Representing Limited English Proficiency (LEP) Persons

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A brief history of language rights

A little background
Why Do Language Rights Matter?

- In Mass., 22% of residents speak a language other than English at home; 9% of residents are LEP.
- Language rights provide access to decision making.
- Without them a person may unknowingly waive their legal rights.
- It is discrimination!
Important Terms

- **Interpretation** involves oral communication from one language (the source language) to another (the target language).

- **Translation**: rendering of written text from the source language into the target language.

- **Vital Document**: A document that contains information that is critical for meaningful access to a program by LEP persons.
Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in programs or activities that receive federal financial assistance:

“No person in the United States shall, on the ground of race, color, or national origin be... subjected to discrimination under any program or activity receiving federal financial assistance.”
In *Lau v. Nichols* (1974), the Supreme Court holds that language is a proxy for national origin and that national origin discrimination includes failing to provide LEP individuals “meaningful access” to recipient programs.
Language Access Codified

Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program ... needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public.

28 C.F.R. § 42.405(d)(1)
Executive Order 13166

- In 2000, President Clinton signs Executive Order 13166, providing further guidance on language access in all federally funded programs.

- Every federal agency creates their own guidance and plans for providing language access in all of their funded “programs or activities.”

- “Flexibility” in addressing needs “should not diminish, and should not be used to minimize the obligation that those needs be addressed.”

- Must take “reasonable steps” to ensure access.

Who is an LEP person?

• “Individual with a limited ability to read, write, speak, and understand English.”

• Person “does not have to be limited in all “speaking, reading, writing and comprehending.”

• Can be the family member of an English speaker who is involved in the care of that person.

Executive Order 13166: "Improving Access to Services for Persons with Limited English Proficiency"
What is a Recipient?

- Entity that receives federal financial assistance and/or operates a program or activity.

- Title VI coverage extends to **all** recipient and sub-recipient operations.
  - schools,
  - courts and court-mandated programs
  - public housing,
  - public programs like Head Start, food stamps

**In most:**
  - hospitals,
  - doctors’ offices

- Includes grants, sub-grants, loans, equipment, federal property (whether it is leased or provided), personnel.
MA also Prohibits Discrimination

- Chapter 151B prohibits discrimination due to race, color, religious creed, national origin, ancestry or sex.

- MA Executive Order 526 prohibits discrimination in all state agencies and programs funded by the state, including language access.

- MA Language Access Guidelines (ANF Administrative Bulletin #16) created to:
  (a) Improve access for LEP persons;
  (b) Reduce disparities and delays, in the provision of state services/programs to LEP persons;
  (c) Increase agency effectiveness and public satisfaction.
What are Language Rights?

An individual with a limited ability to read, write, speak, and understand English has the right to:

- Use **public** programs and **communicate in the preferred language**.

- Set a **language preference** to receive vital written materials.

- **Right to an interpreter** that is free, qualified, trained in subject, impartial, and ensures person understands what everyone says.

A person can ask for services even if the person has some command or knowledge of English!
What are a Recipient’s Obligations?

- Inform LEP individuals that language assistance is available at no cost.

- Provide language interpreter services that are **free and adequate to everyone seeking services** (even if the client speaks some English).

- Provide **vital documents** in the most common languages of LEP clients likely to be served.

- Create a language access plan that details protocols and services to be provided:
What Vital Docs must be Translated?

- Depending on the frequency of the language, important written information that **must** be translated!

- These include:
  - Applications to participate
  - Complaint and intake forms
  - Notices of rights or program administration
  - Written notices of rights
  - Appeal letters
  - Assessments used to determine eligibility or services
  - School documents
  - Standard forms that are considered “vital” to a program
  - Content on website

*It if is a “vital” notice, it usually must be provided in a native language.*
Language Interpretation in Courts

- **Interpretation services should be across the board**
  - Court room, service centers, clerks’ offices, forms, website, court assigned psychologist, mediators

- **Court-provided certified interpreter for all court proceedings, especially criminal**
  - In MA, criminal proceedings have priority for interpreters; Family and Probate are last, and often no one is available.

- **Hold the Court to its responsibilities**
  - Remember witnesses and others involved when requesting interpreters for proceedings
  - Ensure opposing parties are not made to sit together due to lack of interpreters
  - When language access not provided, or if there are problems, make sure you make an objection for the record and appeal.
A Qualified Interpreter

https://www.youtube.com/watch?v=X-DxGoIVUWo
Who is an appropriate interpreter?

Appropriate:

- Professional
- Trained in subject
- Qualified
- Impartial and understands ethical obligations

Not Appropriate:

- Minor children
- Doesn’t know subject, terms, or dialect
- Unqualified to translate
- Partial
Google Translate is Not Appropriate

https://www.youtube.com/watch?v=QKxaxrxVMsg
https://www.youtube.com/watch?v=4GC83wozoeC
2.1. General Policies Applicable to All Assigned Counsel: Use of Interpreters

Courts are required to provide all hearing-impaired clients (G.L. c. 221, § 92A) and all non-English speaking clients (G.L. c. 221C) with the services of a court-certified or professional interpreter at all in-court proceedings, regardless of the language skills of counsel.

It is the responsibility of assigned counsel to make sure that the court provides such interpreter services for his or her client.

[...] For out-of-court pre-trial preparation, including client interviews, the attorney representing the hearing-impaired or non-English-speaking client should obtain the services of a court-certified or professional interpreter, unless counsel is fluent in the client’s language.

It is the responsibility of assigned counsel to insure the provision of a court-certified or professional interpreter for these purposes, by moving the Court to approve funds pursuant to G.L. c. 261, §§ 27A-27G. CPCS will pay for out-of-court interpreter services upon presentation of the allowed motion and appropriate billing. See Chapter 6 of this Manual.
Language Access Resources

- **Translated Court Forms**

- **Requesting an Interpreter**
Practical Tips

WORKING WITH LEP CLIENTS AND INTERPRETERS
5 Rules for Working with Interpreters and LEP Clients

1. Prepare your interpreter.

2. Budget twice the time and take twice the time.

3. Use plain language.

4. Take charge.

5. Use your non-verbal skills!
Rule 1

Prepare your interpreter
Working with Interpreters
Preparing the Interpreter

- Before any court hearing, meeting, or call
  - Give context: What is your meeting about?
  - Help the interpreter prepare appropriate vocabulary
  - Do you have documents that will be interpreted, share in advance to save time

- Communicate ground rules
  - Interpreter always speaks in first person
  - No side conversations take place between client-interpreter
  - If interpreter does not understand, they ask you to clarify
  - You answer all questions, if the client asks the interpreter a question, the interpreter tells you question and you answer it
  - Interpreter should interpret mistakes. It is the attorney’s job to clarify.
Interpreters as Cultural Brokers

Your homework:
- Get to know the interpreter’s language and background
- Know your client’s country of origin, language, and background
- Consider gender, class, religion and other power dynamics

Be aware of a linguistic or cultural mismatch!
- **Match**: allow interpreters to help structure the conversation.
- **Mismatch**: monitor the dynamics and consider requesting a different interpreter.
Rule 2

Budget twice the time and take twice the time
Rule 2: Budget twice the time & take twice the time

• Budget twice time because everything has to be said twice!

• Successful interpretation requires many pauses
  • Pause after every few sentences
  • Interrupt your client to ensure pauses
  • Pause to check-in about client’s understanding

• Legal words may have no equivalence in another language and require lengthy explanation
  Ex: “arraignment” cannot be directly translated into Hmong
Rule 3

Use Plain English!
Rule 3: Use Plain English

Avoid Legalese:
“Your Honor, Ms. Chang was violated on March 23rd. After a hearing, the conditions of her probation were reassessed.”

Avoid acronyms:
“Were you cwoffed on the West Roxbury matter?”

Avoid idioms and proverbs:
“Did he hide the gun in the lazy Susan?”

Avoid cultural references:
“Were you near the green monster?”
Rule 4

You are in charge. Not the interpreter.
<table>
<thead>
<tr>
<th>An interpreter should:</th>
<th>An interpreter cannot:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treat client with respect</td>
<td>Change any words</td>
</tr>
<tr>
<td>Make sure they understand what you and client say</td>
<td>Leave out information</td>
</tr>
<tr>
<td>Make sure client understands what everyone says</td>
<td>Take sides</td>
</tr>
<tr>
<td>Interpret everything client says and the program says</td>
<td>Tell client what to do</td>
</tr>
<tr>
<td></td>
<td>Give legal advice!!</td>
</tr>
</tbody>
</table>
Rule 4: Take Charge

Red flags

- Brokering – “no she said that”, “no ask her”
- Sanitizing – summarizing, using vague language or speaking for shorter periods of time than client spoke for
- Too close for comfort – gesturing client to be quiet, dominating client, or seeming to guide client
- Judging – dismissing clients concern or suggestion, or allowing class or other power dynamics to color conversation
Rule 4: Take Charge

- If you notice a side conversation between client and interpreter, **interrupt**!

- If the interpreter is using too few or too many words, **interrupt**!

- If your gut tells you things are not going well, don’t be afraid to **stop, end the meeting, and restart** with a different interpreter if necessary.
But beware...
Use your non-verbal skills!
Rule 5: Use your non-verbal skills

- Maintain eye contact with client
- Active listening and listening for non-verbal cues (tone, facial gestures...)
- Establish a signal with clients so they can signal confusion (esp. in court!)
Calling your Client Using an Interpreter

- **Before you call**
  - Know the language needed
  - Know number you are dialing
  - Be prepared to provide interpreter with a message

- **Begin the Call**
  - Call language line
  - Select the language
  - Brief the Interpreter
  - Provide Interpreter with number to call and message to leave

- **The Call**
  - Interpreter conferences client in.
  - Speak directly to client
  - Use simple language

- **End call**
  - End conversation with client & thank your interpreter!

http://cpcs-intranet/language-line-access-extended-to-all-staff-members-3/
Meeting your LEP Client with an Interpreter

- Introduce yourself to client in first person
- Introduce the interpreter and allow a quick exchange to ensure client and interpreter understand each other
- Explain your roles: interpreter will be interpreting so that you and the client can communicate directly
- Explain that you the attorney will answer any questions, not the interpreter
- Then speak in the first person as if the interpreter were not there.
Jail Visits with LEP clients

- Requires more advance planning because of limited availability of interpreters during day hours.

- Make sure your interpreter is approved by the state facility.

- ICE facilities require separate, lengthy approvals.
Role Play

Two volunteers, please.
Working with Immigrants

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