



Onondaga County / Syracuse
Human Rights Commission

Joanne M. Mahoney
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Onondaga County Justice Center Oversight Committee

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www.ongov.net/humanrights

FACT SHEET: Rights of People Who Have Limited Proficiency in English

Is discrimination based on National Origin Prohibited by Federal Civil Rights Laws?

YES - Title VI of the Civil Rights Act of 1964 prohibit government agencies that receive federal funds from discriminating against individuals because of their race, color, or national origin. This is the case even when such funding is indirect, or via a grant, contract or subcontract. This also applies to all programs or services provided by that agency, even those not supported by any government funds. No government agency can deny, delay or restrict an individual's access to a service or benefit because they were born or raised by people who were born outside the United States. Such agencies must not operate such programs in a way that discriminates against such persons.

Do government agencies have to provide language assistance to people who have limited English skills?

YES - A 1974 Supreme Court Decision (*Lau v. Nichols* – 414 US 563) established that government agencies discriminate against people with limited English proficiency (LEP) if they do not provide language assistance for them when they seek access to their services or benefits. The court found that the language a person uses is so closely connected with their national origin that language-based discrimination is essentially discrimination based on national origin. This court decision was followed by federal and state executive orders (federal # 13166 issued in 2000 and NY #26 issued in 2011), federal and state regulations and federal agency guidance (from DOJ, HHS, HUD and SSA), and state civil rights laws that clarified the obligation to provide such language assistance. This is incorporated into the ethics rules of several professions, including those working in law and medicine.

Can anyone who does not speak English as their primary language or has limited abilities to understand or communicate in English be considered a person who is LEP?

YES - A person who is LEP is a person who does not speak English as their primary language AND has a limited ability to read, write, speak or understand English. Even if a person speaks or understands some English they can still be considered LEP and should not experience discrimination when seeking services from a government agency, non-profit service organization, or from professionals in the private sector. **Note:** Under the Americans with Disabilities Act (ADA) people who are Deaf or hearing impaired are also entitled to be provided with language assistance to ensure effective communication and equal access to services.

Are service organizations, hospitals or professionals like doctors or lawyers, required to provide language assistance to a person who is LEP?

YES – *For hospitals*, based on NY State Department of Health regulations.

YES – For service organizations that receive *any* kind of government funding.

New York State Human Rights Law also prohibits discrimination based on national origin in employment, housing and public accommodations. A public accommodation is a location or service available to the public at large. So if a service organization, or a doctor or lawyer or other professional, provides services to clients drawn from the community, they *should* not deny or restrict



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their services only to people who can read, write, speak or understand English. They *should* take reasonable steps to ensure that persons who are LEP have meaningful and equal access to their services. However, a doctor or other health care provider who accepts government-funded insurance programs (Medicare or Medicaid) *must* do so.

How can an agency, organization or professional provide language assistance to people who are LEP?

IT DEPENDS - Government Agencies, non-profit organizations and professionals can select the types of language services that make the most sense given the proportion of their clients who may be considered LEP, the likely frequency of contact with people who are LEP, the nature, importance and urgency of their program or services, the language resource available in their area and the related costs. Based on careful consideration of these four factors, managers should seek to strike a balance between providing effective and timely access to their programs or services and respecting the choices of LEP persons. Managers can choose to employ bilingual staff, have an interpreter on staff, hire an interpreter service, utilize reliable and qualified community volunteers, or utilize telephone or teleconference interpreting/translation services. However, a qualified interpreter may often be the best option for effective communication during complex, technical or complex interaction.

Can an agency, organization or professional require a person who is LEP to provide their own interpreter or require them to pay for interpreting services?

NO – People who are LEP should be able to access the agency or professional service on the same basis as people who are not LEP. If English-speaking clients would not be required to do so, people who are LEP should not be required to do so, because this would treat people who are LEP differently which would likely be considered discrimination. Agencies, organizations and professionals should make it clear to the public and to their clients that interpreting services are available and will be provided at NO cost.

Can an agency, organization or professional rely on a friend or family member of the person who is LEP to interpret for them? If not, who is qualified to be an interpreter?

Generally NO – Interpreting is a professional skill that requires training and has strict ethical standards. It is not enough that a person may be bilingual. An interpreter must also maintain a level of confidentiality and impartiality that a friend or family member cannot provide. There can also be specialized or unusual terms or concepts that are not common in regular conversation, especially in medical or legal fields. Interpreters should be qualified to work in a dialect the person will understand and in the specific settings that they are asked to work in, an agencies, organizations and professionals should take steps to make sure that interpreters they use are qualified. In some settings, however, such as courtrooms, interpreters may also need an additional certification that they are qualified to interpret in that setting. Children should NEVER be used as interpreters for their parents or other adult family members. The only time that a family member may be utilized for language assistance is when the communication required is very brief, simple or straightforward, and not technical, and the person who is LEP states a preference for a family member to interpret.



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Internet Resources Regarding People Who Have Limited Proficiency in English (LEP)

Federal Interagency Q & A Factsheets at <http://www.lep.gov/faqs/faqs.html>

Commonly Asked Questions and Answers Regarding Limited English Proficient (LEP) Individuals

Questions and Answers Regarding Aug 16, 2010 Title VI Language Access Guidance Letter to State Courts Regarding the Protection of LEP) Individuals under Title VI of the Civil Rights Act of 1964 and Title VI Regulations

Common Language Access Questions, Technical Assistance, & Guidance for Federally Conducted and Federally Assisted Programs

NY State Division of Human Rights Factsheet on LEP Access Plans for State Agencies

<http://www.dhr.ny.gov/language-access>

NY State Law relating to translation of information about prescription medications

https://www.health.ny.gov/regulations/recently_adopted/docs/2013-03-27_language_assistance_and_official_new_york_state_prescription_form_requirements.pdf

Information from Empire Justice About Effective Communication for People Who are Deaf or Hard of Hearing and LEP http://onlineresources.wnyc.net/pb/orcdocs/LARC_Resources/LEPTopics/DR/DR.htm

Additional Publications from the US Dept. Of Justice – Federal Coordination and Compliance <http://www.justice.gov/crt/fcs-publications-major-interest> **Including:**

Title VI Civil Rights Newsletters

Other Civil Rights Publications

"I Speak" Language Identification Cards

Translation and Interpretation Procurement Series

Know Your Rights Beneficiary Brochures

Factsheet from diversityconnection.org – “Language Access and the Law - Title VI of the U.S. Civil Rights Act (1964)”

[http://www.diversityconnection.org/diversityconnection/leadership-conferences/Lang%20Access%20and%20Law%20Jan%202008%20\(17\).pdf](http://www.diversityconnection.org/diversityconnection/leadership-conferences/Lang%20Access%20and%20Law%20Jan%202008%20(17).pdf)