

Language Access Laws and Legal Issues: A Local Official's Guide

The Institute for Local Government's mission is to promote good government at the local level with practical, impartial and easy-to-use resources for California communities. ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties.

The Institute's current program areas include:

- Local Government 101
- Public Engagement
- Public Service Ethics
- Sustainability

Acknowledgements

Special thanks to the following individuals whose expertise contributed to this publication:

- David J. Jung, Professor of Law and Director, Center for State / Local Government Law
- Noemí O. Gallardo, U.C. Hastings College of the Law, Class of 2012
- Ryan A. Harris, U.C. Hastings College of the Law, Class of 2012

The Institute also gratefully acknowledges the following individuals who reviewed this document and offered their comments prior to publication:

- Jenny Lam, Director of Community Initiatives, Chinese for Affirmative Action
- Grace Lee, Policy Advocate, Chinese for Affirmative Action

All decisions about the final content of this publication are made by the Institute for Local Government.

Copyright © 2011 by the Institute for Local Government

Table of Contents

Introduction.....	1
English as the Official Language and English-Only Laws	2
Federal Laws Requiring Language Access Services.....	4
California Laws Requiring Language Access Services.....	12
Public Participation Requirements and Language Access.....	16
Selected Local Language Access Policies	17
Tips for Providing Language Access Services	23
Links to Helpful Resources.....	26
Appendix A: Limited English Proficiency Plans.....	27
Appendix B: Selected Local Language Access Plans.....	28
Endnotes.....	29

Introduction

The rapid growth of immigrant communities is transforming the demography of the United States. This is particularly true in California where almost one-third of recent United States immigrants reside.¹ Language diversity is a prominent feature of this transformation.² Because many immigrants lack proficiency in English, language diversity often creates language barriers.

Language barriers can prevent people from fully participating in civic and public life. People whose proficiency in English is limited may not be able to use public services,³ communicate their point of view at a town hall meeting or understand information an agency wants the public to know.⁴ According to the 2000 U.S. Census, language is a barrier to meaningful civic participation for approximately 7.7 percent of U.S. residents over the age of five.⁵ California has the country's largest percentage of non-English-language speakers; in some California legislative districts, *most* residents have limited English proficiency.⁶ A state with many limited English-proficient⁷ speakers living within its borders may perceive a greater responsibility to provide language access services to its residents.

Enabling people to use their own language when it is feasible helps them access public services.⁸ For the community, providing language access increases the opportunities that residents have to communicate with their local leaders and public service providers and ensures the flow of information between public agencies and residents and among residents that is vital to effective community-building.

Under some circumstances, local agencies must insure that limited English-proficient residents have access to public benefits and services, and an opportunity to participate in public life. This guide explains the laws that require language access.⁹

This Guide Answers These Questions:

- Does a law declaring English to be California's (or a city's) official language prohibit local agencies from offering services in languages other than English?
- Under federal law, when must local agencies provide language access services?
- Under California law, when must local agencies provide language access services?
- How are other agencies (local, state, and federal) providing language access services to their communities?

English as the Official Language and English-Only Laws

Does the fact that English is California's official language prevent a local agency from providing language access services?

No. While article III, section 6 of California's Constitution declares English to be the state's official language -- and while local jurisdictions may have similar official language pronouncements in their charters or ordinances -- local agencies are still permitted to take steps to ensure that limited English-proficient residents have full access to public benefits, services, and events.

According to the California Constitution, "English is the official language of the state of California."¹⁰ This official language provision requires the Legislature to "take all steps necessary to insure that the role of English as the common language of the State of California is preserved and enhanced."¹¹ It also allows residents to sue the state to enforce its requirements.¹²

This provision does not, however, limit the power of local agencies to provide language access services. Article III section 6 leaves it to the Legislature to enforce its provisions, and the Legislature has not enacted any laws to limit public agencies' authority to offer language access services. The two courts to have considered the issue concluded that this provision does not prohibit agencies from offering language access services. According to the courts, California's official English law is "primarily a symbolic statement concerning the importance of preserving, protecting, and strengthening the English language."¹³

In the absence of implementing legislation, California's official English law does not prevent agencies from choosing to provide access to services and programs for limited English-proficient speakers, or from complying with federal or state laws that mandate language access.¹⁴

Can a local ordinance or charter provision require public business to be conducted only in English?

Probably not. According to the only court to consider the issue directly, English-only laws -- laws that prohibit the use of other languages in conducting public agency business -- are unconstitutional.¹⁵ Prohibiting public officials or employees from choosing to communicate in languages other than English violates the U.S. Constitution for two reasons:

- It "deprives limited- and non-English-speaking persons of access to information about the government when multilingual access may be available and may be necessary to ensure fair and effective delivery of governmental services to non-English-speaking persons."¹⁶
- It deprives "elected officials and public employees of the ability to communicate with their constituents and with the public."¹⁷

Furthermore, as discussed in the sections that follow, federal or state law often mandates language access. Federal or state laws mandating language access supersede local ordinances that attempt to prohibit the provision of public services in languages other than English.

If banning the use of other languages is unconstitutional, does this mean that limited English-proficient residents of our community have a constitutional right to language access?

Not necessarily. Courts have consistently rejected the notion that there is a constitutional right to language access.¹⁸ Neither the U.S. Constitution's Equal Protection Clause nor the Civil Rights Act of 1964 requires municipalities to provide services in languages other than English.¹⁹ The willingness to translate some information or to provide interpreters at some meetings does not create an obligation to translate and interpret in every instance. A public agency's decision as to whether or how often to provide language access services will be upheld so long as it is rationally related to a legitimate governmental purpose.²⁰

Intentionally denying access to public services or programs to those who speak a language other than English, however, can be a form of unlawful discrimination. Everyone has the right to be free from discrimination on the basis of race, ethnicity or national origin.²¹ A policy that intentionally singles out one language group by denying that group language access services that other groups receive could be challenged as violating these principles.²² Or, if an agency knows that it has an obligation to provide language access services under a federal or state statute and intentionally denies those services to a particular group, the agency's acts could be evidence of intentional and unlawful discrimination.²³

Federal Laws Requiring Language Access Services

Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color or national origin in any program or activity receiving federal financial assistance.²⁴ Executive Order 13166, issued in 2000, interprets and enforces Title VI. According to that Order, denying limited English-proficient speakers access to federal programs because of their national origin discriminates against them and violates Title VI.²⁵ The Order requires federal agencies and programs receiving federal financial assistance to take reasonable steps to insure that limited English-proficient speakers have meaningful access to their programs and activities.

The Department of Justice (Justice Department) has issued a guidance document implementing Executive Order 13166, as has each federal agency that provides federal financial assistance. These guidance documents describe how recipients of federal funds can satisfy their obligation to provide access for limited English-proficient speakers to access their programs.

What is a “program or activity receiving federal financial assistance”?

For purposes of Title VI and Executive Order 13166, a program receives federal funds if it receives any form of federal financial assistance, including grants, training, use of equipment, donations of surplus property, and so on.²⁶ If a recipient passes federal financial assistance on to another entity, Title VI’s requirements apply to that entity as well.²⁷

Also, if one part of an agency receives federal funds, Title VI’s requirements extend to *all* of the agency’s operations, including to programs that do not directly receive federal funds.²⁸ Section 2000d-4a of Title VI defines a “program or activity” as all of the operations of:

- A department, agency, special purpose district, or other instrumentality of a state or of a local agency; or
- The entity of such state or local agency that distributes such assistance and each such department or agency (and each other state or local public entity) to which the assistance is extended, in the case of assistance to a state or local agency.²⁹

For example, if the Department of Housing and Urban Development (HUD) gives a recipient funding for a particular facility, all of the recipient’s programs are covered by Title VI, not just the operations having to do with the funded facility.³⁰ If, however, a granting agency decides to terminate a recipient’s funding because reasonable language access services have not been provided, only funds directed to the program that is out of compliance will be affected.³¹

If an agency receives federal financial assistance, what does Title VI require it to do in order to provide meaningful access to limited English-proficient speakers?

Executive Order 13166 requires recipients of federal funds to “take reasonable steps to ensure meaningful access to programs and activities” by limited English-proficient speakers.³² Every federal agency providing federal financial assistance has a guidance document explaining the

obligation to provide language access services under its programs.³³ To access these documents, along with the text of relevant laws and a clearinghouse for information, tools and technical assistance, visit “Limited English Proficiency: A Federal Interagency Website” (<http://www.lep.gov>).

Each agency’s guidance document must be consistent with the Limited English Proficient Guidance issued by the Justice Department.³⁴ This discussion, therefore, focuses on the Justice Department’s guidance document, with occasional examples drawn from different agencies’ guides.

According to the Justice Department’s LEP Guidance, here are the questions to ask to assess Title VI compliance:

- 1) How many limited English-proficient speakers does the program serve or encounter?
- 2) How often do limited English-proficient speakers come into contact with the program?
- 3) What kind of program, activity, or service does the agency provide and how important is it to people’s lives?
- 4) How much will it cost to provide language access services and what resources are available to the program?

Taking a Closer Look at Title VI’s Four Factors.

1) How many limited English-proficient speakers does the program serve or encounter?

The first step in deciding what language access service to provide is to determine:

- How many of the people a program serves cannot communicate effectively in English.
- What languages those people speak.

The greater the number of limited English-proficient people who speak a particular language, the more an agency must do to provide language access services for that group.³⁵ Past experience can be a guide. An agency should first determine how often limited English-proficient residents have encountered the agency’s program in the past, and what kinds of language services they have needed. Next, the agency should look at the population in its service area, as the funding agency defines it.³⁶ What matters is the population that might walk in the door. Even in a county or city with relatively few English-proficient residents there may be an obligation to

provide language access services in a particular office or facility that serves a neighborhood where that population is concentrated.

Even in a city or county with relatively few English-proficient residents there may be an obligation to provide language access services in a particular office or facility that serves a neighborhood where that population is concentrated.

The Justice Department's guidance suggests several ways to find out about limited English-proficient speakers in an area:

- Look at demographic data from the U.S. Census.
- Look at data gathered by school districts.
- Consult with community organizations and state government resources.³⁷

In California, the publications *California Speaks* and *L.A. Speaks* provide a detailed analysis of language diversity and English proficiency in each legislative district and in Los Angeles County based on census data from 2000.³⁸

2) How often do limited English-proficient speakers come into contact with the program?

The more often limited English-proficient speakers come into contact with a program, the greater the obligation to provide language access services.³⁹ The Justice Department's guidance contemplates that recipients of federal financial assistance will accurately assess how frequently their programs encounter limited English-proficient speakers who speak a particular language.⁴⁰ Tracking the type of encounter involved – telephone, in person, email – can also be an important guide to the kind of language access services that will be most effective.

Intake procedures that record contacts with limited English-proficient speakers can accurately assess what language access services are necessary. For example, the California Department of Motor Vehicles (DMV) uses a biennial survey to measure frequency of contact with limited English-proficient speakers.⁴¹ DMV offices around the state conduct a two week survey and record every customer's language.⁴² If a non-English language shows up in more than five percent of customer interactions, the office will provide language access services for that language.⁴³

A low frequency of contact that is due to the failure to provide language access services in the past will not absolve an agency of the obligation to expand services. Agencies are advised to consider how the frequency of contact might increase once language barriers are removed.⁴⁴ Collecting data on instances wherein a member of the public is turned away due to a lack of available language access services is also important for making adjustments in the future.

3) What kind of program, activity, or service does the agency provide and how important is it to people's lives?

The more important a service is to people's lives, the greater the obligation to provide language access services.⁴⁵ For programs with life or death implications – such as disaster response or healthcare⁴⁶ – the obligation is strongest. If people are compelled to participate in a program – such as criminal proceedings or education – language access will likely also be viewed as critical.⁴⁷ Similarly, if an application procedure is needed in order to collect a benefit, language assistance services are important in order to assure that limited English-proficient speakers have equal access to the benefit.

Each federal funding agency indicates in its guidance which activities or services it deems critical. The Corporation for National and Community Service, for example, indicates that providing assistance with enrollment in public services and providing access to emergency or medical care are critical services.⁴⁸ Providing equal access to critical services may require agencies to ensure that oral interpreters are immediately available, and agencies providing critical services should give serious consideration to hiring bilingual staff to ensure receipt of services.⁴⁹ By contrast, services that are not so critical would include voluntary general public tours of a public facility.⁵⁰

4) How much will it cost to provide language access services and what resources are available to the recipient agency's program?

Cost is an important factor in determining what types of language access services are reasonable for an agency. If a service's cost greatly outweighs the benefit to be gained, the recipient agency is not expected to provide that service.⁵¹ The Justice Department's guidance and other agencies' guidances recognize that resources may be limited, and that small agencies with limited budgets cannot be expected to provide the same level of service as larger agencies with larger budgets.⁵²

Agencies with limited resources are particularly encouraged to explore cost saving technologies and resource sharing arrangements in order to provide language access services. Funding agencies may be able to provide valuable information on cost-saving measures such as resource sharing and use of the latest technology.⁵³ General information on service providers is available at http://www.lep.gov/interp_translation/trans_interpret.html. Each funding agency will also have suggestions in its Title VI policy guidance particularly tailored to the kind of services or programs a recipient agency provides. For information regarding technology, see *Communicating More for Less: Using Translation and Interpretation Technology to Serve Limited English Proficient Individuals* (<http://www.migrationpolicy.org/pubs/LEP-translationtechnology.pdf>).

Although cost is a legitimate factor to consider, Justice Department officials have said that “while recipients may be tempted to assign greater weight to the [cost] factor, they must balance each factor equally.”⁵⁴ A claim that scarce resources preclude providing language services must be carefully documented.⁵⁵ “Even in tough economic times, assertions of lack of resources will not provide carte blanche for failure to provide language access. Language access is essential and is not to be treated as a ‘frill’ when determining what to cut in a budget.”⁵⁶

If an agency claims that funds for language services are unavailable due to other agency expenses, the agency will be expected to justify its spending priorities.⁵⁷ There is heightened concern for agencies serving a large limited English-proficient population. Such agencies are expected to document why costs are an impediment to providing language access, and such claims will need to be “well substantiated,” according to the Justice Department’s guidance.⁵⁸

Does an agency need to prepare a formal plan assessing the need for language access services and identifying steps to be taken to meet that need?

Cost saving ideas from the U.S. Justice Department

- Take advantage of technological advances.
- Share language assistance materials and services with other recipients, advocacy groups, and federal grant agencies.
- Train bilingual staff to act as interpreters and translators.
- Use telephonic and video conferencing interpretation services.
- Standardize documents to reduce translation needs.
- Centralize interpreter and translator services to achieve economies of scale.
- Use qualified community volunteers.

The Justice Department strongly recommends that recipients develop a written plan -- called a Limited English Proficiency (LEP) Plan -- for providing language access services.⁵⁹ Many LEP plans are available online and can provide ideas for best practices (see Appendix A for examples). A written plan can document compliance with the obligation to provide meaningful access for limited English-proficient speakers.⁶⁰ A plan can also provide a framework for offering language access services, thereby guiding efforts to train staff, implement services and control cost.⁶¹ Small agencies, as well as large, can benefit from such a plan even if it simply informs staff how to contact a telephone translation service.⁶²

The Justice Department’s guidance stops short of requiring every recipient to develop a written plan, recognizing that small agencies with limited staff and a focused mission may not benefit sufficiently from a plan to justify the cost of developing it.⁶³ Other funding agencies, such as the Department of Transportation (DOT), strongly suggest developing a Limited English Proficient (LEP) Plan regardless of an agency’s size and resources.⁶⁴ DOT emphasizes that “after completing the four-factor analysis and deciding what language assistance services are appropriate, a [DOT] recipient should develop an implementation plan to address the identified needs of the LEP populations it serves.”⁶⁵ Although some DOT recipients such as those “serving very few LEP persons or those with very limited resources may choose not to develop a written LEP plan,” the underlying obligation to provide meaningful access still remains.⁶⁶ DOT suggests that recipients who choose not to develop a Limited English Proficient Plan “consider alternative ways to reasonably articulate a plan for providing meaningful access.”⁶⁷

If an agency encounters limited English-proficient speakers, what specific language access services must it provide?

The Justice Department's guidance indicates that "recipients have substantial flexibility in determining the appropriate mix" of language services to provide in light of the four factor test.⁶⁸ If the recipient agency only encounters limited English-speakers sporadically, reasonable assistance can be as simple as: 1) using language cards (widely available on the web to identify a language the individual understands); and 2) providing staff with access to a telephone interpreting service or a list of community groups that can provide informal interpreters.⁶⁹

Language access services fall into two categories:

- Translation of written documents.
- Interpreting services.

For interpreting services, agencies have a range of options including:

- Hiring bilingual staff.
- Hiring professional interpreters.
- Contracting with interpreters for services as needed.
- Recruiting volunteer interpreters.
- Contracting for telephonic interpretation services.
- Arranging for local community groups to provide interpreters.⁷⁰

The overriding concern, regardless of what mix of services is used, is the interpreter's competence in light of the type of services the agency's program provides.⁷¹ For instance, hospital encounters or legal proceedings will involve the interpretation of technical terms and may have serious consequences that require a certified professional to interpret accurately. Less formal settings may not require a certified interpreter. If an individual prefers to use a family, friend, or fellow inmate, he or she should be allowed to. However in many instances such willing helpers may not be competent to interpret correctly and using them could also raise issues of privacy and confidentiality.⁷²

For written translations, the Justice Department provides clearer guidance on written translations by providing a "safe harbor." The safe harbor provision requires agencies to translate vital documents into a language if the number of limited English-proficient speakers served by the agency who speak that language crosses a specific numerical threshold.⁷³ If the agency complies with the safe harbor provisions, it is considered "strong evidence of compliance with the recipient's written-translation obligations."⁷⁴

To take advantage of the safe harbor provision, an agency should first determine which of its documents are vital. This may be difficult. Not every document that is helpful in understanding a program is necessarily critical for ensuring meaningful access. To determine which documents are vital, look to the importance of the program or service and the consequences for the limited English-proficient community that would flow from a failure to translate.⁷⁵ Factors to consider might be:

- Whether the document creates legally enforceable rights or responsibilities (examples include leases, rules of conduct, and notices of benefit denials).
- Whether the document solicits important information required to establish or maintain eligibility to participate in a federally-assisted program (examples include applications or certification forms).
- Whether the document itself is a core benefit or service provided by the program.

Next, determine how many of the limited English-proficient speakers the program affects are from a particular language group.⁷⁶ The safe harbor provision requires translating all vital written documents into a language if:

- It is the primary language for more than 1000 limited English-proficient speakers who are eligible for or likely to be affected by the program; or
- It is the primary language for between 50 and 1000 limited English-proficient speakers who are eligible for or likely to be affected by the program, and that number constitutes 5 percent of the total population the program affects.⁷⁷

If the program affects less than 50 limited English-proficient speakers from a particular language group, there is no obligation to translate documents into that language.⁷⁸ For documents that are not vital, or for language groups that do not meet the numerical threshold, it is sufficient to provide written notice in that group's primary language that limited English-proficient speakers have the right to have an interpreter read the document to them.⁷⁹

Again, competence of the translation is critical for assessing compliance. Although it is not mandatory, it is preferable that professional translators be used, especially for important or sensitive documents.⁸⁰

Keep in mind that the mandate is to provide meaningful access. For example, instead of translating application forms, an agency may decide to ask for the information being sought in the forms orally. As an example, a number of state unemployment insurance programs have transitioned from paper-based application and certification forms to telephone-based systems.⁸¹ Also, some languages – such as Hmong -- are oral rather than written.⁸² If many limited English-proficient speakers will likely be unable to read translated documents or written instructions, providing interpreters may be a more effective way to communicate with those individuals.

What are the consequences if an agency fails to comply when federal law requires provision of language access services?

Individuals cannot sue to enforce Title VI unless they can prove intentional discrimination, but limited English-proficient speakers can complain to the federal funding agency if the recipient agency does not provide meaningful access to services and programs.⁸³ Federal agencies can initiate an investigation of the recipient agency based upon an individual's complaint, or investigate on their own initiative.⁸⁴ As of 2010, the Justice Department increased its efforts to ensure Title VI compliance in the area of language access by opening numerous investigations.⁸⁵

After attempting to resolve an issue through voluntary and cooperative efforts, the agency granting funds may submit the matter for an administrative hearing and move to cut off funding, or may sue to achieve compliance.⁸⁶ Some investigations, initiated as civil rights complaints, have led to cooperative agreements between the Justice Department and local agencies, formalized as memoranda of understanding between the parties.⁸⁷ These agreements generally include timelines to implement language access policies, describe when and how language access will be offered, and how staff will be trained to provide access.⁸⁸ The agreements also include multi-year reporting requirements that allow the Justice Department to monitor progress.⁸⁹

California Laws Requiring Language Access Services

Two California laws require local agencies to provide language access services.

- The California Civil Rights Act prohibits discrimination by agencies that receive state funds and requires them to provide equal access to benefits without regard to the beneficiary's race, color, national origin, or ethnic group identification among other factors.⁹⁰
- The Bilingual Services Act (Act)⁹¹ requires local agencies to provide language access services to limited English-proficient speakers.

When does a local agency's failure to provide language access services constitute a form of illegal discrimination?

To not provide language access services may be a form of illegal discrimination. If a local agency receives state funds,⁹² it must "take appropriate steps to ensure that alternative communication services are available to ultimate beneficiaries."⁹³ An agency can meet this obligation by providing interpreter services, hiring multilingual employees, providing written translations of documents or otherwise.⁹⁴ A recipient can be relieved of the obligation to provide language access services if the state agency providing funds determines it would produce an undue hardship on the recipient.⁹⁵

What are the consequences if an agency receives state funding, but fails to provide language access services?

Failing to provide language access services may have serious consequences. Individuals who are denied access may sue for injunctive relief if they have been harmed.⁹⁶ State funding agencies may also take remedial action by:

- Seeking voluntary cooperation from local agencies.
- Conducting administrative hearings.⁹⁷
- Cutting off state funding if compliance cannot be achieved.⁹⁸

What does an agency need to know about the Bilingual Services Act?

The Bilingual Services Act applies to any "county, city, whether general law or chartered, city and county, town . . . municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency."⁹⁹ School districts, county boards of education, and the office of a county superintendent of schools are not considered local agencies for purposes of the Act.¹⁰⁰

The Act aims to remove language barriers that would otherwise prevent limited English-proficient speakers from accessing state and local programs and services to which they are entitled.¹⁰¹ The state auditor has expressed concern that agencies may be unaware of the Act and therefore do not have formal policies for providing language access services to address their clients' bilingual needs.¹⁰²

When does the Act require an agency to provide language access services?

Local agencies must provide language access services when they serve a substantial number of non-English speakers. If a local agency serves a substantial number of non-English speakers, the agency must do two things:

- Either employ¹⁰³ enough qualified bilingual speakers in public contact positions or employ enough interpreters to ensure limited English-proficient speakers are provided with benefits and services.¹⁰⁴
- Translate materials explaining the services available to the public into any non-English language spoken by a substantial number of non-English-speaking people, and provide notice in the non-English languages that translations are available.¹⁰⁵

Although California law emphasizes that non-English speakers should have access to public benefits and public services, California law does not require all public business to be conducted in multiple languages.¹⁰⁶ Local agencies have considerable discretion in implementing language access services.¹⁰⁷ Each local agency, for example, determines for itself:

- Whether it serves a substantial number of non-English speaking people.
- How many bilingual people in contact positions or interpreters it will take to ensure provision of services and information to non-English speakers.¹⁰⁸
- Whether translated materials are necessary.¹⁰⁹

California law prohibits local agencies from dismissing an employee in order to hire bilingual speakers in public contact positions.¹¹⁰ Implementation of the Act's provisions must be achieved "by filling employee public contact positions made vacant by retirement or normal attrition."¹¹¹ Further, any steps taken to implement language access must be permissible under federal law and consistent with applicable provisions of the civil service law.¹¹² Finally, the obligation to implement language access services arises only if funds are available.¹¹³

How can an agency determine whether it "serves a substantial number of non-English-speaking people"?

Local agencies have discretion to determine whether the agency serves a "substantial number of non-English-speaking people."¹¹⁴ For guidance in exercising this discretion, local agencies might look to the Act's requirements for state agencies. State agencies serve "a substantial number of non-English-speakers if 5 [percent] of the people they serve belong to a group that

does not speak English or cannot communicate effectively in English because it is not their native language.” Of course, nothing prevents an agency from providing language access services to groups who do not meet this 5 percent threshold.¹¹⁵

How can an agency determine whether it should translate materials into other languages?

Again, the statute leaves this to the local agency’s discretion. For guidance in exercising this discretion, an agency might look to the requirements for state agencies. If a state agency serves a substantial number of non-English speakers, it must either translate or offer translation services¹¹⁶ for any documents that:

- Solicit information from an individual.
- Provide information to an individual.
- Affect an individual’s rights, duties or privileges with regard to the agency’s services.¹¹⁷

Must an agency conduct all of its business in multiple languages? For example, does an agency always need to have interpreters at public hearings or board or council meetings?

California law emphasizes that non-English speakers should have access to public benefits and public services. The Legislature’s concern in passing the Act, however, was broader:

Institute for Local Government Resources Available in Spanish

- [*Understanding the Basics of Local Agency Decision-Making*](#)
- [*Land Use Decisions One-Pagers*](#)
- [*Financial Management for Elected Officials: Questions to Ask*](#)
- [*Understanding the Basics of County and City Revenues*](#)

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.¹¹⁸

To that end, the Legislature created an obligation to provide language access not just for agencies providing direct services and benefits, but for every type of local agency except school districts, county boards of education, and other offices at a county superintendent of schools. All local agencies must “ensure provision of information and services in the language of the non-English-speaking person,” and “information and services” is defined broadly:

The furnishing of information or rendering of services includes, but is not limited to, providing public safety, protection, or prevention, administering state benefits, implementing public programs, managing public resources or facilities, holding public

hearings, and engaging in any other state program or activity that involves public contact.¹¹⁹

While this section of the Act mentions state programs or activities explicitly, the definition applies to the entire chapter, including the sections defining local agencies' obligations. The Legislature's intent seems to be for local agencies to take steps to ensure that non-English speakers are taken into account whenever a local agency has contact with the public. Here, as elsewhere, the Act leaves much to the local agency's discretion.¹²⁰

Public Participation Requirements and Language Access

Many state and federal laws require enhanced public participation for particular programs or activities. State agencies may also have internal regulations that require or encourage provision of language access to facilitate public participation.¹²¹ For example, the California Natural Resources Agency which oversees the Environmental Quality Act (CEQA) deems public participation and comment during any environmental review process as an “essential part of the CEQA process.”¹²²

The CEQA regulations do not mention language access; however, providing language access in some circumstances may be the only way to facilitate public participation.¹²³ A community group in Kettleman City, for example, successfully sued Kings County to prevent the construction of a waste disposal facility in an area of a forty percent Latino, limited English-proficient population.¹²⁴ The community group opposed the project, citing health hazards.¹²⁵ They claimed that their ability to participate in the CEQA review process was hampered because the county failed to provide translations of documents, and then refused to allow residents and their interpreters sufficient time and opportunity to speak at the public hearings.¹²⁶ In ruling for the community groups, a California judge stated that, “[the residents’] meaningful involvement in the CEQA review process was effectively precluded by the absence of the Spanish translation.”¹²⁷

Selected Local Language Access Policies

Three California local agencies – the City of Oakland, the City of San Francisco and the City of Monterey Park – have supplemented the Bilingual Services Act’s enforcement provisions by implementing language access ordinances. Other U.S. cities have also implemented language access ordinances to complement or supplement federal and their respective state’s language access policies.¹²⁸

Below is a survey of language access policies found nationwide, in order of adoption, which highlights each policy’s notable features. The survey provides local officials with a glimpse of the range of practices that other local entities have implemented to address the needs of limited English-proficient residents. Appendix B provides links to the complete ordinances.

Demographic Features of U.S. Cities with Language Access Policies

<u>City</u> (by order of adoption)	<u>Est. Total Population</u> <u>25+ years</u>	<u>Est. Percent Population 5+</u> <u>years that Speaks a</u> <u>Language Other than</u> <u>English At Home</u>
Oakland, CA	274,996	39.2
San Francisco, CA	623,699	44.3
Philadelphia, PA	1,001,167	20.1
Minneapolis, MN	377,000	19.2
Monterey Park, CA	44,276	76.2
New York, NY	5,643,911	47.1
Seattle, WA	437,581	20.7

Source: U.S. Census, American Community Survey 5-Year Estimates 2005-2009, City Factsheets

Oakland, CA – City of Oakland Ordinance No. 12324: Equal Access to Services Ordinance Adopted April 26, 2001

Oakland was the first city in the U.S. to implement a language access ordinance.¹²⁹ Oakland’s ordinance code number 12324 known as the “Equal Access to Services Ordinance” is modeled on San Francisco’s “Equal Access to Services Ordinance” (San Francisco’s ordinance was the first drafted but Oakland’s was the first implemented). “Two immigrant members of the

Oakland City Council, Ignacio de la Fuente and Danny Wan, heard about [San Francisco's effort] and took a personal interest in providing language access protections for their constituents."¹³⁰ Advocates in both cities found it helpful to educate local officials about existing federal and California law to demonstrate that a local ordinance would supplement the efforts of other levels of government.¹³¹

Oakland incorporated the wording of California's Bilingual Services Act, but the ordinance's drafters took the responsibility further by providing guidance as to definitions, evaluation, implementation, and compliance. For example, a "substantial number of Limited English-Speaking Persons Group" is specifically defined as "at least 10,000 limited English-speaking city residents who speak a shared language other than English."¹³² Oakland's city planning department must also determine whether a group meets the threshold on an annual basis based on U.S. Census data.¹³³

Oakland's ordinance eased implementation difficulties by implementing the services in two phases and dividing the departments required to hire bilingual employees into two tiers.¹³⁴ By listing the specific agencies required to provide language access Oakland reduces doubt and confusion as to which agencies must participate.¹³⁵ There is also a single individual, the city manager, charged with determining the adequacy of services upon review of each department's annual compliance plan, enforcing the provisions of the ordinance and ensuring that each department complies.¹³⁶ The ordinance requires oral interpretation at public meetings and hearings (if requested at least 48 hours in advance) and specifies which documents must be translated for the public.¹³⁷

San Francisco, CA – City and County of San Francisco ordinance No. 126-01: Equal Access to Services Ordinance Adopted June 15, 2001

Community advocates were also instrumental to the passage of the City of San Francisco's ordinance number 126-01, known as the "Equal Access to Services Ordinance."¹³⁸ Advocates formed a coalition composed of immigrant groups, policy advocates, and legal services organizations to promote the ordinance.¹³⁹ San Francisco's Board of Supervisors approved the ordinance "which, in effect, 'implements and supplements' the Bilingual Services Act."¹⁴⁰

San Francisco's ordinance requires all city departments to "provide information and services to the public in each language spoken by a Substantial Number of Limited English-Speaking Persons or to the public served by a Covered Department Facility in each language spoken by a Concentrated Number of Limited English-Speaking Persons."¹⁴¹ A "concentrated number of limited English-proficient persons" is "5 percent of the population of the district in which a Covered Department Facility is located or 5 percent of those persons who use their [sic] services provided by the Covered Department Facility."¹⁴² A "substantial number of limited English-proficient persons" is "either 10,000 city residents or 5 percent of those persons who use the department's services."¹⁴³

As with Oakland's ordinance, San Francisco's gives local departments a range of options, including conducting annual language needs assessments through surveys, using written and oral

language services including oral interpretation at public meetings and hearings, developing annual compliance plans, and allowing persons to file complaints alleging violations of the ordinance.¹⁴⁴

Philadelphia, PA – City of Philadelphia Executive Order No. 4-01 Adopted September 29, 2001 and Executive Order No. 09-08 Adopted June 9, 2008

The City of Philadelphia implemented its language access ordinances in two steps. Its Executive Order number 4-01 was a reaction to the 2000 federal Order.¹⁴⁵ Philadelphia acknowledged its immigrant population was growing and indicated that its immigrant residents played an important role in the city.¹⁴⁶ With this initial step, Philadelphia sought to “reduce language barriers . . . preventing its residents with limited English proficiency from meaningfully accessing federally funded city services that are available to all Philadelphians.”¹⁴⁷

Philadelphia’s first Order required “all City departments, boards and commissions . . . [to] take reasonable steps to provide meaningful access to their federally funded programs and activities for persons with limited English proficiency.”¹⁴⁸ These first steps included:

- Assessments of programs and activities that received federal funding to determine how and to what extent their limited English-proficient residents were prevented from accessing programs and to determine the level of economic resources required to address the needs of the limited English-proficient residents those programs or activities served.
- Using the assessments to develop compliance plans detailing the steps departments would take to ensure that limited English-proficient persons could effectively participate in and benefit from federally assisted programs and activities.¹⁴⁹

Later, Philadelphia replaced its first Order with a more comprehensive policy – Executive Order No. 9-08 -- entitled “Access to City Programs and Activities for Individuals with Limited English Proficiency.”¹⁵⁰ The new Order outlined Philadelphia’s evolution “into a regional center of cultural diversity” and the steps leading to its provision of language access services.¹⁵¹ Although the Order originated as a reaction to federal legislation, all city agencies are now required to provide various forms of language access regardless of whether they receive federal funding.¹⁵²

Minneapolis, MN – City of Minneapolis Resolution 2003-R547: Approving the Creation of a Limited English Proficient (LEP) Plan Adopted November, 2003

The City of Minneapolis was also motivated to implement an ordinance in reaction to the Justice Department’s guidelines regarding compliance with Title VI and also to better integrate the increasing foreign-born population.¹⁵³ In August 2000, Minneapolis’s Interdepartmental New Arrivals Work Group issued a report entitled “Welcoming New Arrivals to Minneapolis: Issues and Recommendations.”¹⁵⁴ In response to a question in the report about what staff had done to overcome language barriers, the most common response (47 percent) was “Use client’s

friends/family members as interpreters.” To make further progress on the area of language access, the city resolved to:

- Provide quick, convenient, and effective interpreting and translation services.
- Train staff on culture and language.
- Identify and develop relationships with individuals and organizations in new arrival communities.
- Hire more bilingual and bicultural staff.¹⁵⁵

Minneapolis also resolved to have key departments “work together to train all city staff that have contact with LEP persons in how to provide meaningful language access.”¹⁵⁶ “Meaningful access” includes measures such as: “creating, monitoring, and updating an LEP plan; identifying and tracking language preferences of people using or potentially using city services; interpreting by interpreters with proven competency, provided by the city; translating vital written documents provided by the city; providing notice to LEP persons of the free services available; and training staff in language access issues and procedures.”¹⁵⁷

By including limited English-proficient persons in creating the language services compliance plans, Minneapolis demonstrated its commitment to creating a comprehensive plan that included all constituents of the community.¹⁵⁸ Minneapolis is strongly committed to making city services and information about those services available to everyone, regardless of language barriers.¹⁵⁹ This commitment stems from overall city goals of responsive public agencies, community engagement, and customer service.

“As residents, workers or visitors who contribute to city life, people with limited English proficiency (LEP) are entitled to fair and equal access to service.”¹⁶⁰ After months of “planning, consultation and review of legal mandates and LEP plans created by other cities and counties,” in November 2004, Minneapolis introduced its Limited English Proficiency (LEP) Plan (see Appendix B), “to give specific direction to staff about how to make city services accessible to those who speak limited English.”¹⁶¹

Monterey Park, CA – City of Monterey Park Administrative Policy 10-35: Multilingual City Services Adopted December 18, 2003

Monterey Park did not base its ordinance on California law nor was it a reaction to federal law.¹⁶² Instead, Monterey Park has implemented innovative measures to ensure that its remarkably diverse residents have adequate language access.¹⁶³

To ensure that residents and others are better able to participate in local governance and utilize city programs and services regardless of their proficiency in English, Monterey Park implements inexpensive yet effective practices to provide language access services. For example, to provide translation of documents and correspondence, Policy 10-35 provides:

- “A Volunteer Translators and Interpreters Program will be maintained to assist with the translation of various city brochures, applications, and press releases into appropriate languages. This program will consist of residents, business operators and other interested individuals who are certified as bilingual to ensure their competency in translating complex documents.”
- “Depending on the timing, complexity and availability of the Volunteer Translator and Interpreters Program volunteers, the city shall contract for services of local businesses that provide translation and typesetting services in languages other than English for use in translating and printing city materials, press releases and brochures that will supplement the effort to communicate governmental services and programs.”¹⁶⁴

Monterey Park also takes the following steps:

- Provides a “Language Identification Card” that allows individuals to identify their native tongue that is available at all public counters and issued to all field personnel.
- Takes additional steps to distribute the “Language Identification Cards,” including mailing one to each city household as an insert in the water bill on a biennial basis and sending the cards as part of the new resident packages¹⁶⁵
- Makes public building signage as universally understandable as possible including:
 - Using international symbols on all restrooms at public facilities.
 - Placing identifying signs (for example, those labeling agency departments over counters, such as building, human resources, etc.) in dominant languages (for Monterey Park, Chinese and Spanish) as well as English.¹⁶⁶

New York, NY – City of New York Local Law 73: Equal Access to Human Services Adopted December 22, 2003 and City of New York Executive Order 120: Citywide Policy on Language Access to Ensure the Effective Delivery of City Services Adopted July 22, 2008

The City of New York (New York), adopted its “Equal Access to Human Services Act of 2003” to comply with Title VI. New York requires its agencies to provide various interpretation and translation services promptly “by ensuring that limited English-proficient speakers do not have to wait unreasonably longer to receive assistance than individuals who do not require language assistance services.”¹⁶⁷ In July 2008, Mayor Bloomberg implemented a new policy to improve existing language access services.¹⁶⁸ In doing so, the Mayor ordered that all city agencies develop plans based on the guidance provided by the Justice Department in 2002.¹⁶⁹ Additionally, unlike other cities, New York requires its agencies to “provide services in languages based on at least the top six LEP languages spoken by the population of New York City.”¹⁷⁰

Seattle, WA – City of Seattle Executive Order-01-07: City-wide Translation and Interpretation Policy Adopted January 31, 2007

The City of Seattle does not attribute its ordinance as a reaction to federal or state law. It is a short and simple ordinance that “seeks to make government services and resources easily available and understandable to all Seattle residents, including non-native English speakers.”¹⁷¹ Executive Order-01-07 emphasizes services relating to community engagement. Departments must:

- Translate documents when conducting major projects in neighborhoods where 5 percent or more of the population consists of a specific language group.¹⁷²
- Provide interpreters in these languages at neighborhood specific events conducted by city departments.¹⁷³
- Make every effort to provide interpreters at community meetings organized by the city.¹⁷⁴

To ensure residents obtain qualified interpretation and translation services, Seattle manages its own Language Bank that contains contact information for certified interpreters under contract with the city.¹⁷⁵ All departments must use the City Language Bank to locate interpreters and/or telephone service providers to assist and inform residents about city services.¹⁷⁶ Seattle also “provides service and community information in 30 languages throughout the Seattle.Gov web site The links to service and community information go to the web sites for various city departments. Many of the links go directly to PDF documents The information on these pages is presented in translations of the various languages.”¹⁷⁷

Tips for Providing Language Access Services

Ensure Effective Language Access Coordination and Accountability

- Ensure that local agency departments are aware of existing language access services and resources.
- Appoint a coordinator or, in larger agencies, a working group of individuals from different components to monitor/update the agency's response to the needs of limited English-proficient service-users.
- Consider developing policies that clarify the agencies' responsibilities for providing language access services.
- Monitor agency compliance to ensure staff cooperation and accountability.
- Conduct regular trainings about language access to ensure that all staff, especially those who frequently encounter the public, are aware of the agency's policies.

Tips for Local Agencies from the Bureau of State Audits

The Bureau of State Audits has compiled two reports assessing state and local compliance with the Bilingual Standards Act. Based on their reviews, the Bureau has identified these steps to ensure client needs for bilingual services are identified and addressed adequately:

- Use formal procedures to identify languages clients speak and assess the sufficiency of existing bilingual resources regularly.
- Translate materials explaining services into languages spoken by a substantial number of LEP clients.
- Develop policies that clarify local agencies' responsibilities for providing bilingual services.
- Encourage local departments to consider using state California Multiple Award Schedules (CMAS) contracts to obtain bilingual services whenever cost-effective. (See endnote # 178)

Conduct Effective Needs Assessment

- Survey clients and chart their needs.
- Track encounters with limited English-proficient service-users.
- Obtain L.E.P. service-user feedback via surveys or other methods.
- Use the information obtained to target language access efforts to priority services and locations.
- Use formal procedures to regularly identify the languages that residents speak and to assess the sufficiency of their language access resources to meet their needs.

- Consider establishing feedback processes through which the public can report the absence of language access services or resources.

Ensure Reliable Access to Disaster and Emergency Preparedness Info

- Disaster and emergency preparedness should always be a priority focus for language access efforts.

Use and Maximize Existing Resources

- Leverage existing contracts with other departments through such programs as the CMAS.¹⁷⁸
- Share resources within and across agencies; such as regional and interagency partnerships.
- Use bilingual employees effectively and appropriately. Avoid assumptions about competence and willingness of bilingual staff to provide language services. Once an agency has identified competent and willing bilingual staff, ensure that they are strategically posted.
- Leverage community-based organizations for interpretation and translation assistance, provided that quality control procedures are used.

Provide Meaningful Access to Web-Based Information

- Web pages may be a helpful, less intrusive tool to provide information about services and programs available to limited English-proficient service-users. Allowing limited English-proficient service-users to obtain information via the internet can ease fears of immigrant residents who may not feel comfortable seeking services in person.
- Non-English language web pages should be easy to locate and navigate. These web pages should serve as a “one-stop shop” for agency information.
- Web pages should be available in as many languages as possible, especially those spoken by substantial numbers of residents in the community.
- It is important to note that automatic translations through web-based services will usually not be 100 percent accurate.

Consistently Enforce Quality Control Standards

- Follow the suggestions above related to ensuring competence of bilingual staff, interpreters, and translators; accuracy of web-based information and translations in non-English languages; and reliance on service-user feedback.

- Avoid ad hoc approaches when engaging limited English-proficient service-users by ensuring staff familiarity with an agency's Limited English Proficient Plan.
- Avoid relying on a limited English-proficient individual's family and/or friends for interpretation and translation, whether on an ad hoc basis or as part of the agency's general language assistance strategy. Generally, family and friends should not be used for language assistance, except in certain emergency situations while awaiting a qualified interpreter, or where the information to be conveyed is of minimal importance to the limited English-proficient individual.

Establish and Maintain Community Partnerships

- Seek and enlist the cooperation of community and ethnic organizations for interpretation and translation assistance, for example, to review translations and non-English web pages for accuracy and tone. Attempt to use quality control measures when using the services of external organizations.
- Community organizations can help local agencies determine their language access priorities by identifying the public services and information most frequently accessed or "in demand" by various language communities.
- Community organizations can help agencies assess the effectiveness of their language access plan by providing ongoing feedback.
- Community organizations can be a source of "good publicity" for agency language access efforts by informing limited English-proficient community members of agency services and the manner in which said agency is striving to meet the needs of limited English-proficient residents.

Market Language Access Programs

- In order to access services, limited English-proficient speakers must know about them. It is helpful to market language access programs to target communities.
- Attend seminars, symposia, and community health fairs, and inform ethnic media and culturally diverse media outlets of an agency's commitment to language access.

Demonstrate Importance and Effectiveness of Language Access Services

- Connect language access efforts to the larger mission and goals of the local agency and its departments.
- Maintain a record of all limited English-proficient service-users.

Links to Helpful Resources

The **Justice Department** provides text of relevant laws and a clearinghouse for information, tools and technical assistance and can be accessed at “Limited English Proficiency: A Federal Interagency Website” that can be accessed here: <http://www.lep.gov>.

The **Justice Department** also provides a variety of sources to guide federal agencies in the implementation of LEP and language access plans that can also be helpful for local agencies and can be accessed here: http://www.justice.gov/crt/lep/guidance/guidance_index.html.

Other language access strategies used by **federal agencies** can be accessed here: http://www.lep.gov/resources/2008_Conference_Materials/TopTips.pdf.

For information regarding **California’s language diversity** see Asian Pacific American Legal Center and Asian Pacific Islander American Health Forum’s *California Speaks: Language Diversity and English Proficiency by Legislative District* available at: http://www.apalc.org/pdffiles/APALC_LEP.pdf.

For information regarding **Los Angeles’s language diversity** see Asian Pacific American Legal Center and Asian Pacific Islander American Health Forum’s *LA Speaks: Language Diversity and English Proficiency by Los Angeles County Service Planning Area* available at: <http://demographics.apalc.org/wp-content/uploads/2008/03/la-speaks-final-031908.pdf>.

Prepared **Remarks of Acting Assistant Attorney General Loretta King** at the April 20, 2009 meeting of the Federal Interagency Working Group on Limited English Proficiency, Office of Justice Programs can be accessed at: <http://www.justice.gov/crt/lep/index.htm>.

California’s State Personnel Board provides links to various sources and can be accessed at: <http://www.spb.ca.gov/bilingual/govagenc.htm>.

California’s State Auditor provides insight and recommendations based on audits issued during 1999, 2009 and 2010 assessing local agencies’ compliance of the Bilingual Services Act that can be accessed at: <http://www.bsa.ca.gov/reports/agency/26>.

The **Migration Policy Institute’s Language Portal** provides a wide range of information regarding language access and can be accessed at: http://www.migrationinformation.org/integration/language_portal/doc4.cfm.

For information regarding technology, see the report, *Communicating More for Less: Using Translation and Interpretation Technology to Serve Limited English Proficient Individuals*. It provides an overview of several commonly used translation and interpretation technologies. The paper, authored by Jessica Sperling, can be accessed at: <http://www.migrationpolicy.org/pubs/LEP-translationtechnology.pdf>.

Appendix A

Limited English Proficiency Plans

City of Minneapolis LEP Plan *Minneapolis in Any Language: Policies and Procedures to Ensure Equal Access to City Services for People with Limited English Proficiency* can be accessed at: http://www.ci.minneapolis.mn.us/policies/MplsLEP_Plan.pdf.

Hennepin County LEP Plan *Hennepin County Limited English Proficiency Plan Health and Human Services Departments* can be accessed at:
<http://co.hennepin.mn.us/portal/site/HennepinUS/menuitem.b1ab75471750e40fa01dfb47ccf06498/?vgnextoid=7c0b4f9a5a434210VgnVCM10000049114689RCRD>.

City of Oakland LEP Plan for the *Metropolitan Transportation Commission Plan for Special Language Services to Limited English Proficient (LEP) Populations* can be accessed at:
http://www.mtc.ca.gov/get_involved/LEP/LEP_Plan.pdf.

Butte County Association of Governments LEP Plan can be accessed at:
<http://www.bcag.org/documents/LEP%20Plan.pdf>.

Livermore Amador Valley Transit Authority LEP Plan can be accessed at:
http://www.wheelsbus.com/administration/files/LAVTA_LEP_Plan_Final.pdf.

Superior Court of California County of Napa LEP Plan can be accessed at:
<http://www.napa.courts.ca.gov/Documents/LEP%20Plan%2010.31.08.pdf>.

Superior Court of Trinity County LEP Plan can be accessed at:
<http://www.trinity.courts.ca.gov/pdfs/LEP-Plan.pdf>.

Superior Court of San Mateo County LEP Plan can be accessed at:
http://www.sanmateocourt.org/documents/general_info/limited_english_proficiency_plan.pdf.

Superior Court of Los Angeles County LEP Plan can be accessed at:
<http://www.lasuperiorcourt.org/publicnotice/pdf/lep.pdf>.

Appendix B

Selected Local Language Access Policies

City of Oakland Ordinance No. 12324 can be accessed at:

http://www.migrationinformation.org/integration/language_portal/files/Oakland%20Ordinance%2012324.pdf.

City and County of San Francisco ordinance No. 126-01 can be accessed at:

http://www.migrationinformation.org/integration/language_portal/files/San%20Francisco-Chapter%2091.pdf.

City of Philadelphia Executive Order No. 4-01 can be accessed at:

http://www.migrationinformation.org/integration/language_portal/files/Philadelphia%20EO0401.pdf.

City of Philadelphia Executive Order No. 09-08 can be accessed at:

http://www.migrationinformation.org/integration/language_portal/files/Philadelphia%20EO0908.pdf.

City of Minneapolis Resolution 2003-R547 can be accessed at:

[http://www.migrationinformation.org/integration/language_portal/files/Minneapolis%20Resoluti
on%202003.pdf](http://www.migrationinformation.org/integration/language_portal/files/Minneapolis%20Resolution%202003.pdf).

City of Monterey Park Administrative Policy 10-35 can be accessed at:

http://www.migrationinformation.org/integration/language_portal/doc4.cfm.

City of New York Local Law 73 can be accessed at:

[http://www.migrationinformation.org/integration/language_portal/files/Local%20Law%2073-
NYC.pdf](http://www.migrationinformation.org/integration/language_portal/files/Local%20Law%2073-NYC.pdf).

City of New York Executive Order 120 can be accessed at:

http://www.migrationinformation.org/integration/language_portal/files/NYC%20EO120.pdf.

City of Seattle Executive Order-01-07 can be accessed at:

http://www.migrationinformation.org/integration/language_portal/files/Seattle%20EO0107.pdf.

This publication is a service of the Institute for Local Government (ILG) whose mission is to promote good government at the local level with practical, impartial, and easy-to-use resources for California communities. ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties. For more information and to access the Institute's resources on public engagement and collaborative governance, go to www.ca-ilg.org/engagement. To access this resource, go to www.ca-ilg.org/LanguageAccessLaws. The Institute welcomes feedback on this resource:

- Email: info@ca-ilg.org Subject: *Language Access Laws and Legal Issues: A Local Official's Guide*
- Fax: 916.444.7535
- Mail: 1400 K Street, Suite 205 ▪ Sacramento, CA ▪ 95814

Endnotes

¹ Daniel K. Ichinose et al., *California Speaks: Language Diversity and English Proficiency* by Legislative District 2 (2005).

² Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Differences*, 54 UCLA L. Rev., 999 (2007).

³ See Erik Lagerspetz, *Ethical Theory and Moral Practice: On Language Rights* 198 (1998); Ahmad, *supra* note 2, at 999.

⁴ Hyon B. Shin & Robert A. Kominski, *American Community Survey Reports: Language Use in the United States* 2007 9 (April 2010) (explaining that ability to speak English greatly affects how well people can perform daily activities at home and outside the home); Mexican American Legal Defense & Education Fund (MALDEF) & Asian American Justice Center (AAJC), *Language Rights: An Integration Agenda for Immigrant Communities* 4 (Nov. 2007) (explaining that English proficiency may indicate how well persons communicate with public officials, schools, businesses, medical personnel, and various other service providers).

⁵ Benjamin D. Winig, *Lost in Translation: Local Public Agencies and Translating Official Documents*, Western City, Nov. 2008, at 3 (citing 2000 Census, Profile of Selected Social Characteristics, Supplementary Survey Table (Table QT-02)).

⁶ Shin & Kominski, *supra* note 4, at 6.

⁷ The U.S. Census Bureau defines limited English-proficient (LEP) speakers as those who speak English less than very well (see U.S. Census Bureau, *A Compass for Understanding and Using American Community Survey Data: What State and Local Governments Need to Know* 12 n.8 (2009)). The Justice Department defines limited English-proficient speakers as individuals who primarily speak a language other than English and who have a limited ability to read, speak, write, or understand English (see U.S. Dep't of Justice, *Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency: Policy Guidance*, 65 Fed. Reg. 50123 (Aug. 16, 2000)).

⁸ See Lagerspetz, *supra* note 3, at 198; Ahmad, *supra* note 2, at 999.

⁹ The use of the term “agency” throughout this paper refers to a local public agency like a city or county.

¹⁰ Cal. Const. art. III § 6(b).

¹¹ *Id.* at § 6(c).

¹² *Id.* at § 6(d).

¹³ *Gutierrez v. Municipal Court of the Southeast Judicial Dist.*, 838 F.2d 1031, 1043 (9th Cir. 1988), vacated as moot, 490 U.S. 1016 (1989) (California's declaration that English is the state's official language could not be used to justify a rule prohibiting court employees from speaking Spanish on the job); *Levy v. Davis*, No. A098306, 2003 WL 157555, *2 (Cal. Ct. App. 2003) (unpublished opinion) (State Bar may voluntarily distribute consumer materials in languages other than English without violating the constitution's official language provision).

¹⁴ *Levy* at *4.

¹⁵ Ruiz v. Hull, 191 Ariz. 441, 957 P.2d 984 (Ariz. 1998) (Arizona's constitutional provision banning the use of languages other than English in providing government services violates the First Amendment rights of non-English speakers who are seeking access to government and unconstitutionally limits the political speech rights of government officials and public employees); Yniguez v. Arizonans for Official English, 69 F.3d 920, 924 (9th Cir.1995) (en banc), vacated as moot sub nom; Arizonans for Official English v. Arizona, 520 U.S. 43, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997)(same); *see also* Gutierrez at 1044 n.18, vacated as moot, 490 U.S. 1016 (1989) (noting that a strict ban on language access services could raise due process and "other constitutional questions"). State courts have also found statutes prohibiting the use of languages other than English to violate state constitutions. *See* Alaskans for a Common Language, Inc. v. Kritz, 170 P.3d 183, 206 (Alaska 2007); In re Initiative Petition No. 366, 46 P.3d 123 (Okla. 2002). *Cf.* Alvarez v. Utah, No. 000909680 (Dist. Ct. 2001) (upholding Utah's official English measure, but clarifying that "government officials and employees are free to communicate with clients and constituents in any language").

¹⁶ Ruiz at 998.

¹⁷ *Id.*

¹⁸ *See e.g.*, Guadalupe Org. Inc. v. Tempe Elementary School Dist. No. 3, 587 F.2d 1022 (9th Cir. 1978) (no constitutional right to bilingual education); Carmona v. Sheffield, 475 F.2d 738 (9th Cir. 1973) (no constitutional right to employment notices in Spanish).

¹⁹ Guerrero v. Carleson, 9 Cal. 3d 808, 109 Cal. Rptr. 201, 512 P.2d 833 (1973) (the Constitution's due process clause does not require that a notice of termination of welfare benefits be sent in Spanish, even if the welfare agency is aware that the recipient does not read or speak English). *See also* Ruiz at 1002 ("We do not hold, or even suggest, that any governmental entity in Arizona has a constitutional obligation to provide services in languages other than English."); Alaskans for a Common Language at 201 ("we are only considering the interest of the public in receiving speech when government employees exercise their right to utter such speech, and we do not create an independently enforceable public right to receive information in another language.").

²⁰ Moua v. City of Chico, 324 F.Supp.2d 1132 (E.D. Ca. 2004) (City had no constitutional obligation to provide an interpreter when an initial police complaint was filed.).

²¹ U.S. Const. amend. XIV, § 2 (Equal Protection Clause of the Fourteenth Amendment prohibits governmental discrimination on the basis of an individual's race, ancestry, national origin, or ethnicity).

²² *See e.g.* Moua at 1139.

²³ Almendares v. Palmer, 284 F.Supp.2d 799 (N.D. Ohio 2003) (Spanish-speaking food stamp recipients' allegations that state agency knew recipients were being harmed by its failure to provide bilingual services was at least some evidence of intentional discrimination).

²⁴ 42 U.S.C § 2000d.

²⁵ Executive Order 13166, reprinted at 65 Fed. Reg. 50121 (Aug. 16, 2001). The final version was published on June 18, 2002.

²⁶ HUD, Guidance to Federal Financial Assistance Recipient Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 72 FR 2732, 2738 (Jan. 22, 2007), *available at* http://www.lep.gov/guidance/HUD_guidance_Jan07.pdf; Justice Department, Guidance to Federal Financial Assistance Recipient Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (June 18, 2002).

²⁷ Justice Department, *supra* note 26, at 41459.

²⁸ 42 U.S.C. § 2000d-4a.

²⁹ *Id.* at §§ 2000d - 2000d-7.

³⁰ HUD, *supra* note 26, at 2740.

³¹ *Id.*

³² Executive Order, *supra* note 25, at section 1.

³³ *Id.* at section 3.

³⁴ *Id.*

³⁵ Justice Department, *supra* note 26, at 41459.

³⁶ *Id.* Lacking such a definition, look to how state or local authorities define your service area. Of course, the service area itself cannot be defined in a way that discriminatorily excludes a particular population base.

³⁷ *Id.*

³⁸ Asian Pacific American Legal Center (APALC) & Asian Pacific Islander American Health Forum (APIAHF), *California Speaks: Language Diversity and English Proficiency by Legislative District*, undated, available at http://www.apalc.org/pdffiles/APALC_LEP.pdf; APALC & APIAHF, *LA Speaks: Language Diversity and English Proficiency by Los Angeles County Service Planning Area*, March, 2008, available at <http://demographics.apalc.org/wp-content/uploads/2008/03/la-speaks-final-031908.pdf>.

³⁹ *Id.*

⁴⁰ Justice Department, *supra* note 26, at 41459.

⁴¹ Office of Management and Budget, Report to Congress: Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166 (Improving Access to Services for Persons with Limited English Proficiency) 25 (March 14, 2002). Available at <http://www.justice.gov/crt/cor/lep/omb-lepreport.pdf> (last visited Nov. 13, 2010) (hereinafter “OMB Report”).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Justice Department, *supra* note 26, at 41460.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Ahmad, *supra* note 2, at 1008 (“Courtroom interpretation has emerged as a due process concern in criminal courts, and in other proceedings in which liberty interests are at stake.”); see Justice Department, *supra* note 26, at 41460.

⁴⁸ Corporation for National and Community Service (CNCS), Guidance to Federal Financial Assistance Recipient Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 FR 203 (Oct. 21, 2002), at 64608 available at <http://www.justice.gov/crt/about/cor/lep/CorpforNatlServ2002fin.php>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Justice Department, *supra* note 26, at 41460.

⁵² *Id.*

⁵³ Get information on service providers at http://www.lep.gov/interp_translation/trans_interpret.html and http://www.lep.gov/guidance/guidance_index.html (Funding agencies will also have suggestions contained in their respective Title VI policy guidance, which is more suited to the kind of services or programs the recipient agency provides).

⁵⁴ Loretta King, Acting Assistant Attorney General, Justice Department, *Remarks at the Meeting of the Federal Interagency Working Group on Limited English Proficiency* (April 20, 2009), available at http://www.lep.gov/Kingremarks4_20_09.pdf.

⁵⁵ King, *supra* note 51.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Justice Department, *supra* note 26, at 41455.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ U.S. Department of Transportation (DOT), Policy Guidance Concerning Recipients' Responsibilities to Limited English-Proficient (LEP) Persons, 70 Fed. Reg. 74087 (Dec. 14, 2005), available at http://www.fta.dot.gov/laws/circulars/leg_reg_5956.html.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Justice Department, *supra* note 26, at 41461.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 41462.

⁷³ *Id.* at 41464.

⁷⁴ *Id.* at 41463.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 41464; 41471.

⁷⁸ *Id.* at 41464.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 41456.

⁸² *Id.*

⁸³ *Alexander v. Sandoval*, 532 U.S. 275 (2001).

⁸⁴ 42 U.S.C. §2000d-1.

⁸⁵ *King*, *supra* note 51.

⁸⁶ 42 U.S.C. §2000d-1; *see also*, *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 603 n.24 (1983) (noting that “the Federal Government can always sue any recipient who fails to comply with the terms of the grant agreement” under Title VI) (opinion of White, J.).

⁸⁷ *See, e.g.*, Memorandum of Understanding between the United States of America and Palm Beach County Sheriff's Office, DOJ #171-18-17 (2010); Memorandum of Understanding between the United States of America and State of Maine Judicial Branch, DOJ #171-34-8 (2008), *available at* <http://www.lep.gov/PalmBeachSheriffMOA.pdf>; Memorandum of Understanding between the United States of America and Town of Mattawa, Washington & Town of Mattawa Police Department, DOJ #171-81-2; 171-81-3 (2008); Memorandum of Understanding between the United States of America and Lake Worth Florida Police Department, DOJ #171-18-16 (2007).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Cal. Gov't. Code §11135(a) prohibits discrimination based on race, national origin, ethnic group identification or color, religion, age, sex, or disability by “any program or activity that is conducted, operated or administered by the state or any state agency directly or receives any financial assistance from the state.” California Code of Regulations Title 22 section 98210(b) defines the term, “ethnic group identification” to mean “the possession of the racial, cultural or linguistic characteristics common to a racial, cultural, or ethnic group or the country or ethnic group from which the person or his or her forebears originated.”

⁹¹ Cal. Gov't. Code § 7290 *ff.*

⁹² A local agency is considered a recipient of state funds if it employs more than five people and receives more than a total of \$10,000 in state support in a year, or more than \$1,000 in a single transaction.

⁹³ 22 Cal. Code Reg. §§ 98210, 98211(c).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Cal. Gov. Code section 11139 (“This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief, which shall be independent of any other rights and remedies.”). Of course, to qualify for injunctive relief, an LEP individual must show that he or she will be harmed if language access services are denied – for example, by showing that without an interpreter, he or she might be denied benefits or that her or she will have to pay for an interpreter. *See Mata v. Shultz*, No. A112301, 2007 WL 1811242, *4 (Cal. Ct. App. 2007) (where interpreter was provided to plaintiff free of charge by a non-profit group, and his services were only delayed by a matter of weeks, he failed to show harm sufficient to provide standing to sue state agency for failure to provide language access); *Blumhorst v. Jewish Family Svcs. of Los Angeles*, 126 Cal. App. 4th 993, 1002 (2005) (standing to file private right of action requires “a plaintiff to allege he or she was personally damaged.”)

⁹⁷ 22 Cal. Code Reg. § 98110 *et seq.*

⁹⁸ *Id.*

⁹⁹ Cal. Gov't. Code § 54951.

¹⁰⁰ Cal. Gov't. Code § 7298.

¹⁰¹ See Cal. Gov't. Code §§ 7290 (Clarifying other names known and cited as the Dymally-Alatorre Bilingual Services Act); § 7291 (Explains the intentions of the Legislature in adopting the bilingual services regulatory scheme).

¹⁰² Bureau of State Audits, California State Auditor, California State Auditor Report 2010-106: Dymally-Alatorre Bilingual Services Act, 3 (Nov. 2010).

¹⁰³ Cal. Gov't. Code § 7293.

¹⁰⁴ *Id.*

¹⁰⁵ Cal. Gov't. Code § 7295.

¹⁰⁶ The California Legislature's concern in passing the Act was broader than ensuring public business would be conducted in multiple languages. In enacting these provisions, the Legislature focused on effective communication between residents and local officials and service providers. The Legislature intended for local agencies to take steps to insure that non-English speakers are taken into account whenever a local agency has contact with the public, not merely to burden local agencies with additional requirements.

¹⁰⁷ See Bureau of State Audits, California State Auditor Report 2010-701, Recommendations for Legislative Consideration from Audits Issued During 2009 and 2010, 11, (Dec. 2010).

¹⁰⁸ *Id.*

¹⁰⁹ Cal. Gov't. Code § 7295.

¹¹⁰ Cal. Gov't. Code § 7294.

¹¹¹ *Id.*

¹¹² Cal. Gov't. Code § 7299.

¹¹³ *Id.*

¹¹⁴ Cal. Gov't. Code § 7293.

¹¹⁵ Cal. Gov't. Code § 7298.

¹¹⁶ *Id.*

¹¹⁷ Cal. Gov't. Code § 7295.4.

¹¹⁸ Cal. Gov't. Code § 7291.

¹¹⁹ Cal. Gov't. Code § 7292(b).

¹²⁰ Cal. Gov't. Code § 7290, *et seq.*

¹²¹ See, e.g., Department of Toxic Substances Control, Public Participation Manual, Chapter 6, 55 (2001) (noting that public notices should be provided in languages other than English where non-English speaking residents might be affected). Available at <http://www.dtsc.ca.gov/LawsRegsPolicies/Policies/PPP/PublicParticipationManual.cfm> (last visited Nov. 13, 2010); *Id.* at Chapter 6, 84-85 (encouraging the use of interpreters at public hearings when requested).

¹²² 14 Cal. Code Reg. § 15201.

¹²³ 14 Cal. Code Reg. § 15000 *et seq.*

¹²⁴ See, Luke Cole, The Struggle of Kettleman City: Lessons for the Movement, 5 Md. J. Contemp. Legal Issues 67, 75-77 (1994).

¹²⁵ *Id.*

¹²⁶ *El Pueblo Para el Aire y Agua Limpio v. County of Kings*, 22 Env. L. Rptr. 20357, 20358 (Cal. Super. Ct. 1991).

¹²⁷ *Id.*

¹²⁸ Migration Policy Institute, National Center on Immigrant Integration Policy, Language Portal, Language Access Policies at the State and Local Level, *available at*

http://www.migrationinformation.org/integration/language_portal/doc4.cfm.

¹²⁹ Chapter 2.30, Oakland Municipal Code; see National Immigration Law Center, *Issue Brief: Access to Services for Limited English-proficient Persons*, 7, (Aug. 7, 2003).

¹³⁰ National Immigration Law Center, *Issue Brief: Access to Services for Limited English-proficient Persons* 7 (Aug. 7, 2003).

¹³¹ *Id.*

¹³² Oakland, CA, Municipal Code, § 2.30.020(d).

¹³³ *Id.*

¹³⁴ *Id.* at §§ 2.30.020(h)-(l), and 2.30.040.

¹³⁵ *Id.* at § 2.30.020(a), (k), and (l).

¹³⁶ *Id.* at § 2.30.150.

¹³⁷ *Id.* at §§ 2.30.070, 2.30.050(b) and (c).

¹³⁸ National Immigration Law Center, *supra* note 129.

¹³⁹ *Id.*

¹⁴⁰ City and County of San Francisco, Legislative Analyst Report – Bilingual Police Services (File No. 011550), 2 (Oct. 26, 2001).

¹⁴¹ San Francisco, CA., Admin. Code § 91.2(j).

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.* at §§ 91.2(j)(1), 91.4, 91.6, and 91.8.

¹⁴⁵ Philadelphia, PA., Exec. Order No. 4-01.

¹⁴⁶ *Id.* at § 1.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at § 1(a)(b).

¹⁵⁰ *See generally* Philadelphia, PA., Exec. Order No. 9-08.

¹⁵¹ *Id.*

¹⁵² *Id.* at § 1.

¹⁵³ Minneapolis, MN, Resolution of the City of Minneapolis.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Minneapolis, MN, Resolution of the City of Minneapolis and City of Minneapolis's official website located at http://www.ci.minneapolis.mn.us/policies/LEP_Policy.asp.

¹⁵⁹ City of Minneapolis's official website (retrieved March 14, 2011).

¹⁶⁰ *Id.*

¹⁶¹ Minneapolis in Any Language: Policies and Procedures to Ensure Equal Access to City Services for People with Limited English Proficiency, November 2004 located at

http://www.ci.minneapolis.mn.us/policies/MplsLEP_Plan.pdf (retrieved March 14, 2011).

¹⁶² National Immigration Law Center, *supra* note 129.

¹⁶³ The city has one of the few Asian majorities in the U.S. and within that Asian majority there is incredible diversity according to the Monterey Park's Administrative Policy No. 10-35.

¹⁶⁴ City of Monterey Park, CA, Administrative Policy No. 10-35.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ City of New York, NY, Admin. Code Chapter 10, § 8-1003(b).

¹⁶⁸ City of New York, NY, Exec. Order No. 120.

¹⁶⁹ *Id.* at § 2(b).

¹⁷⁰ *Id.*

¹⁷¹ City of Seattle, WA, Exec. Order No. 01-07.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ City of Seattle's website located at <http://www.seattle.gov/html/citizen/language.htm>.

¹⁷⁸ Bureau of State Audits, California State Auditor, California State Auditor Report 2010-106: Dymally-Alatorre Bilingual Services Act, p. 2 (Nov. 2010). The Bureau of State Audits found that a California Multiple Award Schedules (CMAS) vendor provided translating services for half of the price charged by contractors hired by two separate agencies. "If these agencies purchase these services up to their maximum contracted amounts, they will collectively end up paying approximately \$47,400 more than if they purchased these services from the CMAS vendor." Two other agencies "split contracts by entering into multiple service orders with single vendors to provide

the same type of bilingual services. Thus, these agencies violated the [s]tate's contracting rules by not combining the services into one job and obtaining competitive bids.”

G:\INSTITUTE\Public Engagement Collaborative Governance\Language Access\Language Access Guide_formatted_DRAFT_7-7-11_js.docx