

Don't Speak English? No Tax Break, Alabama Official Declares

By KEVIN SACK

HUNTSVILLE, Ala., June 1 — As a vibrant center for space and technology research, this city in northern Alabama owes much of its character to an immigrant, Wernher van Braun, the German rocket scientist who helped create the Marshall Space Flight Center here after World War II. Proud of its international heritage, the city greets visitors today with flapping roadside banners that welcome newcomers in a variety of languages.

But in recent years, a number of Hispanic and Asian immigrants have found that Huntsville's hospitality vanishes at the door of the Madison County tax assessor, Wayland H. Cooley. Part of Mr. Cooley's job is to grant legally authorized property tax breaks to residents who own and occupy their houses. And in several instances, according to a lawsuit scheduled for an initial hearing next week, Mr. Cooley has denied those breaks to homeowners who cannot speak English.

The plaintiffs — a Dominican-born husband and wife who are United States citizens and a South Korean-born widow who is a permanent United States resident — charge that Mr. Cooley has denied them the tax reductions because state law requires applicants to take a simple oath swearing to the accuracy of information about their property.

And Mr. Cooley maintains, according to the plaintiffs, other witnesses and his own testimony, that he cannot vouch for the accuracy of such an oath if it is not taken in English, even if an interpreter is present.

In some cases, Mr. Cooley, an 83-year-old Democrat who has held his elective office for nearly 22 years, has been only too happy to explain his rationale, according to evidence gathered for the trial.

"He said that he had to watch out for people who were trying to come in from all over the world and skin us on taxes," said Mary Catherine Graham, a financial analyst for the Federal Bureau of Investigation who testified in a deposition after accompa-

nying a native of Mexico to Mr. Cooley's office last September.

Becky Turner, a real estate agent who offered to interpret for the Mexican, said in an affidavit that Mr. Cooley told her, "They're coming over here and taking what's ours."

As it struggles to shed its history of racial intolerance, the South has seen a surge in immigration from Asian and Hispanic countries in the 1990's. The growth has created adjustment problems across the region, particularly in small- and medium-size cities that have little experience with foreign cultures.

Excluding Texas and Florida, which already had large numbers of Hispanic residents, the nine other Southern states are expected to see their Latino population grow by 112 percent from 1990 to 2000, according to Census Bureau projections.

The Asian population is projected to grow by 72 percent in those states, while the region's population is expected to increase by 14 percent. By the end of the decade, 3.5 percent of the people in those states will be of Latin American or Asian origin, compared with 2 percent in 1990.

In towns where large numbers of immigrants have been lured by jobs in poultry plants and carpet mills, the need for interpreters and English-language training has strained schools, courts, police departments and social service agencies.

Experts on immigration say they have been pleasantly surprised at the relative rarity of cases of blatant discrimination or violence against immigrants in the South. But they have started to detect anti-immigrant sentiment in the politics of some areas, and they say they fear there will be more bias of the type the plaintiffs charge in the Huntsville case.

No trial date has been set in the lawsuit against Mr. Cooley, but a Circuit Court judge will hear arguments next week on Mr. Cooley's contention that the case should be thrown out on the grounds that he did not violate the law and that he has immunity as a government officer.



Wayland H. Cooley, an Alabama tax assessor, says he has denied tax breaks to people who do not speak English "to prevent potential fraud."

The plaintiffs say the tax assessor violated the Constitution's equity protections for non-English speakers and ask for both compensatory and punitive damages.

In court papers, the lawyer for the plaintiffs, Rhonda Brownstein, of the Southern Poverty Law Center in Montgomery, Ala., charges that Mr. Cooley's "actual motive, his hatred of foreigners, is nothing more than xenophobia and ethnic prejudice."

Speaking with the help of interpreters in interviews in their homes today, the plaintiffs, Byong Rye Ahn and Jullo and Carmen de Paula Telleria, said they felt demeaned by Mr. Cooley's treatment, which they described as spiteful and sarcastic.

"I felt less than human when he attacked me," said Mrs. Ahn, 63, a hospital housekeeper who came to the United States in 1985 and bought a three-bedroom house the next year with her husband, who died in 1989.

Mrs. de Paula said Mr. Cooley at one point gestured at the ground with his finger. "He said, 'This is Alabama,'" she said. "'Here you need to know English.'"

Ms. Brownstein has calculated that Mrs. Ahn should be paying \$278 in annual property taxes rather than the \$677 she is paying. The de Paulas, she said, should be paying \$209 instead of \$659 annually.

Both Mr. Cooley and his lawyer, Julian Butler, declined to comment on the case. A brief filed by Mr. Butler states that Mr. Cooley's English-only policy is designed "to prevent potential fraud." It also cites a 1990 state constitutional amendment declaring English to be the official language of Alabama.

Because Mr. Cooley provides all taxpayers with equal services in English, Mr. Butler writes, his practice "does not classify persons based on race, ethnicity or national origin."

Last year, Ms. Brownstein's office conducted a survey that found that Madison County, where 3.8 percent of 272,000 residents are Hispanic or Asian, is the only county in Alabama that does not allow interpreters to assist applicants for tax exemptions.

In addition, the State Attorney General, Bill Pryor, issued an opinion last year stating that the English-

language provision of the State Constitution does not restrict non-English speakers from claiming tax exemptions on their property.

The de Paulas retired to Huntsville in 1995 after immigrating to New York City from the Dominican Republic in the 1960's. Mr. de Paula, 71, had worked as a solderer in a Ford assembly plant in New Jersey. Mrs. de Paula, 59, had stitched brassieres in a factory in Brooklyn. Both gained citizenship in 1992 under a provision that allows immigrants of a certain age and tenure in the country to be exempt from an English-language exam and to take the civics exam in the language of their choice.

In Alabama, the couple managed to afford a modest brick house with three bedrooms, a garage and an above-ground pool. They paid \$54,000. "It felt like tranquillity," Mr. de Paula said.

In 1996, accompanied by their son, Ricardo, who is bilingual, the de Paulas went to the tax assessor's office to see that their new house was properly registered on the tax rolls as a residence and to apply for their homestead tax exemption.

Residential property is appraised for tax purposes at half the rate of commercial property, and the homestead exemption grants an additional modest discount to those who own and occupy their houses.

According to affidavits from all three de Paulas, Mr. Cooley informed them that they could not take the oath to qualify for the exemptions because they did not know English. He also told them, the de Paulas said, that an interpreter could not be used and that exemptions could not be granted to noncitizens.

Ricardo de Paula's affidavit says that he told Mr. Cooley that his parents were citizens but that Mr. Cooley said it "doesn't matter."

Several days later, a family friend, Rosa Almanza, called Mr. Cooley to ask whether she could be their interpreter. Ms. Almanza said he refused.

"How do I know," she quoted Mr. Cooley as asking, "that what you are translating is the truth?"



Eugenia Chough

05/12/99 01:27:59 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Irene Bueno/OPD/EOP, Laura Emmett/WHO/EOP
Subject: LEP meeting

We would like to schedule a meeting on Wednesday 6/2 at 2pm in 211 OEOB to discuss next steps on national origin discrimination and LEP guidance. Please let me know if you have a scheduling conflict.

In preparation for that meeting, we ask that agencies please send me the following information (preferably converted to wordperfect format) by next Wednesday, 5/26. We would like to compile this info and disseminate it at the meeting.

- (1) What do the agencies now require grantees to do to serve LEP individuals?
- (2) What legal authority do agencies have to require that grantees take steps to break down language barriers?

Also, please send me your clearance info. (SSN and DOB) for the meeting.

Thank you.

Genie Chough
456-5372

Message Sent To: _____

Clara J. Shin/WHO/EOP
Leslie S. Mustain/OMB/EOP
Edward W. Correia/WHO/EOP
Kathleen K. Ahn/WHO/EOP
Jena V. Roscoe/WHO/EOP
Irene Bueno/OPD/EOP

Moe Vela/OVP @ OVP

ellen.vargas @ eeoc.gov

roberto.canino @ eeoc.gov

ida.castro @ eeoc.gov

tperez @ os.dhhs.gov

sjw @ pheonix2.dol-esa.gov

judith_winston @ ed.gov

arthur_coleman @ ed.gov

juan_e._milanes @ hud.gov

norma_cantu @ ed.gov

jmarinez @ usda.gov

julie.fernandes @ usdoj.gov @ inet

bill.l.lee @ usdoj.gov

rose.ochi @ usdoj.gov

Judy.l.chesser @ ssa.gov

david.m.whalin @ ssa.gov

✓ get more info.

works on something
challenging or stuff

? working

? - done w

- get more info

Karin Stevens - DOJ

- Existing Reg

- Settlement - HUD

DOJ
- INS

- VAWA

~~Supreme~~

Future

Conny Consue

- ON ACP

- FEMA

● ● ●
● Eugenia Chough

05/27/99 06:31:34 PM

Record Type: Record

To: ROBERT CANINO <ROBERT.CANINO @ EEOC.GOV>
cc: Irene Bueno/OPD/EOP
bcc:
Subject: Re: INFO REQUEST in preparation for LEP Meeting 

Hi Robert,

Thanks for clarification. Your call if you'd like to bring your staff person. Just send me clearance info for you and who ever else might join us.

Genie

ROBERT CANINO <ROBERT.CANINO @ EEOC.GOV>



ROBERT CANINO <ROBERT.CANINO @ EEOC.GOV>
05/27/99 04:34:50 PM

Record Type: Record

To: Eugenia Chough/OPD/EOP
cc:
Subject: Re: INFO REQUEST in preparation for LEP Meeting

The EEOC doesn't have grantees or grant programs. So we obviously can't answer these questions, which might be applicable to other federal agencies.

I can come with another staffer if you think we have something to add. Just let me know.
Thanks.

> > > <Eugenia_Chough@opd.eop.gov> 05/27 10:48 AM > > >
In preparation for next Wednesday's 6/2 meeting re: limited English Proficiency (LEP) at 2pm in 2111 of OEOB, we requested that you please send us the following information by yesterday.
For those agencies we have not heard from yet, please send us your responses ASAP. Thank you.

(1) What do the agencies now require grantees to do to serve LEP individuals?

(2) What legal authority do agencies have to require that grantees take

steps to break down language barriers?

Also, please send me your clearance info (DOB and SSN) for the meeting.

Thank you.

Genie Chough
(202) 456-5372



● **Eugenia Chough**

05/28/99 11:23:54 AM

Record Type: Record

To: Irene Bueno/OPD/EOP

cc:

Subject: INFO REQUEST in preparation for LEP Meeting

----- Forwarded by Eugenia Chough/OPD/EOP on 05/28/99 11:21 AM -----



thomas.m.parrott @ ssa.gov

05/28/99 10:45:41 AM

Record Type: Record

To: Eugenia Chough/OPD/EOP

cc: david.m.whalin @ ssa.gov, william.daly @ ssa.gov, grayson.g.snurr @ ssa.gov, lorna.elgamil @ ssa.gov

Subject: INFO REQUEST in preparation for LEP Meeting

Genie,

I am not sure if you've already heard from SSA on this. If so, please disregard this message.

Since SSA administers both the OASDI and SSI programs ourselves, we have no grantees that are involved with program administration. Thus, requirements for grantees or authorities to impose requirements on grantees are not pertinent to SSA.

We do address the LEP issue in administering the OASDI and SSI programs in a number of ways including: (1) the hiring of bilingual employees both in our field offices and teleservice centers, (2) purchasing interpreter services when necessary, (3) sending program-related notices in languages other than English, and (4) having pamphlets and other program information available in languages other than English.

If you are interested in what SSA is doing with regard to its LEP customers, we will be glad to provide you with additional information.

Tom

Forward Header

Subject: INFO REQUEST in preparation for LEP Meeting

Author: David M. Whalin at ~SADC

Date: 5/27/99 1:25 PM

In preparation for next Wednesday's 6/2 meeting re: limited English Proficiency (LEP) at 2pm in 2111 of OEOP, we requested that you please send us the following information by yesterday.

For those agencies we have not heard from yet, please send us your responses ASAP. Thank you.

(1) What do the agencies now require grantees to do to serve LEP individuals?

(2) What legal authority do agencies have to require that grantees take steps to break down language barriers?

Also, please send me your clearance info (DOB and SSN) for the meeting.

Thank you.

Genie Chough
(202) 456-5372

 - RFC822.TXT

Irene Bueno



06/01/99 11:11:36 AM

Record Type: Record

To: Eugenia Chough/OPD/EOP
cc:
bcc:
Subject: Re: INFO REQUEST in preparation for LEP Meeting

I think it would be great to get more info about the SSA efforts to provide services to LEP customers. This could be part of our "Best Practices" compilation.
Eugenia Chough 05/28/99 11:23:54 AM



Eugenia Chough

05/28/99 11:23:54 AM

Record Type: Record

To: Irene Bueno/OPD/EOP
cc:
Subject: INFO REQUEST in preparation for LEP Meeting

----- Forwarded by Eugenia Chough/OPD/EOP on 05/28/99 11:21 AM -----



thomas.m.parrott @ ssa.gov
05/28/99 10:45:41 AM

Record Type: Record

To: Eugenia Chough/OPD/EOP
cc: david.m.whalin @ ssa.gov, william.daly @ ssa.gov, grayson.g.snurr @ ssa.gov, lorna.elgamil @ ssa.gov
Subject: INFO REQUEST in preparation for LEP Meeting

Genie,

I am not sure if you've already heard from SSA on this. If so, please disregard this message.

Since SSA administers both the OASDI and SSI programs ourselves, we

have no grantees that are involved with program administration. Thus, requirements for grantees or authorities to impose requirements on grantees are not pertinent to SSA.

We do address the LEP issue in administering the OASDI and SSI programs in a number of ways including: (1) the hiring of bilingual employees both in our field offices and teleservice centers, (2) purchasing interpreter services when necessary, (3) sending program-related notices in languages other than English, and (4) having pamphlets and other program information available in languages other than English.

If you are interested in what SSA is doing with regard to its LEP customers, we will be glad to provide you with additional information.

Tom

Forward Header

Subject: INFO REQUEST in preparation for LEP Meeting
Author: David M. Whalin at ~SADC
Date: 5/27/99 1:25 PM

In preparation for next Wednesday's 6/2 meeting re: limited English Proficiency (LEP) at 2pm in 2111 of OEOB, we requested that you please send us the following information by yesterday.
For those agencies we have not heard from yet, please send us your responses ASAP. Thank you.

(1) What do the agencies now require grantees to do to serve LEP individuals?

(2) What legal authority do agencies have to require that grantees take steps to break down language barriers?

Also, please send me your clearance info (DOB and SSN) for the meeting.

Thank you.

Genie Chough
(202) 456-5372

 - RFC822.TXT

● Eugenia Chough

05/28/99 04:39:05 PM

Record Type: Record

To: Irene Bueno/OPD/EOP

cc:

Subject: re: Info for LEP Mtg from Thomas Perez

----- Forwarded by Eugenia Chough/OPD/EOP on 05/28/99 04:36 PM -----



"Veronica C. Williams" <vwilliam @ os.dhhs.gov>

05/28/99 04:23:51 PM

Please respond to vwilliam@os.dhhs.gov

Record Type: Record

To: Eugenia Chough/OPD/EOP

cc:

Subject: re: Info for LEP Mtg from Thomas Perez

I don't think attachments were on first e-mail. I will call you Monday with Tom's SS# & DOB.

Original Text

From: Veronica C. Williams@OCR.DO@OS.DC, on 5/28/1999 4:12 PM:

Please see Attachments:

1. Memo in response to your e-mail request to Tom Perez RE: LEP Mtg
2. Attachment to Memo Re: LEP Guidance Memorandum

Please call me at 619-0403, if you'd like a faxed copy of the attached.

Veronica Williams
Staff Assistant
Office for Civil Rights
(202) 619-0403; voice 0118
fax (202) 619-3437



- chough~1.wpd



- lepfin~1.doc



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Rights

20201

Director
Office for Civil
Washington, D.C.

May 28, 1999

TO : Genie Chough
White House

From : Thomas Perez
Director
Office for Civil Rights

SUBJECT: National Origin Discrimination and LEP Guidance

In preparation for the June 2nd meeting to discuss next steps on national origin discrimination and LEP guidance, you asked us to provide certain background information. Specifically, you asked all agencies to address two questions, and this memorandum discusses the following two questions:

1. What do the agencies now require grantees to do to serve LEP individuals?
2. What legal authority do agencies have to require that grantees take steps to break language barriers?

Question #1: Current Requirements

OCR requires that all recipients of HHS funds take measures to ensure that *all* LEP individuals have meaningful access to health and human services. There is no one size fits all set of requirements for recipients. Instead, there is a flexible framework that OCR uses to determine whether a recipient has complied with its obligation under Title VI and the Title VI regulations. This framework is embodied in an internal guidance memorandum that was issued to OCR staff last year. (See attached memorandum dated January 29, 1998).

As this guidance memorandum outlines, there are some baseline rules that all recipients must follow, such as:

- interpreter services must be provided at no cost or no additional cost to the LEP beneficiary.
- A recipient can not require a beneficiary to use friends or family members as interpreters.
- A recipient must ensure that it uses persons who are competent to provide interpreter services.

In addition, recipients should:

- have a procedure in place for identifying the language needs of patients/clients.
- have ready access to, and provide services of, proficient interpreters in a timely fashion during hours of operation as needed;
- develop written policies and procedures regarding language services; and
- disseminate policies and procedures regarding language services to staff and ensure staff awareness of these policies and procedures and of their Title VI obligations to LEP persons.

The type of language services that a recipient must provide depends on a host of factors, including but not limited to the size of the recipient, the size of the LEP population that it serves, and the setting in which interpreter services are needed. For instance, a large hospital that serves a community with a significant Latino LEP population will be expected to have a rigorous set of policies in place to ensure that hospital personnel can meaningfully communicate with Spanish speaking patients. These policies may include hiring bilingual staff, hiring qualified interpreters, or having qualified volunteer interpreters readily available. On the other hand, a rural clinic that services very few LEP individuals may satisfy its requirements in a different manner, such as ensuring ready access to a telephone interpreter service, such as the AT&T language line.

The attached LEP guidance memorandum outlines the general guidelines that OCR-HHS uses to ensure that HHS recipients comply with their legal obligation to ensure that LEP populations have meaningful access to health and human service programs funded by HHS. OCR has consistently entered into compliance agreements with recipients in which they have acknowledged their legal requirement to provide language assistance to LEP persons, and have agreed to take specific measures to ensure compliance with this obligation.

Question 2: Legal Authority

Title VI of the Civil Rights Act of 1964 provides the legal basis for imposing this requirement on HHS recipients to provide service to LEP populations. Under Title VI of the Civil Rights Act of 1964, "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." HHS' Title VI regulations provide that discrimination includes using criteria or methods of administration which have the *effect* of subjecting individuals to discrimination because of their race, color or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular, race, color or national origin. 45 CFR § 80.3(b)(ii).

Although Title VI does not explicitly reference a recipient's duty to provide services to LEP populations, there is ample legal authority for the proposition that a recipient's failure to provide bilingual services to LEP populations constitutes a violation of Title VI and the implementing HHS regulation. Title VI bars intentional discrimination on the basis of race, color or national origin. As noted above, HHS' Title VI regulation proscribes actions that have a disparate impact. The Supreme Court has held that the regulations promulgated pursuant to Title VI may validly proscribe actions having a disparate impact on protected groups even if those actions are not intentionally discriminatory. Guardians Assoc. v. Civil Service Comm'n of City of New York, 463 U.S. 582, 598-99(1983). In essence, Guardians held that "Title VI had delegated to the agencies in the first instance the complex determination of what sorts of disparate impacts upon minorities constituted sufficiently significant social problems, and were readily enough remediable, to warrant altering the practices of the federal grantees that had produced those impacts." Sandoval vs. Hagan, 7 F.Supp.2d 1234, 1249 (M.D. Alabama,1998).

The U.S. Supreme Court, in Lau v. Nichols, 414 U.S. 563 (1974), used the Title VI disparate impact concept to require that LEP persons be provided a meaningful opportunity to participate in federally assisted programs. In Lau, the Supreme Court ruled that a school system's failure to provide English language instruction to students of Chinese ancestry who do not speak English denied the students a meaningful opportunity to participate in a public educational program in violation of Title VI. Lau cited with approval, the 1970 policy memorandum of HEW (HHS' predecessor agency) that generally required school districts to open their instructional programs to students who cannot speak and understand English.

Although there have been no published court decisions that apply the Lau principles to health and human services, there have been a number of court approved consent decrees that do so. See Attached Guidance Memorandum. Moreover, the Department of Justice Title VI coordinating regulation, which specifically articulates a requirement for the provision of certain services in other languages, applies to **all** types of federally assisted programs. 28 C.F.R.

§42.405(d)(1). As noted earlier, OCR has a consistent enforcement history in the LEP context in which recipients have consistently acknowledged their duty under Title VI to provide language services to LEP individuals. Other HHS regulations have also required accommodating persons who are LEP. Under the Medicare+Choice (M+C) Program, the M+C organization must ensure that services are provided in a culturally competent manner to all enrollees, including those with limited English proficiency. 42 C.F.R. § 422.12(a)(9)(I).

Finally, the administration has recently weighed in to support the viability of the Title VI disparate impact framework in the language context. In Sandoval vs. Hagan, 7 F.Supp.2d 1234 (M.D. Alabama, 1998), non-English speaking Alabama residents brought action challenging policy of Alabama Department of Public Safety under which driver's license examinations were administered only in English. The court held that the policy had impermissible disparate impact on basis of national origin in violation of Title VI, and was not supported by substantial legitimate justification. The court stated that disparate impact occurred here because the state's seemingly neutral practice detrimentally affected a protected group to a greater extent than other groups. On January 11, 1999, the Department of Justice submitted a brief to the Eleventh Circuit urging that the court uphold the district court decision.

Overall, there is ample legal authority for the proposition that HHS recipients have an obligation under Title VI to ensure that LEP populations can meaningfully access health and social services.

January 29, 1998

GUIDANCE MEMORANDUM
Title VI Prohibition Against National Origin
Discrimination--Persons with Limited-English Proficiency

I. BACKGROUND

This memorandum is intended to offer guidance to staff of the Office for Civil Rights (OCR) with respect to its enforcement of the responsibilities of recipients of Federal financial assistance from HHS to persons with Limited-English Proficiency (LEP), pursuant to Title VI of the Civil Rights Act of 1964, 2000d et seq. ("Title VI"). Such recipients include hospitals, managed care providers, clinics and other health care providers as well as social service agencies and other institutions or entities that receive assistance from HHS. This document will provide guidance to OCR investigators in assessing compliance, negotiating voluntary compliance, and providing technical assistance. It also stresses flexibility, particularly for small providers, in choosing methods to meet their responsibilities to LEP persons. Through OCR's investigative activities in this area, both recipients and LEP beneficiaries will be made more aware of their respective obligations with respect to the provision and receipt of services.

The guidance is intended to clarify standards consistent with case law and well established legal principles that have been developed under Title VI.

Section 601 of Title VI states that "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." Regulations implementing Title VI which are published at 45 C.F.R. Part 80, specifically provide that a recipient may not discriminate and may not, directly or through contractual or other arrangements, use criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular, race, color or national origin.

The statute and regulations prohibit recipients from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of beneficiaries in their programs, benefits or activities on the basis of race, color or national origin. Accordingly, a recipient must ensure that its policies do not have the effect of excluding from, or limiting the participation of, such persons in its programs and activities, on the basis of national origin. Such a recipient should take reasonable steps to provide services and information in appropriate languages other than English in order to ensure that LEP persons are effectively informed and can effectively participate in and benefit from its programs.

English is the predominant language of the United States and according to the 1990 Census is spoken by 95% of its residents. Of those residents who speak languages other than English at home, the 1990 Census reports that 57% of U.S. residents above the age of four speak English "well to very well." The United States is also, however, home to millions of national origin minority individuals who are limited in their ability to speak, read, write and understand the English language. The language barriers experienced by these LEP persons can result in limiting their access to critical public health, hospital and other medical and social services to which they are legally entitled and can limit their ability to receive notice of or understand what services are available to them. Because of these language barriers, LEP persons are often excluded from programs or experience delays or denials of services from recipients of Federal assistance. Such exclusions, delays or denials may constitute discrimination on the basis of national origin, in violation of Title VI.

LEP persons can and often do encounter barriers to health and social services at nearly every level within such programs. The primary reason for this difficulty is the language barrier that often confronts LEP persons who attempt to obtain health care and social services. Many health and social service programs provide information about their services in English only. Many LEP persons presenting at hospitals or medical clinics are faced with receptionists, nurses and doctors who speak English only, and often interviews to determine eligibility for medical care or social services are conducted by intake workers who speak English

only.

The language barrier faced by LEP persons in need of medical care and/or social services severely limits their ability to gain access to these services and to participate in these programs. In addition, the language barrier often results in the denial of medical care or social services, delays in the receipt of such care and services, or the provision of care and services based on inaccurate or incomplete information. Services denied, delayed or provided under such circumstances could have serious consequences for an LEP patient as well as for a provider of medical care. Some states recognize the seriousness of the problem and require providers to offer language assistance to patients in certain medical care settings.

This guidance sets out factors for OCR staff to consider in determining whether federally-assisted providers of medical care or social services are taking steps to overcome language barriers to health care and social services encountered by LEP persons. The guidance emphasizes flexibility to providers in choosing the language assistance options they will employ. Thus, small providers and/or providers who serve only one or two language groups may be able to meet their responsibilities by choosing fewer or different options than the options selected by larger providers or those providers serving many language groups.

The U.S. Supreme Court, in Lau v. Nichols, 414 U.S. 563 (1974), recognized that recipients of Federal financial assistance have an affirmative responsibility, pursuant to Title VI, to provide LEP persons with meaningful opportunity to participate in public programs. In Lau v. Nichols, the Supreme Court ruled that a school system's failure to provide English language instruction to students of Chinese ancestry who do not speak English denied the students a meaningful opportunity to participate in a public educational program in violation of the Civil Rights Act of 1964.¹

¹ The Lau decision affirmed the U.S. Department of Education's Policy Memorandum issued on May 25, 1970, titled "Identification of

Since the Lau decision, OCR has conducted a number of complaint investigations and compliance and pre-grant reviews involving language barriers that impede the access of LEP persons to federally-assisted health and medical care and social services. OCR has found that where language barriers exist, eligible LEP persons are often excluded from programs, denied medical services or suffer long delays in the receipt of health and social services. Where such barriers discriminate or have had the effect of discriminating on the basis of national origin, OCR has required recipients to provide language assistance to LEP persons.

OCR's position as set forth in this document is fully consistent with a government-wide Title VI regulation issued by the Department of Justice (DOJ) in 1976, "Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs," 28 C.F.R. Subpart F. The DOJ regulation addresses the circumstances in which recipients must provide language assistance, in written form, to LEP persons.² The DOJ regulation does not address the question of oral language assistance. OCR's experience in conducting complaint investigations and compliance and pre-grant reviews demonstrates that oral communication between recipients and program beneficiaries is an integral part of the exchange

Discrimination and the Denial of Services on the Basis of National Origin", 35 Fed. Reg. 11,595. The memorandum states in part: "Where the inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students."

² The DOJ coordination regulations at 28 C.F.R. Section 42.405 (d)(1) provide that "[w]here a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program (e.g. affected by relocation) 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."

that must occur in order for assisted programs and activities to appropriately function. Thus, OCR's longstanding position has been that recipients may be required to provide oral language assistance in languages other than English. This statement affirms this position.

II. DISCUSSION

A. Who is Covered

All entities that receive Federal financial assistance from HHS, either directly or indirectly through a subgrant or subcontract, are covered by this guidance. Covered entities would thus include any state or local agency, private institution or organization, or any public or private individual that operates, provides or engages in health, medical or social service programs and activities that receive or benefit from HHS assistance.

B. Ensuring Equal Access to LEP Persons

All recipients have the responsibility for ensuring that their policies and procedures do not deny or have the effect of denying such LEP persons equal access to federally assisted health, medical and social service programs, benefits and services for which such persons qualify.

The key to ensuring equal access to benefits and services for LEP persons, is to ensure the service provider and the LEP client can communicate effectively, i.e., the LEP client should be given information about, and be able to understand, the services that can be provided by the recipient to address his/her situation and must be able to communicate his/her situation to the recipient service provider. Recipients are more likely to utilize effective communication if they approach this responsibility in a structured rather than on an ad hoc basis.³

Developing policies and procedures for addressing the language assistance needs of LEP persons may best be accomplished through

³ A requirement to ensure effective communication is also found in the area of disability discrimination law. See 28 C.F.R. Section 35.160(a), 45 C.F.R. Section 84.52(c) and 45 C.F.R. Section 85.51(a).

an assessment of the points of contact in the program or activity where language assistance is likely to be needed, the non-English languages that are most likely to be encountered, the resources that will be needed to fulfill this responsibility and the location and/or availability of such resources. In identifying available resources, recipients may find it helpful to consult with national origin organizations and groups in their service areas. Achieving effective communication with LEP persons may require the recipient to take all or some of the following steps at no cost or additional burden to the LEP beneficiary:

- o Have a procedure for identifying the language needs of patients/clients.
- o Have ready access to, and provide services of, proficient interpreters in a timely manner during hours of operation.
- o Develop written policies and procedures regarding interpreter services.
- o Disseminate interpreter policies and procedures to staff and ensure staff awareness of these policies and procedures and of their Title VI obligations to LEP persons.

C. Interpreter Services

In determining the type of interpreter services that will be provided, a recipient has several options. To meet its Title VI responsibility with respect to the provision of interpreter services a recipient may:

- o Hire bilingual staff
- o Hire staff interpreters
- o Use volunteer staff interpreters
- o Arrange for the services of volunteer community interpreters
- o Contract with an outside interpreter service
- o Use a telephone interpreter service such as the AT&T Language Line
- o Develop a notification and outreach plan for LEP beneficiaries.

Factors that may be considered by a recipient in determining which option(s) will best meet its needs and the needs of its LEP beneficiaries are its size, the size of the LEP population it serves, the setting in which interpreter services are needed, the availability of staff members and/or volunteers to provide interpreter services during its hours of operation and the proficiency of available staff members or volunteers available to provide the needed services.

A recipient should not require a beneficiary to use friends or family members as interpreters. Use of such persons could result in a breach of confidentiality or reluctance on the part of beneficiaries to reveal personal information critical to their situations, to family or friends. In a medical setting, reluctance or failure to reveal critical personal information

could have serious, even life threatening, health consequences. In addition, family and friends may not be competent to act as interpreters, since they may lack familiarity with specialized terminology. However, a family member or friend may be used as an interpreter if this approach is requested by the LEP individual and the use of such a person would not compromise the effectiveness of services or violate the beneficiary's confidentiality, and the beneficiary is advised that a free interpreter is available.

A recipient should ensure that it uses persons who are competent to provide interpreter services. Competency does not necessarily mean formal certification as an interpreter, though this certification generally is preferable. However, the competency requirement does contemplate proficiency in both English and the other language, orientation or training which includes the ethics of interpreting, and fundamental knowledge in both languages of any specialized terms and concepts peculiar to the recipient's program or activity. For example, a hospital or medical clinic could use a nurse as a volunteer staff interpreter for a Hispanic beneficiary if the nurse speaks both English and Spanish proficiently. It can be assumed that in addition to language skills enabling the relay of critical information about the patient to medical personnel, the nurse will be sufficiently familiar with medical terminology to convey the medical meaning

and importance of what is being communicated to the LEP patient. However, it would be inappropriate to use a person who had little knowledge of medical terms or a person who spoke English poorly. Similarly, it would be inappropriate to rely on a medical student who worked part-time and had learned some Spanish but did not speak the language proficiently. While the student would understand the medical terminology, and the use of part-time staff would be appropriate in many circumstances, it is unlikely that such a student would have sufficient Spanish language skills to communicate what is being said and its importance, by and to the LEP patient.

The options available to recipients for providing interpreter services to LEP persons have differing weaknesses and strengths depending on the situation. Hiring bilingual staff for certain critical positions, *e.g.*, for patient or client contact positions, would facilitate participation by LEP persons. However, where there are several LEP language groups in a recipient's service area this option may be impractical as the only interpreter option, and additional language assistance options may be required.

Use of staff or community volunteers may provide recipients with a cost-effective method for providing interpreter services. However, recipients should ensure that such a system is sufficiently organized so that interpreters are readily available during all hours of its operation. In addition, recipients should ensure that such volunteers are qualified, trained and capable of ensuring patient confidentiality.

The use of contract interpreters may be an option for recipients that are small, have a significant but small LEP population, have less common LEP language groups in their service areas, or need to supplement their in-house capabilities on an as needed basis. Such contract interpreters should be readily available, qualified and trained.

Paid staff interpreters are especially appropriate where there is a very large LEP presence in a few major language groups. As in other options, these persons should be qualified and available. In most instances these employees are salaried and are entitled to the same benefits received by other employees.

A telephone interpreter service such as the AT&T language line may be a useful option as a supplemental system, or may be useful when a recipient encounters an unusual language that it cannot otherwise accommodate. Such a service often offers interpreting services in many different languages and usually can provide the service in quick response to a request. However, recipients should be aware that such services may not always have readily available interpreters who are familiar with the terminology peculiar to the particular program or service or may require special arrangements to use such persons.

III. Compliance and Enforcement

The recommendations outlined in Section II(B) are not intended to be exhaustive. Recipients are not required to use all of the suggested methods and options listed. However, recipients should establish and implement policies and procedures for fulfilling their Title VI equal opportunity responsibilities to LEP persons in the population eligible to be served.

In determining a recipient's compliance with Title VI, OCR's concern will be whether the recipient's system allows LEP beneficiaries to overcome language barriers and thus have equal access to, and an equal opportunity to participate in, health care and social service programs and activities. While a recipient is not required to use the options listed, and may use options that are equally effective, a recipient's appropriate use of the options and methods discussed in this guidance, will be viewed by OCR as evidence of a recipient's intent to comply with its Title VI obligations.

For example, a small health care clinic that accepts patients by appointment only and serves a small but significant LEP population may be able to meet its responsibility to its LEP clients by making arrangements for interpreter services on an as needed basis, and appropriately publicizing the availability of such arrangements.

On the other hand, the emergency room in a large hospital located in an area with a larger and more diverse LEP population may require a combination of language assistance options. In this setting, there are likely to be a variety of patient contact points, and immediate and accurate information to and from patients is usually critical. In such a situation the recipient also should have staff that are bilingual in English and other frequently encountered languages, in critical patient contact positions. If available staff is insufficient, the recipient should employ other staff interpreters and/or make other language assistance arrangements to ensure that there are no delays in providing medical care and no misunderstandings when conveying information to, or obtaining information or informal consent from, patients.

The procedural provisions of the regulations implementing Title VI, found at 45 C.F.R. Sections 80.6 through 80.10, are applicable to all complaints or compliance reviews regarding a recipient's compliance with its Title VI responsibility to LEP beneficiaries.

Juan Milanes 5/4

- USOA - guidelines - migrant worker/housing
- HUD/farmworker outreach - Roberto Carmona
~~708~~ (DOL) ~~708~~ 708.0614
X4151

HUD - complaint hotline - English + Spanish - looking
language line notes. 86 ~~languages~~ languages.

Options:

- \$ - minor
- Regulation
- Act Order -

Plein English - public services documents to plain
English.

Other agencies:

- DOL
- Ag (Jeff Sally)

② ~~Requirements under Title VI~~
DOJ guidance on ~~agencies~~ responsible
(probably type
agency to all
agencies)

John Tranter, OSC
have experience working
on disability - Bruce

AT&T large line - ~~Harry~~ Moedinger Nat'l Sales
1800 752-0093
1800 648-0186 DL
408-448-5825

- ST case

Enforcement

Public Housing Segregated.

- 800 building - ~~8~~ 1 predominantly 16 entire pop.
but small general pop.

- what requirements.

Requirements under Title VI

* OSC - delegated write



AT&T Language Line® Services

INTERPRETER CODE OF ETHICS

The AT&T Language Line® Services (LLS) Interpreter shall limit him/herself to interpreting. While performing his/her professional duties, the Interpreter shall not give advice, express personal opinions, or engage in any other activity that may be construed to constitute a service other than interpreting. The LLS Interpreter shall comply fully with this Code of Ethics and the AT&T Code of Conduct.

Confidentiality The LLS Interpreter shall respect all confidences received in the course of interpretation. All information gained by the Interpreter in the course of his/her professional duties shall remain strictly confidential. This information shall not be communicated, published or in any way divulged to any organization or person, other than the organization or person engaging the services of the Interpreter. **Accuracy & Completeness**

The LLS Interpreter shall render, to the best of his/her ability, a complete and accurate interpretation without altering or omitting anything that is stated. Interpreter shall not add to what is said nor provide unsolicited explanation.

Impartiality The LLS Interpreter shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. He/she shall not allow personal opinions to interfere with his/her duties nor add unsolicited comments or make recommendations except to assist communication. **Conflict of Interest** The LLS

Interpreter shall disclose any real or perceived conflict of interest. He/she shall not take personal advantage, financial or otherwise, of information obtained in the course of his/her work. **Disqualification & Impediments**

The LLS Interpreter shall, at all times, assess his/her ability to maintain LLS' highest standards for professional interpretation. He/she shall immediately convey any reservations about his/her ability to successfully complete the assignment for the customer. The Interpreter shall decline any assignment he/she believes to be beyond his/her technical knowledge or linguistic ability. **Accreditation**

The Interpreter shall only interpret for the language(s) for which he/she is authorized to interpret by LLS and as certified by LLS. **Professional Courtesy**

The Interpreter shall provide excellent customer service. He/she shall maintain a professional demeanor, be courteous and use the tone of voice appropriate to the situation. Interpreter shall defer to instructions from clients.

Professional Development Interpreter shall continually improve his/her skills and knowledge. Interpreter shall maintain and improve his/her Interpreter skills and knowledge through activities such as professional training or education and interaction with colleagues and specialists in related fields. The Interpreter shall keep informed of, adhere to, and conform his/her practices to LLS policies and guidelines that relates to his/her professional duties.

High Standards of Conduct The LLS Interpreter shall act at all times in accordance with the standards of conduct and decorum appropriate to his/her profession as an over-the-phone Interpreter.

AT&T Language Line® Services

SUBSCRIBED INTERPRETATION ATTACHMENT A Customer Charges

ENROLLMENT FEE

- One-time setup fee for each client identification number, which includes a detailed monthly statement \$200.00
- Each subsequent client identification number with corresponding statement \$100.00
- Enrollment fee includes unlimited access to all four language tiers.

MONTHLY FEE

- Monthly minimum applied against usage \$50.00

PER MINUTE RATES

- Usage is billed in one-minute increments.
- Price per minute for AT&T **Language Line®** Services is based on the language requested and time of day.
- Volume discounts are available.

<i>Tiers</i>	<i>Languages</i>	<i>Daytime</i>	<i>Nights/Weekends</i>
Tier 1	Spanish	\$2.20	\$2.50
Tier 2	Chinese: (Mandarin & Cantonese), French, Japanese, Korean, Russian, Vietnamese	\$2.40	\$3.10
Tier 3	Armenian, Cambodian, German, Haitian Creole, Italian, Polish, Portuguese	\$2.50	\$3.80
Tier 4	Farsi, Tagalog, Thai, Urdu and all other languages offered by AT&T Language Line® Services	\$2.60	\$4.50

Daytime = 5 a.m.-5 p.m. (Pacific time), Monday - Friday

Nights/Weekends = 5 p.m.-5 a.m. (Pacific time), Monday-Friday, weekends, and holidays†

†New Year's Day, Presidents Day, Independence Day, Labor Day, Thanksgiving, & Christmas

Prices effective 1/1/94

*There is no charge for toll-free access to AT&T **Language Line®** Services.
Per minute rates do not include international calls.*

