



Victims' Rights for Those with Limited English Proficiency

What are Language Access Rights?

According to Title VI of the Civil Rights Act of 1964, language access rights include the rights of individuals with limited English proficiency (LEP) to receive meaningful access to services at any agency or organization that receives federal funding. Agencies and organizations that are recipients of any federal funding are required to take reasonable steps to have language access procedures and language services in place to assist individuals with LEP.

Even if the specific program to be accessed by an individual with LEP does not receive federal funds, if the organization or agency receives any federal funds for other programs, it must comply with federal non-discrimination provisions by taking reasonable steps to provide meaningful access for individuals with LEP for all its programs and services. Nearly every court in the United States including its territories receives at least some federal funds, and must comply with the requirements to provide meaningful language access.

"Meaningful access" is defined in the U.S. Department of Justice's own Language Access Plan



What is LEP?

Individuals with LEP refers to those who have limited English proficiency.

as "Language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed or inferior as compared to programs or activities provided to English proficient individuals" (U.S. Department of Justice, 2017).

Who is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English are limited

English proficient (LEP). These individuals may be entitled to language assistance with respect to a particular type of service, benefit, or encounter (LEP.gov, n.d.).

What about Courts?

Courts that receive any federal funds must provide meaningful language access for individuals with LEP in compliance with Title VI of the Civil Rights Act. The relevant language of the Civil Rights Act states the following:

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No 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.

(Section 601 of Title VI, 42 U.S.C. sec. 2000d)

**Note: Protection against national origin discrimination has been interpreted by the Supreme Court to include LEP individuals (Lau v. Nichols, 1974).*

A letter from the Civil Rights Division of the U.S. Department of Justice that was sent to all Chief Justices and State Court Administrators (Perez, 2010) highlighted that courts are required under Title VI of the Civil Rights Act to provide qualified interpreters and translated materials to individuals with LEP in the following situations, among others:

- Criminal cases where an individual with LEP is a defendant, witness, or victim;
- Civil cases involving parental rights, custody, or a protection order;
- The filing of, or responding to, all vital court documents, including orders for protection and affidavits;
- In cases heard not only by a judge, but also by a magistrate, hearing officer, arbitrator, or other decision maker; and
- In situations involving court appointed or court managed service providers.

Overcoming Language Barriers is Essential for Justice

The ability to access justice requires that all parties understand and participate to the best of their abilities in court proceedings. Limited English proficiency is recognized as a barrier to justice as are, for example, physical

access barriers, or the lack of an attorney for indigent criminal defendants. Court systems must recognize and remove these barriers to ensure access to justice for all persons.

“In order to achieve equal justice for all, every litigant, victim and witness must have a complete understanding of what is happening in the courtroom. However, if language barriers intrude into the process of justice and prevent essential communication and understanding, some of the basic strengths and values of our justice system are negated” (State Justice Institute & National Center for State Courts, 2013, p. iv).

According to the Civil Rights Division of the U.S. Department of Justice, “Often the costs of failure to provide appropriate language access can be even higher than the costs of providing a qualified interpreter, translator, or bilingual staffer. Convictions can be overturned, and defendants released for inaccurate interpretation during interrogation, evidence development, or testimony” (U.S. Department of Justice, 2004).

Ensuring Adequate Interpretation

(Casa de Esperanza: National Latin@ Network, 2015)

Sometimes, bilingual advocates are asked to act as interpreters in situations outside the scope of providing sexual and/or domestic violence advocacy. Although the advocate’s role is to support the survivor in their process of accessing services, acting as an interpreter for other systems and professionals is inappropriate. When a bilingual advocate acts as an interpreter for these other service providers, the following issues may arise:

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Role Conflict

For example, if an advocate goes to a meeting between a survivor with LEP and a child welfare worker, and the child welfare agency does not provide an interpreter, the advocate may be asked to serve as the interpreter for the child welfare worker. An interpreter is never supposed to provide an explanation on their own to a survivor or have direct conversation with the individual for whom they are providing interpretation services, but rather only directly interpret the communication between that individual and other parties. As a result, the advocate is no longer able to effectively serve as an advocate for the survivor and has switched from serving the survivor to serving the child welfare agency. Additionally, this would undermine the role of the advocate if they are trying to “wear both hats.” It can create confusion for the survivor regarding the role of the advocate and whether they represent the agency or can be trusted to serve as a confidential advocate.

Barriers to Accessing Services

Interpreters have a unique set of skills that allow them to accurately transmit information between two or more parties. Advocates without this training risk misinterpreting and misrepresenting what the survivor and other service provider are trying to communicate.

Compromises to Confidentiality

Blurring the lines between advocate and interpreter by assuming both roles could lead to misunderstandings of confidentiality requirements under the Violence Against Women Act and Pennsylvania state law. For example, when using an interpreter the third party should expect to know all that is being communicated between an interpreter and an individual with LEP, even if it is a side conversation between the interpreter and the survivor with LEP. As a result, this could undermine confidentiality. Additionally, the survivor may be

It's critical to understand the difference between:

- Being **bilingual or multilingual** and being a **qualified interpreter**.
- The role of the **advocate** and the role of the **interpreter**.
- **Qualified, skilled interpreters** (who are qualified and attuned to, respectful of, and able to interpret across cultural difference) and **unqualified or unskilled interpreters**.



uncertain of future ability to have confidential conversations with the advocate or whether all information will be shared with the agency or entity for which the advocate was interpreting.

If a court uses an unqualified and/or unskilled interpreter, this may result in the exchange of incorrect information, ineffective communication, invalidated survivor testimony, and/or may compromise a survivor's confidentiality and safety, as well as the outcome of the court proceedings.

State-specific Court Interpreter Policies

While state statutes cannot reduce the rights granted by federal law for individuals with LEP, they may provide additional support. Before going to court with survivors with LEP, advocates should review their state's statute and procedures. Note that laws may change; you should verify the information on your own state's statute and procedures.

Ensuring Implementation

If the court in your area does not provide qualified interpreters, or if you believe a survivor has been discriminated against because of their LEP status by a court system that receives federal financial assistance, you or the survivor should bring those concerns to the attention of the Court Administrator or Chief Justice of that court. Some additional documents to consider using in your advocacy include [the U.S. Department of Justice Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons](#) and the August 16, 2010 letter from the U.S. Department of Justice, Civil Rights Division to Chief Justices and State Court Administrators (Perez, 2010). If they do not resolve the situation, you may contact the Federal Coordination and Compliance Section of the Civil Rights Division of the U.S. Department of Justice (DOJ) with questions or to file a complaint.

Systems Advocacy to Improve Language Access in the Courts

STEP #1

Make it Someone's Job

The biggest obstacle to undertaking systems change advocacy is the sense that there is not enough time to help all the survivors who need the support of advocates.

However, if individuals with LEP in your jurisdiction are being denied meaningful language access in the courts, it is important for someone in your organization to take on this responsibility to engage in systems advocacy. If you cannot find specific funding to support a policy or systems-change staff person, assign one or two advocates to work on it together so the task is more manageable. It is important to build in organizational support for their efforts.

In some organizations, the Executive Director and other management staff have taken on the responsibility for systems change. They may be well-positioned to do so since they already work with other systems decision-makers through their participation in inter-agency collaborations such as sexual assault response teams or coordinated community response teams.

STEP #2

Educate Yourself

Your efforts to make broad changes will have more credibility and influence with other systems if you are very familiar with what the problem is, how the agency in question works, how other organizations are affected by the issue, and how it might be resolved.

What's the problem?

Keep track of what's happening when survivors with LEP interact with the courts in your area. Consider gathering information from survivors and advocates in your program. Listening sessions or focus groups with survivors with LEP are effective ways of learning about their experiences. Focus groups with advocates or staff meetings on access for LEP individuals are good ways to gather a lot of information about how to improve language access. Additionally, you may want to organize a Court Watch to observe and document what is happening in the court.

Make sure you know as much as you can about how your local court functions, both in criminal and civil cases. You can then begin to discuss with court systems how language access can help them better accomplish their mission.

Who else should be involved?

Find out which other organizations in your area have an interest in improving language access in the courts. Partner with them in this effort to bring about systems change and engage them in the development of a joint strategy. Note that while it would be good to reach out to other organizations that serve victims of domestic and sexual violence, you should also reach out to a broader group of organizations that would be interested in improving access to justice, including civil rights organizations, immigrant rights organizations, culturally specific community-based organizations, and faith-based organizations.

What's the solution?

Be prepared to provide recommendations to the court and highlight promising practices about ways to respond to problems of inadequate access for individuals with LEP.

Begin by asking your local court's language access coordinator whether they have developed a language access plan. If so, review the plan to determine if it is being properly implemented and if it needs to be improved. If the court does not have a language access plan, it is imperative that they develop one. Be familiar with the steps the court should take to develop and implement a language access plan in your area.

- The Resource Guide for Advocates & Attorneys on Interpretation Services for Domestic Violence Victims (Asian Pacific Institute on Gender Based Violence, 2016) offers guidance on where courts can find qualified interpreters, how to determine if they are effective, how to work with interpreters, and how to pay for the service.
- The Language Access Resource List for Courts (Casa de Esperanza: National Latin@ Network, 2015) includes a technical assistance tool for courts to develop Language Access Plans and sample Language Access Plans.
- The DOJ Agreements and Settlements page of the website of the Federal Interagency Working Group on Limited English Proficiency (www.lep.gov) links to settlement agreements between the DOJ and court systems regarding language access (U.S. Department of Justice, 2018).



Remember, it's not just about oral or signed interpretation, but also about written translations. This includes vital documents that survivors complete, review, and sign, which should be translated into their primary language.

Vital documents include, but are not limited to:

- Complaint, consent, release or waiver forms;
- Claim or application forms;
- Letters or notices pertaining to the reduction, denial, or termination of services or programs or that require a response;
- Time-sensitive notices, including notice of hearing, grand jury or deposition appearance, or other investigation or litigation-related deadlines;
- Form or written material related to individual rights;
- Notice of rights, requirements, or responsibilities; and,
- Notices regarding the availability of free language assistance services (Casa de Esperanza: National Latin@ Network, n.d.).

Be ready to recommend what documents should be translated, as courts will need to take translation under consideration when developing and implementing their Language Access Plans. [Many translated forms and I-Speak cards are available on-line](#) through pacourts.us.

STEP #3

Get in the Door and Build Partnerships

Systems change is much more easily accomplished when advocates and staff from key agencies establish a meaningful partnership with a common purpose. This working relationship requires building trust and centering the long-term community benefit.

The focus is on a common mission of ensuring access to safety and justice for all individuals, with a lens that ensures there is access for underserved and/or marginalized communities.

What Motivates the Court?

Assume that court administrators, clerks and judges also want to ensure meaningful access to justice. It is part of their agency mission, and justice equity was probably a motivation for many of them to begin their careers. However, perhaps language access has not traditionally been part of their planning, or maybe they feel constrained by budget pressures. Knowing what's important to court personnel and why will help you plan the way to approach them to talk about language access. It will also be important to help them understand how failing to comply with the requirements of Title VI of the Civil Rights Act is costly in terms of undermining victim safety and denying access to justice.

Be Constructive

The most effective way to approach any system to make change is to present information in a constructive manner. The guidance and resources in this toolkit are designed to help show court systems how qualified interpreters and translated materials can help ensure access to justice: where to find interpreters, how to work with interpreters, and how to evaluate their performance; and provide information about the law and how it applies to them.



STEP #4

Collaborating to Ensure Institutional Commitment

It is beneficial to involve supervisors or court administrators to ensure institutional commitment to make the changes that increases the safety of survivors with limited English proficiency.

Monitoring and Compliance

If a survivor is having difficulty accessing the help of the courts due to language barriers, you or the survivor may contact [your court's local Language Access Coordinator](#), the [Pennsylvania Court's Language Access and Interpreter Program](#), or the Federal Coordination and Compliance Section of the Civil Rights Division of the U.S. Department of Justice (DOJ) with questions or to file a complaint (www.lep.gov, 888-848-5306, or 202-307-2678 TDD).

Although no law requires a complainant to give personal information to the DOJ, if the DOJ determines it does not have the necessary information to investigate a complaint, it may close the investigation. Additionally, the DOJ may share personal information in carrying out its enforcement activities, or if required to do so by a request made under the Freedom of Information Act. Significant reform efforts have been

undertaken by various court systems across the United States to improve meaningful access to the courts for individuals with LEP as a result of consent decrees that they have entered into with the Civil Rights Division of the DOJ (U.S. Department of Justice, 2018).

Overarching Commitment to Justice and Equality

In broad terms, the principle of language access is that a commitment to justice and equality requires community services and supports to be available to everyone, including survivors with LEP. Ideally, this is possible through a strong infrastructure that includes bilingual advocacy, qualified and skilled interpreters, and culturally relevant frameworks; and is well-coordinated across systems. Your individual and systems advocacy for survivors with LEP is critical to survivors' access to justice and safety and impels social change toward equitable, peaceful, and thriving communities.

To learn more about interpretation services in Pennsylvania courts or to find your local court's Language Access Coordinator, you may visit the webpage for the [Language Access](#) and Interpreter Program for the Pennsylvania Court System.

Thank You

Thank you to our partners at the Casa de Esperanza: National Latin@ Network for authoring this resource.

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