

VII. LIMITED ENGLISH PROFICIENCY

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WHAT IS LIMITED ENGLISH PROFICIENCY?

Limited English Proficiency is a term used to describe individuals who are not proficient in the English language. California is home to millions of individuals from different cultures and backgrounds. A significant number are limited English proficient (LEP). An example of this is identified by the California Department of Education language census, which reveals there are 5,727,303 students enrolled in public schools K-12, of which 25% or 1,406,166 are LEP. At a national level, a total of 3,379,772 LEP students are enrolled in public schools. California represents 42% of K-12 LEP students enrolled in public schools nationally.

AUTHORITY

Executive Order (EO) 13166 – Improving Access to Services for Persons With Limited English Proficiency, August 2000 is directed at implementing the protections afforded by Title VI of the Civil Rights Act of 1964 and related regulations. Accordingly, it prohibits recipients of Federal financial assistance from discriminating based on national origin by failing to provide meaningful access to services to individuals who are LEP. This protection requires that LEP persons be provided an equal opportunity to benefit from or have access to services that are normally provided in English.

HOW DOES LEP AFFECT THE DEPARTMENT OF TRANSPORTATION?

There are two laws that require the Department to provide LEP persons with meaningful access to programs, activities and services. The following matrix illustrates these laws/policy and the considerations.

Title VI of the Civil Rights Act of 1964	Limited English Proficiency Executive Order 13166	Dymally-Alatorre Bilingual Services Act
<ul style="list-style-type: none"> • Federal law • Enacted in 1964 • Contains monitoring and oversight compliance review requirements • Considers all persons • Provides protection on the basis of race, color, and national origin • Annual Accomplishment and Upcoming Goals Report to FHWA 	<ul style="list-style-type: none"> • Policy¹ • Signed August 2000 • Considers the eligible population • Contains monitoring and oversight requirements • No numerical or percentage thresholds factor criteria is required • Focused on providing LEP persons with meaningful access to services using factor criteria 	<ul style="list-style-type: none"> • State law • Enacted in 1973 • Considers the current customer base • Lacks monitoring and evaluation mechanisms • Threshold – substantial number and 5 percent or more customer base • Focused on providing alternative language service at public counters • Requires a biennial language survey

¹ Executive Order 13166 is policy, however the protections afforded for national origin fall under the purview of Title VI of the Civil Rights Act of 1964.

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DIVISION RESPONSIBILITY

The EO directs recipients of Federal financial assistance to take reasonable steps to provide LEP individuals with meaningful access to their programs, activities, and services.

The following chart, although not exhaustive, illustrates Division and Program activities and responsibilities relative to LEP services.

<u>Activity</u>	<u>Responsibility</u>	
	<u>Division / Program</u>	<u>Title VI Program</u>
• Assessing and addressing the needs of eligible persons	X	
• Taking reasonable steps or ensuring that responsible steps are taken to ensure meaningful access	X	
• Developing and implementing monitoring control mechanisms to ensure ongoing compliance	X	
• Compliance, monitoring and oversight	X	X
• Providing technical assistance and guidance		X

The key to providing meaningful access for LEP persons is to ensure effective communication exists between the division and the LEP person. To accomplish effective communication the following actions and discussions are considered appropriate at a divisional level:

1. Perform a needs assessment
2. Provide for oral language assistance
3. Notify LEP customers of the availability of language assistance services
4. Translate vital documents in languages other than English
5. Train staff
6. Develop written procedures
7. Monitor and evaluate access to language assistance

VI. ANNUAL ACCOMPLISHMENT REPORT FORMAT

A. ANNUAL ACCOMPLISHMENT REPORT FORMAT

In accordance with CFR 23 §200.9 (b) (10) & (11), an annual report of Title VI accomplishments for the past year and goals for the next year is submitted to the Federal Highway Administration by October 1. This report update should contain the necessary information to evaluate a State's Title VI Program as it pertains to accomplishments, shortfalls and problem areas.

Accomplishment Report for Each Program Area [23 CFR, §200.9 (b) (10)]

At the minimum, the following should be included in an annual Title VI update for each of the various program areas. Include accomplishments made regarding Title VI since the last plan update and include instances where Title VI issues were identified and discrimination was prevented.

1. PLANNING

- a. What activities and/or studies were conducted that provided data relative to minority persons, neighborhoods, income levels, physical environment and travel habits? Please list each activity or study and include a very brief statement about the activity or study and how it was/will be used.
- b. Identify the number of public meetings and hearings held during the reporting period. What efforts did you use to ensure citizen participation in the public meetings and hearings, particularly minorities, women, elderly, disabled and low-income? Were minorities, women, elderly, disabled and low-income citizens, both individually and through their organizations, represented in the citizen participation effort? How many and in what capacity?
- c. Describe the mechanisms used to identify what communities (minorities, women, elderly, disabled and low-income) were represented at these public meetings and hearings.
- d. Provide a summary of Title VI self-monitoring activities conducted, including findings, recommendations, action items and status thereof.
- e. What Title VI training was provided by your program?
- f. What Title VI training was attended by your program personnel?
- g. List any significant problem areas and corrective actions taken.
- h. List goals/actions planned for the ensuing year.

1. NEEDS ASSESSMENT

Each division is to continuously assess language assistance needs of the population to be served by identifying the following:

- Languages likely to be encountered and number of LEP persons in the eligible population likely to be directly affected by its program
- Public contact where languages assistance is needed
- Resources needed to provide effective language assistance, including location, availability and arrangements necessary for timely use

2. ORAL LANGUAGE ASSISTANCE

Providing LEP persons with oral language assistance at public service counters or when telephone contact is appropriate. Such assistance may take the form of bilingual staff, contracting with an outside interpreter service or the use of voluntary community interpreters who are skilled and competent in interpreting.

Employment of bilingual staff in divisions and programs is recommended, when feasible, where the percentage of LEP customers or potential customers is statistically significant, or where the frequency of contact with such persons will provide for efficient and effective communication. A decision to employ bilingual staff should be based on a needs assessment with due consideration given to budget constraints and in accordance with department policy. The Division of Human Resources can provide additional information on bilingual staff recruitment, bilingual pay procedures, departmental positions requiring bilingual skills, and names and locations of staff that speak an alternative language and language spoken.

3. NOTIFICATION OF AVAILABILITY OF LANGUAGE ASSISTANCE SERVICES

LEP persons have the right to free language assistance in their spoken language. Divisions are responsible for informing the public of this right. Language identification cards or posting signs in public areas are methods that can be used to provide notice.

4. TRANSLATION OF WRITTEN MATERIALS

It is appropriate to have written materials that are routinely provided in English to applicants, customers and the general public translated into languages that are regularly encountered. The translation of vital documents into languages other than English is particularly important where a significant number or percentage of the customers served or eligible to be served have limited English proficiency. Written materials include electronic documents and web-sites.

“Vital Documents” are documents that convey information that critically affects the ability of the recipient/customer to make decisions about his/or

her participation in the program. Examples of vital documents include but are not limited to: applications, public notices, consent forms, letters containing important information regarding participation in a program, eligibility rules, notices pertaining to the reduction, denial or termination of services or benefits, right to appeal, notices advising of the availability of language assistance, and outreach and community education materials. It is recommended that divisions develop criteria for deciding which documents are vital thereby subject to translation.

Translating documents to a fourth (4th) grade literacy level ensures the targeted audience understands the information. Community based organizations or focus groups can assist with testing translations for language and literacy level appropriateness.

5. TRAINING

Training staff on policies and procedures of language assistance and how to determine whether a customer needs language assistance services is essential to bridging the gap between policies and actual practices. Training should include how to obtain language assistance services and communication with interpreters and translators. Because LEP persons can file a complaint on the basis of national origin, staff should be trained on how to properly handle a Title VI complaint. Refer to Part VI of the Title VI Program Plan, Title VI and Related Statutes Complaint Process for a complete reference.

6. DEVELOPMENT OF WRITTEN PROCEDURES

To implement a successful language assistance program, provide guidance to employees through written procedures that address the following:

- a. Identifying and assessing language needs
- b. Oral language assistance; including vendor charges for services, procedures on how to access and to request Department translation assistance
- c. Written translation of materials and publications
- d. Oral and written notification of the availability of language assistance
- e. Staff training on language service provision
- f. Monitoring access to language assistance

7. MONITORING AND EVALUATION

Monitoring and evaluating accessibility and quality of language assistance needs of LEP persons ensures that LEP persons can meaningfully access programs and activities and is the responsibility of the divisions. At a minimum, divisions should conduct an annual assessment to determine: the current LEP composition of its service area; the current communication

needs of LEP persons; whether existing assistance meets LEP needs; whether staff is knowledgeable about policies and procedures and how to implement them; and whether sources of and arrangements for assistance are still current and viable. One mechanism for monitoring is to seek feedback from customers and advocates.

Data collection and record keeping are key to an effective monitoring and compliance system. Analysis of data collected provides an overview of how services are provided. Data collection mechanisms include the following, however keep in mind that when collecting data on race or ethnicity, this information is voluntary and should not include personal information such as name, address or phone number:

- race of LEP person
- ethnicity of LEP person
- primary language of the population in the program service area
- primary language of customers served
- data upon which the division based language needs assessment
- number of LEP persons, by language group, who received language services
- names and categories of staff who received training and training dates

LEP Criteria

Following are factors for divisions to consider when determining what reasonable steps to take to provide LEP individuals with meaningful access to its programs, activities and services.

- A factor in determining the reasonableness of a programs/divisions efforts is the number or proportion of people who will be excluded from the program or activity absent efforts to remove language barriers.
- Consider the frequency of contact. Title VI obligations will differ for programs/divisions who have little contact with individuals who are LEP compared to a program/division who serves a large LEP population.
- Consider the available resources. A larger division with extensive resources may have to take greater steps than a smaller recipient with limited resources. On the premises translators may be appropriate in some circumstances, however, written translation, access to centralized interpreter language lines or other means may be appropriate in other situations.

- Costs must be factored into this balancing test as part of the consideration of “resources available.” “Reasonable steps” may cease to be reasonable where the costs imposed substantially exceed the benefits in light of the factors outlined in the U.S. Department of Justice (DOJ), LEP Guidance.

Guidance/Resources

The following guidance documents and resources are provided to assist divisions with implementing LEP requirements and may be used in conjunction with this LEP Guidance Document.

- The U.S. Department of Transportation Guidance to Recipients on Special Language Services to Limited English Proficient Beneficiaries, Federal Register/Vol. 66, No. 14/Monday, January 22, 2001 (Civil Rights Title VI Program Resource Directory, Tab 29).
- The U.S. DOJ Policy Guidance, Enforcement of Title VI of the Civil Rights Act of 1964-National Origin Discrimination Against Persons With Limited English Proficiency, Federal Register/Vol. 65, No. 159/Wednesday, August 16, 2000.

<http://www.usdoj.gov/crt/cor/>

- U.S. Department of Justice Clarifying Memorandum, dated October 26, 2001

<http://www.usdoj.gov/crt/cor/lep/Oct26BackgroundQ&A.htm>

- State Personnel Board, Bilingual Services Program (916) 651-9017
- United States Census 2000 Language Identification Flashcard (attached)

Technical Assistance

The Civil Rights, Title VI Program is responsible for providing divisions with technical assistance. This includes advising divisions of LEP requirements and its implementation, and assistance in developing individual division plans and mechanisms.

Compliance and Enforcement

Deputy Directors and District Deputy Directors are responsible for ensuring that meaningful services to LEP persons are provided in their respective divisions and districts. Additionally, designated Title VI Program Area Administrators and District Title VI Liaisons will continuously monitor their respective divisions/districts to ensure LEP requirements are fulfilled and report annual accomplishments and upcoming goals relating to LEP activities to the Civil Rights Title VI Program.

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In determining whether LEP compliance is met, the Title VI Program will assess whether the division's procedures allow LEP persons to overcome language barriers and participate in a meaningful way in the division's programs, activities and services. The division's appropriate use of methods and options detailed in this LEP Guidance document including analysis and documentation will be viewed as evidence of intent to comply with LEP requirements and Title VI of Civil Rights Act of 1964.