

LANGUAGE ACCESS AND SURVIVORS OF DOMESTIC VIOLENCE

by Grace Huang, Washington State Coalition Against Domestic Violence

Although domestic violence traverses all racial, ethnic, religious, and economic lines, battered immigrant women face greater obstacles to escaping violence and getting help. One major hurdle is lack of language access. When battered women seek help, courts, hospitals, public benefits offices, law enforcement agencies, and even domestic violence programs often have not implemented policies which ensure that survivors who do not speak English can communicate their complaints effectively, and can learn about their rights as domestic violence victims. The inability to communicate may prevent a battered immigrant from seeking necessary legal, medical, shelter, or emergency services.

For example, the immigrant may be unable to communicate with law-enforcement officers responding to an emergency call. The batterer may try to communicate on behalf of the victim, and distort facts or minimize or deny the abuse. Furthermore, the abuser may lie and tell the police that the victim initiated the fight and she may be arrested as a result. Language barriers can prevent victims from reporting crimes to the police and undermine the effectiveness of police response. In one particularly tragic case studied by the Washington State Fatality Review, where the battered woman's estranged husband appeared with a gun threatening to kill her, the police incident report lacked sufficient detail to support prosecution. Because of the lack of adequate interpretation and translation, police failed to obtain statements from the victim and two witnesses, and they failed to follow up with locating the husband. The prosecutor was unable to proceed with prosecuting this assault incident due to lack of detail in the investigation, and dropped the case. The estranged husband killed his wife with a gun almost a year following the original incident.¹

Many courts, domestic violence shelters, crisis hotlines, and social service agencies have limited access to interpreters, further isolating the battered immigrants from the services they need. Immigrants may also be unaware of the availability of interpreters and translated forms, and thus fail to access available services.

Understanding a program's legal obligations under Federal and State laws will help protect against liability claims for discrimination based on national origin. Furthermore, having a language access policy and plan in place will help battered women get the assistance they need

¹ Hobart, Margaret, *Honoring their Lives, Learning from their Deaths* (Dec. 2000), pp 47-48.

DOJ AND HHS ISSUE POLICY GUIDANCE ON DISCRIMINATION AGAINST PERSONS WITH LIMITED ENGLISH PROFICIENCY

Background

Federal law, in particular, Title VI of the Civil Rights Act of 1964 (Title VI) provides that no person shall be subjected to discrimination on the basis of race, color or national origin under any program or activity that receives Federal financial assistance. Courts have held that Title VI prohibits recipients of Federal financial assistance from denying LEP persons access to programs, on the basis of their national origin.

The Office of Civil Rights (OCR) within the Department of Health and Human Services (HHS) and the U.S. Department of Justice (DOJ) have issued policy guidance intended to help agencies receiving federal funds to comply with Title VI. To ensure that persons with limited English skills can effectively access critical health and social services, the OCR and DOJ's policy guidance outline the responsibilities under federal law of providers who receive Federal financial assistance to assist people with limited English skills. The OCR guidance also contains information about best practices and explains how OCR handles complaints and enforces the law.

The HHS guidance document can be found in the Federal Register at 67 Fed. Reg. 4968 (Feb. 1, 2002). It can be accessed on the Internet at <http://www.hhs.gov/ocr/lep/guide.html>. You can print out a copy of the guidance from OCR's website at <http://www.hhs.gov/ocr> or contact one of the OCR Regional Offices listed below.

The DOJ Guidance was published in the Federal Register on April 18, 2002 at 67 FR 19237. It can be accessed at <http://www.usdoj.gov/crt/cor/lep/DOJLEPGuidApr122002.htm>.

The Title VI Language Assistance Obligation

Any organization or individual that receives Federal financial assistance from HHS or DOJ either directly or indirectly, through a grant, contract or subcontract, is covered by Title VI. Examples of covered entities include hospitals, state welfare offices, HMOs, health service providers, courts, law enforcement agencies, prosecuting agencies, and domestic violence agencies. All organizations or individuals that are recipients of Federal financial assistance from HHS or DOJ have an obligation to ensure that LEP persons have meaningful and equal access to benefits and services.

Under Title VI, recipients of Federal financial assistance from HHS and DOJ must take steps to ensure that LEP persons can meaningfully access services. A program of language assistance should provide for effective communication between the service provider and the LEP person so as to facilitate participation in, and meaningful access to, services.

Examples of Prohibited Practices which may violate Title VI:

- Providing services to LEP persons that are more limited in scope or are lower in quality than those provided to other persons;
- Subjecting LEP persons to unreasonable delays in the delivery of services;
- Limiting participation in a program or activity on the basis of English proficiency;
- Providing services to LEP persons that are not as effective as those provided to those who are proficient in English; or
- Failing to inform LEP persons of the right to receive free interpreter services and/or requiring LEP persons to provide their own interpreter.

At the heart of the guidance are explanations of Title VI's requirement that all recipients of federal funding take reasonable steps to ensure "meaningful" access to the information and services they provide.

HOW DOES ONE DETERMINE WHAT ARE REASONABLE STEPS TO ENSURE MEANINGFUL LANGUAGE ACCESS?

Number or Proportion of LEP Individuals. One factor is the number or proportion of persons who would be excluded from services due to language barriers. The guidance advises that "even those who serve very few LEP persons . . . should utilize this balancing analysis to determine whether reasonable steps are possible" and have in place a plan to serve such persons when the need arises.

Frequency of Contact with the Program. How often do LEP persons come into contact with the program? For example, the guidance explains, the obligations falling on programs that frequently interact with LEP persons, are greater than those applying to programs whose contact with such persons is "unpredictable or infrequent."

Nature and Importance of the Program. The importance of the services provided also affects the determination of reasonableness. The guidance states, "More affirmative steps must be taken in programs where the denial or delay of access may have life or death implications than in programs that are not as crucial to one's day-to-day existence."

Resources Available. The resources that programs have available are also to be considered in determining reasonableness. The guidance notes that a small program with limited resources may not have the same obligations as those falling on larger programs, "where contact is infrequent, where the total cost of providing language services is relatively high, and/or where the program is not crucial to an individual's day-to-day existence."

How Does one Comply With the Language Access Requirement?

The key to ensuring meaningful access for LEP persons is effective communication. An agency can ensure effective communication by developing and implementing a comprehensive language assistance plan that includes:

1. policies and procedures for identifying and assessing the language needs of its LEP applicants/clients,

2. provides for a range of oral language assistance options,
3. notice to LEP persons of the right to language assistance,
4. periodic training of staff,
5. monitoring of the program,
6. in certain circumstances, the translation of written materials.

How does an Agency Select Language Assistance Services?

Oral Interpretation

Agencies and providers have a number of options for providing oral language assistance. Which option to use will depend on a variety of factors including the frequency of need and size of the population(s) being served.

Examples of the oral language assistance options include:

- Hiring bilingual staff for patient and client contact positions
- Hiring staff interpreters
- Contracting for interpreter services
- Engaging community volunteers
- Contracting with a telephone interpreter service

Issues Arising in Providing Oral Interpretation Services Competency

The Guidance stress that providers should ensure that interpreters should be competent, meaning that:

- they should be proficient and have the ability to communicate accurately in both English and the other language
- they should have knowledge in both languages of specialized terms
- they should understand rules regarding confidentiality and impartiality, and adhere to their roles as interpreters and not as advisors or counselors

The Guidance stress that certified interpreters should be used, in particular, in the context of important legal rights such as in Court, and in law enforcement interrogations.

Informal Interpreters

The Guidance discourages the use of friends, family members and other untrained interpreters. Interpretation by friends or family of domestic violence victims is particularly problematic, and can potentially put the interpreter in harm's way. LEP individuals should never be expected or encouraged to use friends or family members as interpreters.

Written Translation Services

As part of its overall language assistance program, a provider must develop and implement a plan to provide written materials in languages other than English where a significant number or percentage of the population eligible to be served,

or likely to be directly affected, by the program needs services or information in a language other than English to communicate effectively.

The necessity to translate written documents may vary depending on several factors including the size of the population(s) being served and the size of the agency or provider. Even when written translations are not dictated by need, agencies still must provide oral interpretation of written documents, if necessary, to ensure meaningful access for a LEP person.

Compliance and Enforcement

With respect to civil rights violations under Title VI, both DOJ and OCR investigate complaints and conduct compliance reviews and try to get voluntary compliance. Where investigations result in findings of non-compliance, agencies receiving federal funds will receive information about steps they must take to correct the noncompliance. If steps are not taken to come into compliance, DOJ or OCR may seek a court order or remove federal funding.

Additional Information

Anyone who believes that he/she has been discriminated against because of race, color or national origin by a federally funded agency may file a complaint with OCR or DOJ within 180 days of the date on which the discrimination took place.

Office of Civil Rights with HHS-(Go www.hhs.gov/ocr for Contact information in your Region

Region X - Seattle (Alaska, Idaho, Oregon, Washington)

Regional Manager, Office for Civil Rights
U.S. Department of Health and Human Services
2201 Sixth Avenue - Suite 900
Seattle, WA 98121-1831
Phone (206) 615-2290
Fax (206) 615-2297

DOJ

Coordination and Review Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Phone: (888) 848-5306

Complaint Forms can be downloaded from:
www.usdoj.gov/crt/cor/complaint.htm