

# Language Access 101

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*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



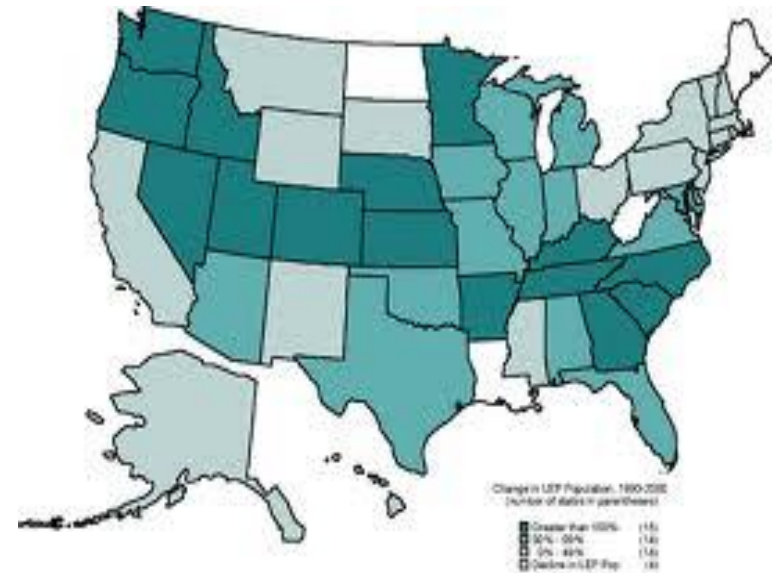
# Language Access Rights for LEP Individuals



# 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.**

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**



# Individuals with Disabilities

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 interrogation, health & safety of

911 calls, custodial 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>

## *City*

<http://www.nyc.gov/html/imm/html/eoll/eo120.shtml>

- [www.nyipi.org](http://www.nyipi.org), [www.maketheroadny.org](http://www.maketheroadny.org),  
[www.legalservicesnyc.org](http://www.legalservicesnyc.org), [www.minkwon.org](http://www.minkwon.org),

