite you to delve into the heart of this document – the Tips and Tools Chapters. We hope that this document will spark your creativity, provide examples you can replicate, and reaffirm what is already working for you as you endeavor to communicate effectively with all community members, regardless of language or national origin.

system and draft findings detailing your language needs and recommendations for addressing those needs, including obtaining the services of a private contractor, if appropriate.

Want more info?

- Consult the Oregon Judicial Department’s website concerning the “Access to Justice for All” committee, which is considering measures to improve delivery of services to LEP and other underserved populations at <http://www.OJD.state.or.us>.
- Also, see the very detailed “2000 Language Need and Use Study” published by the California Judicial Council, which includes an analysis of demographic trends and the changing language needs in different counties throughout the state at <http://www.courtinfo.ca.gov/programs/courtinterpreters/documents/needusestudy.pdf> . The end result of this privately-contracted study was the designation of five additional languages for inclusion in California's Court Interpreter Certification Program. See www.courtinfo.ca.gov/programs/courtinterpreters/courtinformation.htm.

- (2) Develop a comprehensive written plan for the provision of services to LEP individuals, and train court staff on the practices and procedures contained in your plan.
 - Many courts have already implemented plans for the provision of services to LEP individuals. These typically include use of court interpreters, including measures to ensure their competence and ethical conduct, training for court staff on how to access language services, translation of vital documents, and appropriate signage for LEP individuals, among many other things. One need not reinvent the wheel to create a viable LEP plan, as some jurisdictions have already published comprehensive plans.
 - State court administrators should consider statewide plans that provide for local level courts to develop their own needs assessments, policies, and procedures for ensuring access to justice for LEP persons.
- (3) As part of assessing need, keep track of the languages for which interpreters are requested to determine if changes or additions to your LEP plan warrant consideration.

- On the rare occasion when an interpreter requests permission to speak or clarify (e.g., an inability to hear or understand the witness), the interpreter should address the court in the third person. For example, “the interpreter would request the court to instruct the witness to speak into the microphone.”
- Instruct witnesses to stop answering if they hear the word, “objection,” and wait for the judge’s ruling.
- Instruct witnesses not to direct any comments or questions to the interpreter during testimony.
- Instruct witnesses to wait for the question to be interpreted before they answer and to answer in their primary language, rather than to fluctuate back and forth between English and their native language.
- Witnesses should listen to the interpreter, even if they understand some English.
- Instruct the witness to inform the judge if he or she is unable to understand the interpreter.
- Many such techniques will help court reporters in both LEP and non-LEP situations as well.
- Ensure quality of interpreting services as discussed in Section D below and review Section D of Chapter 1, General Tips and Tools.

Want more info?

- Check out <http://sdnyinterpreters.org>, the website of the Interpreters Office for the United States District Court, Southern District of New York, also available through <http://www.lep.gov>.
- Refer to the New Jersey Judiciary Courts Online site, <http://www.judiciary.state.nj.us/interpreters/index.htm>.
- See Oregon’s Unified Court Trial Rule 7.080, which allows the interpreter to require counsel to provide the interpreter in advance a list of specialized terms expected to be used at trial. The list is confidential and not subject to discovery.

- (3) If multiple parties need interpreters, assign each individual needing interpreting services his or her own interpreter.
- (4) Establish a courthouse kiosk or other locations with self-help materials, such as pro se forms translated into non-English languages commonly

King County also provides interpreters for family law facilitations, the protection order office, and LEP parents of juveniles in all juvenile justice cases.

The Office of Interpreter Services also works closely with judges and commissioners on an interpreter services advisory committee and provides orientations for new judges and commissioners regarding the interpreter program and the appropriate use of interpreters. Scheduling has been a key to efficient use of interpreter funds, and judges and commissioners are extremely responsive to the need to call cases requiring interpreters when the interpreters are available. The office also strives to ensure that experienced interpreters are assigned to cases with newer judges and commissioners.

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The Oregon Courts: A Comprehensive Approach

The Oregon Judicial Department (OJD) has a comprehensive program to ensure access to LEP individuals who require interpreting services both inside and outside of the courtroom, whether in criminal or civil proceedings. In addition, the Oregon legislature has enacted measures that require the provision of interpreting services for LEP parents (or for those who serve in loco parentis) of minors who appear in juvenile proceedings. Oregon statutes similarly mandate that LEP individuals who appear in administrative proceedings, including hearings before the Workers Compensation Board, Bureau of Labor and Industry, Board of Parole, Department of Corrections, and Hearing Officer Panels of the Oregon Youth Authority.

OJD's programs include measures to ensure the quality of interpreting and translating services, to inform LEP communities of available court services, to provide direct services in commonly encountered languages, and to assess and adjust programs to the changing needs of a diverse and dynamic LEP population.

OJD became a founding member of the National Center for State Courts Consortium (NCSC) for State Court Interpreter Certification in 1995. The Consortium was established to help state courts develop and share the costs of comprehensive interpreter certification programs. It created a readily accessible source of expertise for OJD and consortium members. Moreover, OJD's participation in the NCSC's Consortium helped defray the costs of creating its certification program and allowed it quickly to establish a methodology for assessing the qualifications of interpreters. The Court Interpreter Certification test screens applicants' language skills in both English and the foreign language, measures candidates' skills in modes of interpreting, and establishes that candidates possess the requisite substantive knowledge of interpreter ethics and professional responsibilities. OJD's court interpreter certification program includes the Spanish, Russian, and Vietnamese languages, as these are the LEP communities most frequently encountered in the courts of the state.

In addition to 16 staff interpreters, the OJD uses the services of approximately 80 certified interpreters, who are sent to particular districts based on the needs of the local courts. Staff interpreters are sometimes called upon to travel between counties and circuits in order to better utilize their services throughout the state. To ensure consistent quality interpreting in the state, judges are required by statute to use a certified interpreter if one is available. However, even in situations where there is no certified interpreter available locally, the OJD undertakes steps to ensure that quality is maintained by bringing in interpreters from out-of-state and even from outside the country when necessary. Certified interpreters are required to maintain and improve their skills through continued education. The OJD Interpreter Unit sponsors such events regularly. In addition, judges are provided with a colloquy that helps them assess the qualifications of an interpreter who is identified from a list prepared by the Court Interpreter Services Office. It is the policy of OJD never to use friends and family members as a source of interpreters.

