

Vermont Judiciary Language Access Plan

January 2017

1. BACKGROUND/ STATEMENT OF NEED

Vermont is a rural state with a growing Limited English Proficient (LEP) population requiring interpreters for access to health, legal, education and other government services. Over 6,000 refugees have settled in Vermont during the last twenty-five years, in addition to immigrant and migrant worker populations. Approximately one-tenth of the population of Chittenden County is made up of LEP individuals, most of whom are refugees. The 2010 United States Census “short report” indicated that over five percent of the state’s population lives in a non-English speaking household. Census figures, as well as figures provided by the Office of Refugee Resettlement (ORR), track continuing increases in both immigrant and refugee populations.

Vermont’s LEP population is primarily though not exclusively refugees. Vermont has no single predominant second language group. For example, over 40 different languages are represented in the Burlington school system. The primary languages for which interpreters are needed are: Vietnamese, Mandarin, Bosnian, Sudanese, Somali, Maay Maay, French, Russian, Spanish, Burmese, Nepali and Arabic. With each arriving refugee group, the languages of need change and there is a period of adjustment as new interpreters are located and trained.

In 2011, the Judiciary surveyed judges and Judiciary staff, who reported ongoing concerns with the quality and cost of in-person interpreters. Survey respondents identified accessibility, affordability, and the quality of interpreter services as barriers to adequate language services for LEP individuals. These concerns existed despite multiyear efforts of an ad hoc Interpreter Task Force and the Judiciary to address them.

In December 2012, the Judiciary published an earlier version of this Language Access Plan to address those concerns and provide guidance to judges and Judiciary staff.

2. GENERAL LANGUAGE ACCESS POLICY

a. Policy Statement

1. It is the policy of the Vermont Judiciary that staff shall take reasonable steps to provide limited English proficient (LEP) persons with meaningful access to all programs or activities conducted both by the Judiciary and by entities receiving funding from the Judiciary.
2. Judiciary staff shall take reasonable steps to effectively inform the public of the availability of language accessible programs and activities.

b. Purpose and Authority

The purpose of this Language Access Plan is to provide courts and Judiciary staff with the guidance they need to ensure meaningful access for limited English proficient individuals to Judiciary programs or activities. This Plan establishes guidelines in accordance with Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. Reg. 50121 (Aug. 16, 2000). These guidelines are designed to be consistent with the standards set forth in the Department of Justice's initial LEP Guidance, Enforcement of Title VI of the Civil Rights Act of 1964— National Origin Discrimination Against Persons With Limited English Proficiency, 65 Fed. Reg. 50123 (Aug. 16, 2000),¹ the Department's later LEP Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (June 18, 2002).² It is necessary for Judiciary staff to make reasonable efforts to provide timely language assistance services to ensure that LEP have equal access to all Judiciary programs.

This directive is intended only to improve the internal management of the Judiciary's language access program. This directive does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the State of Vermont, its agencies, its officers or employees, or any person. Because this document is intended for the internal management of the Judiciary's language access program, it is not intended to be cited in any judicial or administrative proceeding. Administration of the programs discussed herein is within the sole discretion of the Judiciary.

The Judiciary welcomes feedback regarding implementation of this policy. Feedback may be sent to Patricia Gabel, State Court Administrator, Vermont Judiciary, 109 State Street, Montpelier, VT 05609-0701 (*Patricia.Gabel@vermont.gov*).

c. Definitions

1. *Effective Communication* – Communication sufficient to provide the LEP individual with substantially the same level of access to services received by individuals who are not LEP. For example, staff must take reasonable steps to ensure communication with an LEP individual is as effective as communications with others when providing similar programs and services.
2. *Interpretation* – The act of listening to a communication in one language (source language) and orally converting it to another language (target language) while retaining the same meaning.

¹ This document is available at <http://www.justice.gov/crt/about/cor/Pubs/eolep.pdf>.

² This document is available at <http://www.justice.gov/crt/about/cor/lep/DOJFinLEPFRJun182002.php>.

3. *Language Assistance Services* – Oral and written language services needed to assist LEP individuals to communicate effectively with staff, and to provide LEP individuals with meaningful access to, and an equal opportunity to participate fully in, the services, activities, or other programs administered by the Judiciary.
4. *Limited English Proficient (LEP) Individuals* – Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. LEP individuals may be competent in English for certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).
5. *Meaningful Access* – Language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed or inferior as compared to programs or activities provided to English proficient individuals.
6. *Primary Language* – An individual’s primary language is the language in which an individual most effectively communicates.
7. *Program or Activity* – The term “program or activity” and the term “program” means all of the operations of the Judiciary.
8. *Qualified Translator or Interpreter* – An interpreter or translator who has demonstrated his or her competence to interpret or translate or is authorized to do so by the Judge in a specific proceeding.
9. *Sight Translation* – Oral rendering of written text into spoken language by an interpreter without change in meaning based on a visual review of the original text or document.
10. *Translation* – The replacement of written text from one language (source language) into an equivalent written text in another language (target language).
11. *Vital Document* – Paper or electronic written material that contains information that is critical for accessing Judiciary programs or activities, or is required by law.

d. Scope of Policy/Staff Compliance

Judiciary staff should take reasonable steps to provide language assistance services to LEP individuals when they encounter or have reason to believe that they may encounter LEP individuals in the course of fulfilling their responsibilities. Subject to guidelines set forth herein, Judiciary staff should take reasonable steps to provide language assistance services upon request by an LEP person who wishes to access Judiciary programs or activities or with whom Judiciary staff wishes to communicate.

3. OPERATIONAL GUIDELINES FOR LANGUAGE ASSISTANCE SERVICES

a. Quality Control

Ensuring the quality and accuracy of language assistance services provided by the Judiciary is critical to providing LEP individuals with meaningful access to Judiciary programs and activities. Individual courts should take reasonable steps to ensure that all staff or contracted personnel who serve as translators or interpreters for LEP persons are competent to do so. Considerations of competency in light of particular tasks may include:

- Demonstrated proficiency and ability to communicate information accurately in both English and the target language;
- Identifying and employing the appropriate mode of interpreting (e.g., consecutive, simultaneous, or sight translation), translating, or communicating fluently in the target language;
- Knowledge in both languages of any specialized terms or concepts particular to the Judiciary's program or activity and of any particularized vocabulary used by the LEP person;
- Understanding and following confidentiality, impartiality, and ethical rules to the same extent as Judiciary staff; and
- Understanding and adhering to their role as interpreters or translators.

Judiciary staff should not use family members (including children), neighbors, friends, acquaintances, or bystanders to provide language assistance services. Likewise, staff should avoid using individual opposing parties, adverse witnesses, or victims to a dispute as interpreters. Using family, friends, bystanders, or parties to a dispute to interpret could result in a breach of confidentiality, a conflict of interest, or inadequate interpretation.

b. Identifying LEP Individuals

When first encountering an LEP individual, staff should make reasonable efforts to conduct or arrange for an initial assessment of the need for language assistance services, and staff should make reasonable efforts to obtain such services if they are needed to communicate effectively with the individual. Staff can determine whether a person needs language assistance in several ways:

- Self-identification by the non-English speaker, LEP individual or companion;
- Inquiring as to the primary language of the individual if the person asks for language assistance services;
- Asking a multilingual staff or qualified interpreter to verify an individual's primary language;

- Using an “I Speak” language identification card or poster. Each courthouse shall display the INTERPRETER SERVICES poster in a visible place. The poster advises LEP individuals in multiple languages, including American sign language, that those individuals have the right to an interpreter and staff will contact an interpreter who speaks the language they indicate on the poster. Each court clerk’s office is also equipped with a language line account code and directions for accessing the service at the counter or in the courtroom.

c. Notification of the Availability of Language Assistance Services

The Judiciary should make reasonable efforts to notify the public about its LEP policies and how to access language assistance services.

d. Interagency Cooperation

The Judiciary should continue working with with other state and nonprofit stakeholders to share resources, improve efficiency, and standardize the process for obtaining qualified interpreters.

e. Tracking and Reporting

The Judiciary collects data regarding the language assistance services it provides. The CAO has identified the data to be collected, which includes the number of cases in which language assistance services are provided; the primary languages of communication with the LEP persons, the cost of any language assistance services provided, and the type of language assistance provided during a case or matter, if any.

f. Guidance Regarding Payment for Interpreter Services

As set out in the “Davenport Memo re: Payment for Interpreters,” dated May 4, 2010 (attached as an appendix), the court is not responsible for providing interpreter services to litigants in the following circumstances:

1. *Communications between Attorney and Client:* The interpreter retained by the court is the court’s interpreter, and counsel should be instructed that it is counsel’s responsibility to obtain interpreter services for attorney/client communications. It may be necessary to waive this requirement when it is difficult to locate an interpreter in the language spoken by the litigant.
2. *Post-Adjudication when the Litigant Has Been Ordered into State Custody:* Any post-adjudication programming is the responsibility of the receiving agency (e.g., DOC, DCF, DMH).

g. Performance Measurement and Evaluation

The Judiciary should periodically reassess and, where appropriate, update the language access plan to ensure that the scope and nature of language assistance services provided under the plan reflect updated information on relevant LEP populations, language assistance needs, changes in technology, and experience under the plan. Further, the Judiciary should take reasonable efforts to ensure that its in-house and contract language services signs and web-based services meet current language needs.

Every two years, the CAO should assess the effectiveness of language assistance services by, among other things, conducting an inventory of languages most frequently encountered, identifying the primary channels of contact with LEP community members (whether telephonic, in person, correspondence, web-based, etc.), reviewing individual programs and activities for language accessibility, reviewing plans and protocols, reviewing the annual cost of translation and interpreter services, and consulting with outside stakeholders.

4. FUTURE STEPS

a. Training of Court Staff and Judges

Judiciary staff need to know how and when to access language assistance services. For policies and procedures to be effective, courts should take reasonable efforts to ensure that new and existing staff members periodically receive training on: the content of the language access policy, identifying language access needs, and providing language assistance services to LEP individuals. The CAO has developed a baseline language access training for staff who have the potential to interact or communicate with LEP individuals and/or who arrange for language support services and for managers of such staff. Training will also be provided for judges.

The CAO will take reasonable steps to ensure that relevant staff members receive training on the Judiciary's language access policies, plan, and procedures. Training may include but is not limited to:

- Identifying the language needs of an LEP individual
- Working with an interpreter in person or on the telephone
- Requesting documents for translation
- Accessing and providing language assistance services through interpreters and translators
- Duties of professional responsibility with respect to LEP individuals
- Interpreter ethics

Action Steps include:

- Update the standard curriculum for baseline training
- Continue to offer training to judges
- Continue development of online training for new staff
- Ensure that orientation training for new employees includes training on interpreter use

- Provide ongoing training for court officers
- Continue to ensure that all court benches are equipped with Interpreter Bench Cards

b. Promoting Access to Quality Interpreter Services

In recognition of the need for additional language resources, particularly in languages of limited diffusion, the Judiciary recognizes the need to explore national resources and improve the quality of local services. On the national level, the CAO is actively working with the National Center for State Courts to explore use of remote interpreters from other states.

Action Steps include:

- Work with other stakeholders and/or entities (community colleges, Vermont Adult Learning) to develop a legal curriculum for local interpreters
- Work with other stakeholders to provide training for local interpreters on ethics, skills (e.g., modes of interpretation) and substantive information (legal vocabulary)
- Work with other stakeholders to develop a credentialing system for local interpreters
- Explore the benefits and costs of administering the National Center for State Courts written test
- Explore remote interpreting options and a national database of interpreters
- Explore interpreter mentoring as a pathway for improving legal interpreting skills of local interpreters

c. Policy Development

The Judiciary has in place a policy requiring the provision of interpreter services to qualified individuals who are parties, witnesses, or parents involved in the juvenile system in all court and related proceedings at state expense. This policy and the procedures for locating and utilizing interpreters are set out in the “Davenport Memo re: Payment for Interpreters,” dated May 4, 2010 (attached as an appendix) and in the Vermont Court Interpreter Manual, which has been provided to each court and each chamber. Some additional policies may be necessary to ensure consistency and user access.

Action Steps include evaluation of existing policies or development of new policies concerning:

- Two-hour minimum for interpreters
- Cancellation
- Evaluation of interpreter services
- Complaint procedure for users
- Fee schedules
- Translation (see Section d below)
- Changing of statutes and rules to reflect current policy re: provision of interpreter services

d. Translation


The Judiciary recognizes the need to undertake reasonable efforts to translate vital documents and documents in hearings and trials (sight translation). Classification of a document as “vital” depends upon the importance of the program, information, encounter, or service involved and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. The determination of what documents are considered “vital” is to be determined by the Chief Superior Judge in consultation with the Vermont Supreme Court, which is in the best position to evaluate the circumstances. The Judiciary shall ensure that all translations are completed by qualified translators.

Action Steps include:

- Evaluate existing policies or develop new policies to identify “vital” documents
- Determine which of the following should be translated and, if so, in which languages: general information, website content, court forms, notices, etc.
- Determine when case specific documents may need to be translated

Dated this 30th day of December, 2016, at Montpelier, Vermont.

APPROVED:



Patricia Gabel
State Court Administrator
Vermont Judiciary

Appendix

SUPERIOR COURT OF VERMONT
DISTRICT COURT OF VERMONT
FAMILY COURT OF VERMONT
ENVIRONMENTAL COURT OF VERMONT

AMY M. DAVENPORT
Administrative Judge
for Trial Courts

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OFFICE OF THE ADMINISTRATIVE JUDGE FOR TRIAL COURTS

MEMORANDUM

To: Judges, Superior Court Clerks and Court Managers
From: Amy M. Davenport, Administrative Judge
Robert Greemore, Court Administrator
Date: May 4, 2010
Re: Payment for Interpreters

This memorandum applies to all court proceedings and court ordered programs including criminal, juvenile, civil, environmental or judicial bureau matters. It replaces a memorandum issued by Judge Burgess and Lee Suskin on May 20, 2005.

It is the policy of the Vermont Judiciary to pay for interpreter services for litigants and witnesses who either are deaf/hard of hearing or have limited proficiency in the English language. The court covers interpreter services for all court proceedings including case manager conferences, and for court ordered programs. Court ordered programs include but are not limited to: COPE, RFA education, pro se education, mediation, evaluations, etc.

In person interpreter services: In person interpreters should be obtained for any contested court proceedings or lengthy proceedings that involve multiple parties (e.g. juvenile temporary care hearing). Every effort should be made to obtain interpreters who have legal experience.

Telephonic interpreter services: Telephonic interpreter services should be used for interactions at the counter and may also be used for short, non-evidentiary hearings such as arraignments and status conferences. The phone service should not be used for contested evidentiary hearings.

Court managers do not need pre-approval from the CAO or the Administrative Judge in order to engage the services of an interpreter. Invoices should be submitted to the CAO for payment.

The court is **not** responsible for providing interpreter services to litigants in the following circumstances:

1. Communications Between Attorney and Client: The interpreter retained by the court is the court's interpreter and counsel should be instructed that it is counsel's responsibility to obtain interpreter services for attorney/client communications. It may be necessary to waive this requirement when it is difficult to locate an interpreter in the language spoken by the litigant.

2. Post-Adjudication when the litigant has been ordered into state custody: Any post-adjudication programming is the responsibility of the receiving agency (i.e. DOC, DCF, DMH).

A series of grants from the State Justice Institute has allowed the CAO to begin developing a Court Interpreter Program. A manual, protocol, and strategic plan have been developed, and implementation and training on the new protocols is being planned by the CII Division. An Advisory Committee, chaired by Judge Eaton, will also develop testing and training for legal interpreters.

Resources in terms of trained and available interpreters remain limited, but the court will make every effort to provide access to justice for all Vermonters.