

New Federal Guidance for State Courts Serving Limited English Proficient (LEP) Youth and Family Members

In August 2010, the Department of Justice's Civil Rights Division issued new guidance to help state courts meet federal language access requirements.¹ Under Title VI of the Civil Rights Act of 1964, recipients of federal funding must take reasonable steps to accommodate individuals with limited English proficiency (LEP). The failure to do so constitutes national origin discrimination under Title VI of the Civil Rights Act of 1964 and puts federal funding in jeopardy.

This Justice Department guidance highlighted four specific areas of concern for courts serving LEP youth and families, which are briefly summarized below. For a more detailed description of federal language access requirements and guidance, [please click here](#).

- (1) **Courts must provide meaningful language access in all court and court-related proceedings, whether civil, criminal, or administrative.** Courts must ensure interpretation for LEP parties or witnesses during all hearings, trials, and motions. Additionally, courts must provide language assistance to necessary non-party individuals, including the parents and guardians of juvenile justice-involved youth.
- (2) **Courts must provide interpreters free of cost to parties.** Title VI prohibits practices, including requiring payment for interpretation, which have the effect of charging individuals for government services based on national origin.
- (3) **Courts must make reasonable accommodations for services conducted outside the courtroom.** Language services may not be restricted solely to courtroom proceedings, but must extend to other court functions, including offices, operations, and programs that are managed by the court.
- (4) **Failing to ensure that LEP parties and witnesses can communicate with court-appointed or supervised personnel.** Whenever court-appointed or court-supervised personnel communicate with LEP individuals, courts must enlist the support of professional interpreters if the personnel are not themselves bilingual. This includes defense counsel, court psychologists, probation officers, doctors, and other staff.

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¹ Letter from Thomas E. Perez, U.S. Assistant Attorney Gen., to State Chief Justices and State Court Administrators (Aug. 16, 2010), http://www.justice.gov/crt/lep/final_courts_ltr_081610.pdf.

Guidelines for State Courts Serving Limited English Proficient (LEP) Youth and Family Members

Good communication and cultural understanding are prerequisites to a fair, efficient, and effective justice system.¹ Navigating the juvenile justice system is often difficult for youth and their families. For those from different linguistic backgrounds, understanding the process can be particularly challenging, and misunderstanding or confusion can contribute to their overrepresentation and harsher treatment in the system.

Under Title VI of the Civil Rights Act of 1964 and Department of Justice regulations, recipients of federal funding, including state courts, must take reasonable steps to ensure that individuals with limited English proficiency (LEP) have meaningful access to programs and activities. Failing to comply with these requirements puts federal funding in jeopardy. This fact sheet summarizes the federal language access requirements for state courts that serve LEP youth and families, including four areas that the Justice Department recently identified as areas of concern.

Understanding Federal Language Access Requirements

Title VI of the Civil Rights Act of 1964 provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”² According to a 1974 Supreme Court decision, *Lau v. Nichols*, recipients of federal funding that fail to provide reasonable language accommodations for LEP individuals violate Title VI’s prohibition on national origin discrimination.³

In 2002, the Department of Justice issued general LEP guidelines for its recipients of financial assistance, based on Title VI’s mandate. The guidance applies to a broad range of entities, including courts, police and sheriffs’ departments, departments of corrections, certain non-profit agencies, and other organizations with public safety and emergency service missions.⁴ The DOJ guidelines require that these entities “take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.”⁵

Identifying Appropriate Accommodations

When determining what accommodations are appropriate under Title VI, the Justice Department requires state courts to consider four factors:

- (1) courts’ own prior experiences with LEP individuals, population data for the jurisdiction, and input from community organizations;
- (2) the frequency with which courts have or should have had contact with LEP individuals;

- (3) the nature and importance of the program or service provided; and
- (4) the resources available to courts and the cost associated with increased LEP services.

Under the Justice Department's guidelines, courts may offer language services in two main ways: oral language services and written language services.⁶ Where oral language services such as interpreters are in place, courts should ensure the competency of the language service provider, either through formal certification requirements or some other measure. For translated written materials, the Justice Department advises courts not to produce documents with too much jargon or technical language for LEP individuals to understand.

Once state courts complete the four-factor analysis and determine which language services are appropriate, the guidelines require courts to develop implementation plans. The Justice Department outlined the following five steps to assist courts in developing an LEP plan:

- (1) identifying LEP individuals who need language assistance;
- (2) identifying information about the ways in which language assistance will be provided;
- (3) training court staff to know about their obligations;
- (4) providing notice to LEP persons that language assistance services are available; and
- (5) monitoring and updating the LEP plan as necessary.

Understanding the Justice Department's 2010 Guidance

In August 2010, the head of the Civil Rights Division, Assistant Attorney General Thomas Perez, sent a letter to all state courts receiving federal funding to provide greater clarity about their responsibilities under Title VI.⁷ The Justice Department letter stated that the cost of compliance with federal law was not an excuse for noncompliance. It also emphasized the value of maintaining a written LEP design plan to help guide implementation of services, ensure that court staff understands their obligations, and ensure that LEP individuals understand the services that are available.

The letter also noted that some state courts continue to "impede, hinder, or restrict" participation by LEP individuals,⁸ highlighting four areas of particular concern:

- (1) **Failing to provide accommodations during all court and court-related proceedings, whether civil, criminal, or administrative.** Courts must ensure interpretation for LEP parties or witnesses during all hearings, trials, and motions. Additionally, courts must provide language assistance to necessary non-party individuals, including the parents and guardians of juvenile justice-involved youth.
- (2) **Charging for interpreter services.** Title VI prohibits practices, including requiring payment for interpretation, which have the effect of charging individuals for government services based on national origin. Charging for services may also discourage parties from requesting or using a competent interpreter.

- (3) **Failing to make reasonable accommodations for services conducted outside the courtroom.** Language services may not be restricted solely to courtroom proceedings, but must extend to other court functions, including offices, operations, and programs that are managed by the court.
- (4) **Failing to ensure that LEP parties and witnesses can communicate with court-appointed or supervised personnel.** Whenever court-appointed or court-supervised personnel communicate with LEP individuals, courts must enlist the support of professional interpreters if the personnel are not themselves bilingual. This includes defense counsel, child advocates or guardians *ad litem*, court psychologists, probation officers, doctors, and trustees.

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¹ NATIONAL COUNCIL OF LA RAZA, A FAIR JUVENILE JUSTICE SYSTEM: THE IMPORTANCE OF LINGUISTIC AND CULTURAL COMPETENCY (2007), http://www.act4jj.org/media/factsheets/factsheet_13.pdf.

² 42 U.S.C. § 2000(d).

³ In *Lau v. Nichols*, 414 U.S. 563 (1974), the Supreme Court held that a California school system's failure either to provide English instruction or otherwise accommodate approximately 1800 limited English proficient students constituted national origin discrimination.

⁴ Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002).

⁵ *Id.*

⁶ *Id.*

⁷ Letter from Thomas E. Perez, U.S. Assistant Attorney Gen., to State Chief Justices and State Court Administrators (Aug. 16, 2010), http://www.justice.gov/crt/lep/final_courts_ltr_081610.pdf.

⁸ *Id.*