

# Language Access

The Rights of Limited English Proficient (LEP)  
Individuals in New York State

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# Training Overview

**Part I: Overview of LEP**

**Part II: The LEP Population in New York**

**Part III: Federal Protections**

**Part IV: LEP Topics**

Public Benefits in New York State

Federal Medical Assistance and Health Care Providers

LEP Access to State and Federal Courts

Law Enforcement

Legal Assistance and LEP

# Part I: Overview of LEP

- Language access refers to the rights of Limited English Proficient (LEP) individuals to receive meaningful access to Federally funded programs
- LEP- individuals who do not speak English as their primary language and have a limited ability to read, speak, write, or understand English
- Meaningful Access- language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual

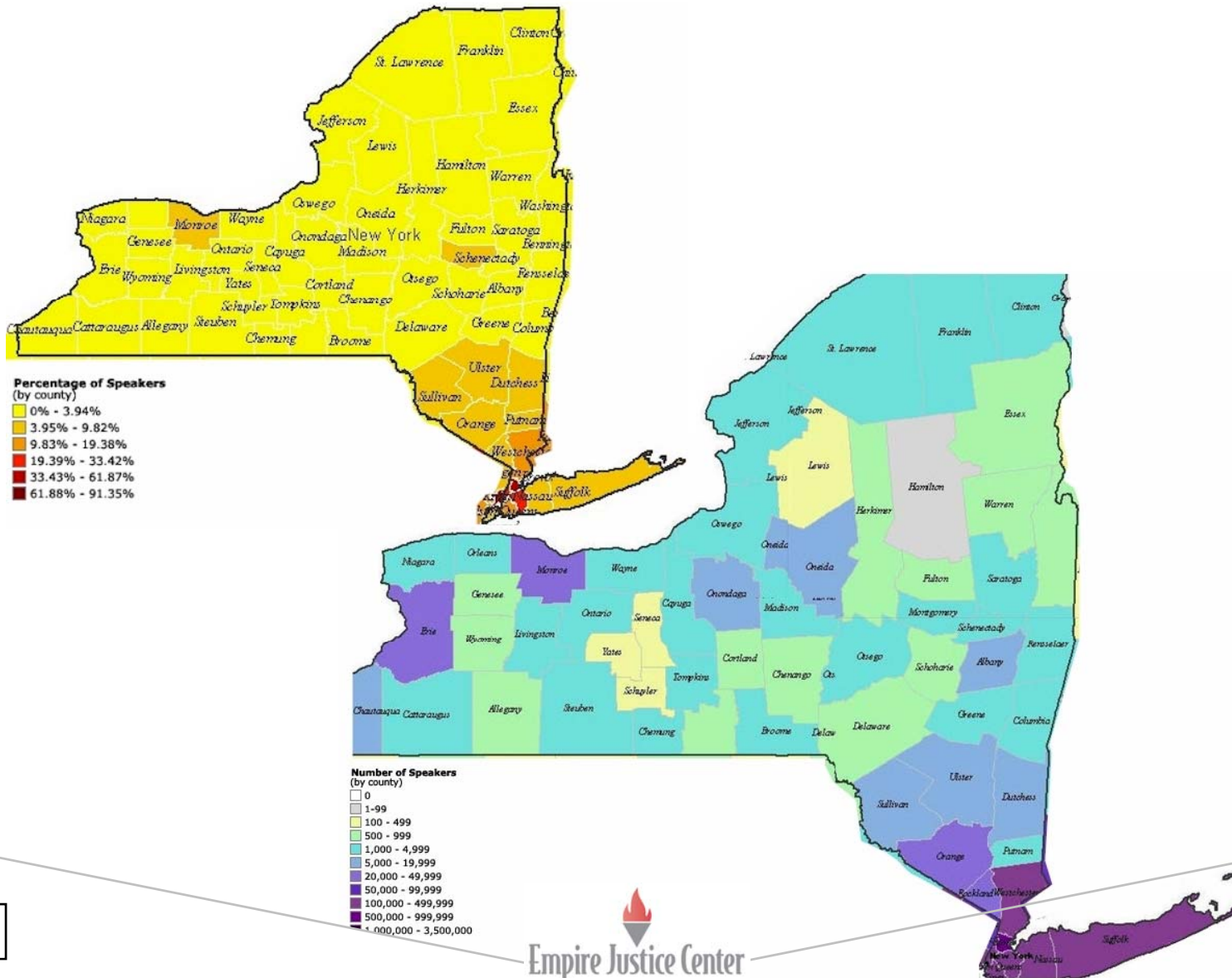
# Overview of LEP (Cont.)

- Title VI of the Civil Rights Act of 1964 prohibits national origin discrimination
- National origin discrimination - discrimination against an individual because of the language they speak or their ancestry
- Top 5 Commonly LEP languages in the U.S.- Spanish, French, German, Italian, Chinese

## Part II: New York's LEP Population

- New York has the fourth largest LEP population in the United States
- 4.9 million New Yorkers speak a language other than English at home
- 2.4 million are Spanish-speaking
- Over 1.1 million Spanish-speakers speak English less than “very well”

# Spanish-Speakers in NY



# Spanish Speakers in Upstate NY

Top LEP Languages Spoken in Monroe County			Ability to Speak English	
	Total	Percent	“well” or “very well”	“not well” or “not at all”
Spanish	<b>31,955</b>	4.64%	26,500	5,455
Italian	9,895	1.43%	8,700	1,195
German	3,970	0.57%	3,780	190
French	3,555	0.51%	3,240	315
Ukrainian	3,260	0.47%	2,420	840
Chinese	2,985	0.43%	2,600	385
Russian	2,405	0.34%	1,835	570
Total	58,025		<b>49,075</b>	<b>8,950</b>

Top LEP Languages Spoken in Erie County			Ability to Speak English	
	Total	Percent	“well” or “very well”	“not well” or “not at all”
Spanish	<b>26,310</b>	2.95%	21,505	4,805
Polish	14,085	1.57%	13,165	920
Italian	7,605	0.85%	6,625	980
German	4,525	0.50%	4,215	310
French	4,040	0.45%	3,470	570
Arabic	2,950	0.33%	2,545	405
Total	59,515		<b>51,525</b>	<b>7,990</b>

Buffalo LEP	
Language	Total
English	238,125
Total LEP	32,777
Spanish or Spanish Creole	<b>17,480</b>

Rochester LEP	
Language	Total
English	166,645
Total LEP	36,083
Spanish or Spanish Creole	<b>22,336</b>

# Part III: Federal Protections

- Executive Order 13166 (2000)
  - Prohibits recipients of federal financial from discriminating based on national origin by, among other things, failing to provide meaningful access to LEP individuals.
  - Department of Justice (DOJ) was given the authority to provide federal agencies guidance on these obligations
- DOJ Guidance
  - The DOJ LEP Guidance was released the same day to clarify these obligations
  - This Guidance was a model for Federal agencies to draft for recipients of Federal funding, “recipients”



# Four Factor Test

- To determine if a recipient of Federal funding is providing meaningful access, the DOJ guidance uses a four-factor analysis:
  - 1. The Number or Proportion of LEP Individuals**
  - 2. Frequency of Contact with the Program**
  - 3. Nature and Importance of the Program**
  - 4. Resources Available**
- Recipient of Federal funding must balance these factors to determine the appropriate mix of written and oral assistance to provide to LEP individuals in their program or service area.

# 2002 DOJ LEP Guidance

Clarified the obligations of recipients of Federal funding to:

- Provide language interpreters that are competent- this requires more than self-identified bilingual staff
- Translate “vital” documents in the languages most encountered (applications, consent forms, complaint / intake forms, notices of rights, etc.)
- “Safe harbor”- strong evidence of compliance when:
  - there are than 100 persons in a language group and the entity provides written notice of the right to receive oral interpretation of written materials in the language of the group
  - All written materials are translated for each LEP group of 10% or 3,000 (whichever is less) of the eligible population.
  - Vital documents are translated for each LEP group or 5% or 1000 (whichever is less) of the eligible population for the program or service.

# 2002 DOJ LEP Guidance (cont.)

- Recipients must provide LEP individuals notice of the language services by:
  - Outreach with media or community groups
  - Posters, language cards, statements in brochures in non-English languages
- They should develop a Language Access Plan (LAP) describing:
  1. Language services available and how to access them
  2. How to respond to LEP callers
  3. How to respond to written communications from LEP persons
  4. How to respond to LEP individuals when in-person contact
  5. How to ensure competency of interpreters and translation
  6. How the LAP will be updated for LEP population changes

# Enforcing LEP Obligations

- LEP individuals may file discrimination complaints for violations
  - Every county, state, Federal agency has a civil rights complaint procedure (page. 32, and 46)
  - Complaints can also be filed directly with the DOJ
    - See pg. 12-27 in the materials
- Agencies had to follow these requirements after the *Sandoval* case
  - DOJ said *Sandoval* did not change the LEP obligations of Federal recipients or the Title VI requirements

# Part IV: LEP Topics

- Public Benefits in New York State
  - Office of Temporary and Disability Assistance (OTDA) & Office of Children and Family Services (OCFS) administer state and Federal benefit programs at Local Department of Social Services (LDSS)
    - NY Social Service law prohibits an LDSS from implementing or continuing policies or practices that have the effect of discriminating against individuals based on national origin
    - This applies to any aid, care, services, other benefits or privileges to an individual by the LDSS

# OTDA and OCFS LEP Directives

- April 2006, OTDA issued 06-ADM-05
  - Described the language services that must be provided for LEP individuals by an LDSS
    - LEP individuals are not required to bring an interpreter
    - They will be provided an interpreter by the LDSS
    - Language services will be timely provided free or charge
- May 2006, OCFS issued 06-OCFS-INF-05
  - Described the obligations of the Department of Health and Human Services (HHS) LEP Guidance based on Executive Order 13166
    - Agencies receiving federal assistance must provide meaningful access to LEP individuals

# Food Stamp LEP Requirements

- The Food Stamp Act (FSA) prohibits national origin discrimination in the certification of applicant households for the food stamp program by OTDA and LDSS
- Food Stamp regulations require OTDA or the LDSS to assess the total number of low-income LEP households for each language and
  - Translate material about the program in areas with more than 2,000 low-income households where more than 100 households are LEP, and in areas with more than 2,000 households when 5% or more of the population are LEP households speak a similar language
  - Provide translated certification materials (application form, change report form, notices to households) and bilingual staff or interpreters in each LDSS are with more than 100 low-income LEP households, and in areas with less than 100 low-income LEP household if a majority of the households are if a single language minority

## Food Stamp LEP Requirements (cont.)

- OTDA or the LDSS must determine the number of low-income LEP households participating and not participating in the program in an area
  - An LDSS must record the number of LEP households that ask about the program, file a new application or are certified for a 6 month period
  - If the LDSS is contacted by more than 100 LEP household in 6 months they must provide bilingual staff or interpreters
  - In areas with a seasonal increase of LEP households the LDSS must provide bilingual staff or interpreters



# NY Food Stamp LEP Requirements

- NY State food stamp requirements are based on the Federal FSA
  - NY Social Service law requires each LDSS to make bilingual materials available so LEP households are informed about the food stamp program
  - LDSS must provide information about the program to low-income ethnic and disadvantaged households
  - LDSS National origin discrimination is prohibited
  - LDSS must provide informational materials in languages spoken by LEP applicants and recipients

# Medical Assistance / Health Care

- Almost every health care provider is subject to Title VI requirements because Federal financial assistance includes Medicare, Medicaid, and block grants to health and welfare agencies
  - Medicaid is a federal-state program that provides health coverage to indigent blind and disabled individuals, children and pregnant woman
    - Spoken and written communication must be in a language understood by LEP beneficiaries and to provide interpreters at Medicaid hearings
    - Medicaid regulations require New York to identify the number of LEP beneficiaries in the state
    - Information and interpreters for enrollees must be provided in the languages of the most prevalent LEP populations

# Federal Health Care Programs

- Medicare and SCHIP are government funded health insurance programs
  - Medicare participating hospitals can get reimbursement for providing bilingual services to inpatients
  - SCHIP matching funds are available for translation
- Federal grant programs provide health services for poor, disabled and older people also have linguistic access requirements.
  - For example, clinics serving migratory and seasonal agricultural workers, and their families

# HHS LEP Guidance

- HHS LEP Guidance requirements apply to all healthcare institutions that receive Federal financial assistance
  - Financial assistance has a broad definition
  - Is enforced by the Office of Civil Rights (OCR)
  - It describes use of interpreters, hiring of bilingual staff, translating, training and monitoring of LEP requirements

# HHS Guidance (continued)

- The Guidance uses a similar 4 factor test
  1. Number or proportion of LEP persons eligible or likely to be served
  2. Frequency with which LEP individuals have or should have contact with the program
  3. Nature and importance of the program or service to people's lives
  4. Resources available to the fund recipient and costs
- Describes the importance of competent oral interpreters and how children should not be used
- Defines “vital documents” that must be translated, and “safe harbor” provisions similar to the DOJ Guidance
- Suggest recipients have a language access plan (LAP) that includes certain elements

# Other Language Standards

- HHS OCR has found the Hill-Burton Act requires language assistance in public and nonprofit community hospitals and health centers
- HHS Office of Minority Health (OMH) issued National Standards on Culturally and Linguistically Appropriate Services in Health Care (“CLAS Standards”) in 2002
  - 14 standards for health care providers include requiring that:
    - language and culturally appropriate care
    - timely interpreter services
    - vital documents to be translated
    - information about the patients spoken language is taken
    - they develop a collaboration with diverse communities

# DOH Regulation on Interpreters

- New York State Department of Health (DOH) interpreter regulation from September 2006 requires:
  - Hospitals to develop a language assistance program with a Language Access Coordinator to ensure meaningful access
  - Policies and procedures to identify a patient's need for language assistance services
  - Training staff on culturally and linguistically competent service
  - Proper signage describing how to receive language services
  - Patient medical records include their language preference
  - The hospital identify LEP populations in their service area and translate documents into those languages
  - Family and friends can only be used if the LEP patient refuses interpreter services from the hospital and minors only in emergencies

# LEP Access to Courts

- New York State Unified Court System
  - Interpreters to all LEP individuals in any court or court office
  - Interpreters to ensure equal access to the New York court system
- DOJ Letter on Federal LEP obligations
- New York Judiciary Law
  - § 386 appointment and compensation of interpreters
  - § 387 temporary appointment in any court
  - § 388 Polish and Italian in Erie County



# State and Federal Interpreters

- Interpreters in State Cases
  - Civil- an interpreter is needed to ensure the fairness of a proceeding, but not required
  - Criminal- An LEP individual has a right to an interpreter to assist in the defense
- Federal Courts
  - Civil- interpreters are not provided unless the government is plaintiff or by special request
  - Criminal- interpreter will be provided in all cases

# LEP and Law Enforcement

- DOJ Guidance describes law enforcement obligations to ensure the LEP population is not denied access to services
  - DOJ funding goes to law enforcement agencies
  - Meaningful access includes LEP individuals understanding rights and accessing police assistance when needed
  - Language barriers hinder police investigations of crimes
  - Police departments should have
    - printed Miranda rights in languages other than English
    - interpreters available to inform LEP persons of their rights and to
    - interpret available for police interviews
  - Seasonal increase in LEP populations may require interpreter services to ensure meaningful access

# Language Assistance Services

- Law enforcement must ensure they have competent interpreters or bilingual staff and that they translate vital documents
  - Does not require certified interpreters, but they should have a method to verify staff competency in a language
  - Using family members, friends, and children as interpreters cause competency and confidentiality problems
  - “Vital” written documents may include written notices regarding rights or benefits, standard warnings, complaint and witness forms, newsletters, and public safety brochures
  - Depends on the importance of the information involved and the consequences to the LEP person if the information is not provided in an accurate and timely manner by law enforcement

# Language Assistance (cont.)

- “Safe Harbor”- translating vital documents into each of the LEP language group that is five percent or 1,000, whichever is less, of the service population
  - If fewer than 50 or less than 5%, law enforcement should provide notice in that language of free oral interpreting of those materials
- DOJ strongly recommends law enforcement agencies have a language assistance plan for obtaining and providing language services, and that this information is prominently displayed
  - These plans ensure the safety of officers, victims and bystanders
  - Development of these plans should include community input

# Language Barriers Make Officers Less Effective

- Police encounter vulnerable LEP people in crisis situations, when the need for accurate communication is most critical
- Reliable communication is apparent in a variety of situations
  - A domestic violence incident when officers rely on an English-speaking child, or a batterer, to communicate with, or on behalf of, an LEP domestic assault victim
  - Time lost in apprehending a rapist or robber when officers cannot effectively communicate with an LEP victim or witness at the scene
  - Have legal consequences that can jeopardize community safety

# Legal Assistance and LEP

- New York Lawyer's Code and the Model Rules of Professional Conduct include the ethical obligation to represent unpopular causes
  - Obligation to represent clients and make legal services available (Lawyers Code, EC-26)
  - Legal services to the unpopular has historical importance to the profession (Lawyers Code, EC-27)
  - Legal services should not be denied to those unable to pay or whose causes are unpopular (Model Rules, Rule 1.2)
  - all lawyers have an obligation to provide pro bono legal services. (Model Rules, Rule 6.2 Commentary)

# Legal Services LEP Obligations

- Legal Services Corporation (LSC) LEP Guidance
  - Obligation to provide services to LEP clients equal to services provided to clients who speak English without difficulty
  - Assess LEP client need with the four factor test
    1. The number or proportion of LEP persons eligible to be served
    2. The frequency with which LEP individuals come in contact
    3. The nature and importance of the program's services
    4. The resources available to the program and the cost
  - Should have an effective LAP that includes
    - a method for identifying the language spoken
    - a list of staff competent in particular languages

# ABA Legal Services Standards

- ABA Standards for Providers of Civil Legal Services to the Poor:
  - Legal services offices should have the capacity to communicate with clients directly in their primary language (ABA Standard 1.7)
  - There are several considerations before using an interpreter (culture and competency concerns)
  - Offices in areas with a large LEP population should recruit bilingual attorneys and staff
  - Staff should receive cultural competency training
  - Client confidentiality with an interpreter must be assured to secure attorney-client privilege



# Attorney-Client Privilege

- Defined: Someone seeking legal advice can communicate with counsel for this purpose and know that the contents of the conversation will not later be revealed against the client's wishes
  - Communications made between a client and counsel in the known presence of a third party is not privileged
  - But communications made to counsel through a hired interpreter, or one serving as an agent of either attorney or client to facilitate communication, will be privileged
  - This is because the privilege includes all the persons who act as the attorney's agents, interpreters

# NYC Ethics Decision

- If a lawyer represents an LEP client and the only way to ensure effective attorney-client communication is through the use of an interpreter, these services must be considered and steps taken to provide such language services.
  - Meaningful participation in the judicial system is not possible without a client understanding what the attorney, judge and witnesses are saying
  - Adequate communication is necessary for competent legal services, ABA Model Rules 1.4
  - Adequate preparation of a case requires communication with the client, NY Code DR 6-101(A)(2)
  - Duty to represent a client competently, DR 6-101(A)(1)
  - A lawyer cannot intentionally prejudice or damage the client during the course of the professional relationship, DR 7-101(A)(3)
  - Denial of an interpreter may be unlawful discrimination, DR 1-102(A)(6)

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