



Language Access in Pro Bono Practice

October 18, 2022

1:00 – 2:00 PM

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OVERVIEW OF BASIC CONCEPTS

- Overview of current numbers of Limited English Proficient (LEP) individuals and families living in the U.S., New York State and New York City
- Relevant federal, state, city laws requiring adherence to providing meaningful language access to LEP individuals
- Recent developments with ABA guidance on language access
- Review of New York Rules of Professional Conduct 1.4 and 1.6, when considering language access
- Consequences of failure to provide meaningful access to LEP individuals when accessing systems, institutions
- Introduction of concepts and definitions around language equity and justice
- Tips for working with interpreters and translators

HOW DOES THIS ENHANCE MY PRACTICE?

- Awareness of language access laws at federal, state, city level
- Enhanced understanding of New York Rules of Professional Responsibility when considering importance of communication
- Improved communication with LEP clients
- Ability to navigate working with interpreters and translators



1. Current State of Limited English Proficient Individuals and Households in 2022
 - a. Current numbers of LEP residents
 - i. National
 - ii. New York State
 - iii. New York City
2. What does the law provide?
 - a. Federal Law
 - i. Title VI of the Civil Rights Act of 1964
 - ii. Executive Order 13166
 - iii. Americans with Disabilities Act (ADA)
 - b. State Laws
 - i. New York State Executive Order 26.1, signed March 2021
 - ii. New York State Department of Human Rights
 - iii. (Proposed) New York State Bill S5236B/A7428B, the Language Access Act
 - c. City Laws
 - i. NYC Commission of Human Rights
 - ii. NYC Local Law No. 30
 - d. New York Rules of Professional Responsibility
 - i. Rule 1.4 Communication
 - ii. Rule 1.6 Confidentiality
 - e. ABA
 - i. Standard 2.3 on Promoting Language Justice
 - ii. Ethics Opinion Formal Opinion 500
 - f. Legal Services Corporation Program Letter dated 12/6/2004
3. Various systems/institutions (schools/hospitals/orgs/agencies) not providing proper T&I
 - a. Case examples
 - b. Consequences
4. Language Equity/Justice
 - a. Definition
5. Working with Translators & Interpreters
 - a. Definitions
 - b. Who needs an interpreter?
 - c. Who can serve as an interpreter?
 - i. Difference between trained interpreters and bilingual persons



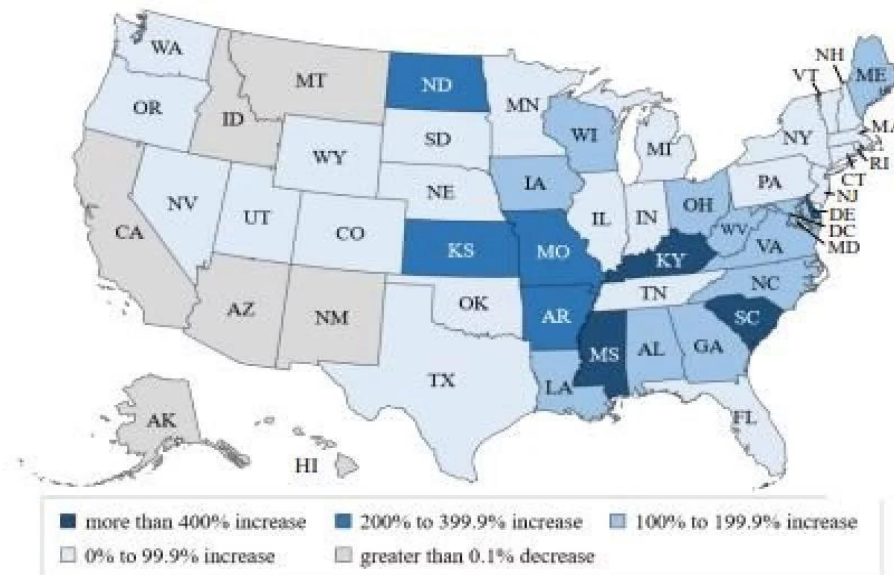
- ii. Considerations when using family members/friends
 - iii. In-house staff
 - d. Document Translations
 - i. Pitfalls of machine translation
 - ii. Taking into account literacy levels
 - e. Tips for Working with Interpreters and Translators
 - f. Interpretation at Court Proceedings and other Administrative Bodies
 - i. How to Handle Inadequate or Incompetent Interpretation
- 6. Building Rapport and Overcoming Language Boundaries (CG)
 - a. Cultural knowledge
- 7. Next Steps
 - a. Consider a Language Access Plan
 - b. Training for bilingual personnel providing translation or interpretation

Current Numbers of Limited English Proficient Individuals and Families

National Statistics

[Migration Policy Institute Language Access Report](#)

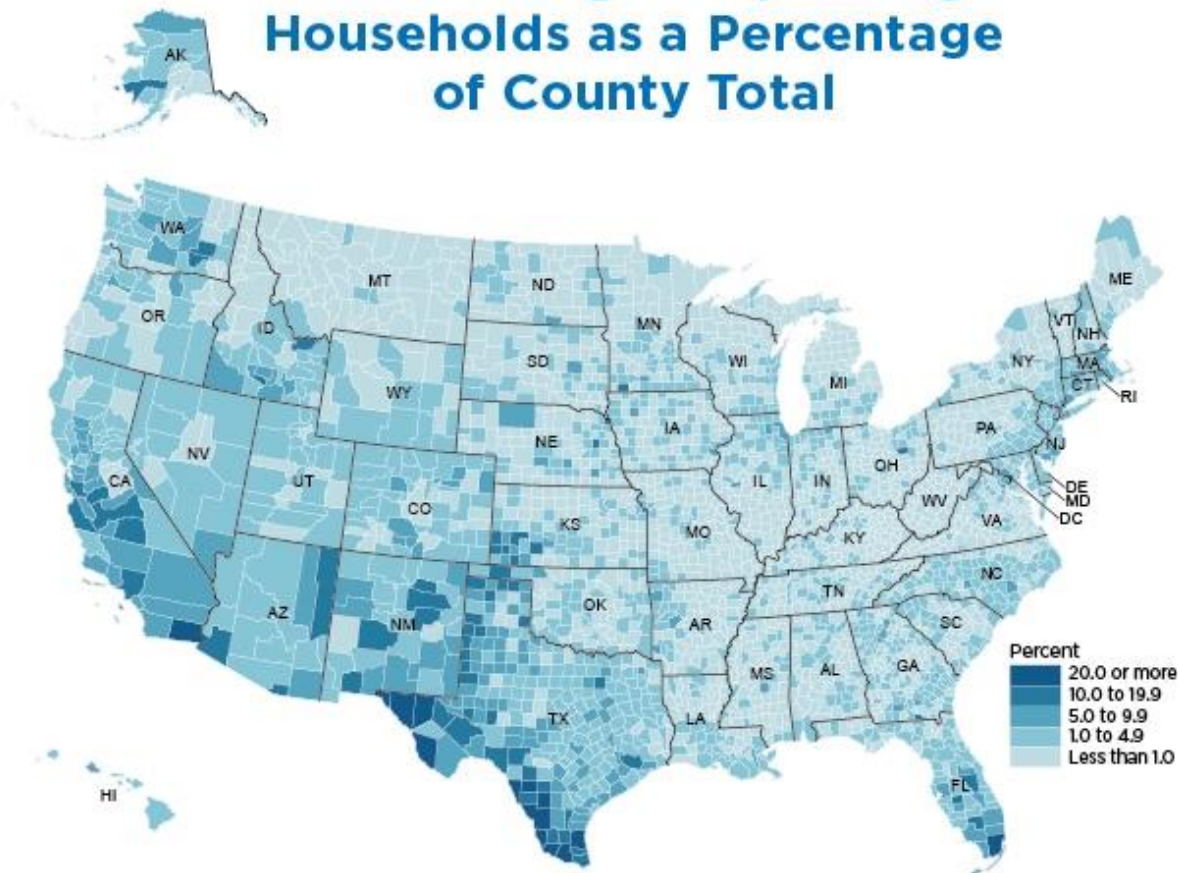
**Percent Increase in Number of English Learners, by State:
SY 2000–01 to SY 2016–17**



The number of ELs in the U.S. grew 28.1% between the 2000–01 school year and the 2016–17 school year. **Forty-three states saw the number of ELs increase**, ranging from 315 ELs in Wyoming to 351,559 ELs in Texas. Of these 43 states, the increases of ELs as a percentage of the total EL student population ranged from a 2.7% increase in New York to a 765.1% increase in South Carolina.

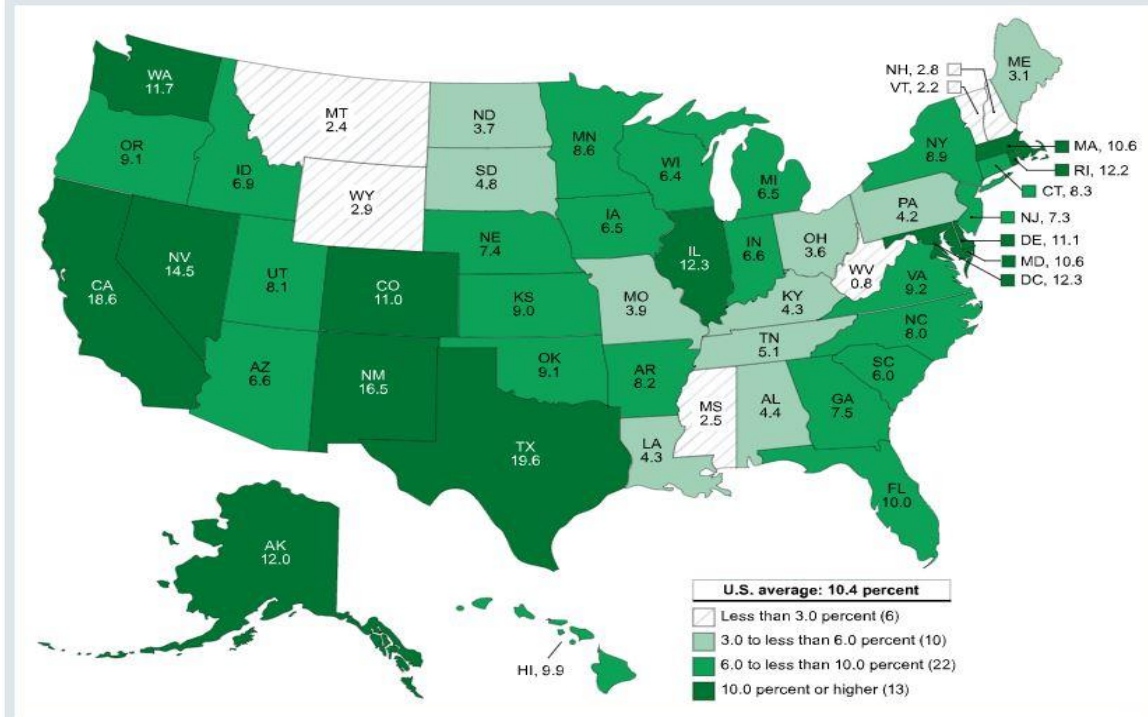
[Office of English Language Acquisition](#)

Limited English Speaking Households as a Percentage of County Total



Note: A "limited English-speaking household" is one in which no member 14 years and over speaks only English or speaks a non-English language and speaks English "very well." In other words, all members 14 years and over have at least some difficulty with English.

Figure 1. Percentage of public school students who were English learners (ELs), by state and categorized into specific ranges: Fall 2019



[National Center for Education Statistics](https://nces.ed.gov/ipeds/datacenter/ipedsdatacenter/)

New York State Statistics

How many New Yorkers speak a language other than English at home?

Over 5.7 million people living in New York State speak a language other than English. Of these, 2.5 million speak English less than well. Based on the 2015-2019 American Community Survey, the number of LEP individuals who speak one of the top ten languages are:

1. Spanish: 1,201,322
2. Chinese : 379,745
3. Russian : 119,380
4. Yiddish: 64,070

5. Bengali: 64,020
6. Korean: 55,506
7. Haitian Creole: 54,746
8. Italian: 46,431
9. Arabic: 40,781
10. Polish: 34,840

New York

Language & Education

	2019		2000		1990	
English Proficiency ⁱ	Foreign Born ⁱ	U.S. Born ⁱ	Foreign Born	U.S. Born	Foreign Born	U.S. Born
English Proficiency (age 5 and older) (%)	4,336,996	13,996,740	3,834,479	13,914,631	2,802,875	13,873,544
Speak only English	23.9%	83.4%	25.1%	85.0%	28.3%	86.5%
Speak English "very well"	30.8%	13.5%	29.5%	10.9%	29.9%	9.4%
Speak English less than "very well" (LEP)	45.3%	3.1%	45.4%	4.1%	41.8%	4.2%
Limited English Proficient (LEP) Population: Change over Time						
% change: 2000-2019	12.9%	-24.5%				
% change: 1990-2000	48.7%	-2.1%				

[Migration Policy Institute](#)

New York City Statistics

- With speakers of approximately 10 percent of the world's 6000-7000 languages, the New York metropolitan area is the most linguistically diverse urban center in the world. [Interactive Language Map of New York City](#)
- During the 2020-2021 school year, there were 42% (369,000) of students enrolled in New York City public schools with a primary home language other than English. Approximately 16% (140,000) of students enrolled in NYC public schools identified as English Language Learners (ELL).
- ELLs in NYC public schools communicated in 151 languages other than English. Over 61% of ELLs are Spanish speakers, followed by students who speak Chinese, Arabic, Bengali,



Russian, Urdu, Haitian Creole, Uzbek, French, and Tadjik. [ELL Demographics at a Glance](#)

- [State of Our Immigrant City: Mayor's Office of Immigrant Affairs Annual Report for Calendar Year 2019](#)

LANGUAGE ACCESS LAWS, GUIDANCE, POLICIES

Federal Law

Title VI of the Civil Rights Act of 1964. This law requires recipients of Federal financial assistance to take reasonable steps to make their programs, services, and activities accessible by eligible persons with limited English proficiency.

Lau v. Nichols, 414 U.S. 563, 569 (1974). The Supreme Court decided over three decades ago that a federal fund recipient's denial of an education to a group of non-English speakers violated Title VI and its implementing regulations

Guidance to Federal Financial Assistance Recipients Regarding Title VI and the Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons – Summary: <https://www.hhs.gov/civil-rights/for-providers/laws-regulations-guidance/guidance-federal-financial-assistance-title-vi/index.html#:~:text=DEFINITION%20OF%20LIMITED%20ENGLISH%20PROFICIENT,service%2C%20benefit%2C%20or%20encounter>.

Guidance Regarding Title VI and LEP Resources: <https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/index.html>

Fact Sheet on Title VI Discrimination

<https://www.hhs.gov/sites/default/files/ocr/civilrights/resources/factsheets/yourrightsundertitlevi.pdf>



Federal Executive Order 13166 (8/11/2000)

On August 11, 2000, the President signed Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." The Executive Order requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them.

Department of Justice's Overview of Executive Order 13166 with Guidance and Materials

[https://www.justice.gov/crt/executive-order-13166#:~:text=On%20August%2011%2C%202000%2C%20the,\(LEP\)%2C%20and%20develop%20and](https://www.justice.gov/crt/executive-order-13166#:~:text=On%20August%2011%2C%202000%2C%20the,(LEP)%2C%20and%20develop%20and)

Americans with Disabilities Act of 1990 (ADA)

The ADA "prohibits discrimination against people with disabilities in several areas, including employment, transportation, public accommodations, communications and access to state and local government programs and services."

It requires that "covered entities," including private employers with 15 or more employees, state and local government employers, employment agencies, labor organizations, and joint labor-management committees, must communicate effectively with people who have communication disabilities. These disabilities include hearing, speech, and vision.

Section 508 of the Rehabilitation Act of 1973 also requires all federal agencies to maintain communications in an accessible format. This includes all electronic information, including websites, Word documents, pdf documents, videos, and other digital content.

Common ADA compliant auxiliary aids include Braille, large print, audio, subtitles, and American Sign Language. However, it's important to remember that not every blind person reads Braille,



and not every deaf person understands ASL. If this is the case, then a covered entity would need to seek new ways to communicate in order to stay ADA compliant.

<https://www.congress.gov/bill/101st-congress/senate-bill/933>

New York State Laws and Enforcement

NYS Executive Order 26.1

In March 2021, an [Executive Order](#) was signed which directs executive state agencies that provide direct public services to offer language assistance services (translation and interpretation) to people with Limited English Proficiency (LEP). EO 26.1 amended Executive Order 26, originally issued in October 2011.

There are millions of New Yorkers who do not speak English as their primary language and have limited ability to read, speak, write, or understand English. For these New Yorkers, their LEP status presents potential barriers to accessing important government programs and services.

- Each executive state agency that provides direct public services is required to offer interpretation services to individuals in their primary language with respect to the provision of services or benefits.
- These agencies are also required to translate vital documents, including public documents such as forms, in the ten most common non-English languages spoken by LEP individuals in the State of New York (based on the most recent United States census data).
- The agencies are also required to appoint a Language Access Coordinator and to publish a Language Access Plan.

While all covered state agencies are required to provide translation services for these ten languages, some agencies may also choose to add additional languages based on the needs of the population they serve and other federal requirements.



New York State Division of Human Rights

The New York State Division of Human Rights (“NYSDHR”) is a state agency responsible for investigation of discrimination complaints on the state level. [Their website](#) lists the state agencies that are responsible for following Executive Order 26.1, and the contact information for each agency’s Language Access Coordinator, who monitors the agency’s compliance.

New York State’s (Proposed) Language Access Act, S5236B/A7428B

[Senate Bill S5236B](#) passed the senate in March 2022. If signed into law, it would require that each state agency that provides direct public provide certain documents in the twelve most common non-English languages spoken by limited English proficient immigrants of five years or less according to the American community survey, as published by the United States census bureau. This bill was introduced with the understanding that language demographics vary drastically by region in New York State, and in many areas, the most common non-English languages state-wide are not representative of smaller communities. As such, these state agencies will also be required to provide documents in the three most common non-English languages which are spoken in their region which are not already included among the twelve specified languages.

New York City Laws and Enforcement

New York City Local Law 30

[Local Law No. 30](#), which requires all City agencies to provide opportunities for Limited English speakers to communicate and receive services.

New York City Commission for Human Rights (HRL)

The New York City Human Rights Law (“NYCHRL”) prohibits discrimination on the basis of actual or perceived “alienage and citizenship status,” and “national origin,” among other categories, by most employers, housing providers, and providers of public accommodations⁸ in New York City. The NYCHRL also prohibits discriminatory harassment and bias-based profiling by law enforcement.

Violations of the NYCHRL Based on Immigration Status and National Origin



A. Disparate Treatment

Disparate treatment—which occurs when a covered entity treats an individual less well than others because of a protected characteristic—based on an individual’s actual or perceived immigration status or national origin in employment, housing, and places of public accommodation violates the NYCHRL. Disparate treatment may be overt, or it may manifest itself in more subtle ways. Disparate treatment can manifest through policies, treatment, harassment, and actions based on stereotypes or assumptions. Disparate treatment based on actual or perceived immigration status or national origin may also be expressed by animus based on characteristics closely associated with one’s actual or perceived immigration status or national origin. For example, discriminating against someone because of their accent, English proficiency, or use of another language is discrimination based on immigration status and/or national origin. To establish disparate treatment under the NYCHRL, an individual must show that they were treated less well or subjected to an adverse action at least in part because of their membership in a protected class. An individual may demonstrate this through direct evidence of discrimination or indirect evidence that gives rise to an inference of discrimination.

NYC Commission on Human Rights Legal Enforcement Guidance on Discrimination on the Basis of Immigration Status and National Origin, Sept 2019: [immigration-guidance.pdf \(nyc.gov\)](#)

New York Rules of Professional Responsibility

Rule 1.4 Communication

(a) A lawyer shall: (1) promptly inform the client of: (i) any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0(j), is required by these Rules; -5-12 (ii) any information required by court rule or other law to be communicated to a client; and (iii) material developments in the matter including settlement or plea offers. (2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with a client’s reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by these Rules or other law. (b) A lawyer shall explain a



matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation

Rule 1.6 Confidentiality of Information

(a) A lawyer shall not knowingly reveal confidential information, as defined in this Rule, or use such information to the disadvantage of a client or for the advantage of the lawyer or a third person, unless: (1) the client gives informed consent, as defined in Rule 1.0(j); (2) the disclosure is impliedly authorized to advance the best interests of the client and is either reasonable under the circumstances or customary in the professional community; or (3) the disclosure is permitted by paragraph (b). "Confidential information" consists of information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential. "Confidential information" does not ordinarily include (i) a lawyer's legal knowledge or legal research or (ii) information that is generally known in the local community or in the trade, field or profession to which the information relates. -9- (b) A lawyer may reveal or use confidential information to the extent that the lawyer reasonably believes necessary: (1) to prevent reasonably certain death or substantial bodily harm; (2) to prevent the client from committing a crime; (3) to withdraw a written or oral opinion or representation previously given by the lawyer and reasonably believed by the lawyer still to be relied upon by a third person, where the lawyer has discovered that the opinion or representation was based on materially inaccurate information or is being used to further a crime or fraud; (4) to secure legal advice about compliance with these Rules or other law by the lawyer, another lawyer associated with the lawyer's firm or the law firm; (5) (i) to defend the lawyer or the lawyer's employees and associates against an accusation of wrongful conduct; or (ii) to establish or collect a fee; or (6) when permitted or required under these Rules or to comply with other law or court order. (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure or use of, or unauthorized access to, information protected by Rules 1.6, 1.9(c), or 1.18(b).



[NYSBA NY Rules of Professional Conduct \(2021\) \(nycourts.gov\)](https://www.nycourts.gov/)

American Bar Association

Standard 2.3 on Promoting Language Justice

A legal aid organization must ensure language justice for all legal services clients, including language assistance that incorporates different tools and strategies (e.g., a bilingual staff, interpretation, translation, signage, and outreach). The organization's management should evaluate whether all language groups have meaningful and equitable access to critical services, programs, and civic participation, including service on the organization's governing body.

Standards for the Provision of Civil Legal Aid

Commentary

General Considerations

Linguistic inclusion and language accessibility affects every part of the organization's interactions with its client communities. Staffing, planning, training, use of interpreters, program evaluations, governing body composition, and community interactions should all reflect careful assessment of and response to client population language needs. The organization's leaders should ensure that the organization complies with Standard 5.7.

Hiring

Staffing should reflect the diversity of the communities served. Recruitment and retention of bilingual staff is critical in providing improved language access to non-dominant language users. Bilingual ability should be highly valued in hiring for all positions involving public contact. These positions should require proficiency in languages commensurate with the needs of local communities. To enhance its capacity for bilingual representation, a legal aid organization should make fluency in pertinent languages a preferred or, where appropriate, required skill when evaluating applicants for employment. Organizations should be certain to periodically assess the written and spoken linguistic proficiency of staff members who communicate directly with clients in a non-dominant language and compensate them appropriately.



Responsibilities to Promote Language Justice

In planning its service delivery methods, a legal aid organization should identify contact points where language barriers may exist for persons seeking and receiving services, and it should develop strategies, plans, and protocols to respond. Some means of delivering services, such as centralized/coordinated telephone or online intake, the availability of online information, and pro se clinics, may be of little use to persons who use non-dominant languages unless appropriate adjustments are made to provide meaningful services to them.

Program priorities, methods of providing services, and outreach programs should be designed so that legal issues of importance to non-dominant language users are addressed by the organization, as are issues of clients who are proficient in English. Organizations should consider targeting outreach to underserved language populations and developing partnerships with community-based organizations that serve such groups. Furthermore, the non-profit law firm or organization should have a policy of adapting materials to plain language before translation and ensuring that translated materials are readable, understandable, and accessible by community members. Organizations should go beyond the default of having services materials in English and Spanish only, as many other language groups are often significant, but excluded from language services.

The organization should budget adequate resources to meet the needs of persons who use non-dominant languages. This means that the organization must have systems to accurately track how much is expended on interpretation and translation services (language assistance services) so that the organization can include language assistance services as a line item in grant proposals and attorney fee requests when applicable, and when assessing budget needs for the upcoming fiscal year. When these costs are not anticipated, resources may be unavailable for staff to provide adequate language assistance services.

The organization must have a clear protocol for how it will respond to the needs of those who do not use English as their dominant language and should train its staff in its proper application. Some legal aid organizations will operate in an area with few non-dominant language users who are not proficient in English. Such organizations should, nevertheless, have a protocol for responding to the needs of individuals who do not use English as their dominant language and are seeking services from the organization. Organizations must be aware of and abide by statutory provisions that exist under state and federal law that prohibit discrimination against persons based on English language ability when providing services and benefits. 1



Training of Staff to Promote Language Justice

Staff should be trained in the fundamental importance of responding effectively to their communities' language needs and serving clients in their preferred language. This could include training on the organization's written plan for working with clients who do not use English as their dominant language. The organization should appoint a language coordinator or working group with the responsibility of bilingual/multilingual staff, language justice principles, legal mandates, language-specific vocabulary/grammar to enhance language skills, and language rights advocacy. Organizations must be certain that staff communicating directly with clients in a non-dominant language have appropriate knowledge of legal terms. It is also very important that the organization's management ensures bilingual staffing is properly resourced in relation to demand to avoid having bilingual staff members imposed with excess workloads as compared to non-bilingual staff members.

Interpreter Training and Requirements

The organization must have ready access to qualified interpreters and translation services to supplement bilingual staff and staff interpreters/translators. Competent interpreting and translating requires individuals with a range of skills. They need to be proficient in both languages, be familiar with legal terms and their meaning, and understand their role as an interpreter/translator. Furthermore, they must understand the need for neutrality, accuracy, completeness, and techniques that facilitate effective communication. Translating and interpreting are different tasks and require different skills. Interpreters and translators also need to be aware that they are agents of the legal aid organization and are bound by its duty to maintain communication confidentiality. These objectives can be achieved by ensuring that the organization's interpreters and translators adhere to the Code of Professional Conduct authored by the National Association of the Deaf (NAD) and the Registry of Interpreters for the Deaf, Inc. (RID). 2

Additionally, management should commit to best practices, including providing accurate and high-quality interpreting, with the ability to do so through the utilization of technology (onsite, video-remote (VRI) with a strong internet connection, and over-the-phone interpreting (OPI); hiring qualified, trained interpreters who are compensated fairly; and providing high-quality training to staff on working with interpreters and translation of vital documents. While on-demand remote interpreting services are essential to meet the needs of callers and walk-ins, interpreting services should be pre-scheduled whenever possible in order to ensure the best match with the interpreter's expertise and the demands of the assignment (e.g., needing interpreters with legal training), and to allow time to provide interpreters with materials so they can prepare appropriately before the assignment. Pre-scheduling also provides time for



the organization to arrange a "variant check" call between the interpreter and client to confirm that they use mutually intelligible linguistic variants in advance of the appointment.

Avoiding use of ad hoc interpreters such as family members or minors is very important. The organization should not allow the use of minors as interpreters. The use of family and friends to interpret gives rise to serious risks that the interpretation will not be neutral, and that the interpreter will not fully understand or be able to translate the legal options available. Further, a practitioner who uses a client's family member or friend as an interpreter should act consistently with their responsibilities under the Model Rules of Professional Conduct, including Rules 1.4 and 1.6, so that clients can understand any risks to privilege and confidentiality.

The organization must maintain a preference for in-person interpreting whenever feasible, unless there are other exigent factors, such as a public health crisis, and should have a plan for providing alternatives such as video interpreting or telephonic interpreting in those situations. Telephonic interpreting often loses the nuance and non-verbal aspects of communication and should not be a default unless no other alternatives are available.

Evaluation

The organization should evaluate, on a defined, periodic basis, its effectiveness in responding to its population's language needs. It should gather data regarding the languages used in the populations in its service area and by the persons it serves. The data should be used to identify emerging and underserved language groups, assist in prioritizing the languages most frequently encountered, and help the organization measure progress in responding to the various language groups in its service area. If significant language groups are identified that are not being adequately served, the organization should develop and implement a plan to address the deficiency. The organization should evaluate its plan annually by measuring changes in demographics, effect on services, response to language needs as they arise, response to unexpected languages, anticipated changes for the next year, and how to assess and measure service to clients.

Other Policies to Promote Language Justice

Organizations should establish relationships with local organizations with experience working with diverse communities and collaborate with trained interpreters and translators. The organization's management should also determine specific strategies about how to respond to and ensure meaningful access at all points of contact. As noted above, the organization should appoint a language coordinator or working group with adequate time, capacity, and authority to perform these functions well. 3 If the language coordinator or working group does



not have some degree of authority or ongoing support from leadership in the organization, staff may disregard the language access plan and protocols. Additionally, organizations should offer community education and information to client communities on their language rights and how to enforce them.

https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/standards-and-policy/updated-standards-for-the-provision-of-civil-legal-aid/standard-2-3-on-promoting-language-justice/

ABA Formal Opinion 500

A lawyer's obligations of communication and competence aren't diminished when a client and a lawyer don't share a common language or owing to a client's non-cognitive physical condition, according to a **recently issued opinion** from the American Bar Association.

[Formal Opinion 500](#) states that, in both situations, the duties of communication under Model Rule 1.4 and competence under Model Rule 1.1 still stand. Moreover, a lawyer may be obligated to ensure those duties are discharged through an impartial interpreter or translator and assistive or language-translation technologies, when necessary.

Importantly, a lawyer must ensure "the client understands the legal significance of the translated or interpreted communications." Likewise, the lawyer must understand the client, keeping in mind potential cultural differences and social assumptions that may impact meaning.

Legal Services Corporation

What is the Legal Services Corporation (LSC)?

LSC is the single largest funder of civil legal aid for low-income residents in the nation. Established in 1974, LSC operates as an independent 501(c)(3) nonprofit corporation that promotes equal access to justice and provides grants for high-quality civil legal assistance to low-income residents of the U.S. LSC funds 132 nonprofit legal aid programs in more than 800 offices. In 2019, LSC-funded organizations helped approximately 1.8 million people.

<https://www.lsc.gov/about-lsc/who-we-are>

The President of LSC issued a [Program Letter](#) on December 6, 2004, aiming to ensure access to justice for communities of potentially eligible clients who do not speak English proficiently.



As part of their legal obligation to refrain from national origin discrimination, LSC programs must ensure that they are providing appropriate service to persons with limited English proficiency. They must have a Language Access Program in place that helps provide competent translation and interpretation to LEP clients.

Language Equity and Justice

Language justice is “an evolving framework based on the notion of respecting every individual’s fundamental language rights—to be able to communicate, understand, and be understood in the language in which they prefer and feel most articulate and powerful. Rejecting the notion of the supremacy of one language, it recognizes that language can be a tool of oppression, and as well as an important part of exercising autonomy and of advancing racial and social justice.”

[Language Justice During COVID-19](#)

Negative Impacts

- Adverse effects of signing paperwork clients do not understand
 - Example: In immigration, is important to ask clients if they remember signing any paperwork at the border. Sometimes, this can signal they signed a voluntary departure. Many times, people are unaware they signed a voluntary departure because it was not explained to them in their language, or the document was completely in English.
- Being subjected to proceedings unjustly
 - Example: ST’s client who was indicated in the Statewide Central Registry
- Reports have found that English proficiency impacts access to fundamental needs, such as housing, employment, law enforcement, and health care.

Best Practices for Working with Translators and Interpreters

Goals:

- Address language discrimination and promote language rights
- Provide clients with meaningful language access



Definitions

- Bilingual: Able to speak effectively in two languages.
- Interpretation: The process of orally rendering communication from one language into another. Interpretation deals with oral or signed speech. Someone who interprets is called an interpreter.
- Language Access: A term used to describe an agency or organization's efforts to make its programs and services accessible to LEP individuals.
- Limited English Proficient (LEP): A person is LEP if his/her native language is not English and s/he has a limited ability to speak, read, write, or understand English.
 - English Language Learners (ELL), English Learners, Emergent Bilingual
- Telephonic Interpreting Service: An over-the-phone interpretation service in which off-site interpreters assist public and private organizations in communicating with people who are LEP.
- Translation: Changing a written text from one language into an equivalent written text in another language. Translation refers to document translation.
- Consecutive Interpretation: A method of interpretation typically used in small meetings and legal proceedings. The speaker pauses after every few sentences to allow the interpreter to translate their words. Very often, an interpreter reads along as the court reporter produces the manuscript, which allows for a more quick and accurate real-time translation without the interpreter taking their own notes.
- Simultaneous Interpretation: A method of interpretation in which an interpreter translates from one language to another in real-time. As opposed to consecutive interpretation, the speaker does not pause to give the interpreter time to speak. Both the speaker and the interpreter speak at the same time. This way, the natural flow of the speaker is not disturbed. Typically, depending on the setting, this is done either with headphones or simply by whispering.
- Dialect: A regional variety of language distinguished by features of vocabulary, grammar, and pronunciation from other regional varieties and constituting together with them a single language.

When to work with an interpreter?

- Client's request
- Client's language capacity or preference



- Communication challenges
- Our professional judgment
- LEP clients
- Conversational English is different from corporate English which requires a higher level of formality

Impact—what gets lost without competent interpretation

- Details, emotion, time lines, coherency, fluency, eye contact, motivation is all lost
- Client has a hard time conveying and lawyer has a difficulty understanding

Who is appropriate to serve as an interpreter?

Serving as an interpreter or translator of documents goes beyond conversational languages. It requires a deep understanding of both languages, including grammar, syntax and word choice. An interpreter needs sufficient knowledge of legal content to know when it is necessary to use a verbatim translation and when they have more freedom over the style of the final translated document. They will need to know legal terminology and how it applies to the type of document they are translating. Important to remain faithful to client's words and meaning. should convey tone, register and emotion. This is a highly skilled activity that differs from informal communication outside of that client meeting.

Interpretation is not for amateurs, so who is appropriate to interpret?

- Paraprofessionals
- Professional interpreters should be used for all legal work, including interviews, meetings, hearings, court appearances
- Family members are usually not appropriate
- Children are never appropriate

Tips for Working with Interpreters

1. Ensure that the interpreter is able to interpret into the correct language and dialect. Discuss the specifics of your client's language before requesting the interpreter. (i.e. Arabic from Morocco is very different from Arabic from Egypt)
2. Brief the interpreter prior to a conversation with the client



- a. Example: CG example of serving as interpreter without a debrief before call with client.
3. The interpreter is there to purely translate what is being said
 - a. No interjections, off comments, suggesting “better” ways to say certain things
4. Ask the interpreter not to change or alter any part of the conversation
5. Refrain from using metaphors, acronyms, slang, or idioms
6. Speak clearly and in short sentences with one question or idea at a time. Avoid compound questions. Ask the client to also pause between their sentences. Pausing between sentences or complete thoughts allows the interpreter to retain the message.
7. Speak directly to the non-English speaker, not the interpreter
 - a. This allows the client to know the conversation is with them and not with the interpreter. Example: “How can I help you today?” NOT “Ask her how I can help her today.”
8. Do not engage in side-conversations with the interpreter.
9. Expect everything said will be interpreted, including potentially offensive and insensitive things.
10. Schedule extra time. It will probably take you at least two times longer to do the interview than if you and the client were speaking the same language.
11. Manage the process, this is your interview! If the interpreter is not doing a good job, remind him/her of your expectations. If necessary, reschedule the meeting with a different interpreter.

Document Translations

How to assist clients when they bring translated documents:

- If you are fluent in the language, a good practice is to review and compare the translated document with the original document. Translators can make mistakes! It’s best to ensure that the document is a true and exact copy of the original document.
- If there are any mistakes, or inconsistencies with the translated document, ask the client to return to the agency or translator to correct it. In immigration, a document will be rejected if it’s not a true and exact copy of the original document. This can cause delays, added costs, and/or requests for evidence in a person’s case.



Certified Translations

A certified translation is essentially a sworn statement affirming the translator's ability to accurately translate a document from the original language to the English language. There are certain agencies that will reject a translated document if it does not contain a certification.

Example: An immigration application that contains documents in a language other than English and are not translated will be rejected and cause delays.

The translator must certify that s/he is competent to translate and that the translation is accurate. The certification format should include the certifier's name, signature, address, and date of certification. A suggested format is:

Certification by Translator

I, [typed name], certify that I am fluent (conversant) in English and [foreign language], and that the above/attached document is an accurate translation of the document attached entitled [name of document].

Signature_____

[Date]

[Typed Name]

[Address]

Pitfalls of machine translation without qualified human review

- This translation is based entirely on automated machine translation without a qualified human translator review which leads to misgendering clients, using incorrect tone inappropriate terms, incorrect translations, and a lack of client-centered and trauma-informed approaches and protocols. Translations are inaccurate.
- As attorneys we must do our due diligence when you use technology that impacts your applicants and clients.
- Privacy and confidentiality concerns- it is unclear who has access to the texts and there are no assurances that all content will be kept confidential and protected under attorney/client privilege.



- Observations from a professional interpreters show that machine translations’ default is in the masculine form (as if the applicant/client identified as a man or used he/him pronouns. This is insensitive, confusing, and problematic for transgender and other LGBTQ+ people.

Building Rapport and Overcoming Language Barriers

Cultural knowledge

Interpreting or translating legal documents requires a certain amount of cultural knowledge about the country that the finished document will be used in. Legal, court and country-specific terminology may not be directly translatable; a verbatim translation may not correctly convey what the original document meant.

For example, some legal systems have judges or justices that do not exist within the context of other cultures. If you directly translated these roles into other languages, they would not make sense to a reader living in a different culture. As another example, the concept of “Pleading the Fifth” is purely American and would not translate into other cultures well.

Next Steps

- **Consider a language access plan**
 - If you provide information/services in English, ensure that LEP individuals also have meaningful access to oral information/ services.
 - Examples:
 - LAFLA: <https://lsc-live.app.box.com/s/b78ucrrr0g4sp8h0r94p4i7hbzwx9tz4>
 - Legal Services Northern California: <https://lsc-live.app.box.com/s/ja3mw7jj4x3617jun39bdepet7rn6com>
 - Neighborhood Legal Services of Los Angeles County: <https://lsc-live.app.box.com/s/ja3mw7jj4x3617jun39bdepet7rn6com>
- **Build rapport** with reliable interpretation and translation service providers
- **Maintain a list** of interpretation and translation service providers for everyone in the firm or organization to have access to
- **Implement procedures** for attorneys and staff on how to access language assistance services under different circumstances, including screening, interviewing, communicating with non-English speaking clients



- **Educate staff about language access.** Language access trainings can include:
 - Demographic information about local LEP populations
 - Guidance on accessing interpretation and translation resources
 - Tips on how to work with bilingual staff and interpreters
- **Identify and train** bilingual staff
- **Pool language access resources**
- It is possible to ensure language access with your LEP clients



Other Materials:

Massachusetts Legal Services Training on Working with LEP Clients (2013)

<https://www.masslegalservices.org/content/working-lep-clients-interpreters>

- Includes slideshow, roleplay, best practices for interpreters, tips for using telephone interpreters. Could use as frame for VOLS presentations

Empire Justice Project: The Rights of LEP Individuals in NYS (2007)

http://onlineresources.wnylc.net/pb/orcdocs/LARC_Resources/LEPResources/LATraining/February12007_TrainingPresentation.pdf

- Rel. slides around NYS/federal laws (could be dated), and around page 30 on

Northwest Justice Project: Working with Interpreters (video)

<https://www.youtube.com/watch?v=skw9vWIpZjQ&list=PLEDBA3D39A7D52DBD>

- Sections on “what makes a qualified interpreter,” “how should an attorney work with an interpreter”

Legal Services Corporation (grantmaking organization): Language Access and Cultural Sensitivity

<https://www.lsc.gov/i-am-grantee/model-practices-innovations/language-access-cultural-sensitivity>

- Includes in-depth best practices for organizations, including links to data sources. Can see what outside organizations are doing wrt language access.

Refugee Health Technical Assistance Center: Best Practices for Communicating through an

interpreter <https://refugeehealthta.org/access-to-care/language-access/best-practices-communicating-through-an-interpreter/>

- Non-legal setting but wide application

ABA Oct 2021 Opinion on Language Access

https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-500.pdf

ABA Blog Post April 2019: Five Tips for Working with Persons with Limited English Proficiency

<https://www.americanbar.org/groups/litigation/committees/consumer/practice/2019/five-tips-working-with-persons-with-limited-english-proficiency/>

- Very basic

Legal Aid Foundation of LA Pro Bono Training Institute <https://pbtraining.org/>



- Pro bono library which includes cultural competency and language access training modules.

Expanding Legal Services: Serving Limited English Proficient Asian and Pacific Islanders
<https://www.courts.ca.gov/partners/documents/ExpandingLegalServices-APALC.pdf>
NYCCHR <https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/immigration-guidance.pdf>

Language Access Policies:

NYLPI: <https://www.nylpi.org/language-access-policy/>