Language Access 101

Long Island Language Advocates Coalition Conference

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Our Organizations

**Make the Road New York (MRNY)** builds the power of *Latino and working class communities* to achieve dignity and justice through *organizing, policy innovation, transformative education*, and *survival services*.

The **Center for Popular Democracy** promotes *pro-immigrant, pro-worker, pro-racial justice* policies at the *state and local* levels across the country. CPD is the national sister organization of MRNY.

Both groups are members of the **New York State Language Access Coalition**.
Roadmap

• What is the Legal Framework?
• Using the Framework
• Resources
Language Access Rights for LEP Individuals
Why Language Access Now?

Nationwide, some **25.2 million** Americans are Limited English Proficient.

An estimated **2.4 million** New York State residents are LEP.
Defining Limited English Proficient

Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

These individuals may be entitled to language assistance with respect to a particular type or service, benefit, or encounter.
Interpretation vs. Translation

**Interpretation** is the immediate communication of meaning from one language, the source language, into another target language. An interpreter conveys meaning **orally**.

**Translation** is the conversion of a **written text** from one language into an equivalent written text in another language.
Title VI of the Civil Rights Act of 1964

“No 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.”
Application to Immigrant Communities

• “Person” includes citizens and non-citizens because of Plyler v. Doe.

• “National origin” includes discrimination on the basis of language because of Lau v. Nichols.
What Does Title VI Outlaw?

• Intentional discrimination on the basis of race, color or national origin

• Conduct that has a disparate impact on the basis of race, color or national origin
Disparate Impact

Conduct in question is neutral as to race, color or national origin.

You **cannot** sue if you have a disparate impact claim! The reason: [Alexander v. Sandoval](https://www.law.cornell.edu/supct/cases/1995/94-1305).

Only the **government** can enforce Title VI disparate impact regulations.
Executive Order 13166 & Agency Guidance

Require **four factor balancing test:**

1. **Number** of LEP persons encountered;
2. **Frequency** of encounters;
3. **Importance** of the service provided; and
4. **Resources** available.

Providers have a lot of flexibility in determining how to provide language assistance services, but usually a **mix of interpretation and written translation.**

Competency is important!
NYS Executive Order 26

Requires all state agencies providing direct services to public to provide

- **Interpretation** in primary language related to services and benefits
- **Translate all essential documents**, forms and written notices into top 6 languages spoken by LEP New Yorkers
- Create a **language access plan** and designate a **language access coordinator**
Communications issues are also critically important for individuals with sensory impairments, who are **Deaf or hard of hearing** and communicate using **American Sign Language (ASL)**, have **speech impairments**, or who are **blind or have visual impairments**.
Americans with Disabilities Act

For individuals with disabilities, protection is available under the Americans with Disabilities Act (ADA).

Applies in places of public accommodation

All state & local governments must provide “effective communication.”
Sectors in Focus
Hospitals

Designate a **Language Access Coordinator** to monitor and manage language assistance services.

Develop **policies and procedures** to ensure timely delivery of language assistance services to LEP patients.

Create and make available **materials that explain how to access** free language assistance services.

Conduct **ongoing training** of staff members on the importance of language access and on hospitals policies & procedures.

**Post signs** explaining how to access language assistance services.

**Document the patient’s language** needs in her chart.

**Avoid using friends, family members,** strangers and kids under the age of 16 as interpreters.
Medicare & Medicaid

Medicare Advantage plans
• Must provide multi-lingual marketing materials if significant non-English speaking population
• Provide services in culturally and linguistically competent manner

Medicaid Managed Care
• NYS must identify major, non-English languages spoken by current and potential enrollees & make written info available
• Participating managed care organizations have to provide free oral interpretation and notify enrollees of availability
Pharmacies

Chain pharmacies must

• Provide free, competent oral interpretation and translation

• Post signs notifying customers of translation and interpretation services
Education

Under federal law, efforts to educate LEP children must be

• based on a **sound educational theory**;

• **adequately supported**, with adequate and effective staff and resources, so that the program has a realistic chance of success; and

• **Periodically evaluated** and, if necessary, revised

Must be provided until students are proficient enough to **participate meaningfully** in regular program.
State Courts
Must provide **meaningful access** to LEP persons, regardless of conflicting state or local laws or court rules

- Must provide **competent interpretation** during all hearings, trials and motions.
- Must provide **language assistance** to non-party LEP individuals whose participation is necessary
- Must provide **interpreters at no cost**
- Must provide language assistance whether **in or out of court**
- Must provide language assistance for interactions with all professionals
Law Enforcement

DOJ Recommendations for Four Factor Analysis

- Consider **seasonal and permanent** LEP populations
- Assess frequency of contact in light of **specific program or geographic area** served
- Consider role of language access services in **community partnerships or community policing**
- **Skill level** of interpreters should correspond to importance of role

Critical areas for assistance may include 911 calls, custodial interrogation, health & safety of persons in custody
Social Services

HHS guidance provides more specific guidelines on

- How four factor test applies to different types of providers
- Settings in which language assistance responsibilities are heightened

Additional requirements under NYS state law

- Section 331 of NYS Social Services Law
- 2006 Office of Temporary and Disability Assistance (OTDA) Administrative Directive (food stamps, temporary assistance, Home Energy Assistance) related to LEP individuals and individuals with disabilities
Challenging Lack of Services

**Title VI Complaints**

- File with federal agency that funds discriminating entity – individual or group

- Investigation & Letter of Findings

- Voluntary compliance

- Loss of federal funds and/or referral to DOJ
Advocacy in Action

• Safe Rx Campaign
  • AG Agreements
  • City Legislation
  • State Legislation/Implementation

• Executive Order 120 (Bloomberg)
• Executive Order 26 (Cuomo)
Resources

*Federal*
- LEP.gov

*State*
- [http://www.governor.ny.gov/executiveorder/26](http://www.governor.ny.gov/executiveorder/26)

*City*