

***Right to Meaningful Language Access
for Limited English Proficiency Individuals***



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Introduction:

Language Access refers to the level of accessibility that non-English speakers are guaranteed, by Title VI of the Civil Rights Act of 1964, while communicating with service providers in their communities. Statistically, non-English speakers in the United States, or Limited English Proficiency speakers (LEPs), are foreign-born.¹ The Census Bureau definition of “foreign-born” includes U.S. citizens and all immigrants, noncitizens and refugees.² Title VI of the Civil Rights Act is interpreted to guarantee Meaningful Language Access to all LEP individuals, regardless of their citizenship or immigration status.

When one moves to a new community he or she generally will initially encounter difficulties locating assistance that is available to them. This challenge of locating services is compounded for immigrants, noncitizens, and refugees who may not be proficient in English. For an LEP individual, identifying entities that offer assistance and understanding the resources at his or her disposal through community programs may prove to be nearly impossible without meaningful language access. Meaningful language access ensures that when immigrants turn to agencies or institutions that specialize in providing necessities such as housing, healthcare, and education, the language barrier does not seriously impact the quality of service.³ Several hurdles exist that create strife for immigrants who choose to access community resources, ranging from a maze of bureaucracy to the potential bias of representatives. Although there are a wide range of challenges affecting immigrant access to community resources, the Department of Justice oversees how federally funded agencies implement and execute language access plans, ensuring one less barrier for the LEP population. This report reveals the details of which entities fall under the requirement to provide language access and what are the requirements for these agencies.

This report examines the right to meaningful language access in the United States. Additionally, it will provide a framework for entities to self-identify whether or not they are required to provide language access by Federal law. Finally, it will describe the Federal requirements to providing language access, including defining meaningful language access and providing information on the written language access plan.

The Brandeis Human Rights Advocacy Program (HRAP) at the University of Louisville Brandeis School of Law performed a community survey of entities in Louisville, Kentucky to assess the level of language access available to LEP individuals while seeking basic community resources. This report will also highlight the findings of the survey, which revealed a general deficiency in the knowledge of the requirements of Title VI and irregular language access resources provided by entities. This report serves as a larger mission of the HRAP to provide resources to assist community service providers in better serving the needs of the immigrant, noncitizen, and refugee populations.

Section 1. Governing Statutes: Title VI, Executive Order 13166, and Department of Justice Guidelines

Title VI of the Civil Rights Act of 1964 is the primary federal law that mandates federal agencies to serve the immigrant community through non-discriminatory practices. Title VI mandates that “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”⁴ In 1963, President John F. Kennedy stated regarding Title VI that, “[s]imple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination. The language in Title VI makes it clear that programs which receive federal funds cannot turn away a person simply on the basis of being an immigrant. Furthermore, any entity, agency, or department that receives federal financial funds is subject to judicial review and can potentially lose their funding and face disciplinary actions for any non-compliance.⁵ For many years after the passage of Title VI, there was no specification that discrimination of an LEP individual was the same as discrimination for national origin.

In 2000, Executive Order 13166 expanded upon Title VI by ensuring access to services especially for immigrants based on the argument that discrimination of an LEP by not providing language access was the same as discrimination based on national origin. The Executive Order, “Improving Access to Services for Persons with Limited English Proficiency”, issued August 11, 2000, recognizes that immigrants are more likely to be

limited in their English proficiency, which leads to immigrants not being aware of certain services available to them. The first provision of EO 13166 ensures that agencies who receive federal funding provide “meaningful access” to non-English speakers.⁶ Meaningful access means that non-English speakers can interact with the entity workers and understand what services are provided. The second provision requires federally funded agencies to submit their own plans for improving language access to the Department of Justice for review.⁷ As a condition of receiving funding, an entity must submit a plan that complies with the federal standards and that is approved by the Department of Justice. To help agencies assess themselves and prepare their own language access plans, the Department of Justice published guidelines for these programs in 2002.

The Department of Justice’s Guidelines state that an agency or entity must submit their own Language Access Implementation Plan. The plan must show that the entity is aware of the non-English speaking population utilizing its resources and that it has policies in place to provide meaningful access to that population. Entities must appoint an individual to oversee its language access policies, which ensures that it is accountable for providing language access. One of the most important parts of the submitted plan is the Language Access Procedures, which direct the entity’s front-line representatives how to implement the plan.⁸ The Procedures describe thoroughly what should happen if a non-English speaking immigrant were to walk through the doors of the entity, so that the employees are well-informed of what to do to guarantee that LEP individuals receive meaningful access. Primarily, the Guidelines describe in detail the procedures for how an organization can create meaningful language access, which begins with defining the organization’s LEP population.

Section 2. Defining the scope of the Title VI and Clarification by Executive Order 13166

The stipulations set out in Title VI and Executive Order 13166 apply to a vast number of organizations. Community organizations to whom these regulations apply are best categorized in one of three types of agencies: federal, federally funded, and private.

First, any type of federally conducted program or activity automatically falls under the scope of Title VI and Executive Order 13166. This means every department and agency of the federal government must provide meaningful access to LEPs.⁹ The Department of Justice highly encourages people to report these agencies if they feel that the agencies are not adequately providing meaningful language access. Federal agencies are relatively easy to identify and each entity clearly falls under the Language Access requirement.

In contrast, questions about the scope of Title VI and the Executive Order 13166 arise when an organization is not a federal agency, but receives federal funding. The federal government can provide funding to state or local governments and other entities. Funds are not strictly limited to financial revenue, “funds” can include supplies, training, property or other things needed to operate the business.¹⁰ In addition, the government can provide funds to corporations as well. When an entity receives federal funding, there is an agreement that the entity will universally comply with Title VI; that means if an entity takes funds to repair just one institution, then all of their institutions must comply with Title VI — not just the one repaired.¹¹ The Department of Justice also encourages citizens to report these entities for not providing meaningful language

access to immigrants. However, potential clients and customers may not know whether the organization receives federal funding, and the entity itself may not realize that it falls under the scope of Title VI requirements. If an immigrant experiences Language Access problems and he or she is interested in filing a complaint, legal advocates will be required to assist him or her in determining the status of an organization.

Finally, there are privately owned organizations that do not receive any federal funding. Due to their independence from the federal government, there is no standing obligation to provide meaningful language access pursuant to Title VI and Executive Order 13166. However, if a federally funded agency outsources parts of their work relating to benefits for LEPs to a private entity, that entity must also comply with Title VI and Executive Order 13166.¹² Private actions can also potentially be brought against private institutions under discrimination and Equal Protection claims.

Section 3. Federal Funding

“Recipients”: Who receives federal funding?

In short, a “recipient” is a public or private entity that has directly, indirectly, or through another recipient received federal financial assistance and is required to follow the non-discriminatory practices of section 601 of Title VI of the Civil Rights Act of 1964. A “recipient” receives extended federal funding and is required to follow non-discriminatory practices within Title VI of the Civil Rights Act. Title VI addresses non-discrimination in federally assisted programs. The Civil Rights Act states that “[n]o person in the United States shall, on the ground of race, color, or *national origin*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under **any program or activity receiving Federal financial assistance**” (emphasis added.)¹³

The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom federal financial assistance is extended, directly or through another recipient, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary. The term primary recipient means any recipient which is authorized or required to extend federal financial assistance to another recipient.¹⁴ The Code of Federal Regulations defines “recipient” in plain language. First, a recipient can be a public or private entity. Second, a recipient can be given financial assistance directly, indirectly, or through another recipient. Third, a recipient is not the same as an ultimate

beneficiary. An ultimate beneficiary is the person(s) to which the financial aid is benefiting without imposing Title VI.¹⁵ Fourth, a primary recipient is a recipient of federal funding that is required to extend that funding to another recipient.

a. Direct Federal Assistance

If an entity receives direct federal funding, then it is required to adhere to Title VI non-discriminatory policies. "By limiting coverage to recipients, Congress imposes the obligations of § 504 upon those who are in a position to accept or reject those obligations as a part of the decision whether or not to "receive" federal funds."¹⁶ When an entity has the right to accept or reject federal financial assistance, the entity accepts the Title VI regulations with the acceptance of federal assistance. Therefore, when an entity accepts the federal funds the entity is obligated to follow Title VI regulations regarding non-discrimination. Direct federal funds could be in the form of grants received by community service providers or it could be in payments that a physician's office receives from Medicare or Medicaid.

b. Indirect Federal Assistance

As noted in the language of the Code of Federal Regulations, federal assistance can be given directly or indirectly. If an entity is an indirect recipient of federal assistance, they still have to adhere to Title VI regulations. The most common example of indirect federal assistance is federal student loans. In *Grove City College v. Bell*, the Supreme Court held that when an entity receives federal funds earmarked for education that entity is then considered an indirect recipient of federal funds.¹⁷ Although loans are paid directly to the student they are used to pay tuition to schools, thereby giving schools federal assistance indirectly. Almost all school directly or indirectly receive federal assistance, therefore, and will fall under the requirements of providing meaningful language access. Additionally, extracurricular programs and after school care programs

that take place in school buildings that receive federal assistance will also likely fall under the requirements. The limits of Grove City College are not clearly identified and may extend to otherwise private entities, such as grocery stores who accept payments from state food stamp programs, which are likely direct federal funds recipients.

c. Through Another Recipient: Successor, Assignee, and Transferee

Another way that an entity can indirectly become subject to the Title VI requirements of language access is in the transfer of federal property to others as long as the property is used for the same purpose as it was used while owned by the Federal government. This is primarily true of the transfer of federal land and buildings, but it can also be applied to other types of goods. If federal property is transferred to another entity, that entity becomes a recipient as long as that entity is using the land for the original or similar purpose.¹⁸

d. Through Another Recipient: Primary Recipient and Subsequent Recipient

Should an entity receive direct federal assistance, it may be required or permitted to give that federal assistance to another individual or entity later. This would include entities that work as the “middlemen” or the facilitators of the distribution of federal funds. Under this category, the primary recipient, who receives direct federal funds, and the secondary recipient, the person who receives the funds later from the primary recipient, would both be required to provide language access under Title VI of the Civil Rights Act. This could include federal contractors hiring subcontractors, where both the contractor and subcontractors will fall under the definition of recipients of federal funds.¹⁹

Section 4. Language Access Best Practices

Once an entity determines that it falls under the scope of the Language Access requirements of the Executive Order and Title VI, it must then create a formalized Language Access plan. The Department of Justice explains which actions every entity should take to develop the procedures of a formalized language access plan. First, entities should make all vital documents available to LEPs in their native language. The Department of Justice has defined a "vital document" as one that contains information that is critical to obtain federal services and/or benefits or a document that is simply mandated by federal law.²⁰ These documents can range from all necessary application forms, consent and/or compliance forms, notice of rights, disciplinary actions, notices advising LEPs of free language assistance, prison rule books, written tests that focus on competency for a license for which English comprehension is not needed, and letters or notices that require a response from the LEP client.²¹ To make these documents even more accessible, organizations must provide translated versions of these documents on their websites as well.²²

When working with LEPs the best practice is considered having someone on staff who can communicate with the non-English speakers themselves. Having multilingual employees on staff is the most ideal scenario for having entities providing meaningful language access to non-English speakers. However, if an entity does not have enough multilingual employees who can individually interpret or translate for non-English speakers, they may outsource to qualified interpreter services or volunteers.²³ Entities can

only rely on a LEP's friend or family member for translation services in emergency circumstances, primarily due to confidentiality concerns.²⁴

Section 5. Determining Who Needs Help

Online Resource: For local maps describing the LEP population in your area, visit:

www.LEP.gov/maps

The guidelines provide a clear instruction on how to determine what type of Language Access plan is necessary for an organization. First, the organization must define the LEP population in its service area. Before being able to provide meaningful language access, agencies should face the issue of defining which and how many language barriers exist in their service population. In order for agencies to learn more about the demographics of their community, the Department of Justice's Civil Rights Division has provided resources, accessible through their website. Most notably, DOJ provides online maps which breakdown LEP statistics by county.²⁵ Agencies can effectively and efficiently begin the process of preparing appropriate resources and documents needed for LEPs once they assess the demographics of their service population and the larger community.

The Department of Justice lays out a four-part test for agencies to determine which populations need the most help by considering the overall breadth and demand for language access in the community. The factors of this test include:

- (1) The number of the LEP persons in the eligible service population;
- (2) the frequency with which the LEPs come into contact with the program;
- (3) the importance of the service provided by the program; and
- (4) the resources available to the recipient.²⁶

By using this test, an entity can best determine for themselves what actions need to be taken to accommodate their non-English speaking populations in order to be in compliance with the requirements to provide language access.

Section 6. Compliance Can Not Create An “Undue Burden”

Executive Order 13166 requires federal, state or private agencies that are recipients of federal funds to provide for such meaningful access consistent with, and without unduly burdening, the fundamental mission of the entity.²⁷ Relying partly in *Lau v. Nicholas*,²⁸ Department of Justice Guidance instructs that recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.²⁹ As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.³⁰ The courts consider the circumstances of the four-part analysis in the previous section when determining the merit of an entity's argument that providing language access would be an undue burden to the organization. For instance, in laying out the parameters of what constitutes an undue burden to the agencies, the court in Hawaii held that publicly funded health care providers are usually unable to claim an undue burden defense if they fail to provide interpreters under the ADA, because state and local governments have resources available to cover such necessary expenses.³¹ Other similar entities that are crucial to the life and well-being of an individual, such as law enforcement agencies, will have little room to argue that language access creates an undue burden to the entity. Entities that specialize in social work or that provide housing for a large LEP population will also experience challenges in asserting that it would be an undue burden on the organization to provide meaningful language access. The next section will elaborate on sectors of entities that affect the daily lives of LEP individuals, which,

assuming that they are recipients of federal funding, will likely be compelled by Title VI requirements to provide meaningful language access.

Section 7. Language Access by Industry

The Brandeis Human Rights Advocacy Program (HRAP) identified language access as a challenge for the service providers who make an impact on the lives of immigrants, noncitizens, and refugees in its local community in Louisville, Kentucky. As the HRAP deliberated about how to improve language access, it contemplated which entities would provide important resources to a community. In identifying these important industries of entities, HRAP has developed an interconnecting web of service providers which must be accessible in order to meet the needs of each individual in a community.

After the list of important industries below was created, it became obvious to HRAP why meaningful language access should be pursued equally across all industries. Each of these service providers is connected to the others in the mission of meeting the many needs of an individual in a community; if one of the industries does not provide meaningful language access, it will create a burden on the other industries. The other industries will either make up for the lack of language access by using their own resources or they will have to address consequences created by the void left from the lack of language access. Therefore, the requirements of Title VI should be applied equally across all important industries in able to most effectively ensure meaningful language access for each industry individually.

a. Law Enforcement

Law enforcement agencies have a duty to protect and assist everyone in their community. However, when an LEP individual and a police officer encounter each other, the language barrier creates a problem for the non-English speaker in communicating

the immediate issue and for the officer in communicating the precautions that should be taken.³² When exigent circumstances exist, police officers can lose valuable time mitigating damages or capturing suspects by attempting to overcome the language barrier. By the time officers have finally begun to understand the message the LEP is trying to convey, the situation has undoubtedly grown worse. In some instances, there have been complete miscommunications between LEPs and police officers. These include failure on behalf of the officers to understand when a LEP has invoked their Miranda rights,³³ officers mistreated a stabbed victim for a gunshot wound,³⁴ and officers returned escaped human trafficking victims to their captors.³⁵ Examples such as these prove that police officers in every community need to improve their abilities to communicate with non-English speaking immigrants.

Across the country, several agencies are trying new strategies to improve their officers' abilities to effectively communicate with non-English speaking immigrants. Some departments have distributed multilingual Miranda warning cards to their officers so they may effectively communicate a person's rights to them in their native language.³⁶ Other departments create portable "tool kits" for their officers to use in their daily patrols; these kits include resources such as the translated Miranda warnings, flashcards, language assistance cards used for identifying what language the LEP is familiar with, the numbers of either a bilingual officer or translating service, and translated copies of some vital documents.³⁷ While requiring every officer to be fluent in a multitude of languages is impossible, departments can provide frequent seminars designed to educate officers on key terms in languages prominent in their community. For example, if a police department operates in a community with a largely Hispanic or Vietnamese immigrant population, officers would be educated on key phrase such as help", "fire", "murder",

“gun, or “rape”. Having officers familiar with such phrases can only lead to improvements in overcoming the language access barrier and potentially improving officer safety.

b. Language Access in Social Work

Social workers can play an important role in the life of a non-English speaking immigrant. Due to their understanding of an immigrant’s cultural background and personal needs, they are often the first line advocates for LEPs to get the help they need.

Many social workers provide direct services in terms of interpretations and helping immigrants enroll with services.³⁸ A few multi-licensed social workers can even provide bio-psycho-social assessments and develop care plans to help immigrants adjust to their new surroundings.³⁹ In a social worker setting, the best practices are to have multi-licensed, multi-lingual employees on staff and for all employees to have an understanding of what services exist in their community in order to make effective referrals to other agencies.

c. Language Access in Healthcare

The healthcare sector confronts its own unique challenges for LEP individuals. The role of immigrants in the national healthcare system presents its own distinct and separate challenges and well-publicized difficulties. Those few moments when a LEP has to communicate with a doctor about a serious medical emergency can be wasted in the face of a significant language barrier.

While the hospital itself is required to provide meaningful language access to LEPs, this does not extend to the physicians personally. Generally, the hospital as a whole must ensure there is meaningful language access. Regarding other agencies, healthcare providers are encouraged to hire multilingual staff and use translating services. However, due to the exigent circumstances, English speaking family members or friends of the ill or injured LEP can communicate on their behalf to the physician.⁴⁰ Sometimes this is not

enough and miscommunication between the physician and patient can lead to worse symptoms or even death. One well-recorded case involved a thirteen-year-old girl who died from appendicitis after being sent home because a physician could not communicate clearly to her or her family.⁴¹ An absolute need to comply with Title VI and overcome language barriers exists in emergency rooms and urgent care treatment centers to ensure that LEP individuals can receive the appropriate assistance they need.

d. Language Access in Education

School systems have policies in place to address a long-recognized language access issue within the classroom. The Supreme Court held that school districts are responsible for taking action to ensure that LEP students can overcome language barriers and can meaningfully and equally participate in school.⁴² Schools are required to provide language assistance programs so that LEP students can achieve English proficiency by demonstrating the ability to speak, listen, read, and write in the English language.⁴³ On the surface, these programs sound effective, but several issues can arise from their implementation. ESL classes, or other special education classes, are often understaffed, which can result in an ineffective learning environment that could stagnate a student's ability to learn and result in problems for that student, including being held back a grade or dropping out of school entirely.⁴⁴ Schools should take care to ensure that the LEP population is not suffering negative consequences as a result of participating in ESL programs. In situations where the LEP learners are separated from the general population of students, there is a danger that the ESL students are not experiencing an equal access to education.

Language access barriers are not exclusive to students. Language accessibility presents an issue for parents of students as well. In order to comply with Title VI, schools must provide parents with information regarding registration and enrollment, assistance

programs, report cards, disciplinary procedures, and permission slips must be presented in a language the parent understands.⁴⁵ Parents have a vested interest in the education of their child, which means that the school must provide meaningful communications to the parent about the status of the student.

e. Language Access in Housing

Many LEP individuals have low or limited incomes which means that affordable housing may be a concern for LEP families.⁴⁶ Public housing, Section 8 housing, and places that receive Community Development Block Grant and HOME funds from the Department of Housing and Urban Development are all required to follow Title VI's requirements.⁴⁷ Despite the mandates of both Title VI and the Fair Housing Act, the basic human necessity of adequate housing proves to still be an issue for immigrants. For example, some court systems have held that a lease does not qualify as a "vital document" and does not have to be translated for LEPs.⁴⁸ That a non-translated lease form is not a Title VI violation because "all non-English speaking people are equally affected by English only forms" and there is no "distinct impact" on non-English speaking immigrants.⁴⁹ Thankfully, the United States Department of Housing and Urban Development has realized that these problems represent a major issue for non-English speakers. The Department of Housing and Urban development has brought issues like this on behalf of LEPs as being in violation of the Fair Housing Act, and had success in bringing these actions.⁵⁰

f. Language Access in the Legal System

In the interest of protecting personal rights and effectively keeping the legal system moving, the court systems must provide meaningful language access to non-English speaking immigrants. The American Bar Association (ABA) standard is that the court system should provide all judges, court personnel, and court appointed attorneys with training on how to interact with LEPs, use effective techniques for working with LEPs, use referrals to competent service providers, providing translated materials, and be culturally competent.⁵¹ Language access must be provided for the LEP at every stage in the judicial process — all the way from filing a complaint to the appeals process.⁵² In addition, if a LEP is to be either a witness or party to a case, the court must provide a translator in order for the hearing to be fair and that due process has not been violated.⁵³ To ensure that there are no non-essential financial burdens keeping LEPs away from the legal system, court shall not charge a person for the translation services used in their case.

The court's duty does not exist solely in the courtroom, but extends to the community as well. Courts should ensure that outreach materials be distributed in the surrounding community that provide information about the court's language access services and assistance in legal matters.⁵⁴ Despite the court's best attempts to reach out to the LEP population, many issues still exist with the amount of qualified translators working in the courtroom and successfully communicating what rights to which these people are entitled.

Section 8. University of Louisville Brandeis Human Rights Advocacy Program Research

Beginning in 2014, the Brandeis Human Rights Advocacy Program (HRAP) as a part of the Brandeis School of Law at the University of Louisville began to investigate the status of compliance of language access requirements the local Louisville community. The investigation was precipitated by concerns raised by members of the immigrant, noncitizen, and refugee community and service providers who reported that their clients experienced language access issues as a major barrier to accessing services. HRAP sought to identify the extent to which this barrier exists within our community. After identifying the legal requirements set out in the law, described above, the HRAP conducted an assessment of compliance in Louisville, Kentucky.

Student fellows and volunteers with HRAP conducted a phone survey of service providers in Louisville, Kentucky to determine the state of language access in the local area. Through phone surveys conducted by fellows and student volunteers, the HRAP interviewed front-line representatives of organizations to determine how much access an LEP individual would have walking in the door of an entity. We assumed that the directors and other administrative officials would likely have a less spontaneous (and potentially less accurate) response. A total of 55 entities completed the survey: 7 law enforcement agencies, 7 social work/community center entities, 14 healthcare entities, 16 educational entities, 2 housing agencies, and 9 legal services entities.

The HRAP developed a list of questions related to determining if the entities receive federal funds, the entities' knowledge of language access requirements, and the specific

details of the entities' language access plans, if applicable. Following the completion of the interviews, the HRAP fellows and faculty advisors analyzed the responses and organized the agencies, based on their level of language access. The entities were divided into categories: Tier I, Tier II, and Tier III. Tier I agencies would have a clear understanding of the Title VI requirements and have a concrete, written language access plan. Tier II agencies are agencies that provide some level of language access, but may not fulfill all requirements (i.e. no written language access plan or reliance on the "language access" hotline). Tier III agencies require awareness and understanding of language access requirements, as they are not currently meeting the LEP population's language access needs based on the interviews. The results of the phone survey confirmed the concerns of community service providers that organizations were unaware of the requirement to provide meaningful language access.

**Brandeis Human Rights Advocacy Program
Language Access Survey Compliance Categories**

Tier I:
Organization has a clear understanding of Title VI requirements, has developed a written Language Access Implementation Plan, and provides meaningful language access to its LEP population.

Tier II:
Organization provides language access resources, but may not be aware of Title VI requirements, may not have a written plan, or may not follow best practices in language access.

Tier III:
Organization does not provide meaningful language access and is not aware of Title VI requirements.

The research results revealed that only five Tier One agencies existed representing nine percent of the total number of the agencies contacted. This snapshot of language access barriers raises serious concerns about awareness of the Title VI requirements. Many

of the organizations that provided language access either at the Tier I or Tier II level, did so out of coincidence and not through an intention to comply with statutory requirements. Since the completion of the compliance survey, HRAP is responding to the general lack of awareness of Title VI requirements by developing community resources and programs to raise compliance in Louisville across all industries. However, compliance resources targeted to the challenges of specific industries may be an important future step to ensure meaningful language access for all.

a. Law Enforcement in Louisville, Kentucky

The survey revealed that law enforcement agencies are varied in their formal response to the LEP population. Some agencies did have a formal language access plan, but others stated that they did not even receive training on how to serve a person who does not speak English. A select number of agencies reported that they had hired bilingual officers and staff, mostly Spanish-speaking, but law enforcement agencies generally relied on the Language Line in order to communicate with the LEP population.

The greatest opportunity for future compliance in this field will be in assisting law enforcement agencies with identifying that they are very likely recipients of federal funds. None of the law enforcement agencies responded that they were recipients of federal funding; respondents stated that they either were not recipients or that they were unsure of whether the agency received federal funds or not. With direct federal grants and indirect resources, it is unlikely that law enforcement agencies do not receive federal funds, given the broad interpretation of what entities are recipients.

b. Healthcare in Louisville, Kentucky

Hospitals and healthcare facilities in Louisville are largely informed of the language access resources that are available to LEP individuals, perhaps due to the life and death consequences of not being able to effectively communicate with patients. The

healthcare facilities that completed the survey were detailed in their descriptions of the language access resources available, including bilingual/multilingual employees, translated documents, intake procedures, and access to the Language Line. Two hospitals had designated departments that were focused on providing language access. One entity mentioned that all employees are trained in how to interact with LEP individuals.

The weakness of the healthcare respondents was that they, similar to the law enforcement entities, also were unaware of their status as a recipient of federal funds. Further, the respondents of the survey were either not sure whether a formally written language access plan had been developed or they may have responded that they did not have one. It is probable that the hospital has developed the written plan in compliance with Title VI, but has not made it widely available to the front-line employees who responded to our survey.

c. Social Services/Community Centers in Louisville, Kentucky

The results under the category of social services and community centers varied. The difference in the results between organizations may be attributed to the size, budget, and mission of the organization. Organizations that have a mission to serve immigrants, noncitizens, and refugees responded that they interact with an LEP population daily. The front-line employee of these organizations was able to give detailed information about the organization's language access plan, including bilingual employees who were available to translate and also who provided internal training on cultural competency in a number of organizations. One notable difference about the social services category is that all of the entities relied on volunteers or employees to translate and interpret. None of the entities described a reliance on the Language Line.

Nearly all of the organizations under this category did not have a written language access plan, but in practice they offered meaningful language access through a variety of resources. The reason for this is probably that the organizations either are not subject to Title VI requirements or they are not certain whether they fall under the definition of "recipient". In this category, a number of organizations were not direct recipients of federal grants and were funded by individual donors or by funding from larger, national organizations separate from the Federal Government. The HRAP would require more information about the finances of these organizations to assist in determining whether or not they are actually recipients of federal funds as defined by law and then to assist the recipients to develop a written language access plan.

d. Housing Programs in Louisville, Kentucky

The HRAP, as it developed the methodology of the study, recognized the importance of being able to seek out shelter, especially affordable housing, as one of the categories of services that impacts immigrants, noncitizens, and refugees. In spite of the small number of responses under this category, the information that was collected points to informal language access plans, which appear to meet the needs of the LEP populations that used their services. For example, one entity orally reads each provision of a lease with the LEP individual and a translator, which initially sound like it would not be a "best practice" in language access. However, the LEP individuals in this case speak a language that is an oral language and the entity has employed an individual to provide this excellent language access resource.

The housing entities recognize that they receive direct federal funding, but did not express that they were familiar with the Title VI requirements. They mentioned the Language Line as a resource for interpretation and translation, but the respondents stated that they generally relied on employees who are multilingual. By providing leases

and other important documents translated into the LEP individual's native language and also creating a written language access plan, these entities could satisfy the formal requirements of Title VI to bolster the meaningful language access that they are already providing on the ground.

e. Legal Services in Louisville, Kentucky

The legal services entities, including courts and advocacy organizations, were the most informed about the Title VI requirements. Each entity was aware of its status as a recipient of federal funding and had knowledge of the requirement to provide language access to the LEP population.

The courts in Kentucky responded that there is a process for individuals to become interpreters for the court and, further, that there are continuing education requirements to maintain the certification required to be a court interpreter. The courts provide training through the Administrative Office of the Courts (AOC) at least once every two years for interpreters.

Some administrative offices were not as effective at providing meaningful language access. One entity that mentioned that it dealt with LEP individuals responded that it did not translate any documents and was unsure of what documents it would translate if required. This particular entity is an important face of the legal system in Louisville; the immigrant, noncitizen, and refugee population would greatly benefit from the development additional language access resources in this entity and in administrative agencies generally.

f. Language Access in Schools

Secondary and primary schools presented a challenge for our study, as front-line respondents were reluctant to provide information about the schools' policies. Further, the responses that we received generally did not reflect an intention to provide

meaningful language access. The schools responded that they were recipients of federal funds, but responded that they did not have language access plans. One school responded that they interacted daily with LEP students, but rarely with their parents and thus, did not have many official documents translated.

Community colleges and other higher education facilities typically had an office or department dedicated to international students as well as Latino students. The front-line respondent was able to describe language access resources that the LEP student would have through that office, as well as community resources and mentorship. The front-line respondent in each case was not able to provide a written language access plan, but mentioned many resources that described meaningful language access.

g. Future Goals of the HRAP Language Access Project

Moving forward, the Brandeis Human Right Advocacy Program will take four addition steps in order to continue its dedication to language access in Louisville. First, HRAP, supported by a grant from the Louisville Bar Foundation, will develop informational videos describing the statutory requirements and how to ensure compliance. The video will describe the components of a language access implementation plan and those entities that fall under the requirements. The video will be a part of a series of related videos related to rights and responsibilities surrounding the immigrant, noncitizen, and refugee community, including videos on education access and media rhetoric. In order to ensure accessibility and wide distribution, the video will be uploaded onto the University of Louisville's YouTube account. Organizations who view the video will become familiar with language access requirements and will receive the information necessary to take steps become compliance.

Second, the Brandeis Human Rights Fellowship will reach out to all of the Tier Two and Tier Three agencies interviewed and inform them of the results. The goal of the

Language Access project was not to expose and shame these agencies for failing to meet their obligations. Instead, the goal is to create a better support system for the local immigrant, noncitizen and refugee community of Louisville. When the HRAP reaches out to the agencies who fell below Tier One classifications, they intend to simply inform them of their Title VI and Executive Order 13166 obligations. In their communications with the organizations, they will provide agencies examples of what Language Access plans are and explain the importance of these plans to the immigrant population. Information is the key to combating issues in language access because it better creates preventive measures within the service providing agencies. Hopefully after receiving an explanation of the importance of Language Access plans, these agencies will take it upon themselves to adopt a plan and change their problematic practices.

Following up with these agencies is the third step of the HRAP's project. The interview process was designed in such a way that allow for this survey to be repeated multiple times in the future. Using this year's results (2015 - 2016) as a baseline, the Brandeis Human Rights Fellowship program will be able to chart the progress of these agencies in their attempt to become more compliant with Title VI. More agencies can be added to the project every year using the same formula as well. As a watchdog type agency, the fellowship can continue ensuring that all agencies across Louisville are providing meaningful language access to LEP individuals.

Lastly, over the course of the next year, the HRAP will develop a language access clinic which will directly address personal claims that an entity did not provide meaningful language access. Ideally, the clinic will be open once a month and run by students of the fellowship. The students will interview the LEP individuals directly about whether the person was denied access to an entity's benefits based on a language barrier. From there, students will draft and send letters on the LEP's behalf explaining to the entity how

their current practices failed this particular person. HRAP will function as an advocate for those LEP individuals and document those cases where multiple complaints may arise against the same entity for future action.



Conclusion

Language access is an issue most native English speakers do not typically think about because it is easy to take for granted the benefit of being able to speak the primary language of their community. After being enlightened to the widespread problem of language access that exists in communities around the country, it is imperative that agencies begin to address the language barrier. Moving forward with the dual knowledge that this problem exists and knowing the governing law on the issue, legal advocates may dedicate themselves to combating non-compliance and under-compliance. After detailing the nature of language access in Louisville, the Brandeis HRAP plans to continuously work towards the goal of ensuring that all immigrants in our community have access to valuable resources and are not being turned away due to lack of language skills. Legal advocates should strive to combat the inequality in their own communities by literally being a voice for those who would otherwise be unheard and ensuring a better quality of life for all.

¹ According to the American Community Survey through the United States Census Bureau, "foreign born" individuals are 81.4% of all of the individuals surveyed who speak English "less than very well" and account for more than 20 million individuals in the United States. 2011-2015 American

Community Survey 5-Year Estimates, Place of Birth by Language Spoken at Home and Ability to Speak English in the United States

² According to the American Community Survey through the United States Census Bureau, naturalized US Citizens make up 46.6% of all foreign born individuals. The remaining individuals could be Legal Permanent Residents, Refugees, or individuals with no legal immigration status. 2011-2015 American Community Survey 5-Year Estimates, Place of Birth by Nativity and Citizenship Status

³ Ideally, immigrants would be able to walk in the front door of an entity and get the help that they need, without encountering significant barriers to access.

⁴ Civil Rights Act of 1964, 42 U.S.C. § 1981 (2012).

⁵ *Id.*

⁶ Exec. Order No. 13166, 65 FR 50121 (2000).

⁷ *Id.*

⁸ Federal Coordination and Compliance Section Civil Rights Division U.S. Department of Justice, *Common Language Access Question Technical Assistance, and Guidance for Federally Conducted and Assisted Program*, 4, (2011).

⁹ US Department of Justice, *Commonly Asked Questions & Answers Regarding Executive Order 13166* (2015).

¹⁰ Department of Justice, *Title VI of the Civil Rights Act of 1964*, (Nov. 1 2015, TIME), <http://www.justice.gov/crt/video/title-vi-civil-rights-act-1964>.

¹¹ *Id.*

¹² Department of Justice, *Commonly Asked Questions & Answers Regarding Executive Order 13166* (2015).

¹³ Civil Rights Act of 1964, 42 U.S.C. § 1982 (2012).

¹⁴ 28 C.F.R. § 42.102 g, f

¹⁵ *United States DOT v. Paralyzed Veterans of Am.*, 477 U.S. 597, 609 (1986).

¹⁶ *Id.*

¹⁷ *Grove City College v. Bell* 465 U.S. 555, 563-70 (1984).

¹⁸ In the case where the federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, such assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer.

When dealing with federal land that has been given for a particular purpose and is then transferred to another organization, the transferee is taking on the role of a recipient only if the land is used for the original and similar purpose for which the land was extended to the original recipient. The act of transferring the property extends federal funding to a new recipient. The transference of property is an agreement that the transferred recipient will adhere to section 601 of the Civil Rights Act of 1964.

¹⁹ Federal aid can be given through a primary and a subsequent recipient. "[P]rimary recipient means any recipient which is authorized or required to extend Federal financial assistance to another recipient." 28 CFR § 42.102(g). Title VI applies to both primary and subsequent recipients when federal aid is extended to a primary recipient and they have the requirement to give that funding to a subsequent recipient.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Limited English Proficient (LEP) Maps, (Nov. 1 2015, TIME), <http://www.lep.gov/maps/>.

²⁶ *Supra* Federal Coordination and Compliance Section Civil Rights Division U.S. Department of Justice, 10.

²⁷ *Id.*

²⁸ Lau v. Nicholas, 414 U.S. 563 (1974).

²⁹ *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 FR 41455-01

³⁰ *Id.* at 41459.

³¹ *Faith Action for Cmty. Equity v. Hawaii*, No. CIV. 13-00450 SOM, 2015 WL 751134, at *2 (D. Haw. Feb. 23, 2015).

³³ Bharathi A. Venkatraman, *Lost in Translation Limited English Proficient Populations and the Police*, (Oct. 29, 2015, TIME), http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=861&issue_id=42006.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Workplace Spanish, Miranda Rights*, (Nov. 4, 2015, TIME), https://www.workplacespanish.com/info_sheets/miranda_rights.pdf.

³⁷ Bharathi A. Venkatraman, *Id.*

³⁸ Rita A. Webb, *Social Workers: A Bridge to Language Access Services*, (Oct. 20, 2015, TIME), <http://www.naswdc.org/assets/secured/documents/practice/clinical/WKF-MISC-47310.DiversityPU.pdf>.

³⁹ *Id.*

⁴⁰ U.S. Department of Health & Human Services, *Guidance of Federal Financial Assistance Recipients Regarding Title VI and the Prohibition Against Origin Discrimination Affecting Limited English Proficient Persons - Summary*, (Oct. 22, 2015, TIME), <http://www.hhs.gov/ocr/civilrights/resources/laws/summaryguidance.html>.

⁴¹ Alice Hm Chen, Mara K. Youdelman & Jamie Brooks, *The Legal Framework for Language Access in Healthcare Settings: Title VI and Beyond*, US National Library of Medicine National Institutes of Health, (Nov. 1, 2014, TIME), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2150609/>.

⁴² Lau v. Nicholas, 414 U.S. 563, 572 (1974).

⁴³ U.S. Department of Justice & U.S. Department of Education, *Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs*, (Nov. 11, 2015, TIME), <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-el-students-201501.pdf>.

⁴⁴ *Id.*

⁴⁵ U.S. Department of Justice & U.S. Department of Education, *Information for Limited English Proficient (LEP) Parents and Guardians and for Schools and School Districts that Communicate with Them*, (Nov. 11, 2015, TIME), <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-lep-parents-201501.pdf>.

⁴⁶ *Of individuals 18 and older with incomes below the poverty line, 28.4% of individuals speak Spanish or another language other than English. In comparison, of the individuals in the US whose income is at or above the poverty line, 19.8% of individuals who speak Spanish or another language. POVERTY STATUS IN THE PAST 12 MONTHS BY AGE BY LANGUAGE SPOKEN AT HOME FOR THE POPULATION 5 YEARS AND OVER, 2011-2015 American Community Survey 5-Year Estimates*

⁴⁷ National Housing Law Project, *Federal Housing Rights of Survivors with Limited English Proficiency: An Information Packet*, (Nov. 4, 2015, TIME), <https://nhlp.org/files/01%20LEP%20Info%20Packet%20FINAL10.20.15.pdf>.

⁴⁸ *Vialez v. New York City Housing Authority*, 783 F. Supp. 109, 122 (1991). The Fair Housing Act provides a similar protection for individuals as Title VI of the Civil Rights Acts. The Fair Housing Act states, "it shall be unlawful-- (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling

to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. 3604.

⁴⁹ *Id.*

⁵⁰ National Housing Law Project, *Id.*

⁵¹ American Bar Association, Standards for Language Access in Courts, 115 (2012), (Oct. 28, 2015, TIME),

http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf.

⁵² American Bar Association, *Id.*

⁵³ U.S. v. Maynes, 17 F. 3d 1174, 1181 (1994).

⁵⁴ American Bar Association, *Id.*