



MAKING LEGAL SERVICES ACCESSIBLE TO LIMITED ENGLISH PROFICIENT CLIENTS

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Not to be forgotten in the discussion about attacking racial discrimination as a program priority is the emergence of language-based discrimination as a civil rights issue. Legal services providers need not step outside their office doors to find practices which effectively allocate scarce resources

to clients based upon their ability to speak a particular language. Opening the program's doors to limited English proficient (LEP) clients is the first step to advocating for language rights.

Community Legal Services undertook this task in 1999 by assigning two attorneys and a paralegal, all on a part time basis, to the newly created Language Access Project, which reports directly to the executive director. The Project was directed to build internal capacity to deliver services in a full range of languages, increase the number of LEP clients served through outreach, and take up advocacy issues important to immigrants and other LEP groups. As a result of the work of the Project, intake from LEP clients increased more than 50% in three years.

Demographic trends and recent improvements in federal policy have increased the importance of providing access to legal services for LEP clients. The foreign-born population has increased as a proportion of the U.S. population with each census, rising from less than 5% in 1970 to more than 11% in 2000, and the population has spread far beyond traditional immigrant centers. Substantial LEP populations now exist in states across the country, in rural areas as well as cities, including many areas that in the past had been almost exclusively English speaking. Legal services programs must act quickly to assure that they reduce language-based barriers to new client populations.

There are a number of reasons to motivate change. Programs without language access policies are likely to

Quick Indicators of Basic Language Access Deficiencies

- The program encourages relatives or friends to interpret for clients.
- The intake database lacks a mandatory data field for the client's primary language.
- No formal arrangements are in place to obtain professional interpreters.
- Neither bilingual nor monolingual staff have been trained on interpreting techniques.
- No articulated policy on delivering services to LEP clients exists.
- Case handlers send untranslated letters (or no letters at all) to clients who don't read English (or Spanish).

deliver second rate services to LEP clients, who may not understand legal advice or be able to carry out self help instructions delivered in English. Case handlers face obvious difficulties in obtaining the facts and determining the client's goals when unable to communicate effectively with the client. Misunderstood facts, advice or client goals that result from language barriers a program fails to overcome might well form the basis for a legal malpractice claim, ethics complaint or Rule 11 motion. In addition, any provider receiving federal financial assistance, direct or not, is obligated by fairly detailed government "guidances" to assure that they have in place comprehensive policies and practices to provide services to LEP clients or risk loss of funding for discriminating against clients on the basis of national origin. These guidances have been promulgated by a number of federal departments and agencies acting under Title VI of the Civil Rights Act of 1964.

To assess just where your program measures up on language access, take the quick self test in the accompanying box. If you find that many of these practices

apply to your program, or that you have never even considered the issues, now is a good time to start implementing new policies and practices. Here are some basic suggestions for getting started.

Setting Policy

At the outset, it is critical to understand that if your program is fairly typical in its absence of good language policy, basic attitudinal changes are required. Simply setting and distributing a policy will not solve the problem. Instead, some initial assessment is needed, followed by policy setting, staff training, monitoring and fine tuning. To accomplish the sustained attention needed to implement the changes, the first step is to designate one or two people in the program with specific responsibility and appropriate authority to make the program language accessible.

The designated staff should conduct an initial assessment of the program's services to language minority clients. Assuming that you can tabulate clients in the database by primary language, some statistics should be gathered to determine the proportion of clients served and the nature of services provided, according to the clients' language. If the database does not track clients' language, or it is too limited (e.g., English, Spanish, Other), anecdotal information from intake staff and other case handlers can still provide insight, as can fiscal information on spending for language services. The language breakdown of the actual client population served should then be compared, at least in a gross fashion, to the breakdown of the universe of eligible clients as divined from census data or less formal estimates of numbers of LEP low income persons.² The language resources, such as bilingual staff or outside interpreters, used to provide help to LEP clients should be identified and existing protocols gathered. Program staff should be surveyed to identify language barriers to service.

A new approach should be evident from the first formulation of the goal of the new policy, which may start with something as simple as this: *ABC Legal Services is committed to delivering quality legal services to clients in their primary language.* Of course, much more is needed to flesh out the contours of the policy, but this initial goal statement should be meaningful to staff and clients alike. It emphasizes that the program carries the burden of communicating with the client, rather than the other way around, which is how things typically operate. The policy will require that the program overcome any language barriers by providing services through a bilingual case handler or by providing free,

competent language services at all stages to allow communication between monolingual staff and the client. The goal statement also explains that services will be provided in the client's primary language rather than in English, which helps orient the staff as to the nature of the undertaking.

Policy and protocols need to be set up to carry out the goal of providing quality legal services to LEP clients:

- Use professional interpreters and translators. Programs that would never allow an untrained, untested or incompetent lawyer, paralegal, expert witness or social worker to be involved in providing legal services to a client do not blink an eye at allowing virtually anyone to serve as an interpreter when a non-English speaking client shows up in the office. Yet interpreting is an extremely skilled profession which requires years of education to acquire fluency in two languages in addition to training in proper interpreting techniques. Friends, relatives, and most particularly children of clients should generally not be permitted to interpret for the advocate. With rare exceptions, they will lack sufficient skill in English or the client's language and are likely to be unaware of the manner in which interpreting is done. Some may have hidden conflicts of interest with the client, or feel uncomfortable answering for the client. The client is entitled to confidentiality and privacy, neither of which is well served by allowing nonprofessionals to interpret.
- An interpreter is needed whenever the client *or* the case handler thinks one would be helpful. Sometimes it is immediately obvious that an interpreter is needed. In other cases, the need may be less clear. The vocabulary and sentence structure needed to fill out an intake form in English is much easier than that needed to explain the details of the problem. Clients often deny that an interpreter is needed, but for the wrong reasons — like fear that asking for an interpreter will result in a delay (or even denial) of services. Case handlers must assure that *they* can understand the client completely even if the client claims to understand the case handler, bearing in mind the ethical responsibility of the program to assure that it is able accurately to understand the facts of the case and the client's intentions.

- Case handlers need authority to procure language services when needed. In order to get people in the habit of using the services, programs should not erect bureaucratic barriers. Staff should not need approvals to obtain language services.
- Translation policy must be carefully developed as well. (“Interpreting” involves oral communication, while “translation” is used for written communication.) Good interpreters are not necessarily good translators and vice versa. Some balancing of costs and benefits is appropriate in setting policy on what kinds of documents should be translated. Certainly, programs ought to assure that staff send translated letters to non-English speaking clients in the same situations that would result in a letter to an English speaking client. On the other hand, translating a brief or a set of bankruptcy schedules may not be worth the cost. “Sight translation,” in which an interpreter orally reads a document to the client, may sometimes be a suitable alternative, with an interpreted summarization of the document by the advocate serving as a last resort.
- Data gathering related to language is important for monitoring. The intake sheet should be modified to include a mandatory primary language field, which does not default to English. The field should offer a comprehensive list of languages from which to choose. Fiscal staff should gather staff specific data on spending for language services.

Training

Staff training is essential to change practices in serving LEP clients and it begins with the new language policies. The procedures to follow to obtain interpreter assistance must be written up and explained. Skills training on how to work with an interpreter is also needed for any staff that come into contact with clients, including support staff as well as advocates. The methods used by trained interpreters are not difficult to understand, but they are also neither obvious nor comfortable for the untrained. For example, interpreters expect to function simply as a conduit between two parties to a conversation rather than to participate in a three-way conversation. Trained staff will look at the client and ignore the interpreter while the untrained naturally look at the interpreter and tend to treat the client almost as a bystander. Don’t forget that bilingual staff who act as in-house interpreters also need training on how to interpret; the proper techniques will not be

Language Services Components

- Bilingual staff case handlers
- Staff interpreters/translators
- Professional in-person interpreters
- Professional telephone interpreters
- Professional translators
- Volunteer interpreters/translators

followed by them either without training. Case handlers also need to be prepared for the fact that a properly interpreted interview will likely take three times longer than one in which everyone is speaking the same language.

Language Services Components

The foundation of the language accessible legal services office is a system of bilingual case handlers, interpreters and translators capable of handling both common and infrequently encountered languages for the program’s service area. The most efficient and effective way to deliver services to LEP clients is to minimize the need for interpreting by using bilingual advocates. Bilingual staff not only allow for services to be delivered directly in the client’s language, but are likely to bring more cultural awareness and connections to community organizations than monolingual staff. Programs can increase capacity here by placing greater emphasis on second language fluency in hiring new staff. However, in most cases, the need for capacity in several languages throughout the program will still require the use of outside help.

Arrangements need to be made to retain professional in-person interpreters for client interviews and meetings in order to cover the breadth of languages spoken within the client population. In-person interpreting tends to work better than telephone-based interpreting because the parties can see each other and view documents together. On the other hand, telephone interpreting services ought to be used to interpret conversations that would occur on the telephone with an English speaking client. Telephone interpreting is also helpful for brief, in-person discussions with the client, particularly when the program lacks advance notice of the need to arrange for an interpreter to come to the office. A telephone interpreter can be obtained in less than a minute and in an amazing number of languages, whereas it may take a day or more to schedule an in-person interpreter, with less frequently used languages

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taking more time. Bear in mind that telephone interpreters usually bill by the minute and at a rate that makes them much more expensive per hour than an in-person interpreter, who is likely to bill by the whole hour, perhaps with a minimum time charged. It tends to be cheaper to use a telephone interpreter for a conversation of less than, say, a half hour, than to bring in an in person interpreter who will bill for at least an hour, if not two.

A system also needs to be set up to obtain translation services to handle written work. Again, in-house staff can be a starting point, provided that the program assures that translators possess the high level of written skill required for competent translation. However, programs will need external resources to cover all languages that may be encountered. With the convenience of e-mail and the fax, national services can be utilized to bring translations in a wide variety of languages even to isolated programs. Quality checks done from time to time by back up translators are recommended to screen for poor translations. And do not forget to be sensitive to the client's literacy level, just as should be done with English speaking clients.

Translations are needed for program brochures, handouts and forms in addition to client correspondence. The program's policy of providing free interpreting and translating services should be printed up in a multilingual format, posted, and distributed publicly. Commercial language services offer handy tools like multilingual signs and posters advising that interpreters are available, and language identification cards to use when the client's language cannot be discerned (a government version of one format, as well as a host of other resources and information, can be viewed at: <http://www.lep.gov/>).

As with other services, program managers should shop around for price and quality. Setting up a shared contract, such as with other legal services and public interest programs in the region, may supply the volume that may allow for reduced rates. But be sure that staff

are aware that the skill level of the interpreters within and between different language services providers varies to a surprising extent, thus reinforcing the need for staff training so that advocates know how to spot deficient interpreting techniques and methods to respond to them.

Caution should be exercised in connection with the use of volunteer interpreters and translators. Remember that it is not easy to find a person who possesses the requisite language skills and training to handle legal interpreting, where conversational level skill in either language will not suffice. Volunteers, including some staff at community-based organizations, may themselves speak English with less than the fluency required. Others may be operating at a fluent level in English, but only be able to speak the native language of their parents at the level of, say, an eight-year-old. The possible existence of linguistic or interpreting skills problems with a volunteer interpreter is compounded by the touchiness of questioning, criticizing or dismissing a volunteer or community partner for unsatisfactory work.

Programs also need to be careful about automatically expecting staff at ethnic organizations to provide free interpreting. Not only can there be skill problems, but you might inadvertently create a disincentive for referring language minority clients to your program by requiring the agency staff not only to make the referral, but also to take the time to serve as a free interpreter for your legal services program. When services are compensated, we can demand quality work and avoid taking advantage of other agencies. Nevertheless, carefully planned arrangements between community organizations seeking to provide convenient services to members of language minority groups and legal services providers interested in reaching out to under served populations can be beneficial to all.

Monitoring

Once basic policies are set and protocols established, ongoing monitoring, feedback and policy adjustment over a period of time will be required to change the habits of staff. When primary language is added as a data field, managers can begin to gather data on services to LEP clients. The program may find that some offices or units have more contact with particular language groups that may reflect the presence of bilingual staff, location, outreach efforts, the relevance of the services offered, and the extent to which clients learn that they can get help without speaking English. Other offices or units in a program may continue to serve only

one or two language groups. Reports on spending for language services should also be studied for patterns on use or disuse. For example, billing records might indicate where staff seem to be using interpreters but no translators, which would prompt a question about whether the case handler is neglecting to have client letters translated.

Monitoring should provide indicators of the extent to which staff are complying with the new policy. Some staff will need to be reminded or retrained on proper policy and the protocols to retain interpreters. There is no doubt that it will take concerted effort to break old habits and this is particularly true with offices that see relatively fewer LEP clients, making it even more of a challenge for staff to become familiar with the use of the language services.

The monitoring can be incorporated into larger program reviews about what clients are being served. Many programs are failing to provide services equally across language groups. The ability to monitor services to clients by language will greatly help programs that want to enhance services to LEP clients. The data can be compared to demographic data to look for disparities between the low income populations and the client population based upon language. It may help to suggest where a program should seek consciously to build relationships with ethnic organizations or consider the particular needs of a specific group of clients that ought to be better served. In addition, the monitoring results should suggest adjustments that are needed in policy, which ought to be consciously reviewed annually for several years. Input from client organizations serving LEP populations will facilitate the process and provide important perspective from the consumer angle.

A Word about Costs

Legal services programs, chronically pinched for money and staff to handle client needs, are understandably reluctant to engage in programs designed to bring in more clients. With programs seeming to spend inordinate amounts of time on turning away clients who want a lawyer, some say, what's the point of bringing more clients in? Is this so we can reject people on an equal opportunity basis? And how do we justify reaching out to clients that we know will cost more to represent?

There is not much difference between the existing non-policies of many legal services programs and hanging a sign on the door that says Free Legal Services for English (or Spanish) Speaking Poor People — All Others Go Away or Bring Your Own Interpreter. Since language is a recognized proxy for national origin, fail-

ing to provide equal services to LEP clients — even unintentionally — may be a civil rights violation, pure and simple. If you don't receive any federal funding, you may not be violating any law, but then you'd have to feel comfortable with private clubs restricted to white men to use that as an excuse. The law mandates that recipients of federal funding provide meaningful access to people who don't speak English.

Programs in many areas of the county need to aggressively address language issues to remain relevant to emerging client populations and capable of meeting their critical legal needs. The rights of language minorities are routinely violated by institutions upon which poor people depend, making language an issue ripe for advocacy. But we also need to get our own houses in order as we start filing complaints against others who don't provide language appropriate services.

Costs of course will vary widely depending on the demographics of your service area and the availability of interpreters. Philadelphia has a sizeable LEP population — about one in six residents speaks a primary language other than English — as well as a good number of resources for language services. Last year, we were spending about \$1,500 per month for outside language services, an amount which is a fraction of a percent of our budget. Over the past few years, we have increased services to several language groups by more than 100%, and we are now able to provide quality service to entire populations that in the past rarely received any service from us. And expanding our client base has drawn our staff into new areas of advocacy on issues of importance to immigrants and language minorities — such as providing interpreters for court hearings, making welfare offices accessible, and challenging eligibility requirements for non-citizen drivers' licenses and identification cards. The money was well spent in reducing language barriers to our program. Although we have a ways to go still, the hardest part was getting started.

1 The Language Access Project of Community Legal Services welcomes questions and comments from program directors, which may be directed to the author at puyehara@clsphila.org or (215) 981-3718. The Samuel S. Fels Fund provided financial support for the preparation of this article.

2 The Social Characteristics Profile (Table DP-2) of Census 2000 data (available by state or county at www.census.gov) provides a generalized but useful starting point for assessment of potential client population by primary language and ancestry.