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A Local Official's Guide to Language Access Laws

DAVID JUNG,* NOEMÍ GALLARDO,** AND RYAN HARRIS***

Introduction

The rapid growth of immigrant communities is transforming the demography of the United States, perhaps nowhere so much as in California, where almost one third of the country's recent immigrants reside.¹ Language diversity is a prominent feature of this transformation.² According to U.S. Census data, more than 200

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1. DANIEL K. ICHINOSE, AM. LEGAL CTR. OF S. CAL. ET AL., CALIFORNIA SPEAKS: LANGUAGE DIVERSITY AND ENGLISH PROFICIENCY BY LEGISLATIVE DISTRICT 2 (2009), available at http://www.apiahf.org/sites/default/files/APIAHF_Report05_2009.pdf.

2. Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Differences*, 54 UCLA L. REV. 999, 999 (2007).

different languages are spoken at home by California residents.³

Many of these Californians are also limited English-proficient, or LEP. A person is considered LEP if she reports that she does not speak English "very well."⁴ The number of U.S. residents who are limited English-proficient has increased substantially in recent decades, consistent with the growth of the U.S. foreign-born population.⁵ When English is not spoken well enough to allow the speaker to benefit from government programs and services, language diversity can become a language barrier.

Language barriers can prevent people from fully participating in civic life. People whose proficiency in English is limited may not realize what public services they have access to, may not be able to communicate their point of view at a town hall meeting, or may not understand information an agency wants the public to know.⁶ As

3. U.S. CENSUS BUREAU, *Table 6, Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for California: 2006–2008*, in DETAILED LANGUAGE SPOKEN AT HOME AND ABILITY TO SPEAK ENGLISH FOR THE POPULATION 5 YEARS AND OLDER BY STATES: 2006–2008 (2010), available at <http://www.census.gov/hhes/socdemo/language/data/other/detailed-lang-tables.xls>.

4. The U.S. Census Bureau defines limited English-proficient (LEP) speakers as those who speak English less than very well. See U.S. CENSUS BUREAU, *A COMPASS FOR UNDERSTANDING AND USING AMERICAN COMMUNITY SURVEY DATA: WHAT STATE AND LOCAL GOVERNMENTS NEED TO KNOW* 12 n.8 (2009), available at <http://www.oseda.missouri.edu/acs/ACSstateLocal.pdf>. The U.S. Department of Justice ("DOJ") defines LEP speakers as individuals who primarily speak a language other than English and who have a limited ability to read, speak, write, or understand English. See U.S. Dep't of Justice, *Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency: Policy Guidance*, 65 Fed. Reg. 50120, 50123 (Aug. 16, 2000).

5. CHHANDASI PANDYA ET AL., *LIMITED ENGLISH PROFICIENT INDIVIDUALS IN THE UNITED STATES: NUMBER, SHARE, GROWTH, AND LINGUISTIC DIVERSITY* 1 (2011), available at <http://www.migrationinformation.org/integration/LEPatabrief.pdf>.

6. HYON B. SHIN & ROBERT A. KOMINSKI, *AMERICAN COMMUNITY SURVEY REPORTS: LANGUAGE USE IN THE UNITED STATES 2007* 9 (2010), available at <http://www.census.gov/prod/2010pubs/acs-12.pdf> (explaining that ability to speak English greatly affects how well people can perform daily activities at home and outside the home); MEXICAN AM. LEGAL DEF. & EDUC. FUND & ASIAN AM. JUSTICE CTR., *LANGUAGE RIGHTS: AN INTEGRATION AGENDA FOR IMMIGRANT COMMUNITIES* 4 (2007), available at http://www.maldef.org/resources/publications/language_rights_briefing_book_june%202008.pdf (explaining that English proficiency may indicate how well persons communicate with public officials, schools, businesses, medical personnel, and various other service providers); see generally Eerik Lagerspetz, *On Language Rights*, 1(2) *ETHICAL THEORY AND MORAL PRACTICE* 181, 198 (1998).

the U.S. Attorney General has emphasized, “[w]hether in an emergency or in the course of routine business matters, the success of government efforts to effectively communicate with members of the public depends on the widespread and nondiscriminatory availability of accurate, timely, and vital information.”⁷

Language is a barrier to meaningful civic participation for approximately 7.7% of U.S. residents over the age of five.⁸ California has the country’s largest percentage of non-English-language speakers;⁹ in some California legislative districts, *most* residents have limited English proficiency.¹⁰ A state, like California, with many LEP speakers living within its borders may feel a greater responsibility to provide language access services to its residents.

Enabling people to use their own language when it is feasible helps them access public services.¹¹ Providing language access increases the opportunities for residents to communicate with their local leaders and public service providers, and protects the flow of information between public agencies and residents, as well as among residents themselves. This access is vital to effective community building. Under some circumstances, local agencies must ensure that LEP residents have access to public benefits and services, as well as an opportunity to participate in public life. This guide explains the laws that require language access.¹²

7. Memorandum from the Office of the Attorney General for Heads of Federal Agencies, General Counsels, and Civil Rights Heads, Federal Government’s Renewed Commitment to Language Access Obligations Under Executive Order 13,166 (Feb. 17, 2011), *available at* <http://www.ada.gov/508/AGSection508Memo.htm>.

8. Benjamin D. Winig, *Lost in Translation: Local Public Agencies and Translating Official Documents*, WESTERN CITY, Nov. 2008, at 3, (citing 2000 Census, Profile of Selected Social Characteristics, Supplementary Survey Table (Table QT-02)), *available at* <http://www.westerncity.com/Western-City/November-2008/Lost-In-Translation-Local-Public-Agencies-and-Translating-Official-Documents/>.

9. PANDYA ET AL., *supra* note 5, at 2. The following table lists the four states with the largest population of limited English-proficient persons. *Id.*

Rank	State	LEP Pop. (thousands)	% Share of Total US LEP Pop.
1	California	6,898	27.3
2	Texas	3,359	13.3
3	New York	2,458	9.7
4	Florida	2,112	8.4

10. SHIN & KOMINSKI, *supra* note 6, at 6.

11. See Lagerspetz, *supra* note 6, at 198; Ahmad, *supra* note 2, at 999.

12. The use of the term “agency” throughout this paper refers to a local public

I. English as the Official Language and English-Only Laws

A. Does the fact that English is California's official language prevent a local agency from providing language access services?

While article III, section 6 of California's Constitution declares English to be the state's official language—and while local jurisdictions may have similar official language pronouncements in their charters or ordinances—local agencies are still permitted to take steps to ensure that LEP residents have full access to public benefits, services, and programs.

According to the California Constitution, "English is the official language of the state of California."¹³ This official language provision requires the Legislature to "take all steps necessary to insure that the role of English as the common language of the State of California is preserved and enhanced."¹⁴ The provision also allows residents to sue the state to enforce its requirements.¹⁵

This provision, however, does not limit the power of local agencies to provide language access services on their own accord. Article III section 6 leaves it to the legislature to enforce its provisions, and the Legislature has not enacted any laws to limit public agencies' authority to offer language access services. The two courts to have considered the issue concluded that this provision does not prohibit agencies from offering language access services.¹⁶ California's official English law is "primarily a symbolic statement concerning the importance of preserving, protecting, and strengthening the English language."¹⁷

agency such as that of a city or county.

13. CAL. CONST. art.III, § 6(b).

14. *Id.* § 6(c).

15. *Id.* § 6(d).

16. *Gutierrez v. Mun. Court of the Se. Judicial Dists. Cnty. of Los Angeles*, 838 F.2d 1031, 1043 (9th Cir. 1988), *vacated as moot* by 490 U.S. 1016 (1989) (California's declaration that English is the state's official language could not be used to justify a rule prohibiting court employees from speaking Spanish on the job); *Levy v. Davis*, No. A098306, 2003 WL 157555, at *2 (Cal. Ct. App. Jan. 23, 2003) (unpublished opinion) (State Bar may voluntarily distribute consumer materials in languages other than English without violating the constitution's official language provision).

17. *Gutierrez*, 838 F.2d at 1043.

Thus, in the absence of implementing legislation, California's official English law does not prevent agencies from choosing to provide access to services and programs for LEP speakers, or from complying with federal or state laws that mandate language access.¹⁸

B. Can a local ordinance or charter provision require public business to be conducted only in English?

English-only laws—laws that prohibit the use of other languages in conducting public agency business—have been held to violate the First Amendment.¹⁹ Prohibiting public officials or employees from choosing to communicate in languages other than English violates the U.S. Constitution for two reasons.

- It “deprives limited- and non-English-speaking persons of access to information about the government when multilingual access may be available and may be necessary to ensure fair and effective delivery of governmental services to non-English-speaking persons.”²⁰
- It deprives “elected officials and public employees of the ability to communicate with their constituents and with the public.”²¹

18. *Levy*, 2003 WL 157555 at *4.

19. *Ruiz v. Hull*, 957 P.2d 984, 996 (Ariz. 1998) (Arizona's constitutional provision banning the use of languages other than English in providing government services violates the First Amendment rights of non-English speakers who are seeking access to government and unconstitutionally limits the political speech rights of government officials and public employees). The Ninth Circuit also invalidated the Arizona provision on First Amendment grounds, however, that decision was vacated by the U.S. Supreme Court to allow the Arizona Supreme Court to first rule on the construction of the statute, which proceeding ended with the *Ruiz* decision. See *Yniguez v. Arizonans for Official English*, 69 F.3d 920, 924 (9th Cir.1995) (en banc), *vacated as moot by Arizonans for Official English v. Arizona*, 520 U.S. 43 (1997) (same). See also *Gutierrez*, 838 F.3d at 1044 n.19 (noting that a strict ban on language access services could raise due process concerns and “other constitutional questions”). State courts have also found statutes prohibiting the use of languages other than English to violate state constitutions. See *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 206 (Alaska 2007); *In re Initiative Petition No. 366*, 46 P.3d 123 (Okla. 2002). Cf. *Alvarez v. Utah*, No. 000909680 (Dist. Ct. Mar. 5, 2001), available at <http://www.acluutah.org/alvarezruling.htm> (upholding Utah's official English measure, but clarifying that “government officials and employees are free to communicate with clients and constituents in any language”).

20. *Ruiz*, 957 P.2d at 998.

21. *Id.*

As discussed in the sections that follow, federal or state law often mandates language access. Such laws supersede local ordinances that attempt to prohibit the provision of public services in languages other than English.²²

C. If banning the use of other languages is unconstitutional, does this mean that LEP residents have a constitutional right to language access?

Courts have consistently rejected the notion that there is a constitutional right to language access.²³ Neither the U.S. Constitution's Equal Protection Clause nor the Civil Rights Act of 1964 requires municipalities to provide services in languages other than English.²⁴ Accordingly, the willingness to translate some information or to provide interpreters at some meetings cannot create an obligation to translate and interpret in every instance.²⁵ A public agency's decision whether or how often to provide language access services will be upheld so long as it is rationally related to a legitimate governmental purpose.²⁶

Intentionally denying access to public services or programs to those who speak a language other than English, however, can be a

22. See *infra* notes 28–182 and accompanying text.

23. See, e.g., *Guadalupe Org. Inc. v. Tempe Elementary School Dist. No. 3*, 587 F.2d 1022, 1027 (9th Cir. 1978) (no constitutional right to bilingual education), *disapproved on other grounds by Yniguez*, 69 F.3d at 946 n.31; *Carmona v. Sheffield*, 475 F.2d 738, 739 (9th Cir. 1973) (no constitutional right to employment notices in Spanish).

24. *Guerrero v. Carleson*, 512 P.2d 833, 839 (Cal. 1973) (holding that the Constitution's due process clause does not require that a notice of termination of welfare benefits be sent in Spanish, even if the welfare agency is aware that the recipient does not read or speak English). See also *Ruiz*, 957 P.2d at 1002 ("We do not hold, or even suggest, that any governmental entity in Arizona has a constitutional obligation to provide services in languages other than English."); *Alaskans for a Common Language*, 170 P.3d at 201 ("we are only considering the interest of the public in receiving speech when government employees exercise their right to utter such speech, and we do not create an independently enforceable public right to receive information in another language.").

25. See, e.g., *Guerrero*, 512 P.2d at 834 (declining to require provision of Spanish language forms despite admission that some other forms were printed in Spanish)

26. *Moua v. City of Chico*, 324 F. Supp. 2d 1132, 1139 (E.D. Cal. 2004) (City had no constitutional obligation to provide an interpreter when an initial police complaint was filed.).

form of unlawful discrimination.²⁷ Everyone has the right to be free from discrimination on the basis of race, ethnicity, or national origin.²⁸ A policy that intentionally singles out one language group by denying that group language access services which other groups receive could be challenged for violating these principles.²⁹ Alternatively, if an agency knows that it has an obligation to provide language access services under a federal or state statute and intentionally denies those services to a particular group, the agency's acts could be evidence of intentional and unlawful discrimination.³⁰

II. Federal Laws Requiring Language Access Services

Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.³¹ Executive Order No. 13,166, issued in 2000, interprets and enforces Title VI. According to that Order, denying LEP speakers access to federal programs because of their national origin is discriminatory and violates Title VI.³² The Order requires federal agencies and programs receiving federal financial assistance to take reasonable steps to ensure that LEP speakers have meaningful access to their programs and activities.

In 2002, the Department of Justice ("DOJ") issued a guidance document entitled *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* ("LEP Guidance"),³³ which

27. See, e.g., *Moua*, 324 F. Supp. 2d at 1137–38.

28. U.S. CONST. amend. XIV, § 1 (Equal Protection Clause of the Fourteenth Amendment prohibits governmental discrimination on the basis of an individual's race, ancestry, national origin, or ethnicity).

29. See, e.g., *Moua*, 324 F. Supp. 2d at 1137–38.

30. *Almendaras v. Palmer*, 284 F.Supp.2d 799, 808 (N.D. Ohio 2003) (holding that Spanish-speaking food stamp recipients' allegations that state agency knew recipients were being harmed by its failure to provide bilingual services, if true, supported an inference of intentional discrimination).

31. 42 U.S.C § 2000d (2006).

32. Executive Order No. 13,166, reprinted at 65 Fed. Reg. 50,121 (Aug. 16, 2001). The final version was published on June 18, 2002.

33. U.S. DEP'T OF JUSTICE, GUIDANCE TO FEDERAL FINANCIAL ASSISTANCE RECIPIENT REGARDING TITLE VI PROHIBITION AGAINST NATIONAL ORIGIN DISCRIMINATION AFFECTING LIMITED ENGLISH PROFICIENT PERSONS, 67 Fed. Reg. 41455 (June 18, 2002) [hereinafter DOJ], available at <http://www.gpo.gov/fdsys/pkg/FR-2002-06-18/pdf/02-15>

implemented Executive Order No. 13,166, as has each federal agency that provides federal financial assistance.³⁴ The LEP Guidance describes how recipients of federal funds can satisfy their obligation to provide access for LEP speakers to access their programs.³⁵

A. What is a “program or activity receiving federal financial assistance”?

For purposes of Title VI and Executive Order No. 13,166, a program receives federal funds if it receives any form of federal financial assistance, including grants, training, use of equipment, donations of surplus property.³⁶ If a recipient passes federal financial assistance on to another entity, Title VI’s requirements apply to that receiving entity as well.³⁷

If one part of an agency receives federal funds, Title VI’s requirements extend to *all* of the agency’s operations, including programs that do not directly receive federal funds.³⁸ Section 2000d-4a of Title VI defines a “program or activity” as all of the operations of a department, agency, special-purpose district, or other instrumentality of a state or of a local agency; or the entity of such state or local agency that distributes such assistance and each such department or agency (and each other state or local public entity) to which the assistance is extended, in the case of assistance to a state or local agency.³⁹

For example, if the Department of Housing and Urban Development (“HUD”) gives a recipient funding for a particular facility, all of the recipient’s programs are covered by Title VI, not

207.pdf.

34. LIMITED ENGLISH PROFICIENCY, *Federal Agency LEP Plans*, http://www.lep.gov/guidance/fed_plan_index.html (last visited Oct. 31, 2012).

35. *Id.*

36. U.S. Department of Housing and Urban Development, *Guidance to Federal Financial Assistance Recipient Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 72 Fed. Reg. 2732, 2738 (Jan. 22, 2007) [hereinafter “HUD”], *available at* http://www.lep.gov/guidance/HUD_guidance_Jan07.pdf.

37. DOJ, *supra* note 33, at 41459.

38. 42 U.S.C. § 2000d-4a.

39. *Id.* at §§ 2000d–2000d7.

just the operations having to do with the funded facility.⁴⁰ If, however, a granting agency decides to terminate a recipient's funding because reasonable language access services have not been provided, only funds directed to the program that is out of compliance will be affected.⁴¹

B. If an agency receives federal financial assistance, what does Title VI require it to do in order to provide meaningful access to LEP speakers?

Executive Order No. 13,166 requires recipients of federal funds to "take reasonable steps to ensure meaningful access to programs and activities" by LEP speakers.⁴² Every federal agency providing federal financial assistance has a guidance document explaining the obligation to provide language access services under its programs.⁴³ Each agency's guidance document must be consistent with the DOJ's LEP Guidance.⁴⁴

The DOJ's LEP Guidance provides a four factor test that can help an agency determine whether or not it must provide language access services, and if so which services it must provide. Those factors are:

- 1) How many limited English-proficient speakers does the program serve or encounter?
- 2) How often do limited English-proficient speakers come into contact with the program?
- 3) What kind of program, activity, or service does the agency provide and how important is it to people's lives?
- 4) How much will it cost to provide language access services and what resources are available to the program?

The following discussion focuses on the DOJ's LEP Guidance, with occasional examples drawn from different agencies' guides.

40. HUD, *supra* note 36, at 2740.

41. *Id.*

42. Executive Order, *supra* note 32, at section 1.

43. *Id.* at section 3. To access these documents, along with the text of relevant laws and a clearinghouse for information, tools and technical assistance visit "Limited English Proficiency: A Federal Interagency Website" (<http://www.lep.gov>).

44. *Id.*

C. The Four Factor Test

1. *How many LEP speakers does the program serve or encounter?*

The first step in deciding what language access services to provide is to determine how many of the people served by a program cannot communicate effectively in English, and what languages those people speak. The more LEP individuals there are who speak a particular language, the more an agency must do to provide language access services for that group.⁴⁵ Past experience can be a guide. An agency should first determine how often LEP residents have encountered the agency's program in the past, and what kinds of language services they have needed.⁴⁶

Next, the agency should look at the population in its service area, as the funding agency defines it.⁴⁷ What matters is the population that might walk in the door. Even if a city or county has relatively few LEP residents, if a particular office serves a neighborhood where an LEP population is concentrated, there may be an obligation to provide language access services in that particular office. The DOJ's LEP Guidance suggests several ways to find out about LEP speakers in an area:

- Look at demographic data from the U.S. Census.
- Look at data gathered by school districts.
- Consult with community organizations and state government resources.⁴⁸

In California, the publications *California Speaks* and *L.A. Speaks* provide a detailed analysis of language diversity and English proficiency in each legislative district and in Los Angeles County based on census data from 2000.⁴⁹ More current data may now be

45. DOJ, *supra* note 33, at 41459.

46. *Id.*

47. *Id.* Lacking such a definition, look to how state or local authorities define your service area. Of course, the service area itself cannot be defined in a way that discriminatorily excludes a particular population base.

48. *Id.*

49. ASIAN PACIFIC AM. LEGAL CTR. & ASIAN PACIFIC ISLANDER AM. HEALTH FORUM, CALIFORNIA SPEAKS: LANGUAGE DIVERSITY AND ENGLISH PROFICIENCY BY LEGISLATIVE DISTRICT (2009), available at http://www.apiahf.org/sites/default/files/APIAHF_Report05_

obtained from the 2010 U.S. Census.⁵⁰

2. *How often do LEP speakers come into contact with the program?*

The more often LEP speakers come into contact with a program, the greater the obligation to provide language access services.⁵¹ The DOJ's LEP Guidance contemplates that recipients of federal funds will accurately assess how frequently their programs encounter LEP speakers, and what languages they speak.⁵² Tracking the type of encounter involved—telephone, in person, email—can also be an important guide to the kind of language access services that will be most effective.

Intake procedures that record contacts with LEP speakers can accurately assess what language access services are necessary. For example, the California Department of Motor Vehicles ("DMV") uses a biennial survey to measure frequency of contact with LEP speakers.⁵³ DMV offices around the state conduct a two-week survey and record every customer's language.⁵⁴ If a non-English language shows up in more than 5% of customer interactions, the office will provide language access services for that language.⁵⁵

An agency will not be absolved of the obligation to expand services if a low frequency of contact is due to the failure to provide language access services in the past.⁵⁶ Agencies are thus advised to consider how the frequency of contact might increase once language barriers are removed.⁵⁷ Collecting data on when members of the public have been turned away due to a lack of available language

2009.pdf.; ASIAN PACIFIC AM. LEGAL CTR. & ASIAN PACIFIC ISLANDER AM. HEALTH FORUM, *LA SPEAKS: LANGUAGE DIVERSITY AND ENGLISH PROFICIENCY* BY LOS ANGELES COUNTY SERVICE PLANNING AREA (2008), available at <http://demographics.apalc.org/wp-content/uploads/2008/03/la-speaks-final-031908.pdf>.

50. U.S. CENSUS BUREAU REPORT (2010), <http://2010.census.gov/2010census/>.

51. *Id.*

52. DOJ, *supra* note 33, at 41459.

53. OFF. OF MANAGEMENT AND BUDGET, REPORT TO CONGRESS. ASSESSMENT OF THE TOTAL BENEFITS AND COSTS OF IMPLEMENTING EXECUTIVE ORDER NO. 13166: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY 25 (2002), available at <http://www.justice.gov/crt/about/cor/lep/omb-lepreport.pdf>.

54. *Id.*

55. *Id.*

56. DOJ, *supra* note 33, at 41460.

57. *Id.*

access services is also important for making adjustments in the future.

3. *What kind of program, activity, or service does the agency provide and how important is it to people's lives?*

The more important a service is to people's lives, the greater the obligation to provide language access services.⁵⁸ For programs with life or death implications—like disaster response or healthcare⁵⁹—the obligation is strongest. If people are compelled to participate in a program—like criminal proceedings or education—language access will likely also be viewed as critical.⁶⁰ Similarly, if an application procedure is needed in order to collect a benefit, language assistance services are important in order to ensure that LEP speakers have equal access to the benefit.

Each federal funding agency indicates in its guidance which activities or services it deems critical. The Corporation for National and Community Service ("CNCS"), for example, indicates that providing assistance with enrollment in public services and providing access to emergency or medical care are critical services.⁶¹ Providing equal access to critical services may require agencies to ensure that oral interpreters are immediately available, and agencies providing critical services should give serious consideration to hiring bilingual staff to ensure receipt of services.⁶² By contrast, services that are not so critical would include voluntary general public tours of a public facility.⁶³

4. *How much will it cost to provide language access services and what resources are available to the recipient agency's program?*

58. *Id.*

59. *Id.*

60. Ahmad, *supra* note 2, at 1008 ("Courtroom interpretation has emerged as a due process concern in criminal courts, and in other proceedings in which liberty interests are at stake."); see DOJ, *supra* note 33, at 41460.

61. Corporation for National and Community Service, Guidance to Federal Financial Assistance Recipient Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 203, 64608 (Oct. 21, 2002), available at <http://www.justice.gov/crt/about/cor/lep/CorpforNatlServ2002fin.php>.

62. *Id.*

63. *Id.*

Cost is an important factor in determining what types of language access services are reasonable for an agency. If a service's cost greatly outweighs the benefit to be gained, the recipient agency is not expected to provide that service.⁶⁴ The DOJ's LEP guidance and other agencies' guidance documents recognize that resources may be limited and that small agencies with limited budgets cannot be expected to provide the same level of service as larger agencies with larger budgets.⁶⁵

Agencies with limited resources are particularly encouraged to explore cost-saving technologies and resource-sharing arrangements in order to provide language access services. Funding agencies may be able to provide valuable information on cost-saving measures like resource sharing and use of the latest technology.⁶⁶ Each funding agency will also have suggestions in its Title VI policy guidance particularly tailored to the kind of services or programs a recipient agency provides.⁶⁷

Although cost is a legitimate factor to consider, the DOJ explains that "[r]ecipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns."⁶⁸ DOJ officials have gone to the extent of saying that "[e]ven in tough economic times, assertions of lack of resources will not provide carte blanche for failure to provide language access. Language access is essential and is not to be treated as a 'frill' when determining what to cut in a budget."⁶⁹

64. DOJ, *supra* note 33, at 41460.

65. *Id.*

66. Get information on service providers at http://www.lep.gov/interp_translation/trans_interpret.html and http://www.lep.gov/guidance/guidance_index.html (Funding agencies will also have suggestions contained in their respective Title VI policy guidance, which is more suited to the kind of services or programs the recipient agency provides). General information on service providers is available at http://www.lep.gov/interp_translation/trans_interpret.html.

67. See COMMUNICATING MORE FOR LESS: USING TRANSLATION AND INTERPRETATION TECHNOLOGY TO SERVE LIMITED ENGLISH PROFICIENT INDIVIDUALS, available at <http://www.migrationpolicy.org/pubs/LEP-translationtechnology.pdf> (more information regarding technology).

68. DOJ, *supra* note 33, at 41460.

69. Loretta King, Acting Assistant Attorney General, DOJ, Remarks at the Meeting of the Federal Interagency Working Group on Limited English Proficiency 8 (April 20, 2009) (transcript available at http://www.lep.gov/Kingremarks4_20_09.pdf). Ms. King's

If an agency claims funds for language services are unavailable due to other agency expenses, the agency will be expected to justify its spending priorities.⁷⁰ There is heightened concern for agencies serving a large LEP population. Such agencies are expected to document why costs are an impediment to providing language access, and such claims will need to be “well substantiated,” according to the DOJ’s LEP guidance.⁷¹

D. Does an agency need to prepare a formal plan assessing the need for language access services and identifying steps to be taken to meet that need?

The DOJ strongly recommends that recipients develop a written plan, called a Limited English Proficiency Plan (“LEP Plan”), for providing language access services.⁷² Many LEP Plans are available online and can provide ideas for best practices.⁷³ Generally, written plans can document compliance with the obligation to provide

remarks referred to a technical assistance letter sent Feb. 4, 2009, by the DOJ to the Indiana Court Administrator in response to that State Supreme Court’s ruling that LEP criminal defendants are not entitled to receive interpreters at the court’s expense unless they are indigent. The letter advised the court system that in order to comply with Title VI’s prohibition against national origin discrimination, courts receiving federal financial assistance must take reasonable steps to provide meaningful access for LEP individuals. This principle, which applies in both civil and criminal proceedings, means that oral language services must generally be offered free of cost. *Id.*

70. *Id.*

71. *Id.*

72. DOJ, *supra* note 33, at 41455.

73. City of Minneapolis LEP Plan available at http://www.ci.minneapolis.mn.us/policies/MplsLEP_Plan.pdf; Hennepin County LEP Plan available at <http://co.hennepin.mn.us/portal/site/HennepinUS/menuitem.b1ab75471750e40fa01dfb47ccf06498/?vgnnextoid=7c0b4f9a5a434210VgnVCM10000049114689RCRD>; City of Oakland LEP Plan available at http://www.mtc.ca.gov/get_involved/LEP/LEP_Plan.pdf; Butte County Association of Governments LEP Plan available at <http://www.bcag.org/documents/LEP%20Plan.pdf>; Livermore Amador Valley Transit Authority LEP Plan available at http://www.wheelsbus.com/administration/files/LAVTA_LEP_Plan_Final.pdf; Superior Court of California County of Napa LEP Plan available at <http://www.napa.courts.ca.gov/Documents/LEP%20Plan%2010.31.08.pdf>; Superior Court of Trinity County LEP Plan available at <http://www.trinity.courts.ca.gov/pdfs/LEP-Plan.pdf>; Superior Court of San Mateo County LEP Plan available at http://www.sanmateocourt.org/documents/general_info/limited_english_proficiency_plan.pdf; Superior Court of Los Angeles County LEP Plan available at <http://www.lasuperiorcourt.org/publicnotice/pdf/lep.pdf>.

meaningful access for LEP speakers.⁷⁴ A plan can also provide a framework for providing services, helping a program train staff, planning operations, and controlling costs.⁷⁵ Even a small agency can benefit by developing a plan, even if the plan simply informs staff how to contact a telephone translation service.⁷⁶

The DOJ's LEP Guidance stops short of requiring every recipient to develop a written plan, recognizing small agencies with limited staff and a focused mission may not benefit enough from a plan to justify the cost of developing it.⁷⁷ Other funding agencies, like the Department of Transportation ("DOT"), strongly suggest developing an LEP Plan regardless of an agency's size and resources.⁷⁸ The DOT emphasizes that "after completing the four-factor analysis and deciding what language assistance services are appropriate, a [DOT] recipient should develop an implementation plan to address the identified needs of the LEP populations it serves."⁷⁹ Although some DOT recipients, such as those "serving very few LEP persons or those with very limited resources, may choose not to develop a written LEP [P]lan," the underlying obligation to provide meaningful access still remains.⁸⁰ The DOT suggests that recipients who choose not to develop an LEP Plan "consider alternative ways to reasonably articulate a plan for providing meaningful access."⁸¹

E. If an agency encounters LEP speakers, what specific language access services must it provide?

The DOJ's LEP Guidance indicates that "recipients have substantial flexibility in determining the appropriate mix" of language services to provide in light of the four-factor test.⁸² If the

74. DOJ, *supra* note 33, at 41455.

75. *Id.*

76. *Id.*

77. *Id.*

78. Policy Guidance Concerning Recipients' Responsibilities to Limited English-Proficient (LEP) Persons, 70 Fed.Reg. 74,087 (Dec. 14, 2005), available at http://www.fta.dot.gov/laws/circulars/leg_reg_5956.html.

79. *Id.*

80. *Id.*

81. *Id.* at 74096.

82. DOJ, *supra* note 33, at 41461.

recipient agency only encounters LEP speakers sporadically, reasonable assistance can be as simple as using language cards (widely available on the web to identify a language the individual understands), and providing staff with access to a telephone interpreting service or a list of community groups that can provide informal interpreters.⁸³

Language access services fall into two categories: 1) translation of written documents, and 2) interpreting services. For interpreting services, agencies have a range of options including:

- hiring bilingual staff;
- hiring professional interpreters;
- contracting with interpreters for services as needed;
- recruiting volunteer interpreters;
- contracting for telephonic interpretation services; and
- arranging for local community groups to provide interpreters.⁸⁴

The overriding concern, regardless of the mix of services used, is the interpreter's competence in light of the type of services the agency's program provides.⁸⁵ For instance, hospital encounters or legal proceedings will involve interpreting technical terms and may have serious consequences, requiring a certified professional to interpret accurately. Less formal settings may not require a certified interpreter. If an individual prefers to use a family member, friend, or fellow inmate, he or she should be allowed to do so. However, in many instances such willing helpers may not be competent to interpret correctly and using them could also raise issues of privacy and confidentiality.⁸⁶

The DOJ provides clearer guidance on written translations by providing a "safe harbor."⁸⁷ To qualify for the safe harbor provision agencies must translate vital documents into a language if the

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.* at 41462.

87. *Id.* at 41464.

number of LEP speakers served by the agency who speak that language crosses a specific numerical threshold.⁸⁸ If the agency complies with the safe harbor provisions, it is considered “strong evidence of compliance with the recipient’s written-translation obligations.”⁸⁹

To take advantage of the safe harbor provision, an agency should first determine which of its documents are vital. This may be difficult. Not every document that is helpful in understanding a program is necessarily critical for ensuring meaningful access. To determine which documents are vital, look to the importance of the program or service and the consequences for the LEP community that would flow from a failure to translate.⁹⁰ Factors to consider might be:

- whether the document creates legally enforceable rights or responsibilities (examples include leases, rules of conduct, and notices of benefit denials).
- whether the document solicits important information required to establish or maintain eligibility to participate in a federally assisted program (examples include applications or certification forms).
- whether the document itself is a core benefit or service provided by the program.

Next, the agency should determine how many of the LEP speakers affected by the program are from a particular language group.⁹¹ The safe harbor provision requires translating all vital written documents into a language if that language is the primary language for more than 1000 LEP speakers eligible for or likely to be affected by the program, or if the language is the primary language for between 50 and 1000 eligible or affected LEP speakers and that number constitutes 5% of the total population the program affects.⁹²

If the program affects less than fifty LEP speakers from a

88. *Id.*

89. *Id.* at 41463.

90. *Id.*

91. *Id.*

92. *Id.* at 41464–41471.

particular language group, however, there is no obligation to translate documents into that language.⁹³

For documents that are not vital or for language groups that do not meet the numerical threshold, it is sufficient to provide written notice in that group's primary language that LEP speakers have the right to have an interpreter read the document to them.⁹⁴ Again, competence of the translation is critical for assessing compliance. Although it is not mandatory, it is preferable that professional translators be used, especially for important or sensitive documents.⁹⁵

The mandate is simply to provide meaningful access. For example, instead of translating application forms, an agency may decide to ask for the information being sought in the forms orally. As an example, a number of state unemployment insurance programs have transitioned from paper-based application and certification forms to telephone-based systems.⁹⁶ Also, some languages—like Hmong—are oral rather than written.⁹⁷ If many LEP speakers will likely be unable to read translated documents or written instructions, providing interpreters may be a more effective way to communicate.

F. What are the consequences if an agency fails to comply when federal law requires provision of language access services?

Individuals cannot sue to enforce Title VI unless they can prove intentional discrimination.⁹⁸ LEP speakers can, however, complain to the federal funding agency if the recipient agency does not provide meaningful access to services and programs.⁹⁹ Federal agencies can initiate an investigation of the recipient agency based upon an individual's complaint or investigate on their own initiative.¹⁰⁰ As of 2010, the DOJ has increased its efforts to ensure

93. *Id.* at 41464.

94. *Id.*

95. *Id.*

96. *Id.* at 41456.

97. *Id.*

98. *Alexander v. Sandoval*, 532 U.S. 275, 285–86 (2001).

99. *Id.* at 289–90.

100. 42 U.S.C. §2000d-1 (2006).

Title VI compliance in the area of language access by opening numerous investigations.¹⁰¹

After attempting to resolve an issue through voluntary and cooperative efforts, the agency granting funds may submit the matter for an administrative hearing and move to cut off funding, or may sue to achieve compliance.¹⁰² Some investigations, initiated as civil rights complaints, have led to cooperative agreements between the DOJ and local agencies, formalized as memoranda of understanding between the parties.¹⁰³ These agreements generally include timelines to implement language access policies, describe when and how language access will be offered, and how staff will be trained to provide access.¹⁰⁴ The agreements also include multiyear reporting requirements which allow the DOJ to monitor progress.¹⁰⁵

III. California Laws Requiring Language Access Services

Two California laws require local agencies to provide language access services. First, the California Civil Rights Act prohibits discrimination by agencies that receive state funds and requires them to provide equal access to benefits without regard to the beneficiary's race, color, national origin, or ethnic group identification among other classifications.¹⁰⁶ Second, the Dymally-

101. King, *supra* note 69.

102. 42 U.S.C. §2000d-1; *see also* Guardians Ass'n v. Civil Serv. Comm'n, 463 U.S. 582, 603 n.24 (1983) (noting that "the Federal Government can always sue any recipient who fails to comply with the terms of the grant agreement" under Title VI) (opinion of White, J.).

103. *See, e.g.*, Memorandum of Understanding between the United States of America and Palm Beach County Sheriff's Office, DOJ #171-18-17 (2010); Memorandum of Understanding between the United States of America and State of Maine Judicial Branch, DOJ #171-34-8 (2008), *available at* <http://www.lep.gov/PalmBeachSheriffMOA.pdf>; Memorandum of Understanding between the United States of America and Town of Mattawa, Washington & Town of Mattawa Police Department, DOJ #171-81-2; 171-81-3 (2008); Memorandum of Understanding between the United States of America and Lake Worth Florida Police Department, DOJ #171-18-16 (2007).

104. *Id.*

105. *Id.*

106. CAL. GOV'T CODE §11135(a) (West Supp. 2012) prohibits discrimination based on race, national origin, ethnic group identification or color, religion, age, sex, or disability by "any program or activity that is conducted, operated or administered by the

Alatorre Bilingual Services Act (“Bilingual Services Act”)¹⁰⁷ requires local agencies to provide language access services to LEP speakers.

A. When does a local agency’s failure to provide language access services constitute a form of illegal discrimination?

Failing to provide language access services may be a form of illegal discrimination. If a local agency receives state funds,¹⁰⁸ it must “take appropriate steps to ensure that alternative communication services are available to ultimate beneficiaries.”¹⁰⁹ An agency can meet this obligation by providing interpreter services, hiring multilingual employees, providing written translations of documents, or otherwise providing access.¹¹⁰ A recipient can be relieved of the obligation to provide language access services if the state agency providing funds determines it would produce an undue hardship on the recipient.¹¹¹

Failing to provide language access services may have serious consequences. Individuals who are denied access may sue for injunctive relief or for damages if they have been harmed.¹¹² State funding agencies may also take remedial action by:

state or any state agency directly or receives any financial assistance from the state.” California Code of Regulations Title 22 section 98210(b) defines the term “ethnic group identification” to mean “the possession of the racial, cultural or linguistic characteristics common to a racial, cultural, or ethnic group or the country or ethnic group from which the person or his or her forebears originated.”

107. CAL. GOV’T CODE § 7290 *ff.*

108. A local agency is considered a recipient of state funds if it employs more than five people and receives more than a total of \$10,000 in state support in a year, or more than \$1,000 in a single transaction.

109. CAL. CODE REGS. tit. 22, §§ 98210, 98211(c) (2012).

110. *Id.*

111. *Id.*

112. *See* Greater Los Angeles Council on Deafness, Inc. v. Zolin, 812 F.2d 1103, 1113–14 (9th Cir. 1987); *but see* Blumhorst v. Jewish Family Svcs. of Los Angeles, 126 Cal. App. 4th 993, 1002 (2005) (standing to file private right of action requires “a plaintiff to allege he or she was personally damaged.”); Mata v. Shultz, No. A112301, 2007 WL 1811242, at *4 (Cal. Ct. App. June 25, 2007) (where interpreter was provided to plaintiff free of charge by a nonprofit group, and services were only delayed by a matter of weeks, plaintiff failed to show harm sufficient to provide standing to sue state agency for failure to provide language access).

- seeking voluntary cooperation from local agencies,
- conducting administrative hearings,¹¹³ and
- cutting off state funding if compliance cannot be achieved.¹¹⁴

B. What does an agency need to know about the Bilingual Services Act?

An agency must know that the Bilingual Services Act applies to any “county, city, whether general law or chartered, city and county, town . . . municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.”¹¹⁵ However, school districts, county boards of education, and the office of a county superintendent of schools are exempt because they are not considered local agencies for purposes of the Bilingual Services Act.¹¹⁶

Removing language barriers that would otherwise prevent LEP speakers from accessing state and local programs and services to which they are entitled is the aim of the Bilingual Services Act.¹¹⁷ Despite this good intention, LEP residents in California may not be receiving the language services to which they are entitled. The state auditor has expressed concern that agencies may be unaware of the BSA and therefore do not have formal policies for providing language access services to address their clients’ needs for language services.¹¹⁸

C. When does the Bilingual Services Act require an agency to provide language access services?

Local agencies must provide language access services when they serve a substantial number of non-English speakers. If a local agency serves a substantial number of non-English speakers, the

113. CAL. CODE REGS. tit. 22, § 98360 (2012).

114. *Id.* § 98370 (2012).

115. CAL. GOV’T CODE § 54951 (2008).

116. CAL. GOV’T CODE § 7298 (2008).

117. *See* CAL. GOV’T CODE §§ 7290 (clarifying other names known and cited as the Dymally-Alatorre Bilingual Services Act), 7291 (2008) (explaining the intentions of the California Legislature in adopting a bilingual services regulatory scheme).

118. Bureau of State Audits, California State Auditor, California State Auditor Report 2010-106: Dymally-Alatorre Bilingual Services Act, 3 (Nov. 2010).

agency must either employ¹¹⁹ enough qualified bilingual speakers in public contact positions or employ enough interpreters to ensure LEP speakers are provided with benefits and services,¹²⁰ translate materials explaining the services available to the public into any non-English language spoken by a substantial number of non-English-speaking people, and provide notice in the non-English languages that translations are available.¹²¹

Although the BSA emphasizes that non-English speakers should have access to public benefits and public services, the BSA does not require all public business to be conducted in multiple languages. Local agencies have considerable discretion in implementing language access services.¹²² Each local agency, for example, determines for itself:

- whether it serves a substantial number of non-English speaking people;¹²³
- how many bilingual people in contact positions or interpreters it will take to ensure provision of services and information to non-English speakers;¹²⁴ and
- whether translated materials are necessary.¹²⁵

The Bilingual Services Act prohibits local agencies from dismissing an employee in order to hire bilingual speakers in public contact positions.¹²⁶ Implementation of the Bilingual Services Act's provisions must be achieved "by filling employee public contact positions made vacant by retirement or normal attrition."¹²⁷ Any steps taken to implement language access must be permissible under federal law and consistent with applicable provisions of the civil

119. CAL. GOV'T CODE § 7293 (2008).

120. *Id.*

121. CAL. GOV'T CODE § 7295 (2008).

122. *See* Bureau of State Audits, California State Auditor Report 2010-701, Recommendations for Legislative Consideration from Audits Issued During 2009 and 2010, 11, (Dec. 2010).

123. CAL. GOV'T CODE § 7293.

124. *Id.* § 7297 (West 2008).

125. *Id.* § 7295.

126. *Id.* at § 7294 (West 2008).

127. *Id.*

service law.¹²⁸ Finally, the obligation to implement language access services arises only if funds are available.¹²⁹

1. *According to the Bilingual Services Act, how can an agency determine whether it “serves a substantial number of non-English-speaking people”?*

Local agencies have discretion to determine whether the agency serves a “substantial number of non-English-speaking people.”¹³⁰ For guidance in exercising this discretion, local agencies might look to the Bilingual Services Act’s requirements for state agencies. State agencies serve a substantial number of non-English-speakers if 5% of the people they serve belong to a group that does not speak English or cannot communicate effectively in English because it is not their native language.¹³¹ Of course, nothing prevents an agency from providing language access services to groups who do not meet this 5% threshold.¹³²

2. *According to the Bilingual Services Act, how can a local agency determine whether it should translate materials into other languages?*

The Bilingual Services Act leaves the decision of whether to translate materials into other languages to the local agency’s discretion. For guidance in exercising this discretion, a local agency might look to the requirements provided for state agencies. If a state agency serves a substantial number of non-English speakers, it must either translate or offer translation services for any documents that:

- solicit information from an individual,
- provide information to an individual, or
- affect an individual’s rights, duties or privileges with regard to the agency’s services.¹³³

128. *Id.* at § 7299 (West 2008).

129. *Id.*

130. *Id.* at § 7293.

131. *Id.* at § 7296.2 (West 2008).

132. *Id.* at § 7299.8 (West 2008).

133. *Id.* §§ 7295.2, 7295.4 (West Supp. 2012, West 2008).

3. *Must an agency conduct all of its business in multiple languages? For example, does an agency always need to have interpreters at public hearings or board or council meetings?*

The Bilingual Services Act emphasizes that non-English speakers should have access to public benefits and public services.¹³⁴ The Legislature's concern in passing this law, however, was broader: "The effective maintenance and development of a free and democratic society depends on the right and ability of its citizens and residents to communicate with their government and the right and ability of the government to communicate with them."¹³⁵ To that end, the Legislature created an obligation to provide language access not just for agencies providing direct services and benefits, but for every type of local agency except school districts.¹³⁶

All local agencies must "ensure provision of information and services in the language of the non-English-speaking person," where contact is made with a substantial number of non-English-speaking people.¹³⁷ Furnishing information and rendering services are defined broadly and "includes, but is not limited to, providing public safety, protection, or prevention, administering state benefits, implementing public programs, managing public resources or facilities, holding public hearings, and engaging in any other state program or activity that involves public contact."¹³⁸

While this subsection mentions specific state programs or activities, the definition applies to the entire chapter, including the sections defining local agencies' obligations.¹³⁹ The difference is that local agencies retain discretion to determine what constitutes a substantial number of non-English-speaking people, and what constitutes a sufficient number of bilingual staff.¹⁴⁰

134. *Id.* at § 7291.

135. *Id.*

136. *Id.* at § 7298 (West 2008).

137. *Id.* at § 7292(b) (West 2008).

138. *Id.*

139. *Id.* at § 7293.

140. *Id.*

IV. Public Participation Requirements and Language Access

Many state and federal laws require enhanced public participation for particular programs or activities. State agencies may also have internal regulations that require or encourage provision of language access to facilitate public participation.¹⁴¹ For example, the California Natural Resources Agency, which oversees the Environmental Quality Act (“CEQA”), deems public participation and comment during any environmental review process an “essential part of the CEQA process.”¹⁴²

The CEQA regulations do not mention language access; however, providing language access in some circumstances may be the only way to facilitate public participation. A community group in Kettleman City, for example, successfully sued Kings County to prevent the construction of a waste disposal facility in an area of a 40% Latino, LEP population.¹⁴³ The community group opposed the project, citing health hazards.¹⁴⁴ They claimed that their ability to participate in the CEQA review process was hampered because the county failed to provide translations of documents, and then refused to allow residents and their interpreters sufficient time and opportunity to speak at the public hearings.¹⁴⁵ In ruling for the community groups, a California judge stated that “[the residents’] meaningful involvement in the CEQA review process was effectively precluded by the absence of the Spanish translation.”¹⁴⁶

141. See, e.g., DEPARTMENT OF TOXIC SUBSTANCES CONTROL, PUBLIC PARTICIPATION MANUAL 55 (2001), available at <http://www.dtsc.ca.gov/LawsRegsPolicies/Policies/PPP/PublicParticipationManual.cfm> (last visited Nov. 13, 2010) (noting that public notices should be provided in languages other than English where non-English speaking residents might be affected); *Id.* at 84–85 (encouraging the use of interpreters at public hearings when requested).

142. CAL. CODE REGS. tit. 14, § 15201 (2012).

143. See Luke Cole, *The Struggle of Kettleman City: Lessons for the Movement*, 5 MD. J. CONTEMP. LEGAL ISSUES 67, 75–77 (1994).

144. *Id.*

145. *El Pueblo Para el Aire y Agua Limpio v. Cnty of Kings*, 22 Env. L. Rptr. 20357, 20358 (Cal. Super. Ct. 1991).

146. *Id.*

V. Selected Local Language Access Policies

Three California cities—Oakland, San Francisco, and Monterey Park—have supplemented the Bilingual Services Act’s enforcement provisions by implementing language access ordinances.¹⁴⁷ Other U.S. cities have also implemented language access ordinances to complement or supplement federal state language access policies.¹⁴⁸

Below is a survey of language access policies found nationwide, in order of adoption, which highlights each policy’s notable features. The survey provides local elected officials a glimpse of the range of practices that other local entities have implemented to address the needs of LEP residents.

A. Oakland, Cal. - City of Oakland Ordinance No. 12324: Equal Access to Services Ordinance Adopted April 26, 2001

The City of Oakland was the first city in the U.S. to implement a language access ordinance.¹⁴⁹ Oakland’s ordinance code number 12324, known as the “Equal Access to Services Ordinance,” is modeled on San Francisco’s “Equal Access to Services Ordinance” (San Francisco drafted its ordinance first, but Oakland was the first to implement it). “Two immigrant members of the Oakland City Council, Ignacio de la Fuente and Danny Wan, heard about [San Francisco’s effort] and took a personal interest in providing language access protections for their constituents.”¹⁵⁰ Advocates in both cities found it helpful to educate local authorities about existing federal and California law, to demonstrate that a local ordinance would supplement the efforts of other levels of government.¹⁵¹

Oakland incorporated the wording of California’s Bilingual Services Act, but the ordinance’s drafters took the responsibility

147. Migration Policy Institute, Nat’l Center on Immigrant Integration Policy, Language Portal, Language Access Policies at the State and Local Level, http://www.migrationinformation.org/integration/language_portal/doc4.cfm.

148. *Id.*

149. *Equal Access*, CITY OF OAKLAND, CALIFORNIA, <http://www2.oaklandnet.com/Government/o/HumanResources/o/EqualAccess/index.htm> (last visited Oct. 13, 2012).

150. National Immigration Law Center, *Issue Brief: Access to Services for Limited English Proficient Persons* 7 (Aug. 7, 2003) [hereinafter NILC], available at http://www.migrationinformation.org/integration/language_portal/files/NILC.pdf.

151. *Id.*

further by providing guidance as to definitions, evaluation, implementation, and compliance. For example, a “substantial number of Limited English-Speaking Persons Group” is specifically defined as “at least 10,000 limited English-speaking city residents who speak a shared language other than English.”¹⁵² Oakland’s city planning department must also determine whether a group meets the threshold on an annual basis based on U.S. Census data.¹⁵³

Oakland’s ordinance eased implementation difficulties by implementing the services in two phases and dividing the departments required to hire bilingual employees into two tiers.¹⁵⁴ By listing the specific agencies required to provide language access, Oakland reduces doubt and confusion as to which agencies must participate.¹⁵⁵ There is also a single individual, the city manager, charged with determining the adequacy of services upon review of each department’s annual compliance plan, enforcing the provisions of the ordinance, and ensuring that each department complies.¹⁵⁶ The ordinance requires oral interpretation at public meetings and hearings if requested at least forty-eight hours in advance and specifies which documents must be translated for the public.¹⁵⁷

B. San Francisco, Cal. - City and County of San Francisco Ordinance No. 126-01: Equal Access to Services Ordinance Adopted June 15, 2001

Community advocates were also instrumental to the passage of the City of San Francisco’s ordinance number 126-01, known as the “Equal Access to Services Ordinance.”¹⁵⁸ Advocates formed a coalition composed of immigrant groups, policy advocates, and legal services organizations to promote the ordinance.¹⁵⁹ San Francisco’s Board of Supervisors approved the ordinance “which, in effect,

152. OAKLAND, CAL., MUN. CODE, § 2.30.020(d) (2001), available at <http://library.municode.com/index.aspx?clientId=16308>.

153. *Id.*

154. *Id.* at §§ 2.30.020(h)-(l), 2.30.040.

155. *Id.* at § 2.30.020(a), (k), (l).

156. *Id.* at § 2.30.150 (2001).

157. *Id.* at §§ 2.30.070, 2.30.050(b), (c) (2001).

158. NILC, *supra* note 150.

159. *Id.*

'implements and supplements' the Bilingual Services Act."¹⁶⁰

San Francisco's ordinance requires all city departments to "provide information and services to the public in each language spoken by a Substantial Number of Limited English-Speaking Persons or to the public served by a Covered Department Facility in each language spoken by a Concentrated Number of Limited English-Speaking Persons."¹⁶¹ A "concentrated number of limited English-proficient persons" is "5 percent of the population of the district in which a Covered Department Facility is located or 5 percent of those persons who use their [sic] services provided by the Covered Department Facility."¹⁶² A "substantial number of limited English-proficient persons" is "either 10,000 city residents or 5 percent of those persons who use the department's services."¹⁶³

Like Oakland's ordinance, San Francisco's gives local departments a range of options, including conducting annual language needs assessments through surveys, using written and oral language services including oral interpretation at public meetings and hearings, developing annual compliance plans, and allowing persons to file complaints alleging violations of the ordinance.¹⁶⁴

C. Philadelphia, Penn. - City of Philadelphia Executive Order No. 4-01 Adopted September 29, 2001 and Executive Order No. 09-08 Adopted June 9, 2008

The City of Philadelphia implemented its language access ordinances in two steps. Philadelphia's Executive Order ("Order") No. 4-01 was a reaction to the 2000 Federal Order.¹⁶⁵ Philadelphia acknowledged its immigrant population was growing and indicated that its immigrant residents played an important role in the city.¹⁶⁶ With this initial step, Philadelphia sought to "reduce language

160. City and County of San Francisco, Legislative Analyst Report – Bilingual Police Services File No. 011550, 2 (Oct. 26, 2001).

161. S. F., CAL., ADMIN. CODE § 91.2(j) (2009), available at [http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$sync=1](http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1).

162. *Id.*

163. *Id.*

164. *Id.* §§ 91.2(j)(1), 91.4, 91.6, and 91.8.

165. Phila., Pa., Exec. Order No. 4-01 (2001).

166. *Id.* § 1.

barriers . . . preventing its residents with limited English proficiency from meaningfully accessing federally funded city services that are available to *all* Philadelphians.”¹⁶⁷

Philadelphia’s first Order required “all City departments, boards and commissions . . . [to] take reasonable steps to provide meaningful access to their federally funded programs and activities for persons with limited English proficiency.”¹⁶⁸ These first steps included: assessments of programs and activities that received federal funding to determine how and to what extent their LEP residents were prevented from accessing programs and to determine the level of economic resources required to address the needs of the LEP residents those programs or activities served, and use of the assessments to develop compliance plans detailing the steps departments would take to ensure that LEP persons could effectively participate in and benefit from federally assisted programs and activities.¹⁶⁹

Later, Philadelphia replaced its first Order with a more comprehensive policy – Executive Order No. 9-08 – entitled “Access to City Programs and Activities for Individuals with Limited English Proficiency.”¹⁷⁰ The new Order outlined Philadelphia’s evolution “into a regional center of cultural diversity” and the steps leading to its provision of language access services.¹⁷¹ Although the Order originated as a reaction to federal legislation, all city agencies are now required to provide various forms of language access regardless of whether they receive federal funding.¹⁷²

D. Minneapolis, Minn. - City of Minneapolis Resolution 2003-R547: Approving the Creation of a LEP Plan Adopted November, 2003

The City of Minneapolis was also motivated to implement an ordinance in reaction to the DOJ’s issuing guidelines regarding

167. *Id.*

168. *Id.*

169. *Id.* at § 1(a)(b).

170. *See generally* Phila., PA., Exec. Order No. 9-08 (2008).

171. *Id.*

172. *Id.* §1.

compliance with Title VI and to better integrate the increasing foreign-born population.¹⁷³ In August 2000 Minneapolis's Interdepartmental New Arrivals Work Group issued a report entitled "Welcoming New Arrivals to Minneapolis: Issues and Recommendations."¹⁷⁴ In response to a question in the report about what staff had done to overcome language barriers, the most common response (47%) was "Use client's friends/family members as interpreters." To make further progress on the area of language access, the city resolved to:

- provide quick, convenient, and effective interpreting and translation services;
- train staff on culture and language;
- identify and develop relationships with individuals and organizations in new arrival communities;
- hire more bilingual and bicultural staff.¹⁷⁵

Minneapolis also resolved to have key departments "work together to train all city staff that have contact with LEP persons in how to provide meaningful language access."¹⁷⁶ Meaningful access includes "measures such as: creating, monitoring, and updating an LEP [P]lan; identifying and tracking language preferences of people using or potentially using city services; interpreting by interpreters with proven competency, provided by the city; translating of vital written documents, provided by the city; providing notice to LEP persons of the free services available; and training staff in language access issues and procedures."¹⁷⁷

By including LEP persons in creating the language services compliance plans, Minneapolis demonstrated its commitment to creating a comprehensive plan that included all constituents in its community.¹⁷⁸ Minneapolis is strongly committed to making city

173. Minneapolis, Minn., Resolution of the City of Minneapolis (2003) ("Approving the Creation of a Limited English Proficient (LEP) Plan for the City of Minneapolis.").

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. Minneapolis, Minn., *LEP Policy*, available at <http://www.minneapolismn.gov/>

services and information about those services available to everyone, regardless of language barriers.¹⁷⁹ This commitment stems from overall city goals of responsive public agencies, community engagement, and customer service.

“As residents, workers or visitors who contribute to city life, people with limited English proficiency (LEP) are entitled to fair and equal access to service.”¹⁸⁰ After months of “planning, consultation and review of legal mandates and LEP [P]lans created by other cities and counties,” in November 2004, Minneapolis introduced its LEP Plan “to give specific direction to staff about how to make city services accessible to those who speak limited English.”¹⁸¹

E. Monterey Park, Cal. - City of Monterey Park Administrative Policy 10-35: Multilingual City Services Adopted December 18, 2003

The City of Monterey Park did not base its ordinance on California law nor was it a reaction to federal law.¹⁸² Instead, Monterey Park has implemented innovative measures to ensure that its remarkably diverse residents have adequate language access.¹⁸³

To ensure city services and civic engagement are accessible regardless of English proficiency, Monterey Park implements inexpensive yet effective practices to provide language access services. For example, to provide translation of documents and correspondence, Policy 10-35 provides:

A Volunteer Translators and Interpreters Program will be maintained to assist with the translation of various city brochures, applications, and press releases into appropriate

policies/policies_lep_policy (last visited Oct. 10, 2012).

179. *Id.*

180. *Id.*

181. Minneapolis, Minn., *Minneapolis in Any Language: Policies and Procedures to Ensure Equal Access to City Services for People with Limited English Proficiency*, (Nov. 2004) available at http://www.minneapolismn.gov/www/groups/public/@clerk/documents/webcontent/conv_263025.pdf (last visited Oct. 10, 2012).

182. NILC, *supra* note 150.

183. The city has one of the few Asian majorities in the U.S. and within that Asian majority there is incredible diversity according to the Monterey Park’s Administrative Policy No. 10-35.

languages. This program will consist of residents, business operators and other interested individuals who are certified as bilingual to ensure their competency in translating complex documents.

Depending on the timing, complexity and availability of the Volunteer Translator and Interpreters Program volunteers, the city shall contract for services of local businesses that provide translation and typesetting services in languages other than English for use in translating and printing city materials, press releases and brochures that will supplement the effort to communicate governmental services and programs.¹⁸⁴

Monterey Park also takes the following steps:

- Provides a “Language Identification Card” that allows individuals to identify their native tongue that is available at all public counters and issued to all field personnel.
- Takes additional steps to distribute the “Language Identification Cards,” including mailing one to each city household as an insert in the water bill on a biennial basis and sending the cards as part of the new resident packages¹⁸⁵
- Makes public building signage as universally understandable as possible including using international symbols on all restrooms at public facilities, and placing identifying signs (for example, those labeling agency departments over counters, such as building, human resources, etc.) in dominant languages (for Monterey Park, Chinese and Spanish) as well as English.¹⁸⁶

184. *Id.*

185. *Id.*

186. *Id.*

F. New York, N.Y. - City of New York Local Law 73: Equal Access to Human Services Adopted December 22, 2003 and City of New York Executive Order No. 120: Citywide Policy on Language Access to Ensure the Effective Delivery of City Services Adopted July 22, 2008

The City of New York adopted its “Equal Access to Human Services Act of 2003” to comply with Title VI.¹⁸⁷ New York requires its agencies to provide various interpretation and translation services promptly “by ensuring that limited English-proficient speakers do not have to wait unreasonably longer to receive assistance than individuals who do not require language assistance services.”¹⁸⁸ In July 2008, Mayor Bloomberg implemented a new policy to improve existing language access services.¹⁸⁹ The Mayor ordered that all city agencies develop plans based on the guidance provided by the DOJ in 2002.¹⁹⁰ Unlike other cities, New York requires its agencies to “provide services in languages based on at least the top six LEP languages spoken by the population of New York City.”¹⁹¹

G. Seattle, Wash. - City of Seattle Executive Order 01-07: City-Wide Translation and Interpretation Policy Adopted January 31, 2007

The City of Seattle does not describe its ordinance as a reaction to federal or state law.¹⁹² It is a short and simple ordinance that “seeks to make government services and resources easily available and understandable to all Seattle residents, including non-native English speakers.”¹⁹³ Executive Order 01-07 emphasizes services based on community engagement. Departments must:

- translate documents when conducting major projects in

187. *See generally* N.Y.C., N.Y., ADMIN. CODE ch. 10 (2012).

188. *Id.* at § 8-1003(b) (2012).

189. N.Y.C., N.Y., Exec. Order No. 120 (2008).

190. *Id.* § 2(b).

191. *Id.*

192. *See generally* SEATTLE, WASH., EXEC. ORDER No. 01-07.

193. SEATTLE, WASH., EXEC. ORDER No. 01-07.

neighborhoods where 5% or more of the population consists of a specific language group.¹⁹⁴

- provide interpreters in these languages at neighborhood specific events conducted by city departments.¹⁹⁵
- make every effort to provide interpreters at community meetings organized by the city.¹⁹⁶

To ensure residents obtain qualified interpretation and translation services, Seattle manages its own Language Bank that contains contact information for certified interpreters under contract with the city.¹⁹⁷ All departments must use the City Language Bank to locate interpreters and/or telephone service providers to assist and inform residents about city services.¹⁹⁸ Seattle also provides information about services and other community information in thirty languages throughout the Seattle.Gov website.¹⁹⁹

VI. Steps Toward Providing Language Access

The Bureau of State Audits has compiled two reports assessing state and local compliance with the Bilingual Standards Act.²⁰⁰ Based on these reviews, the Bureau has identified a number of steps to ensure client needs for bilingual services are identified and addressed adequately.²⁰¹ First, use formal procedures to identify languages clients speak and assess the sufficiency of existing bilingual resources regularly.²⁰² Second, translate materials explaining services into languages spoken by a substantial number of LEP clients.²⁰³ Third, develop policies that clarify local agencies'

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *Non-English Language Available on Seattle.Gov*, SEATTLE.GOV, <http://www.seattle.gov/html/citizen/language.htm> (last visited Oct. 13, 2012).

200. CALIFORNIA STATE AUDITOR REPORT 2010-106, 44, *available at* <http://www.bsa.ca.gov/pdfs/reports/2010-106.pdf>.

201. *Id.*

202. *Id.*

203. *Id.*

responsibilities for providing bilingual services.²⁰⁴ Fourth, ensure that local departments are aware of existing bilingual services resources and encourage local departments to consider using state contracts to obtain bilingual services whenever doing so is cost-effective.²⁰⁵

In addition to the Bureau of State Audits's advice, the Institute for Local Government recommends that agencies take the following steps in order to ensure compliance.²⁰⁶ To ensure strong language access coordination and accountability, agencies should: ensure that local departments are aware of existing language access services and resources; appoint a coordinator or, in large agencies, a working group of individuals from different components to monitor or update the agency's response to the needs of LEP service users; consider developing policies that clarify agencies' responsibilities for providing language access services; monitor agency compliance to ensure staff cooperation and accountability; and conduct regular trainings on access to ensure that all staff is aware of the agency's policies, especially those who frequently encounter the public.

In order to conduct effective needs assessment, agencies should: Survey clients and chart their needs; track encounters with LEP service users; obtain service-user feedback via surveys or other methods; use the information obtained to target language access efforts to priority services and locations; use formal procedures regularly to identify the languages that residents speak and to assess the sufficiency of their language access resources to meet their needs; and consider establishing complaint processes through which the public can report the absence of language access services or resources.

To ensure reliable access to disaster and emergency preparedness information, disaster and emergency preparedness should always be a priority focus for language access efforts.

To ensure that they are able to use and maximize existing resources, agencies should: leverage existing contracts with other departments through such programs as the California Multiple

204. *Id.*

205. *Id.*

206. INSTITUTE FOR LOCAL SELF GOVERNMENT, *Language Access Laws and Legal Issues: A Local Official's Guide* (Institute for Local Government (2011) at 23.

Award Schedules ("CMAS")²⁰⁷ and share resources within and across agencies, for example, by forming regional and interagency partnerships.

Agencies should use bilingual employees effectively and appropriately and avoid assumptions about competence and willingness of bilingual staff to provide language services. Once an agency has identified competent and willing bilingual staff, ensure that they are strategically posted. Agencies should also leverage community-based organizations for interpretation and translation assistance, provided that quality control procedures are used.

Web pages can be a helpful, less intrusive tool to provide information about services and programs available to LEP service users. Allowing LEP service users to obtain information via the internet can ease fears of immigrant residents who may not feel comfortable seeking services in person. Non-English-language web pages should be easy to locate and navigate. These web pages should serve as "one-stop shops" for agency information. Web pages should be available in as many languages as possible, especially in languages a substantial number of residents in the community speak. Translations through web-based services may be inaccurate; web pages translated professionally or written in the language initially may be more helpful.

To ensure consistent enforcement of quality control standards, agencies should: follow the suggestions above related to ensuring competence of bilingual staff, interpreters, and translators, accuracy of web-based information and translations in non-English languages, and reliance on service-user feedback; avoid ad hoc approaches when engaging LEP service users by ensuring staff familiarity with an agency's limited English proficient plan; and

207. BUREAU OF STATE AUDITS, CALIFORNIA STATE AUDITOR, CALIFORNIA STATE AUDITOR REPORT 2010-106: DYMALLY-ALATORRE BILINGUAL SERVICES ACT, at 2 (Nov. 2010), *available at* <http://www.bsa.ca.gov/pdfs/reports/2010-106.pdf> (last visited Oct. 10, 2012) (The Bureau of State Audits found that a CMAS vendor provided translating services for half of the price charged by contractors hired by two separate agencies. "If these agencies purchase these services up to their maximum contracted amounts, they will collectively end up paying approximately \$47,400 more than if they purchased these services from the CMAS vendor." Two other agencies split contracts by entering into multiple service orders with single vendors to provide the same type of bilingual services. Thus, these agencies violated the [s]tate's contracting rules by not combining the services into one job and obtaining competitive bids.").

avoid relying on an LEP individual's family and/or friends for interpretation and translation, whether on an ad hoc basis or as part of the agency's general language assistance strategy.

Generally, family and friends should not be used for language assistance, except in certain emergency situations while awaiting a qualified interpreter, or where the information sought to be conveyed is of minimal importance to the LEP individual.

To establish and maintain community partnerships, agencies should seek and enlist the cooperation of community and ethnic organizations for interpretation and translation assistance, for example, to review translations and non-English web pages for accuracy and tone. Agencies should attempt to use quality control measures when using the services of external organizations. Community organizations can help local agencies determine their language access priorities by identifying the services and information most frequently accessed or "in demand" by various language communities.

Community organizations can also help agencies assess the effectiveness of their LEP Plan by providing honest feedback. Finally, community organizations can be a source of "good publicity" for agency language access efforts by informing LEP community members of agency services and the manner in which said agency is striving to meet the needs of LEP residents.

Agencies should ensure effective marketing of language access programs. In order to access services, LEP speakers must know about them. It is helpful to market language access programs to target communities. Agency officials should attend seminars, symposia, and community health fairs, and inform ethnic media and culturally diverse media outlets of an agency's commitment to language access.

Creative approaches to budget and funding may include charting encounters with LEP service users to provide "hard data" in support of requests for LEP resources, including hiring of bilingual personnel, obtaining funding for interpretation and translation, among other things. Another creative approach may include tying LEP efforts to the mission of the larger agency to enable budgeting for LEP access when it falls in line with mission-critical objectives, such as national security or emergency preparedness.

Conclusion

The U.S. Census Bureau estimates there are nearly seven million California residents who are LEP.²⁰⁸ It is to be expected that these Californians do not speak English well enough to access public services, benefit from public programs, or participate fully in civic life. This article has explained the mandate local agencies have under federal, state, and sometimes local law to provide LEP residents with meaningful access to public services and programs. By providing language access services, local agencies can engage all Californians in the work of building stronger communities and making wise decisions about California's future.

208. PANDYA ET AL., *supra* note 5, at 2. See also U.S. CENSUS BUREAU, TABLE B16001 FOR CALIFORNIA: LANGUAGE SPOKEN AT HOME BY ABILITY TO SPEAK ENGLISH FOR THE POPULATIONS 5 YEARS AND OVER (2010), available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.