

Limited English Proficiency (LEP) Information to Assist County Agencies in Drafting or Updating their LEP Plans

The Ohio Department of Job and Family Services (ODJFS), Bureau of Civil Rights (BCR) is charged with the duty to ensure that each county agency is in compliance with all applicable state and federal requirements involving LEP applicants/recipients of program information, benefits and services. §5101.24 and §5101.241 of the Revised Code provide ODJFS the authority to remedy any situation should there be a violation of state or federal civil rights laws.

I. Background, Legal Authorities and Definitions

Background

§601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, provides that no person shall “on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” §602 authorizes and directs federal agencies that are empowered to extend federal financial assistance to any program or activity “to effectuate the provisions of §601 by issuing rules, regulations, or orders of general applicability.” 42 U.S.C. §2000d-1.

The federal departments of Health and Human Services, Agriculture and Labor regulations pursuant to §602 forbid state entities receiving federal funds from utilizing methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin. Further, on August 11, 2000, the President issued Executive Order 13166, titled “Improving Access to Services for Persons with Limited English Proficiency” 65 FR 50121 (August 16, 2000). This order requires federal agencies to assess and address the needs of otherwise eligible persons seeking access to federally conducted programs and activities who, due to limited English proficiency, cannot fully and equally participate in or benefit from those programs and activities. It also requires that every federal agency that provides financial assistance to non-federal entities must publish guidance on how its recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations.

Some factors to be considered in what constitute reasonable steps to ensure meaningful access are the number or proportion of LEP persons in the eligible service population, the frequency with which LEP individuals come in contact with the program and the importance of the service provided by the program. These factors are the same criteria the federal oversight agencies will use in evaluating whether state entities receiving federal money are in compliance with Title VI and regulations related to Title VI.

In certain circumstances, the failure to ensure that LEP persons can effectively participate in, or benefit from, federally-assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and regulations related

to Title VI prohibiting national origin discrimination. Specifically, the failure of a recipient of federal financial assistance from federal agencies to take reasonable steps to provide LEP persons with meaningful opportunity to participate in federally funded programs may constitute a violation of Title VI and applicable implementing regulations (also see Lau v. Nichols, 41 U.S. 563(1974)).

The state of Ohio through ODJFS receives federal financial assistance for Temporary Assistance for Needy Families (TANF), Food Stamps, Medicaid and other federally funded medically related programs (Medicaid), Child Support Enforcement, Children Services programs, and training services funded by the Workforce Investment Act (WIA). ODJFS, in turn, allots some of this federal funding to county agencies and entities (departments of job and family Services, public children services agencies, child support enforcement agencies, and Workforce Investment Act One-stops) that administer the programs for applicants/recipients who seek benefits and/or services. Violation of civil rights laws by any of these county agencies or entities make Ohio non-compliant with civil rights laws as far as the federal oversight agencies are concerned. Therefore, BCR must employ methods of administration to the county agencies and entities supervised by ODJFS to ensure that they stay in compliance with applicable civil rights laws including those applying to LEP persons. BCR does this through several methods including but not limited to; mandating LEP plans from each county agency and entity, investigating applicant/recipient complaints of discrimination against county agencies and entities, training and promulgation of rules through the Ohio Administrative Code.

Legal Authorities

- **Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000 et seq.; 45 CFR §80.3; 29 CFR §31.1, et al; 7 CFR §15.3; 7 CFR §272.4.** Nondiscrimination based on race, color or national origin for any programs receiving federal financial assistance. Failure to provide meaningful access to program information, benefits and/or services due to an applicant/recipient's LEP status is considered discrimination based on national origin.
- **U.S. Department of Justice Title VI Legal Manual**, January 11, 2001 edition (<http://www.usdoj.gov/crt/cor/coord/vimannual.htm>)
- **U.S. Department of Health and Human Services Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons**, last revised November 20, 2003; <http://www.hhs.gov/ocr/lep/>
- **U.S. Department of Labor Policy Guidance on the Prohibition of National Origin Discrimination as it pertains to Persons with Limited English Proficiency**, (05/29/03), Federal Register, Volume 68, Number 103, Page 32289-32305
- **FNS Instruction 113-1 section VII;**
<http://www.fns.usda.gov/cr/Documents/113-1.pdf>

- **Ohio Department of Job and Family Services Language Access Policy**, Dated January 20, 2005; http://jfs.ohio.gov/civilrights/pdf/LEP_Policy_1.pdf
- **Ohio Administrative Code section 5101:9-2-01**
- **Ohio Administrative Code section 5101:9-2-05**

Definitions of Terms:

- **County Agency** – County Departments of Job and Family Services, County Child Support Enforcement Agencies, Public Children Services Agencies, WIA funded One-Stop Agencies standing alone or any combined agencies with a single administrative structure.
- **Effective Communication** – In a human services, social services or job training/assistance setting; effective communication occurs when county agency staff have taken necessary steps to ensure that an LEP person is given adequate information in his/her language to understand the services, benefits or the requirements for services or benefits offered by the county agency. These necessary steps must be taken without undue delay to give an individual access to the benefits or services provided by that county agency. Effective communication also refers to an LEP individual’s ability to communicate the relevant circumstances of his/her situation to the county agency.
- **Interpretation** – Interpretation means oral or spoken transfer of a message from one language into another language.
- **Limited English Proficiency** – A person with limited English proficiency or “LEP “is not able to speak, read, write or understand the English language well enough to allow him/her to interact effectively with a county agency.
- **Meaningful Access** – “Meaningful access” to benefits, programs and services is the standard of access required of county agencies that receive federal funding through the state of Ohio. Meaningful access requires compliance by county agencies with state and federal LEP requirements as set out in relevant state and federal laws. To ensure assistance available to applicant/recipients of benefits/services in order to ensure accurate and effective communication and prevents undue delay or the denial of benefits to which the LEP applicant/recipient is eligible.
- **BCR** – The entity contained within the Ohio Department of Job and Family Services charged with responsibility of overseeing compliance by county agencies with relevant civil rights laws including those related to LEP.
- **Translation** – Translation means the written transfer of a message from one language into another language.

- **Vital Documents** – Vital Documents are forms or documents *designed and utilized* by the county agency that are critical for assessing federally funded services or benefits or are required by law. Vital documents can include but are not limited to; applications for county designed programs, consent forms designed by the county agency, letters designed by the county agency requesting eligibility documentation.
- **Outreach Documents** – Outreach documents are county agency-designed documents utilized by the county agency to provide information to the general public and which aim to target individuals who are eligible or may be eligible for county benefits/services or programs.

II. Determining the County Agency Needs to Serve the LEP Population

Each county must determine what language(s) other than English may be encountered for applicants/recipients or **potential** applicants/recipients who may apply or receive benefits/services. The county must have resources in place to serve the LEP population of that county or provide an interpreter for any LEP individual who enters the agency seeking assistance no matter what the language. Since LEP individuals whose primary language is Spanish are very numerous in Ohio, each county agency must at least designate Spanish as a language other than English that is likely to be encountered.

Methodology:

In order to determine the language(s) other than English that are most likely to be encountered in a county, the county agency should complete a detailed LEP assessment of each program that the county agency administers. The programs should be analyzed by the county agency in terms of how they generally interact with the public in the performance of the county agency's responsibilities. This approach allows the county agency to focus on those areas where the potential impact on LEP persons is of greatest concern. In identifying "reasonable steps to ensure meaningful access," the number or proportion of LEP persons in the eligible service population and the importance of the service provided by the program, have the greatest impact in initially determining what language assistance measures may be appropriate.

There are several measures that can be used to determine whether other languages besides Spanish are likely to be encountered in the county. The latest U.S. Census is one. However, this may not be enough for a reliable determination since the last U.S. Census was reported in 2000. The U.S. Census website contains a page titled "American Community Survey" that can provide information for 2006 and 2007. This page is located at the following web address (position cursor on "People" on left of page and then click onto "origins and language.") The survey can be narrowed to state and county. http://factfinder.census.gov/servlet/DatasetMainPageServlet?_lang=en&_ts=222788373703&_ds_name=ACS_2006_EST_G00_&_program= Another source of data that could be used to help make a determination is county data from CRIS-e involving the primary language indicator (PLI). PLI is a field in CRIS-e marked by each county department of

job and family services caseworker indicating the applicant/recipient's primary language. PLI data can be broken down by program for Food Stamps, Ohio Works First (TANF), Medicaid or combination of the three. This will provide some additional indication of your LEP clientele but it should be kept in mind that the PLI only includes those LEP individuals who have actually made application for some type of assistance, not those in the county who have potential eligibility for the programs. Additional resources could involve data from community agencies in the county that provide services to populations that are likely to qualify for services from the county agency and data from county school districts. If the county agency keeps track of county agency encounters with LEP applicants/recipients, this could also be considered. Each county agency should also take into account, if applicable, seasonal migrant workers who come to the county temporarily for work. Many of the migrant workers could be LEP and need services from the county agency. It is recommended that the methodology utilized by the county entity use data from several of these sources that would apply to the county agency demographics.

Completing a valid and effective assessment of the languages most likely to be encountered other than English in the county is not only necessary for the county agency's preparation to serve the LEP population seeking benefits/services within the county, but is also necessary to determine what county agency vital documents and county outreach documents need to be translated into other languages (see section V).

Each county agency should be prepared to periodically reassess the demographics in its county involving LEP applicants/recipients or potential applicants/recipients to determine if additional LEP populations are residing in the county and whether the county agency needs to change or increase its resources to address the new population(s).

III. Language Assistance Requirements for the County Agencies

Each county agency must advise all LEP individuals coming to its agency that he/she has a right to receive a competent interpreter from the county agency free of charge. This information must be provided to the LEP individual in his/her own language. Posters with this information in several languages are available. A county agency utilizing the posters should have them prominently displayed in areas of the county agency building that applicant/recipients must travel through when seeking benefits/services at the county agency. Cards in several languages (Babel Cards) stating in English and the individual's language that an interpreter will be provided free of charge can also be provided to LEP persons seeking benefits/services through the county agency. Another method that can be utilized to provide this information is that the first point of contact at the county agency is trained to recognize the language of the LEP person and quickly provide an in-house bi-lingual interpreter or utilize a telephonic language line or other contracted resource that can quickly speak with the individual in his/her own language to determine what the person is seeking from the county agency. The applicant/recipient status as LEP and the person's selection of interpreter should be documented in any written record generated with respect to the LEP person. If the county agency utilizes CRIS-e, the PLI field should reflect the primary language of the applicant/recipient. This documentation is crucial so that the caseworker, social worker, customer service representative or other county

agency employee is aware of the LEP status of the person and; when any subsequent appointments, correspondence or other contact is needed; can make arrangements for an interpreter so there is no delay or denial of benefits/services solely due to the LEP status of the person.

A county agency utilizing interpreters for LEP applicants/recipients of benefits/services should take reasonable steps appropriate to the circumstances to ensure that it provides interpreter services only through individuals who are competent to provide interpreter services at a level of fluency, comprehension, and confidentiality appropriate to the specific nature, type and purpose of information at issue. Interpreters used by the county agency should have proficiency in English and the other language, and the ability to employ appropriate modes of interpreting. The interpreter should have knowledge of specialized terms and be able to integrate phraseology (regionalisms). It is understood that the level of proficiency of an interpreter may vary depending on the circumstances. It should be noted that BCR provides a two day interpreter training each year for bi-lingual county agency employees and, if space permits, for interpreters contracted by county agencies. The two day training covers the ethical considerations involving interpreting, practical discussion of various issues arising during interpreting sessions, and other related issues.

In certain situations, a county agency may be forced to consider the use of a family member or friend of an LEP person applying for benefits or services with the agency. This should not be a regular occurrence. However, in the instances when this is necessary, the county agency must take into account, on a case by case basis, factors such as: competence of the family or friend used as the interpreter; the appropriateness of the use in light of the circumstances; ability to provide quality and accurate information, especially if the interview could result in a negative effect on the individual or family's eligibility for benefits/services; potential or actual conflicts of interest; and confidentiality of the information being interpreted. These considerations are important so the county agency can determine whether it should provide its own independent interpreter and notify the LEP individual of this decision. Remember, utilizing a family or friend as an interpreter forces the county agency to rely on this individual for accurate information in the eligibility process or in determining what services to provide. It is also possible that should a state hearing be requested in response to an eligibility determination by the county agency, the only witness as to what was told to the county agency could be the family or friend of the Appellant. Some county agencies require a waiver to be signed by an LEP individual who wants to provide a friend or family member as an interpreter. This is acceptable but should be utilized in situations wherein the LEP individual insists on using a family or friend as an interpreter. In no case should use of a family or friend as an interpreter be routine so as to avoid providing an interpreter by the county agency. In no situation, with or without a waiver, should a county agency accept a minor child as interpreter for the family or individual.

IV. Methods of Providing Services to the LEP Population

The following are some suggested resources that county agencies may use to serve the county LEP population. These methods are not mandatory and each county agency can use these methods or others that meet their needs. Which ones to use or to what extent will depend on the LEP population in the county, county resources and other related considerations. However, the county agencies must have in place resources such that any LEP person seeking benefits or services from the county agency is not delayed or denied benefits or services solely due to his/her LEP status:

- **Bi-lingual Employees** – Bi-lingual employees are ideal for public contact positions in which direct communications with LEP persons are required. However, if county agencies use Bi-lingual employees for interpretation the county agency must ensure that they are competent in the skill of interpreting. All Bi-lingual employees must be trained to understand their role as interpreters (language assistance, not advocates), and receive training in ethics, confidentiality, impartiality and privacy rules (BCR provides this type of training once each year). If a county agency utilizes competent Bi-lingual interpreters as caseworkers, it is recommended that LEP individuals or families whose primary language matches the Bi-lingual employee's non-English language be assigned to the Bi-lingual employee's caseload. This makes it easier for the LEP person to communicate by phone and decreases the need to make arrangements for interpreters when the person comes to the county agency.
- **Telephone Interpreting Services** – Telephone interpreting services involve use of three party calling wherein an interpreter is put on the phone with the county employee and the LEP person to interpret for the LEP person. The telephone interpreting services provide a good value and service to county agencies. Most of the telephone interpreting services provide interpreters in upwards of a 100 languages and bill by the minute for services. Other telephone interpreting services do not require a contract; allow a county agency to set up an account with a credit card with charges only for the minutes used. This arrangement is particularly beneficial for smaller county agencies or county agencies with very few encounters with LEP individuals. Telephone interpreting services work well for emergency situations where interpreters cannot be located quickly, receptionists or first point of contact employees, LEP individuals whose language is obscure or not common in the area and telephone calls from LEP individuals wherein Bi-lingual employees are not readily available. The telephone interpreting services provide helpful literature and posters in several languages and make it easy to train county agency employees in use of the service.
- **Interpreter Contract** – Contract Interpreters may be a cost effective option where there is no need for a particular language skill within the county. The county agency can negotiate the costs and terms of the contract as well as provide face to face interpreters within the agency. County agencies should seek contracts with vendor(s) that can provide interpreters in several languages or in one particular

- language that is prevalent in the county and possibly combine the interpreter contracts with the use of a telephone interpreting service should other LEP individuals whose primary language is outside the interpreter contract seek benefits or services from the county agency.
- Volunteer Interpreters – Volunteer interpreters may be best used for county agencies’ less critical programs and activities where the provision of language services may be delayed. Volunteers used as interpreters should be competent in the skill of interpreting and trained to know about applicable confidentiality and impartiality rules.
- Agreement with Educational Institution – Some county agencies are located close to educational institutions that contain language programs/departments or individuals from other countries who are language instructors competent to interpret for the county agency. An arrangement with the Educational Institution for use of interpreters may be beneficial to the county agency and provide all the LEP resources needed by the county agency. However, it may be advantageous for the county agency to enter into some type of written arrangement with the Educational Institution to identify what languages are available; receive a commitment from Educational Institution to provide interpreters within a reasonable amount of time so that LEP individuals are not delayed or denied benefits/services solely because they are LEP; determine cost, if applicable; and outline other procedures such as telephone interpretations, if possible. If the Educational Institution has sufficient interpreters to meet the county agency’s needs in a timely manner, using this resource may be enough. However, if the languages available are not numerous and timeliness cannot be guaranteed, a combination of an arrangement with the Educational Institution and a telephone interpreting service may be sufficient to meet the county agency’s obligations.
- Translation Contracts – The permanent nature of written translations imposes additional responsibility on the county agency to ensure that the quality and accuracy of the translations allow meaningful access to LEP persons. Competence of translations can often be ensured through back translation. Translators should understand the expected reading level of the audience, have a fundamental knowledge about the target audience and have a fundamental knowledge about the target language group’s vocabulary and phraseology. County agencies that have large enough LEP populations wherein county agency vital documents and outreach materials require translation into specific languages (see section V.) may wish to use a translation contract.

V. Translation of Vital Documents and Outreach Documents by County Agencies

ODJFS is responsible for translation of vital documents that are to be used uniformly by all county agencies (e.g. applications, hearing notices, etc.). However, if a county agency produces its own document to be used in a specific program that is vital to its program(s) (e.g. letter to request verification for eligibility purposes, scheduling letter, etc.) or is used

for outreach purposes, the county agency may be required to have the county produced vital documents and outreach documents translated and available in other languages. If the demographics involving LEP individuals whose primary language is other than English who are eligible to be served or likely to be served by a county agency program exceed the following, all county produced vital documents or outreach documents must have a version translated to that language. Translated materials must be written in a culturally sensitive and understandable manner.

Vital Documents:

Vital documents for each LEP language group in a county that constitutes 5% or 1,000 individuals, whichever is less, for the population of persons eligible to be served or likely to be directly affected by the county agency programs must be translated into that language. For instance, if CRIS-e PLI for a county agency reflects more than a 1,000 LEP individuals in that county whose primary language is Arabic, the county agency would be required to have county generated documents in an English and Arabic version.

Outreach Documents:

Outreach documents for each LEP language group in a county that constitutes 10% or 3,000 individuals whichever is less, for the populations of persons eligible to be served or likely to be directly affected by ODJFS programs must be translated into that language. For instance, if the county agency generates its own outreach documents targeted at migrant workers who may qualify for Food Stamps and there are more than 3,000 individuals who are LEP in Spanish, the outreach materials must be available in a Spanish version as well as English.

It should be noted that any LEP individual, no matter what their numbers are in the county, must be provided with an interpreter and not delayed or denied services solely because he/she is LEP. The safe harbor percentage and numbers stated above only affect the county agency's responsibility to have and maintain translated documents in specific languages other than English.

When a county agency is serving an LEP person, the county agency must make it clear to that person that an interpreter will be provided free of charge (see section III) when necessary. The county agency will also notify the person (in writing in the person's language if possible or at least document the notification somewhere in a record) that interpreters will be provided to the person to translate any document (state or county) sent to the person from the county agency or ODJFS. This is important because certain documents sent to LEP individuals in English set out requirements to be met in order to receive benefits/services, state whether the person was approved or denied benefits and the reasons, as well as providing information concerning due process involving the eligibility determination.

VI. Staff Training and Dissemination of Information to County Agency Personnel

County agencies can have excellent and varied resources available for addressing LEP individuals' needs. However, unless all employees and contractors at the county agency

who have contact via phone or in person are provided training and information about the LEP resources, the county agency may find itself in violation of discrimination laws involving the LEP population. The county agency must require that all employees who have direct or telephone contact with customers receive training concerning the LEP plan, identification of the resources available under the plan and how to utilize the resources set out in the plan. It is recommended that training be given annually (depending on the frequency of contact by the county agency with LEP individuals) to update information, refresh emphasis on importance of serving the LEP population and identify any new resources available through the agency to serve LEP customers. It is also recommended that all management staff at the county agency, even those who do not interact regularly with LEP persons, be fully trained and understand the LEP Plan in order to reinforce its importance and ensure implementation by staff. Information about the LEP Plan should be included in all county agency new employee orientation procedures and the county agency may want to include the LEP Plan in its personnel handbook, through hand-outs, on-line training or other methods of dissemination of personnel information.