

MODEL PROTOCOL ON SERVICES FOR LIMITED ENGLISH PROFICIENT IMMIGRANT AND REFUGEE VICTIMS OF DOMESTIC VIOLENCE

Historically, in order to avoid being targeted by authorities, immigrant and refugee communities in the United States have tended to keep a low profile. This phenomenon is linked to various factors, often based on negative experiences with law enforcement and the military in their home countries. This is particularly the case for people who are escaping war, dictatorship or an authoritarian government. Other factors are migrant status, cultural differences and language barriers.

For these reasons, immigrant and refugee women with abusive partners are often reluctant to seek the services of a domestic violence agency in the U.S. How immigrant and refugee victims of domestic violence find out that agencies are prepared to serve them in their native language depends on the efforts of the domestic violence agencies themselves. Outreach campaigns are essential in linking non-English-speaking victims to the services available. Such outreach efforts can include the distribution of posters and pamphlets and giving presentations in the community, which affirm the agency's plan and commitment to serve immigrant clients in their native languages.

Since the terrorist tragedy of September 11, 2001, immigrant and refugee communities have been targets of an increased number of investigations, and in several cases have been harassed by law enforcement authorities under the guise of improving "homeland security." This climate of fear directed against immigrants has resulted in a crisis of safety in those communities, as victims may now be more reluctant to utilize law enforcement as a part of their safety plan. Because of this, it is essential for an advocate who is working with a Limited English Proficient (LEP) immigrant or refugee to be well-informed of their immigration and legal rights. For more details and resources, see the "Know Your Rights" attachment to this document.

The goal of this protocol and policy model is to support domestic violence agencies in the state of Washington to increase and extend their services to immigrant women whose first language is not English. The statutes mentioned in this protocol (e.g., Title VI) are mandates which recipients of federal funds must adhere to and should be a part of agency policy. However, some of the procedures may not be attainable or practical for every program, although they are an ideal to which programs should aspire.

BACKGROUND

Any organization or individual that receives federal financial assistance (e.g., FVPSA, VOCA, STOP, HUD), either directly or indirectly, through a grant, contract or subcontract, must comply with several federal civil rights laws, including Title VI of the Civil Rights Act of 1964 (“Title VI”) and the Omnibus Crime Control and Safe Streets Act of 1968 (“Safe Streets Act”), as amended. These laws prohibit discrimination on the basis of race, color, religion, national origin and sex in the delivery of services.

National origin discrimination includes discrimination on the basis of limited English proficiency. To ensure compliance with Title VI and the Safe Streets Act, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

Furthermore, Title VI regulations¹ prohibit intentional discrimination as well as policies and practices that appear neutral but have a discriminatory effect. That is, an organization’s policies and practices need not be intentionally discriminatory, but may violate Title VI if they “have an adverse effect on the ability of national origin minorities to meaningfully access programs and services.” For details regarding Title VI, see <http://www.hhs.gov/ocr/lep/guide.html> or <http://www.lep.gov>.

Understanding a program’s legal obligations under federal and state laws will help protect against liability claims for discrimination based on national origin. Furthermore, having a language access policy and plan in place will help battered immigrant and refugee women get the assistance they need.

¹ 67 Fed. Reg. 4968 (February 1, 2002); 67 Fed. Reg. 19237 (April 18, 2002).

RECOMMENDED POLICY

[Name of agency] shall work to ensure meaningful language access for all recipients of services by developing and implementing a comprehensive language assistance plan that includes:

1. Developing policies and procedures for identifying and assessing the language needs of its Limited English Proficient (LEP) applicants/clients.
2. Providing for a range of oral language assistance options.
3. Communicating to LEP persons (either verbally or in written form) their right to language assistance.
4. Providing written translation of materials that are often used when working with a LEP client.
5. Developing a budget plan to implement comprehensive language assistance.
6. Periodic training of staff.
7. Monitoring of the program.

RECOMMENDED PROCEDURES

It is essential to keep in mind the legal obligations outlined in Title VI to provide services to Limited English Proficient (LEP) clients. The following procedural recommendations should be considered as models for service delivery, although not all of them may be realistic for every program to implement. These recommendations can support bilingual and non-bilingual staff and volunteers in their work with LEP clients.

Initial Contact/Crisis Intervention

This is a critical opportunity to provide support and information for the LEP victim of domestic violence. The advocate's ability to communicate through knowledge of the language or using qualified interpretation may save the victim's life and the life of her children.

During the initial contact/crisis intervention with the LEP victim, advocates should:

1. Determine the LEP person's native language.
2. Ensure that everyone who is in contact with the client knows how to access a qualified interpreter or the interpreter line.
3. Contact a qualified interpreter.²
4. Tell the client that she has the right to have a qualified interpreter.
5. With the help of a qualified interpreter, tell the LEP client how to contact the police and explain to her what her legal rights are, as well as what to expect from a police response.
6. Ensure that the information that the interpreter provides is clear for the LEP client.
7. Work with the client on a safety plan that includes language access and continuing contact with the agency.

In the Shelter

This can be a very intimidating time for the LEP victim, as she is now in an unknown environment where she may not be able to communicate with others around her. That is why it is essential that the shelter advocates communicate with her as soon as she arrives at the shelter.

² [Name of the agency] will screen potential qualified interpreters to ensure the quality of the interpretation as well as a basic understanding of domestic violence and issues of confidentiality. For a complete guide on how to work with interpreters, see the "Working Effectively with Interpreters" attachment to this document.

Shelter advocates should:

1. Contact a qualified interpreter.
2. Tell the client that she has the right to have a qualified interpreter.
3. Ensure that the client feels comfortable with the interpreter.
4. Provide intake form to the client in her own language.
5. Construct a plan for communication between shelter advocates and the LEP client in the future.
6. Provide all written materials that are essential for the client in her own language and explain them with the help of an interpreter.
7. With the help of a qualified interpreter, ensure that the LEP client will be able to participate in shelter meetings (such as house meetings, individual and support meetings, parenting meetings) by providing interpretation or by providing groups/meetings in her own language.
8. With the help of an interpreter, tell the client about the resources that are available to her and her children in the shelter (such as food, clothing, children's program, legal advocacy program) and how to access those services.
9. If the client has children with her, schedule time to meet with each child individually, along with a qualified interpreter, to assess their needs and inform them of services available.
10. With the help of a qualified interpreter, make a plan for scheduling appointments and meetings that the LEP client needs to attend.
11. Work with the client on a safety plan that includes language access and continuing contact with the agency.

In the Community Advocacy Program

When working with a LEP victim of domestic violence in the community program, this a difficult moment for the victim. It may be the first time that this individual has made a contact for support, so is very important to be prepared to serve her. Also, when talking on the phone with a LEP client, advocates need to remember that for a person who does not speak English fluently, this kind of communication can be a difficult process.

Community advocates should:

1. Contact a qualified interpreter.
2. Tell the client that she has the right to have a qualified interpreter.
3. Ensure that the client feels comfortable with the interpreter.
4. Provide intake form to the client in her own language
5. Construct a plan for communication between advocates and the LEP client in the future.

6. Make sure the community advocate voicemail message is in different languages or develop a plan with clients for them to be able to leave messages.
7. Provide all written materials that are essential for the client in her own language and explain them with the help of an interpreter.
8. Make sure that the LEP client will be able to participate in support groups by providing interpretation or by providing support groups in her own language.
9. If the client has children with her, schedule time to meet with each child individually, along with a qualified interpreter, to assess their needs and inform them of services available.
10. With the help of a qualified interpreter, make a plan for scheduling appointments and meetings that the LEP client needs to attend.
11. Work with the client on a safety plan that includes language access and continuing contact with the agency.

In the Transitional Housing Program

Because a client will remain for a longer period of time in this program, this is a key opportunity for the advocate to be able to link a LEP person with resources in the community to help her and her children. These resources may include: English as a Second Language (ESL) classes, health care providers, legal resources, community activities and culturally relevant events.

In order to do this, advocates should:

1. Contact a qualified interpreter.
2. Tell the client that she has the right to have a qualified interpreter.
3. Ensure that the client feels comfortable with the interpreter.
4. Work with the client on a safety plan that includes language access.
5. Make a plan with the LEP client that includes how to access community resources using language accessibility options.
6. Construct a plan for communication between housing staff and the LEP client during the client's transitional housing stay.
7. Provide all written materials that are essential for the client in her own language and explain them with the help of an interpreter.
8. Make sure that the LEP client will be able to participate in support groups by providing interpretation or by providing support groups in her own language.
9. Make sure that the transitional housing advocate voicemail message is in different languages or develop a plan with clients for them to be able to leave messages.
10. If the client has children with her, schedule time to meet with each child individually, along with a qualified interpreter, to assess their needs and inform them of services available.

11. With the help of a qualified interpreter, make a plan for scheduling appointments and meetings that the LEP client needs to attend.
12. Work with the client on a safety plan that includes language access and continuing contact with the agency.

Legal Advocacy

When doing legal advocacy with a LEP victim of domestic violence, advocates need to be aware that the client may feel threatened by the legal system. The legal advocate must be very clear in explaining to the client, with the help of a qualified interpreter, how the U.S. legal system works and explain to her that there might be situations in which a legal remedy will not be available for her case. Also, it is essential not to send LEP immigrant or refugee clients to Immigration and Naturalization Service (INS) for legal advice. Instead, refer them to immigration law experts, such as an immigration lawyer or immigrant rights agencies.

Legal advocates should:

1. Contact a qualified interpreter.
2. Tell the client that she has the right to have a qualified interpreter.
3. Ensure that the client feels comfortable with the interpreter.
4. Provide screening materials to the client in her own language.
5. Work with the client on a safety plan that includes language access.
6. Inform the LEP client of her legal and immigration rights.
7. Inform the client about legal resources that are available for her and her children.
8. Construct a plan for communication between legal advocates and the LEP client in the future.
9. With the help of a qualified interpreter, ensure that the legal information advocates provide to the client is clear and understandable.
10. Provide all written materials that are essential for the client in her own language and explain them with the help of an interpreter.
11. Accompany the LEP client to every legal meeting or procedure and make sure that she has an interpreter available.
12. With the help of a qualified interpreter, make a plan for scheduling appointments and meetings that the LEP client needs to attend.
13. Work with the client on a safety plan that includes language access and continuing contact with the agency.

Staff and Volunteer Training and Bilingual Recruitment

For the LEP victim of domestic violence, the language barrier is only one of many issues that she and her children are facing. Cultural differences can also play a large role, so training in cultural differences can help staff members and volunteers to better serve LEP clients. Recruiting bilingual staff and volunteers could provide an additional opportunity to meet the needs of LEP clients. Volunteers play an essential role in delivering services to victims of domestic violence; it is therefore very important to make sure that they receive the same level of training in providing services to LEP clients as other staff.

Community Collaboration

Immigrant and refugee victims of domestic violence may contact different community agencies, such as health providers or immigrant and refugee rights organizations, before they contact a domestic violence agency. That is why it is essential that domestic violence agencies collaborate closely with other social services agencies in order to expand their knowledge and options to better serve LEP victims of domestic violence.

Advocates must remain vigilant about confidentiality restrictions when collaborating with other community agencies and must have written releases if they are sharing information about the LEP client. Confidential information must be maintained by all parties, including domestic violence programs, immigrant rights agencies, health care providers and others. Confidentiality is essential in protecting the safety of all victims of domestic violence.

Critical Questions in Implementing a Plan to Work with Limited English Proficient (LEP) Immigrant and Refugee Victims of Domestic Violence

1. Our program occasionally works with people who are deaf and hard of hearing, as well as refugees and immigrants who do not speak English. What kind of policies do we need to have to cover all interpretation and language access issues?

Many people who are deaf and hard of hearing need interpreters to access services. Agency practices regarding interpretation and communication for both Limited English Proficient (LEP) clients and individuals who are deaf and hard of hearing can be similar. It is important to know that there are different laws that guide access for these populations—Title VI of the Civil Rights Act and the Safe Streets Act for LEP individuals, and the Americans with Disabilities Act for individuals who are deaf, hard of hearing or have other disabilities. We encourage you to review your existing policies to ensure access for people who are deaf and hard of hearing.

2. What are the types of written materials that should be provided to LEP clients?

Materials that are essential for the LEP client include the following:

- Intake form
- House rules list
- Children’s permission forms
- Confidentiality waivers
- Clients’ rights information sheets
- Clients’ grievance policy/procedures

3. How does one determine what are reasonable steps to ensure meaningful language access?

- **Number or Proportion of LEP Individuals.** One factor is the number or proportion of persons who would be excluded from services due to language barriers. The policy guidance documentation from the U.S. Department of Justice and the U.S. Department of Health and Human Services Office of Civil Rights advises that “even those who serve very few LEP persons . . . should utilize this balancing analysis to determine whether reasonable steps are possible” and have in place a plan to serve such persons when the need arises.

- **Frequency of Contact with the Program.** How often do LEP persons come into contact with the program? For example, the guidance explains, the obligations falling on programs that frequently interact with LEP persons are greater than those applying to programs whose contact with such persons is “unpredictable or infrequent.”

- **Nature and Importance of the Program.** The importance of the services provided also affects the determination of reasonableness. The guidance states, “More affirmative steps must be taken in programs where the denial or delay of access may have life or death implications than in programs that are not as crucial to one's day-to-day existence.”

- **Resources Available.** The resources that programs have available are also to be considered in determining reasonableness. The guidance notes that a small program with limited resources may not have the same obligations as those falling on larger programs, “where contact is infrequent, where the total cost of providing language services is relatively high, and/or where the program is not crucial to an individual's day-to-day existence.”

4. *What are some examples of prohibited practices that may violate Title VI?*

- Providing services to LEP persons that are more limited in scope or are lower in quality than those provided to other persons,
- Subjecting LEP persons to unreasonable delays in the delivery of services,
- Limiting participation in a program or activity on the basis of English proficiency,
- Providing services to LEP persons that are not as effective as those provided to those who are proficient in English, or
- Failing to inform LEP persons of the right to receive free interpreter services and/or requiring LEP persons to provide their own interpreter.

5. *How does an agency select language assistance services?*

Oral Interpretation

Agencies and providers have a number of options for providing oral language assistance. Which option to use will depend on a variety of factors, including the frequency of need and size of the population(s) being served.

Examples of oral language service options:

- Hiring bilingual staff for client contact positions
- Hiring staff interpreters
- Contracting for interpreter services

- Engaging community volunteers
- Contracting with a telephone interpreter service

6. What are the issues that arise in providing oral interpretation services?

Competency

The federal policy guidance stresses that providers should ensure that interpreters are competent, meaning:

- they should be proficient and have the ability to communicate accurately in both English and the other language,
- they should have knowledge in both languages of specialized terms,
- they should understand rules regarding confidentiality and impartiality, and adhere to their role as interpreters and not as advisors or counselors.

7. What are the kind of interpreters that the U.S. Department of Justice policy guidance discourages agencies from using?

Informal Interpreters

The policy guidance discourages the use of friends, family members and other untrained interpreters. Interpretation by friends or family of domestic violence victims is particularly problematic, and can potentially put the interpreter in harm's way. LEP individuals should never be expected or encouraged to use friends or family members as interpreters. The guidance stresses that certified interpreters should be used, particularly in the context of important legal rights such as in court and in law enforcement interrogations.

Helpful Links for More Information:

1. Tips for working with an interpreter prepared by Legal Momentum (www.legalmomentum.org):

http://www.legalmomentum.org/assets/pdfs/15-tips_for_working_with_an_interpreter.pdf

2. Northwest Immigrants Rights Project, Seattle, WA: <http://www.nwirp.org/>

3. Northwest Women's Law Center, Seattle, WA: <http://www.nwwlc.org/>