

SUMMARY OF LANGUAGE ACCESS LAWS IN CALIFORNIA

There are a number of federal, state, and local laws that govern language access for limited-English proficient (LEP) individuals. The following is an overview of the federal, state and local laws governing language access.

Title VI of the 1964 Civil Rights Act

“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.”¹

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin by any recipient of federal funding. This obligation applies to all recipients, including government agencies, public educational institutions, nonprofit organizations, private corporations, and other entities. Title VI also applies without regard to the amount of funds received by an entity. Although the law does not define national origin discrimination, courts and regulations have consistently interpreted the provision as requiring linguistically assessable services.

This means that agencies that receive federal funds and fail to provide meaningful access for limited English speaking individuals to services can violate Title VI. Title VI also covers private for-profit and nonprofit entities that receive federal funds, including those re-allocated by state or local governments.

In the past several years, policies have been put in place at the federal level to provide more specific direction to federal recipients regarding their legal duty to provide language-accessible services. In August 2000, President Clinton issued Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” requiring federal agencies to develop guidance for federal funding recipients on how to comply with Title VI. The Bush administration has reaffirmed Executive Order 13166, and the U.S. Department of Justice has led a multi-agency effort to issue guidance outlining four factors that a recipient of federal funding should apply in determining its level of obligation to provide access to services for people who are LEP:

1. *Number or proportion of LEP persons served.* While programs that serve fewer LEP individuals are still required to take reasonable steps to provide meaningful access, the number of LEP individuals expected to be encountered will determine the reasonableness of the efforts.
2. *Frequency of contact with LEP persons.* The more frequent the need by LEP individuals to access the services, the greater the responsibility to provide meaningful access.
3. *Nature and importance of the program.* The greater the importance of the program to beneficiaries, the greater the duty to provide access.
4. *Resources available and costs.* Cost is a legitimate consideration in assessing the reasonableness of particular language access measures, and a smaller recipient of federal funding with limited resources may not have to take the same steps as a larger one.

¹ 42 U.S.C. Section 2000d.

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In balancing these four factors, recipients of federal funding must provide an appropriate level of both oral interpretation and translation of important written documents. More information about Title VI's language access requirements can be found at the federal government's web site, www.lep.gov. This web site contains:

- Background information about Title VI;
- Executive Order 13166 (requesting federal agencies to develop detailed guidances on enforcing Title VI);
- Guidances for implementing Title VI for over 30 federal agencies;
- Federal implementation and enforcement policies;
- "Know Your Rights" materials;
- "I Speak" Flashcards (flashcard written in 38 languages that can be used to identify the language spoken by individuals who attempt to access services); and
- General resources for providing multilingual services.

Dymally-Alatorre Bilingual Services Act

California's Dymally-Alatorre Bilingual Services Act requires state and local agencies serving a "substantial number of non-English speaking people," to employ a "sufficient number of qualified bilingual staff in public contact positions" and to translate documents explaining available services into their clients' languages. In enacting the law over 30 years ago, the California Legislature recognized that "the effective maintenance and development of a free and democratic society depends on the right and ability of its citizens and residents to communicate with their government and the right and ability of the government to communicate with them." Gov. Code § 7291. Because a substantial number of limited English proficient ("LEP") Californians were unable to effectively utilize government services to which they were entitled, in 1973, the Legislature passed the Dymally-Alatorre Bilingual Services Act (the "Act"). See Gov. Code §§ 7290 et seq.

The Bilingual Services Program of the State Personnel Board monitors agency compliance with Dymally-Alatorre and provides guidance to agencies seeking to meet their legal obligations to serve LEP individuals. For more information see, <http://www.spb.ca.gov/bilingual/>

Equal Access to Services Ordinance

San Francisco's Equal Access to Services (EAS) Ordinance, Chapter 91 of the SF Adm. Code, requires covered city departments to make its services accessible in any language spoken by limited English proficient persons who make up either 1) five percent of the population served by the Department, or 2) 10,000 residents citywide. The EAS Ordinance applies to all city departments that provide services to the public and have at least 30 full-time employees. The EAS delineates a range of obligations including, but not limited to: conducting annual language needs assessments, utilizing written and oral language services to ensure individuals have equal access to services regardless of language ability.

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Written Translation

The Ordinance requires City departments that provide extensive public services (enumerated in the Ordinance as “Tier 1” departments),² to translate vital governmental documents into the languages spoken by at least 10,000 LEP residents or 5 percent of the clients served by the department. [Section 91.4.] At this time, the languages that fall under the broad, citywide 10,000 persons category are Spanish and Chinese. The seven categories of “vital” documents designated for translation by Tier 1 departments include:

- (1) applications or forms to participate in a Department’s program or activity or to receive its benefits or services;
- (2) written notices of rights to, determination of eligibility of, award of, denial of, loss of, or decreases in benefits or services, including the right to appeal any Department’s decision;
- (3) written tests that do not assess English language competency, but test competency for a particular license or skill for which knowledge of written English is not required;
- (4) notices advising limited English-proficient persons of free language assistance;
- (5) materials explaining a Department’s services or programs;
- (6) complaint forms; and
- (7) any other written documents that have the potential for important consequences for an individual seeking services from or participating in a program of a city department.

Oral Language Services

The ordinance requires each City department with at least 30 full-time employees to provide information and services to the public not only in English, but also in the languages spoken by at least 10,000 LEP residents or 5 percent of the clients served by the department. [Section 91.3.] Again, the languages that fall under the citywide threshold are Spanish and Chinese (specifically Cantonese).

Also, a local office of a City department that provides direct services to the public and serves as the workplace for 5 or more full-time City employees must additionally provide information and services to the public in the languages spoken by at least 5 percent of the population of the supervisorial district in which the facility is located or at least 5 percent of the clients served by the local office, when either of those constituencies is LEP and shares a primary language other than English. [Section 91.3.]

In order to comply with the spoken language component of the Ordinance, departments must utilize sufficient numbers of bilingual staff in public contact positions (made vacant by retirement or attrition – no existing employee would be dismissed to implement this ordinance). A public contact position is defined in the ordinance as “a position in which a primary job responsibility consists of meeting, contacting, and dealing with the public in the performance of the duties of that position.” [Section 91.2(i).] The standard for determining whether departments are in compliance with this

² "Tier 1 Departments" include the following: Adult Probation Department, Department of Consumer Assurance, Department of Elections, Department of Human Services, Department of Parking and Traffic, Department of Public Health, Department of Public Transportation, District Attorney's Office, Emergency Communications Department, Fire Department, Juvenile Probation Department, Police Department, Public Defender's Office, Department of Aging and Adult Services, Rent Stabilization and Arbitration Board, and Sheriff's Office.

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requirement of the Ordinance is whether they “provide the same level of service to Limited English Speaking Persons as they provide English speakers.” [Section 91.3(a).] The Ordinance may require the use of other means (such as language translation telephone lines) to communicate with the public in non-English languages in order to supplement bilingual staffing.

Monitoring

Individual departments and the city’s Immigrant Rights Commission are charged with monitoring compliance with the EAS. Departments must submit annual compliance plans by February 1st. Amongst other items, the plans must include³:

- The number and percentage of LEP individuals who actually use the Department’s services citywide, listed by language.
- The number and percentage of LEP residents of each district in which a covered departmental facility is located and persons who use the services provided by such facility.
- The number of public contact positions in the Department.
- The number of bilingual employees in public contact positions, their titles, office locations, the languages other than English that the person speaks.
- A description of any telephone based interpretation services offered, including the number of times such services were used and that languages for which they were used.
- A narrative assessment of the procedures used to facilitate communications with LEP individuals.
- A numerical assessment of the number of bilingual employees in public contact positions needed to meet the requirements of the EAS.
- A list of the Department’s written materials required to be translated under the EAS.
- A description of procedures for accepting and resolving complaints of an alleged violation of the EAS.
- A copy of the written policies on providing services to LEP individuals.

³ For a complete listing of items required in annual compliance plans, see Chapter 9, Sec. 91.1