

8. Resources and References

This chapter includes:

Print resources

(attached)

- A Report on Mpls LEP services as of April, 2004
- B Legal opinion from Assistant City Attorney Susan Trammell
- C How to calculate primary languages
- D Summary of Mpls LEP community member comments
- E “Safe harbors provision” of Department of Justice guidance on vital documents and primary languages

Online resources

(available on the Internet or through CityTalk, Minneapolis City intranet, as indicated)

- F General resources
- G Resources for LEP service
- H Resources for notice
- I Resources for identification
- J Resources for interpreting
- K Resources for translation
- L Resources for staffing
- M Resources for training

**Appendix A:
Minneapolis LEP Services, April 2004**

**Services Offered
In Minneapolis City Departments
For People With
Limited English Proficiency**

RESULTS OF AN INFORMAL INTERVIEW AND ASSESSMENT

Prepared for the Minneapolis Department of Health and Family Support

By Garth Osborn and Patricia Ohmans
Health Advocates Consultants

April 27, 2004

I. OVERVIEW

The City of Minneapolis has committed to developing a plan for improving access to city services for limited English proficient (LEP) residents and in February 2004 hired the consulting firm, Health Advocates, to assist in developing LEP plans. An intradepartmental LEP Work Team, including at least one representative from each of the thirteen chartered city departments, was formed and had its initial meeting in February. The team will be meeting at least monthly over the eight month planning process. Health Advocates implemented a set of interviews with representatives from each of the city departments in March and April 2004. The purpose of these interviews was to determine:

- ⇒ Which key business lines are being utilized by LEP residents.
- ⇒ Which departments are collecting data on LEP resident usage of their services.
- ⇒ What resources and tools are being used to communicate with LEP residents.
- ⇒ If any departmental-level policies are in place related to serving LEP residents.
- ⇒ Department recommendations on how services could be made more user-friendly for LEP residents.

The information collected and summarized in this report will be used to focus the efforts of the LEP Work Team during the planning process and to inform the development of the citywide and departmental LEP plans. It should be noted, however, that this report provides a snapshot of some, but not all city departments' approaches to LEP service. It is not an evaluation of the quality or comprehensiveness of city services, nor is it a comprehensive list of all city services or all strategies that the city is currently using to address the communication needs of its LEP residents.

Key findings include the following:

- ⇒ Each of the city departments surveyed is involved some way in serving LEP residents, either directly or through the services they provide to intermediaries.
- ⇒ Very little is being done to track or monitor the utilization of city services based on the language of clients.
- ⇒ Several city departments have already made laudable efforts to ensure quality services to the city's LEP community, particularly through their use of interpreters and translated documents. However, much more needs to be done to ensure meaningful access to services.
- ⇒ Except for the Minneapolis Police and Fire Departments, there appear to be no significant written or formal departmental policies specific to serving LEP

residents.

⇒ The response to this survey by the members of the LEP Work Team was generally very positive, with several providing thoughtful recommendations that reflect a commitment to improving the quality of city services to members of the LEP community.

II. METHODOLOGY

Health Advocates developed a five-item questionnaire in consultation with Patty Bowler and Ellie Zuehlke of the Department of Health and Family Support. Consultants requested interviews with each of the Work Teams' participants, who represent the chartered city departments. A majority of the interviews were done over the phone, however, due to time constraints some responded in writing. To ensure as free and open a discussion in the interviews as possible, each respondent was told that this was not an evaluation and that their comments would not be directly attributed to them in any published form. Extensive notes were taken of the interviews, reviewed, and then discussed by the consultants to develop the findings, which are presented in the next section.

III. FINDINGS

Question 1. Please briefly describe key business lines your department provides for city residents. Which of these services most commonly involve individuals from the LEP community?

Each of the departments interviewed have some level of contact with LEP residents or provide services, either to other city departments or intermediaries, which impact LEP residents.

Department	LEP-related Services
Assessor	Property inspections Property tax programs Property valuation reviews and appeals
Business Information Services	Supervision of phone operators for the city's general phone lines Manage City website
City Attorney/Civil Division	Provide legal opinions and draft contracts
City Attorney/Criminal Division	Criminal prosecution and victim and witness contact
City Clerk	Run elections Investigate complaints of discrimination in Minneapolis Certify/register small/underutilized businesses Review complaints against the Minneapolis Police Department
Communications	Provide communications counsel and technical support to other city departments Produce the "Access Minneapolis" cable TV show targeting Somali and Spanish speaking residents Implement "Community Engagement"
Community Planning and Economic Development	Employment training, job placement and displaced worker programs Manage Advantage Centers and City-run high rise apartments Programs for new arrivals Workshops on home ownership Small business loans Low interest housing loans and rehab Orchestrates strategic planning meetings with communities and community-based organizations
Finance	Billing for water/sanitation and manage call-in and walk-in centers
Fire	EMS, fire suppression, rescue, fire prevention, EMS/fire education
Health	School health clinics and Family Resource Center Emergency preparedness Advocacy on housing and seniors
Regulatory Services/Inspections	Safety inspections and educational visits to local businesses
Regulatory Services/Minneapolis Convention Center	Manage conference center events
Human Resources	Manage employee hiring process, including ensuring outreach to diverse communities

Police	Crime prevention Emergency Call Center (911) Investigations Traffic Control Precinct-level services
Public Works	Manage city Solid Waste and recycling services, Clean City programs Manage Water and Sewer services Manage city-owned parking facilities (on-street and off-street/ramps), traffic systems, skyways, vehicle impound lot, permits for block events Manage snow and ice control, street sweeping, sidewalks Manage Gopher State One-call for Minneapolis Manage city-owned buildings including Police and Fire stations, Public Service Center Manage public construction and maintenance projects, including public notice, community involvement Manage Special Assessment processes.
Civil Rights	Investigate complaints of discrimination in Minneapolis Certify/register small/underutilized businesses Review complaints against the Minneapolis Police Department

There are several ways to bundle these services, which may be helpful later when the LEP departmental templates are being designed. Similar types of services could conceivably be addressed the same way in different departments and therefore use the same template. Possible ways to differentiate and bundle these services:

- ⇒ Services that are provided internally to other city departments versus those that involve direct contact with LEP residents (i.e., City intranet website management by Business Information Systems versus managing the drop-in center where people pay their water bills in the Department of Finance).
- ⇒ Services that require broad community notification/education versus those that do not (i.e., Fire EMS/prevention education versus property inspections by the Assessor’s Office).
- ⇒ Compulsory versus elective services (i.e., traffic control by the Police versus small business loans by CPED).

Question 2. How does your department track utilization of its services? Either from data or by estimate, what proportion of this usage is by LEP individuals?

Very little is being done currently within the city to monitor utilization of its services based upon the language spoken by clients. Several departments noted that doing so would be costly and/or time consuming. However, some departments are currently developing databases for client tracking (for instance Civil Rights). Language could be incorporated later into these databases without having to go back and reprogram an entire system.

There is also the potential for using surrogate measures from within the city to monitor use of city services by LEP residents and to identify any newly emerging languages spoken by city residents:

- ⇒ Adapting current databases used by the city to track languages spoken by clients.
- ⇒ Telephone interpreting usage.
- ⇒ Website ‘hits’ directed to translated content.
- ⇒ Resident satisfaction surveys.
- ⇒ Number of translated materials requested/distributed.
- ⇒ Number of city government requests for Minneapolis Multicultural Services (MMS) assistance.
- ⇒ Incorporating ‘language spoken’ fields in client intake forms and tracking responses.

Question 3. What resources/tools/services are currently being used in your department to communicate with LEP individuals?

Of the current strategies used by the city to address LEP resident language needs, the most common are the use of bilingual and MMS staff to provide interpreter services and the use of translated materials. This is further detailed in the attached table.

Departments, Divisions and Offices	A	B	C	D	E	F	G	H	I	J	K	L
	Signage	Translated Materials	Where to go for language services translation	Translated website content	Contracted language interpreter lines	MM S	Bilingual staff in the department	Contracted interpreter staff	"I speak cards"	Phone messages in multiple languages	City intranet site	Notes
Health	X	X			X	X	X	X				
Regulatory/Inspections	X	X ¹				X ²	X			X ³		
Regulatory/Convention	X ²						X		X			X ⁹
HR	X ⁶	X ⁷										X ⁸
Police					X	X	X ⁹		X			X ¹⁰
Public Works		X			X	X	X					
Assessor		X					X		X			
BIS				X	X	X	X					
City Atty/Civil					X		X					
City Atty/Criminal		X	X		X	X	X					X ¹¹
City Clerk							X					X ¹²
Civil Rights/CI	X	X				X	X		X	X		
Civil Rights/SUBP												

¹ Have food safety pamphlets translated into 7 languages.
² Sometimes bring MMS staff along during visits to businesses.
³ Some, but not all, staff can answer in Somali or Spanish
⁴ Use of pictographs at restrooms.
⁵ Has posted sheets with information about English classes available for staff.
⁶ Front door sign has been translated.
⁷ This is done ad-hoc for a particular recruitment drive.
⁸ Language skill is sometimes a plus in hiring up a level. Resource printed materials of LEP in contract info. Also interpreter translation, cultural info, etc. No interpreters in the HR Department. MMS staff are contacted.
⁹ Latino Project grant Spanish Speaking Citizens Academy oriented to police services. Provided by a Spanish-speaking Sergeant.
¹⁰ Spanish Language classes have been offered. Community service officers can be LEP.
¹¹ Utilize District Court interpreters when available; utilize friends/family members and bilingual domestic abuse advocates.
¹² Staff received training internally on how to communicate with a person who is LEP or has an accent, however, the effectiveness of the training was questioned by one of the respondents.

Departments, Divisions and Offices	A	B	C	D	E	F	G	H	I	J	K	L
	Signage	Translated Materials	Where to go for language services translation	Translated website content	Contracted language interpreter lines	MM S	Bilingual staff in the department	Contracted interpreter staff	"I speak cards"	Phone messages in multiple languages	City intranet site	Notes
Civil Rights/ CRA		X ¹³				X						
Civil Rights/CC		X				X	X		X			
Communication s						X						
CPED		X		X		X	X			X		
Finance	X		X		X	X	X		X			
Fire		X	X		X	X	X					X ¹⁴
TOTALS	6	11	4	2	8	12	15	1	6	3	0	N/A

¹³ Informational brochure explaining their services that was translated into 9 languages.

¹⁴ Currently implementing a trial study of PDA hand held Spanish Language interpreters.

Question 4. Can you share copies of any written policies that your department is currently using related to services for LEP individuals? Are there unwritten policies or procedures that your department follows?

None of the departments reported formal written policies specific to serving LEP residents, except for the mediation agreement involving the Police Department and a March memo distributed within the Fire Department detailing how to respond to emergency situations involving LEP residents. Some departments have, however, provided training to their staff who have direct contact with the community and specific direction on what to do when they come in contact with a client who cannot speak English.

Question 5. What steps could be taken within your department that would most effectively and efficiently improve communication with LEP individuals?

Each of the respondents had suggestions for ways to improve both their own department's services for LEP residents and those of the city overall. The most commonly noted recommendations include:

- ⇒ Quicker access to interpreter assistance: It was suggested that the level of stress inherent in the interaction, as well as situations where timeliness is a factor should be taken into account when prioritizing use of interpreter resources.
- ⇒ Staff training: The most commonly requested topics include use of the telephone interpreting lines, cultural sensitization, recognizing/identifying different languages, and language immersion courses.
- ⇒ Translated directions on how to use city services posted on the city web site: Several departments noted that they are trying to have residents conduct more of their business online through the city's website. One concern voiced was how to incorporate multiple languages on the website without making the site overly complicated or too expensive. Computer literacy, which is probably significantly lower in the LEP community, will also need to be taken into account when determining the efficacy and reach of this approach.
- ⇒ Pay differentials for applicants and employees with multiple language skills: Several of the departments report using their own staff to interpret. Some view higher pay as an incentive for helping to ensure that they will be able to retain this capacity with staff turnover.
- ⇒ Tracking who is using city services: There was recognition that the city needs to have a better understanding of which languages are spoken in the community.
- ⇒ Proactive outreach to the LEP community: Effective ways to communicate with the LEP community about city services need to be identified and pursued. One

department raised the question of how best to use interpreters at community meetings where more than two languages are involved.

⇒ Training of the communities: Some departments expressed an interest in providing training to members of the LEP community on various topics such as food safety classes for individuals interested in starting or working in a restaurant or classes to potential homeowners.

ATTACHMENTS:

- **List of Respondents**
- **Questionnaire**

INTERVIEW RESPONDENTS

Assessor's Office • Patrick Todd

City Attorney's Office • Susan Trammell

Business Information Systems • Roger Downey

City Clerk • Mary Keefe

Civil Rights Department • Sara Dietrich

Community Planning & Economic Development • Kent Robbins

Finance Department • Tony DiPietrantonio

Fire Department • Charlotte Holt

Health Department • Erin Schroeder

Human Resources • Brenda Shepherd

Police Department • Medaria Arrondando, Glen Burt

Public Works • Trudy Moloney

Regulatory Services/Inspections • Curt Fernandez, Tim Jenkins

Regulatory Services/Convention Center • Sheila Sabas

INTERVIEW QUESTIONNAIRE

1. Please briefly describe key business lines your department provides for city residents. Which of these services most commonly involve individuals from the LEP community?
2. How does your department track utilization of its services? Either from data or by estimate, what proportion of this usage is by LEP individuals?

3. What resources/tools/services are currently being used in your department to communicate with LEP individuals?

- Signage
- Written translated materials
- Written materials with translated directions on where to go for further information
- Translated website content
- Contracted telephone interpreter lines
- Minneapolis Multicultural Services staff
- Bilingual staff from within your own department providing interpretation
- Contracted interpreter services provided from outside City Government
- "I speak" cards
- Telephone answering machine messages provided in different languages
- Minneapolis Multicultural Services intranet website
- Others, Please list: _____

4. Can you share copies of any written policies that your department is currently using related to services for LEP individuals? Are there unwritten policies or procedures that your department follows?

5. What steps could be taken within your department that would most effectively and efficiently improve communication with LEP individuals?

Appendix B: Legal Opinion from the City Attorney

July 25, 2003

Ellie Ulrich Zuehlke
Interim Director
Minneapolis Multi-Cultural Services
Department of Health and Family Support

RE: Limited English Proficiency Programmatic Requirements

Dear Ms. Zuehlke:

You have requested that the Office of the City Attorney issue an opinion on the following questions.

- 1) What legal responsibility does the City have regarding its provision of services to limited English proficient persons?
- 2) Are departments in compliance with their legal responsibilities by using volunteer interpreters from the City workforce?
- 3) What are the potential legal liabilities should the City fail to provide interpretive or translation services to limited English proficient persons?

Title VI of the Civil Rights Act of 1964 and the implementing federal regulations require City Departments receiving federal financial assistance to provide meaningful access to their programs and activities for limited English proficient (“LEP”) persons. Departments that rely upon volunteers from other departments to provide access to their programs and activities may not be in compliance with federal regulations implementing Title VI. The requirement to provide meaningful access to LEP persons is enforced by the federal agency providing the funding. Failure to provide meaningful access could result in a loss of federal funding. Private individuals could bring a civil action alleging intentional discrimination in the denial of services based upon their protected class status.

FACTS

Nearly every City department receives some sort of federal financial assistance. Recipients of federal financial assistance have the responsibility to ensure meaningful access to their programs and activities by persons with limited English

proficiency (LEP). See, for example, 28 CFR 42.104(b)(2) and 29 CFR part 31. Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Subrecipients likewise are covered when federal funds are passed through from one recipient to a subrecipient.

Pursuant to the Civil Rights Restoration Act of 1987 (CRRA), coverage extends to a recipient's entire program or activity, i.e., to all parts of a recipient's operations. This is true even if only one part of the recipient receives the federal assistance or the recipients operate in localities in which English has been declared the official language.

Each federal agency extending assistance subject to the requirements of Title VI is required to publish guidance for its respective recipients clarifying that obligation. See 65 FR 50121 (August 16, 2000). The guidance documents must be consistent with the Department of Justice (DOJ) LEP guidance, which was drafted and organized to also function as a model for similar guidance documents by other Federal grant agencies. See 67 FR 41455 (June 18, 2002).¹⁵ The DOJ LEP Guidance provides a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.¹⁶

ANALYSIS

I. The City Is Required To Provide Meaningful Access Of Its Services And Programs To Limited English Proficient Persons.

A. Defining Limited English Proficient Persons.

The DOJ LEP guidance (hereinafter "the Guidance") describes limited English proficient persons as "individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English". 67 FR 41459.

B. The Extent of a Recipient's Obligation to Provide LEP Access.

The Guidance requires recipients to take "reasonable steps to ensure meaningful

15. This memorandum will discuss the DOJ Guidance. LEP guidances issued by other federal agencies make note of differences from the DOJ Guidance. Any department receiving federal funding should confirm with the issuing agency which guidance the department should consider when fulfilling its responsibilities to LEP persons.

16. This memorandum is only a summary of the DOJ Guidance and should not be considered a substitute for the DOJ Guidance. Each City Department receiving federal assistance should thoroughly review the guidance applicable to the department's operations.

access to their programs and activities by LEP persons”. Id. The Guidance goes on to state that each recipient must conduct an individualized assessment that balances four factors:

- 1) The number or proportion of LEP persons served or encountered in the eligible service population.
- 2) The frequency with which LEP individuals come in contact with the program.
- 3) The nature and importance of the program, activity, or service provided by the recipient; and
- 4) The resources available to the recipient and costs.

Id. From the individualized assessment, the recipient must decide what reasonable steps should be taken to ensure meaningful access for LEP persons. Id.

Recipients have two main ways to provide language services – oral interpretation and written translation. The four-factor analysis necessarily implicates the “mix” of LEP services required. 67 FR 41460. The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. Id.

C. Considerations in Selection of Language Assistance Services.

The Guidance considers quality and accuracy of the language service, both oral and written language services, as critical in order to avoid serious consequences to the LEP person and to the recipient. 67 FR 41461.

1. Oral Language Services

Oral language Services (hereinafter “interpretation”) can range from telephonic interpretation services to in person services. Recipients should generally offer competent interpreter services free of cost to the LEP person when the interpretation is necessary to provide meaningful access to the program or activity. 67 FR 41462. No matter which service is used, the DOJ guidance emphasizes that “recipients should ensure competency of the language service providers”. 67 FR 41461. Competency to interpret does not necessarily mean formal certification as an interpreter, but it does require more than self-identification as bilingual.¹⁷ Id. In fact

17. “Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly in the contexts of courtrooms and custodial or other police interrogations, the use of certified interpreters is strongly encouraged.” 67 FR 41461. The Guidance notes that “[f]or those languages in which no formal accreditation or certification currently exists, courts and law enforcement agencies should consider a formal process for establishing the credentials of the interpreter.” 67 FR 41461, fn. 10.

the Guidance recognizes that interpretation can be provided through the hiring of bilingual staff, hiring staff interpreters, contracting for interpreters, using telephone interpreter lines, using community volunteers, use of family members, friends, or other community members. 67 FR 41461-62.

When using interpreters, recipients should ensure that interpreters:

- Demonstrate proficiency and ability to communicate information accurately in both English and in the other language and be able to identify and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization, or sight translation).
- Have knowledge in both languages of any specialized terms or concepts peculiar to the recipient's program or activity and of any particularized vocabulary and phraseology used by the LEP person.
- Understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires.
- Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles (particularly in court, administrative hearings, or law enforcement contexts).

67 FR 41461.

Provision of interpretive services must be timely. The guidance instructs that the "one clear guide [for determination of timeliness] is that the language assistance should be provided at a time and place that avoids the effective denial or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. Id.

2. Written Language Services

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language). The general rule of the Guidance is that documents should be translated if "after applying the four-factor analysis", the recipient determines that an effective LEP program includes "translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program." 67 FR 41463.

Whether or not a document (or the information it provides and/or solicits) is "vital" may depend upon the importance of the program, information, encounter, or service

involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. * * * [R]ecipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are “vital” to the meaningful access of the LEP populations they serve.

Id. Regular assessment of programs and the populations served will assist in the determination of “vital” documents. Additional factors to consider when determining whether a document should be translated include lifespan of the document and cost of translation over the lifespan of the document. Id.

Vital documents should be translated into the languages spoken by the LEP individuals with whom the recipient has frequent contact. The Guidance recognized that it is unrealistic to translate all encountered languages but also notes that a recipient has an obligation to translate vital “documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time.” Id.

The competency standards for interpreters also apply to translators. Because of the resulting target language document, having a having a second, independent translator check the work of the primary translator will help ensure competency. Translation of the target language back into English by a second, independent translator is also a competency check. Id. The Guidance notes that utilizing community organizations for target document review can ensure that a document is written at an appropriate level for the audience.

The Guidance provides a “safe harbor” that applies to when a recipient either provides:

- a) * * * written translations of vital documents for each eligible LEP group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered * * *” or
- b) [i]f there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

67 FR 41464. Proof of a recipient’s compliance with either (a) or (b) means that the recipient’s actions will be “considered strong evidence of compliance with the

recipient's written translation obligations.”¹⁸ Id. It is important to note, however, that the safe harbor does not relieve a recipient of the need to provide meaningful access to LEP persons through competent oral interpreters. Id.

D. Establishment of an Effective Language Assistance Plan.

The Guidance recommends that a recipient develop an implementation plan after completing the four-factor analysis and deciding what language assistance services are appropriate. Id. A written implementation plan will both document compliance and provide a framework for the provision of timely and reasonable language assistance. Id.

The Guidance identifies five elements that are typically part of an effective implementation plan:

- 1) Identifying LEP individuals who need language assistance.
- 2) Information about the ways in which language assistance will be provided.
- 3) Training staff of their obligations to provide meaningful access to information and services for LEP persons.
- 4) Providing Notice to LEP Persons that LEP services are available and offered free of charge.
- 5) A process for monitoring and updating the LEP plan.

67 FR 41464-65.

Each City department receiving federal funding subject to Title VI should establish a Language Assistance Plan that documents the four-factor analysis conducted by the department and contains the five elements suggested by the Guidance.

II. The Guidance contains no prohibition regarding the use of City employees as interpreters.

A department may utilize a wide range of persons when providing oral interpretation services: bilingual staff, staff interpreters, contract interpreters, telephone interpreter lines, community volunteers, family members, friends, or other community members. 67 FR 41461-62. Because the department must ensure the competency of the interpreters, staff should only be used as interpreters after their competency has been determined. Caution should be exercised when using

18. Not all LEP Guidances issued by federal agencies contain this “safe harbor” provision. For example, the Department of Labor LEP Guidance does not adopt the “safe harbor” provision.

family, friends, and other informal interpreters. In addition to competency issues, use of family, friends and other informal interpreters raise issues of confidentiality, privacy, or conflict of interest. 67 FR. 41462.

Similarly, if a LEP person voluntarily chooses to provide his or her own interpreter, a department should consider whether a record of that choice and of the recipient's offer of assistance should be kept. While the LEP person's decision should be respected, the department "should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost." 67 FR 41463. There may be situations where the department will want to provide its own, independent interpreter, even if a LEP person wants to use his or her own interpreter as well. *Id.*

Competent interpreters are also required in certain situations by Minnesota law. Police officers are required, following apprehension or arrest, to provide qualified interpreters to persons who are "handicapped in communication." Minn. Stat. § 611.32, subd.2. Persons are "handicapped in communication" if, due to a communication disorder, or because of difficulty in speaking or comprehending the English language, they cannot fully understand the proceedings or charges against them. Minn. Stat. § 611.31. By requiring the provision of interpreters, the legislature intended to avoid injustice and to insure the complete protection of the constitutional rights of persons considered "handicapped in communication." See Minn. Stat. § 611.30 (outlining the policy and legislative intent surrounding statutory requirement of providing qualified interpreters).

III. The City Faces Potential Financial and Legal Liabilities Should the Requisite City Departments Fail to Provide Interpretive or Translation Services to Limited English Proficient Persons.

A. Enforcement by Federal Agencies.

The federal agencies providing federal financial assistance are charged with enforcing the requirement to provide meaningful access to LEP persons is enforced and implemented through the procedures identified in Title VI regulations¹⁹. These

19. Regulations promulgated by federal agencies to implement statutorily enacted programs may also contain procedures relative to the enforcement of the meaningful access to LEP persons requirement. See for example, 29 CFR parts 31 and 37; 45 CFR part 80.

procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The regulations state that the applicable agency will investigate any complaint, report or other information that alleges or indicates possible noncompliance by a City department receiving federal funds.²⁰ See 67 FR 41466; 68 FR 14114189; 68 FR 32300. If the investigation results in a finding of compliance, the agency will inform the City department in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, the agency will inform the City department of the noncompliance in a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. *Id.* The applicable agency will first seek voluntary compliance through informal means.²¹ If the matter cannot be resolved informally, compliance may be effectuated through the termination of federal assistance after the City department has been given an opportunity for an administrative hearing and/or referral to a DOJ litigation section for injunctive relief or other enforcement proceedings. Should a matter proceed through the process to a point where the federal assistance is being terminated, only the funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d-1.

B. Civil Action by Individuals.

1. Federal Actions.

Section 601 of Title VI provides that no person 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" covered by Title VI. 42 U.S.C. §2000d. Section 602 of Title VI provides that each Federal department and

20. A complaint is not necessary for an investigation. The U.S. Department of Health and Human Services, Office of Civil Rights (DHHS/OCR) began an investigation after a newspaper article suggested that the Wyandotte County Department of Health was not providing adequate services to LEP persons. See <http://www.hhs.gov/ocr/selectacts/lep.html#wyandotte>.

21. Recently the U.S. Department of Health and Human Services, Office of Civil Rights (DHHS/OCR) issued findings against the South Carolina Department of Social Services, Department of Health and Environment, and the Department of Health for routinely requiring LEP clients to bring a family member or friend to interpret for them; routinely requiring LEP clients to pay for interpreters; failure to develop language assistance policies/procedures; and failure to train staff regarding the obligation to provide language assistance. The South Carolina Departments are working with the DHHS/OCR to remedy the deficiencies. See <http://www.hhs.gov/ocr/selectacts/lep.html#04007037>.

agency extending financial assistance to any program or activity must “effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability.” 42 U.S.C. 2000d-1.

Private individuals may sue to enforce the Title VI prohibition against intentional discrimination in covered programs and activities and obtain both injunctive relief and compensatory damages. *See, Cannon v. University of Chicago*, 441 U.S. 677, 699 (1979) (Congress intended Title IX, like Title VI, to provide a private cause of action) and *Alexander v. Sandoval*, 532 U.S. 275 (2001) (“It is beyond dispute that private individuals may sue to enforce § 601.”) Private individuals, however, do not have right of action to enforce regulations promulgated under Title VI. *Alexander v. Sandoval*, 532 U.S. at 293.

In *Sandoval*, the plaintiff sued to enjoin Alabama’s English-only policy, arguing that it violated the DOJ regulation forbidding funding recipients to “utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin * * *” because it had the effect of subjecting non-English speakers to discrimination based on their national origin. The U.S. Supreme Court held that there is no private cause of action to enforce the regulation promulgated under § 602 unless it is also actionable under § 601.

Although no federal courts have examined issues of language in the merits of a Title VI discrimination case, two recent federal cases examined language issues in race and national origin employment discrimination cases. The Seventh Circuit Court of Appeals considered and rejected an employer’s failure to interpret during meetings as a factual foundation for a prima facie claim of national origin discrimination. The court noted:

The failure to translate from Japanese into English at meetings at which [the plaintiff] was present is subject to too many alternative explanations to discrimination (such as the unavailability of a translator, or the inadvertence-- which we cannot believe could be thought, without more, significant evidence of national-origin discrimination--that often results in a bilingual speaker's lapsing into his native language despite the presence of monolingual foreigners) to be considered any better than makeweight evidence of discrimination.

Wallace, v. SMC Pneumatics, Inc., 103 F.3d 1394, 1398-99 (1997).

Similarly, the Eighth Circuit Court of Appeals, rejected a claim of race or national

origin discrimination that was based, in part, on the use of the word translate. In *Hannoon v. Fawn Engr. Corp.*, Hannoon’s supervisor forwarded one of Hannoon’s e-mails to one of Hannoon’s subordinates requesting the subordinate translate the message. The e-mail contained various technical terms and Hannoon’s poor communication skills had been an issue since Hannoon’s hiring. The Eighth Circuit rejected Hannoon’s allegation stating:

Even if we were to believe that a trier of fact could interpret use of the word "translate" as a reference to race or national origin, we agree with the district court and do "not find that criticizing a foreign employee's facility with the English language constitutes discrimination against a particular race or national origin."

324 F.3d 1041, 1048 (8th Cir. 2003) (citing *Hannoon v. Fawn Engr. Corp.*, No. 4-01-CV-90170 at 7 (S.D. Iowa April 2, 2002).

Title VI plaintiffs would likely encounter the same difficulties experienced by the *Hannoon* and *Wallace* plaintiffs when attempting to link language skills, or lack thereof, to race and national origin discrimination.

2. State and local actions.

Minneapolis Civil Rights Ordinance (“MCRO”) prohibits discrimination in access to, admission to, full use of or benefit from any public service based upon race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability, marital status, or status with regard to public assistance. M.C.O. § 139.40(j). The MCRO defines “public services” as “all activities, services or facilities offered to the public within the City of Minneapolis by any governmental agency or unit of government owned, operated or managed by any local, state or federal government, including, but not limited to, the Minneapolis Community Development Agency and Special School District No. 1. M.C.O. , §139.20. “Discriminate or discrimination” is defined as that which “[i]ncludes any act, attempted act, policy or practice, which results in the unequal treatment, separation or segregation of or which otherwise adversely affects any person who is a member of a class protected by this title, and for purposes of discrimination based upon sex it includes sexual harassment.” *Id.*

The corresponding state statute regarding discrimination in the provision of public services is Minn. Stat. § 363.03, subd. 4, which reads as follows:

It is an unfair discriminatory practice: (1) To discriminate against any person in the access to, admission to, full utilization of or benefit from any public

service because of race, color, creed, religion, national origin, disability, sex, sexual orientation, or status with regard to public assistance or to fail to ensure physical and program access for disabled persons unless the public service can demonstrate that providing the access would impose an undue hardship on its operation.

Minnesota Statute 363.01 Subd. 14 defines discriminate as that which “includes segregate or separate and, for purposes of discrimination based on sex, it includes sexual harassment.”

Like the federal provision permitting private lawsuits to enforce Title VI, a private individual may sue to enforce intentional discrimination in public services under either the Minneapolis Civil Rights Ordinance or the State Human Rights Act. The action would have to be based upon one of the listed protected classifications. Minnesota Courts have not examined, in any reported cases, a discrimination claim involving lack of English skills under either the Ordinance or the State Human Rights Act

While the Minnesota Human Rights statute and the Minneapolis Civil Rights ordinance do not reference inability to speak English in its classifications under which suit may be brought for discrimination in provision of public services, they do include language prohibiting discrimination from “full utilization or benefit from” public services. Under a disparate impact theory, a complainant would need to prove that the City’s program or service, while facially neutral, actually operates to exclude a disproportionate number of the members of the protected class from full utilization or benefit from the program or service but would not need to prove discriminatory intent. Therefore, it is conceivable that a non-English speaking individual might bring a claim of disparate impact under the ordinance or the statute because he/she did not receive full utilization or benefit from a City service or program.

CONCLUSION

The opinion of the City Attorney’s Office, based upon the facts and analysis stated, is that City Departments receiving federal financial assistance are required to provide meaningful access to their programs and activities for LEP persons and the failure to do so could result in a loss of federal funding. Departments that rely upon volunteers from other departments to provide access to their programs and activities may not be in compliance with the applicable Federal Regulations. Private individuals could bring a civil action alleging discrimination in the denial of services based upon their protected

class status.

Very truly yours,

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By

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Approved

SLT: 02A-00224/ 7.7.03 Draft

Appendix C: How to calculate primary languages

Every year, the primary languages in Minneapolis are calculated using a formula that extrapolates data from the Minneapolis Public Schools and the most recent census. The formula is used to identify which languages are spoken by at least 1,000 Minneapolis residents as their primary language.

The formula, $X/Y \times Z$, is used where Y = the number of Minneapolis public school students (42,925 in October 2003), X = the total population of Minneapolis (382,618 in 2000), and Z the number of Minneapolis school students who report speaking a specific language other than English at home. (Both the Y and Z variables are available at: <http://cfl.state.mn.us/datactr/language/index.htm> and the X variable is available at <http://www.ci.minneapolis.mn.us/citywork/planning/Census2000/2000-Mpls-ProfileofGeneralDemographicCharacteristics.asp>.)

Once the number of LEP residents is computed by language, the language groups can be listed in order of size and the 1,000 resident cutoff can be applied. For instance, 251 students reported speaking Oromo at home, so $382,618/42,925 \times 251$, or an estimated 2,237 Minneapolis residents speak Oromo as their primary language. Since this is over 1,000 residents, Oromo would be included. Conversely, 103 students said they speak Cambodian at home. So, an estimated $382,618/42,925 \times 103 = 918$ Cambodian-speaking residents live in Minneapolis and therefore, Cambodian would not be included.

This formula is used because it can be updated annually (the two main variables are recounted at the beginning of each school year) and it is more directly tied to language rather than the other population-based data sources that are based on ethnicity or country of origin. It is not, however, an exact measure of the LEP community, because of the recognized undercounting of minority populations in the US Census. Further, some immigrant groups (such as Russians, who are on average, older at immigration) might have fewer children in the Minneapolis school system than other groups.

Appendix D:

Summary: LEP community member comments

Community Input about LEP Service in the City of Minneapolis

A) How do you or members of the communities where you live or work find out about city services?

- from friends and family-“word of mouth” (20)
- at my place of worship (10)
- TV and radio announcements (10)
- at school (9)
- at my job (9)
- bulletin boards at agencies and libraries (6)
- newspapers (4)
- internet (4)

Other:

- Community based organizations/groups (3)
- Community events (2)
- Resettlement organizations (2)
- New Families Center (1)
- Email (1)
- Brochures (1)
- Medical clinics (1)

Notes:

- Several respondents circled or starred radio on their forms.

B) We have all heard stories about barriers that Limited English speakers have when they need services from City departments. When you think about this what are the most common barriers that you or the people you work with experience when accessing City services?

- language barriers (22)

- lack of understanding in how to navigate “the system” (19)
- difficult to find the department that can help you (18)
- lack of cultural sensitivity (17)
- confusing phone and voicemail message systems (17)
- lack of information or postings in my own language about the services that are available (11)
- unwelcoming space and staff (11)
- nobody that works there looks and speaks like me (8)
- can’t find information on the website (6)

Other:

- lack of follow-up (1)
- confusing notices/ forms received in the mail from City departments (1)
- no internet access (1)

C) Developing a plan is just the start, each department within the City of Minneapolis will have to develop strategies for customer service. This will take time and money. In order to help bring this plan into practice, we need your help in prioritizing decisions. If the City of Minneapolis could do 5 of the following things right now to improve services to people with Limited English Proficiency, what would they be? Please rank items-the most important = one; the least important = five.

1. hire more multilingual staff (22)
2. better interpretation services (20)
3. train staff to be more customer-focused (19)
4. centralized multilingual phone-line- “one call does it all” (16)
5. more City department information translated into multiple languages (13)
6. clearer signage (10)
7. more City staff or offices that are located in my neighborhood (9)
8. create waiting rooms and service counter areas that are more welcoming (8)
9. more advertising about services in newspapers and on TV and radio (6)
10. create a multilingual webpage (4)

Other:

- have information at community based organizations (3)
- transportation vouchers to access services from all areas of the city (1)

Notes from the community meeting held on July 27, 2004:

- Group members liked the idea of the centralized multilingual phone line, but

only if it is a real person, not an automated phone line/phone tree.

- Signage is vital; very basic. Signs should help you to get to the right location without having to ask anyone. Some group members felt that City buildings were confusing and intimidating. Some group participants felt that signage was useless if services were not available when the customer made it to the appropriate location. Some felt that a kiosk with translated brochures with maps may be helpful; others disagreed and thought that would work only for some communities/ individuals. Everyone in the group agreed that computer kiosks were not a good strategy.
- A key issue is that different strategies are needed for different communities.
- A lot of people do not access the web so don't spend too much energy on translating web content
- Having staff that speak the language is not enough; staff need to be culturally competent and provide good customer service.
- Several group members thought that educating staff in community based organizations about City services and providing translated materials and/or co-locating staff in community based organizations would help to get the word out about services and minimize barriers to access. However, some group members cautioned that the City should not expect community based organizations to take on the work of the city.

D) Can you think of any aspect of City services that the plan missed?

- Clarification is needed that City services are available to all people who live in Minneapolis. The use of the word "citizen" should be avoided.
- "Resident" also carries some connotations related to immigration status.
- Staff need cultural sensitivity training
- Talk more to people in the community
- "Highly desirable" is a good way to increase bilingual or multilingual staff, but will not fulfill the needs of LEP persons
- Competent interpreters and translators are needed. Not everyone who speaks a language has the needed language and/or personal (cultural understanding) to interpret.
- More services need money. The City has a deficit. Reducing the budget for services and eliminating some services. It would not do any good if I mention now what other services are needed.
- Supporting neighborhood and community organizations to provide better facilities that could enable the LEP populations to be served better.
- I would like to add "respect other cultures"
- You did not put much focus on the police department.
- Educating the hundreds of community agencies of the resources.

- Due to language barriers and cultural differences, the city services for immigrants needs to be customized so the resources need to be allocated adequately. For example, the resources to serve MFIP participants are not based on the needs of immigrants but resources have been allocated equally. As a result, providers don't have enough resources to meet the special needs of refugees and immigrants.
- Educate communities on rules, regulations and services. Community outreach is a key factor to help the communities accessing important benefits or services.
- Cooperation with existing community groups or non profits (2)
- Outreach (2)
- Translated information for health insurance for children.
- Cultural sensitivity.
- Place people in community based offices so City is more approachable. Also, brochures translated into each of the six most common languages given to community based organizations to be distributed.
- More attention to elderly people.
- What is missing is that each department is given the option; there is no mandate. This leaves the LEP population vulnerable in many instances due to the institutional racism that exists at the service level.
- One on one assistance in filling out forms

E) How can we stay in touch with you?

Several respondents indicated that email was the best way to stay in touch. The City needs to come more to the community to hear peoples' input and their needs.

Appendix E: “Safe harbors” provision of Department of Justice guidance

Department of Justice Guidance Memorandum

*section on safe harbors Federal Register Doc 0320179 HHS
revised guidance for LEP (August 8, 2003)*

“Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of “meaningful access.” Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. In determining what outreach materials may be most useful to translate, such recipients may want to consider consulting with appropriate community organizations. Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision [[Page 47319]] of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Given the foregoing considerations, vital written materials could include, for example:

- Consent and complaint forms.
- Intake forms with the potential for important consequences.
- Written notices of eligibility criteria, rights, denial, loss, or decreases in benefits or services, actions affecting parental custody or child support, and other hearings.
- Notices advising LEP persons of free language assistance.

- Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required.
- Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Nonvital written materials could include:

- Hospital menus.
- Third party documents, forms, or pamphlets distributed by a recipient as a public service.
- For a non-governmental recipient, government documents and forms.
- Large documents such as enrollment handbooks (although vital information contained in large documents may need to be translated).
- General information about the program intended for informational purposes only.

Into What Languages Should Documents be Translated?

The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Some recipients may serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is usually a one-time expense, consideration should be given to whether the up-front cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.”