

# Federal Language Access Guide:

The Rights of Limited English Proficient (LEP) Individuals in the United States

> Michael Mulé, Esq. Staff Attorney Empire Justice Center

Empire Justice Center Hon. Michael A. Telesca Center for Justice One West Main Street, Suite 200 www.empirejustice.org

Copyright © August 2008 Empire Justice Center

Empire Justice is the only statewide, multi-issue, multi-strategy non-profit law firm focused on changing the "systems" within which poor and low income families live. With a focus on poverty law, Empire Justice undertakes research and training, acts as an informational clearinghouse, and provides litigation backup to local legal services programs and community based organizations. As an advocacy organization, we engage in legislative and administrative advocacy on behalf of those impacted by poverty and discrimination. As a non-profit law firm, we provide legal assistance to those in need and undertake impact litigation in order to protect and defend the rights of disenfranchised New Yorkers.

#### **Empire Justice Vision**

To be a statewide leader working to achieve social and economic justice for people in New York State who are poor, disabled or disenfranchised.

## Empire Justice Mission

Empire Justice protects and strengthens the legal rights of those who are poor, disabled or disenfranchised through: systems change advocacy, training and support to other advocates and organizations, and high quality legal representation in civil matters.

#### Board of Directors

James C. Moore, Esq. (Chair)	Hon. Andrea Phoenix
JoAnn Smith (Vice Chair)	Paula C. Johnson, Esq.
Maggie R. Robb, Esq. (Secretary)	John T. O'Connell
Dann Braveman, Esq. (Treasurer)	Rene Reixach, Esq.

#### **Empire Justice Center**

### Anne Erickson, President/CEO

Bryan Hetherington, Chief Counsel

One West Main Street, Suite 200 Rochester, NY 14614 (585) 454-4060

119 Washington Avenue Albany, NY 12210 (518) 462-6831 80 No. Broadway White Plains, NY 10603 (914) 422-4329

Public Advocacy Center, Touro Law Center 225 Eastview Drive, Room 222, Central Islip, NY 11722 (631) 650-2306

# TABLE OF CONTENTS

Table of Contents		
Part I: Over	view of LEP	3-4
a.	What are Language Access Rights?	3
	What Does LEP Mean?	3
	What Federal Legal Protections are in Place for LEP Individuals?	3
	What is Meaningful Access?	3
	What is National Origin Discrimination?	3-4
	What are the Most Common LEP Populations in the United States?	4
Part II: Fed	eral Protections	5-10
	Title VI of the Civil Rights Act of 1964	5
	Title VI Implementing Regulations	5
	Executive Order 13166	5
d.	DOJ LEP Guidance	5-6
e.	The Four Factor Test	6-7
f.	2002 DOJ LEP Guidance	7-9
g.	Enforcing LEP Obligations	9-10
-	LEP Protections after Sandoval	10
Part III: Soc	ial Benefit Programs	11-39
a.	Public Assistance Programs	11-17
	i. Temporary Assistance for Needy Families (TANF)	11
	ii. The Food Program for Women Infants and Children (WIC)	11-12
	iii. The Food Stamp Program	12-15
	iv. Appendix: Food Stamp LEP Checklist	16-17
b.	Federally Subsidized Housing	18-20
	i. HUD LEP Guidance Requirements	18-19
	ii. Recipients of HUD Assistance	19
	iii. Compliance and Enforcement	20
с.	Social Security Administration Programs	21-24
	i. SSA LEP Plan	21
	ii. SSA District Office LEP Policies	21-22
	iii. SSA Hearing Office LEP Policies	22
	iv. Appendix: District / Hearing Requirements, Unfair Treatment Complaint	23-24
d.	Federal Medical Assistance and Health Care Providers	25-32
	i. U.S Department of Health and Human Services (HHS) LEP Guidance	25-28
	ii. Medicaid	29-30
	iii. State Children's Health Insurance Program (SCHIP)	30
	iv. Medicare and Part D	30
	v. Federal Categorical Grant Programs	31
	vi. Hill-Burton Act	31
	vii. Culturally and Linguistically Appropriate Services (CLAS)	31-32

e.	Federal Employment Programs	33-34			
	i. DOL LEP Guidance	33			
	ii. Four Factor Test	34			
f.	Access to Education for Students and Parents	35-36			
	i. Federal Education Requirements	35			
	ii. Equal Education Opportunities Act	35			
	iii. No Child Left Behind Act	35-36			
g.	Federal Voting Rights	37			
h.	Federal Disaster and Emergency Assistance	38			
i.	i. Refugee and Resettlement Services				

Part IV:	Pu	blic S	afety, the Courts, and Attorneys	<u>40-60</u>
	a.	Don	nestic Violence and LEP Women	40-41
		i.	Language Services in Court Proceedings	40
		ii.	DOJ LEP Guidance Examples	40-41
		iii.	OJP and OVW Grant Recipients	41
	b.	Acce	ess to Federal and State Courts	42-43
		i.	Interpreters in Federal Court	42
		ii.	Interpreters in State Courts	42
		iii.	Case Law on Interpreters	43
	c.	Law	Enforcement	44-47
		i.	DOJ Guidance for Law Enforcement	44
		ii.	Seasonal LEP Populations	45
		iii.	Language Assistance Services	45-46
		iv.	Safe Harbor Provisions	46
		v.	Language Access Plans are Strongly Recommended	46
		vi.	Language Barriers Make Police Officers Less Effective	46-47
	d.	Lega	al Assistance	48-60
		i.	Language Service Obligations to LEP Clients	48
		ii.	Legal Service Corporation (LSC) Requirements	48-49
		iii.	ABA Standards for Providers of Civil Legal Services to the Poor	49-50
		iv.	2006 ABA Standards for the Provision of Civil Legal Aid (SCLAID)	50-51
		v.	Interpreters and Attorney-Client Privilege	51
		vi.	New York City Bar Opinion	51-53
		vii.	Appendix: Interpreter Assessment /Checklist, Federal Court Interpreters	53-60