



## Best Practices for Language Access for Domestic Violence Survivors

*\*\*This document contains general legal information, not legal advice. If you have specific legal questions, please consult with an attorney.*

### Title VI of the Civil Rights Act of 1964

Title VI prohibits recipients of federal funding, whether that funding is received directly or through state administrators, from discriminating against or otherwise excluding individuals based on race, color, or national origin. The U.S. Supreme Court has interpreted this to require an organization that receives federal funding to take “reasonable” steps in ensuring “meaningful access” for LEP individuals. In other words, they must make an effort to ensure those language barriers do not exclude LEP persons from effective participation in its benefits and services. This requirement is not contingent on immigration status. Noncompliance with these requirements can result in loss of funding or legal action by the U.S. Department of Justice.

What is federal funding?

- Federal funding can be interpreted to encompass any type of financial assistance from the federal government, including monetary gifts or grants, training, or use or donation of services, equipment, or other property.
- This funding can be given directly from federal agencies to an entity or can be funneled from the federal agency to an entity through a third party or state government.
- If any part of the entity receives federal funding, the entirety of that organization must comply with Title VI.

What constitutes “reasonable” steps depends on four factors:

1. The number or proportion of LEP persons in the eligible service population
2. The frequency with which the LEP individuals come in contact with the program
3. The importance of the service provided by the program
4. The resources available to the program. This means that what is a reasonable step for an organization with many resources may not be reasonable for an organization with very limited resources. However, low resources do not exempt entities from making strides to assist LEP people.

The Department of Justice (DOJ) policy guidance on Title VI says, “The steps that are reasonable for a recipient who serves one LEP person a year may be different than those expected from a recipient that serves several LEP persons each day. But even those who serve very few LEP persons on an infrequent basis should utilize this balancing analysis to determine whether reasonable steps are possible, and if so, have a plan of

what to do if an LEP individual seeks service under the program... *it may be as simple as being prepared to use one of the commercially available language lines to obtain immediate interpreter services.*” Therefore, even if an agency only serves one LEP person per year, they must still have a plan in place for how to serve that one person in a *meaningful* way.

Translation of materials may or may not qualify as a required, reasonable step. The policy guidance from DOJ states: “In balancing the factors to determine what reasonable steps must be taken by recipients to provide meaningful access to each LEP individual, agencies should particularly address the appropriate mix of written and oral language assistance. Which documents must be translated, when oral translation is necessary, and whether such services must be immediately available will depend upon the balancing factors.”

### *Federal Implementation and Responsibility*

Executive Order 13166: “Improving Access to Services for Persons with Limited English Proficiency” was signed into law by President Bill Clinton in August 2000. This Executive Order makes it mandatory for all federal agencies to review their available services, evaluate needs for service to LEP individuals, and create and institute a method for delivering these services in a manner that gives LEP individuals meaningful access. The Executive Order requires the creation of an LEP Language Access Implementation Plan to be assessed and adjusted continually.

Furthermore, the Order mandates that federal agencies oversee entities that received federal funding and that they comply with Title VI.<sup>1</sup>

### *Barriers*

Unfortunately, many systems in the United States are not designed to facilitate limited English proficiency (LEP) comprehension. Forms and instructions are often provided only in English, and many institutions that offer support or relief functions only offer their services in English. Because many services are limited to the English language, millions of people are blocked from receiving assistance. This linguistic barrier to access is prevalent among domestic violence survivors – notably many Latinx and survivors. Ensuring meaningful access to services is critical to protecting the life and safety of LEP survivors and their families. This language barrier is often exacerbated by other factors, such as fear, embarrassment, and other nuances of communication.

People that do not have fluency in English are known as Limited English Proficient (LEP) speakers. This could mean that English is not their primary language or that they have limited proficiency in reading, writing, speaking, and/or understanding English. According to the U.S. Census, there are over 24 million people (ages 5+) in the U.S. who do not speak English “very well” but do speak another language. Of that population, approximately 11 million people do not speak any English or speak it relatively poorly.

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<sup>1</sup> Casa de Eseperanza. “Ensuring Access to Services for Survivors with Limited English Proficiency (LEP)”

## *Strategy*

Accuracy and effective communication are paramount in helping survivors. Ideally, service providers should have bilingual and bicultural staff. At the very least, they need to provide access to qualified interpreters. This is vital both for federal compliance and for providing equitable services.

Given the low numbers of English-dominant speakers in North Carolina, it's important to keep the following things in mind when working with a client with language needs:

1. It is imperative to build a sense of mutual trust and respect with your client.

Stress, nervousness, and fear about a personal situation and the process of seeking help make language more difficult – even when a person is communicating in their native language.

The client's educational level, pronunciation, or use of colloquial language or slang can lead to miscommunication or misunderstanding.

2. Due to some people's interaction with the English language, communication can be difficult but not impossible

Many people who speak a different language at home encounter English through their children and their children's friends attending school in the U.S. Another instance might be second-generation immigrants who tend to speak more English in general. All in all, most people in North Carolina will have a sense of English to some extent.

During an encounter with a Latinx client, it can be extremely helpful to:

- Speak at a moderate pace
- Explain specialized terms, processes, and concepts
- Use plenty of details and examples
- Conduct yourself as a good host – i.e., someone who is interested in the comfort and well-being of the person reaching out to you for help

During advocacy, using an interpreter should be a last resort, not a norm, because it:

- Makes sharing intimate and painful information that much harder
- Increases the chance that a victim won't continue to seek help
- Hampers an advocate's ability to build a relationship with the victim

If you need to utilize an interpreter in your interactions, adhere to the following guidelines:

- Simply being fluent in the survivor's primary language does not qualify someone to operate as an interpreter
- Employ trained interpreters that are neutral parties, and are willing and able to abide by confidentiality and ethical parameters
- Avoid using children as interpreters
- Do not ask friends or family members to interpret during important and sensitive situations
- Don't assume that a person who accompanies the victim is a safe interpreter
- Affirm that the survivor is comfortable with the interpreter
- Verify that there is no connection between the interpreter and the abuser or their family

- Use confidentiality agreements with all interpreters
- Speak directly to the client; do not tell the interpreter to ask or tell them something
- Have the interpreter relay often
- Utilize a language line if needed
- Establish clear roles, an advocate should not be serving as an interpreter or vis versa

Strategize with other organizations/agencies in your community to respond to the needs of the different communities. Action items may include:

- Creating a Language Access Plan (see below) including one for Deaf and Hard of Hearing
- Hiring bilingual and bicultural staff
- Ensuring that there is language line accessibility especially in courts, police departments, and hospitals (mandatory)
- Distributing all materials in the language(s) that are prominent in your community (brochures, handouts, etc.)
- Hosting events for the different communities in your county

### Creating a Language Access Plan

Agencies can create a Language Access Plan by assessing the agency and how they are providing language access. In doing this, agencies should also consider their bilingual staff and volunteers, their access to in-person interpreters, their access to a language line, and the text-based materials they have available in multiple languages. Your assessment can help identify and fill the gaps to help you be intentional about hiring, finding community partners, and/or creating an account with a language line. An organization's effective Language Access Plan for LEP individuals should incorporate all of the following:

- Current demographic statistics for the relevant community or communities
- System for identifying those LEP individuals who need language assistance during their first encounter with the agency
- Concrete methods for delivering both written and oral language assistance and a process for discerning the need for new methods
- Thorough training of all personnel
- Employment of bilingual staff
- Outreach to community actors and the development of educational opportunities (LEP accessible)
- Methods and timelines for periodic review and adjustment of the plan

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For more information about language access plans, reference the *Language Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs*, published by the Federal Coordination and Compliance Section of the Civil Rights Division of the U.S. Department of Justice.

### Guidance for Court Advocacy

Many Latinx survivors need additional support through the Civil Court Process and face an extra barrier if they do not read and/or write English. North Carolina state courts only accept forms written in English but are required to provide “meaningful access” to all persons, including those who cannot read or write English

and are LEP speakers. In other words, they must make an effort to ensure those language barriers do not exclude LEP persons from effective participation in its benefits and services. All clerks' offices have been equipped with the ability to use telephonic interpreting services to assist LEP individuals with their court operations and inquiries at public information areas.

There are steps that advocates can take and guidelines that they can follow to help LEP and illiterate survivors to complete their forms and to take full advantage of the court system.

- Although the “preparation and filing of petitions” can be considered the “unauthorized practice of law” in North Carolina, this does not apply when a non-lawyer is solely acting as a “scribe”.
- Acting as a scribe means that the person is simply writing down, verbatim, what the plaintiff is telling them or re-writing the person's statement from their native language into English.
- If an advocate can be present, they can perform the duties of scribe and assist in relieving the burden from the court system personnel.
- If an advocate is not present, clerks should be able to act as a scribe for LEP individuals, just as they may for an English speaker who is illiterate or blind. This would require utilization of the telephonic interpreting services.
- Court interpreters are unable to function as a scribe. If a court interpreter is physically present to assist in interpreting, they are not permitted to fill out forms for LEP individuals.
- If a survivor is literate in their native language, they should write out the facts of their case in their native language first and attach it to the complaint that is being filed in English (scribed by an advocate or clerk). The advocate would then translate the survivor's statement verbatim and act as a scribe to complete the English forms.
- An advocate who is functioning as a scribe must only act as a scribe. They may not advise on how to complete any form or what they should write. Scribes are not permitted to “clean up” the client's statement by including stronger words, improved grammar, etc. The advocate should write exactly only what the client wrote, even if it does not make sense, including facts that the client might have been better off not including, or incorporating any other potential issues.

*TIP: If you are an advocate that is performing scribe duties, you may wish to include a signed and dated statement that says:*

*I, (insert name), an advocate with (insert Program name) assisted (insert client's name), the Plaintiff, (at the request of the clerk's office) by acting only as a scribe in that the Plaintiff does not read & write in English. I did not assist the client with what to say nor change the statement in any way. As a scribe, I simply put the Plaintiff's exact words into English to the best of my ability. (For LEP literate clients also add: If there is any question as to the Plaintiff's statement, the Plaintiff has attached to this Complaint their statement in their native language so that a certified court interpreter can be called upon to translate it for the Court.)*

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For more information about language access in North Carolina State Courts, reference the *Standards for Language Access Services: North Carolina Judicial Branch* published by the North Carolina Administrative Office of the Courts in the *Resources* section of this toolkit.

### *State and Local Law*

While some states have “English-only” laws, Title VI applies to the entire country, and even organizations in “English-only” states are required to comply. No state or local law can reduce these LEP protections, but they may increase protection within their jurisdictions.

### *Need help complying with Title VI?*

Please contact NCVAN’s Director of Outreach and Language Access, Saira Estrada at [saira@nc-van.org](mailto:saira@nc-van.org) to learn more about starting a Language Access policy or a Language Line account.

### *Are you struggling with a non-compliant entity?*

Complaints can be filed with the Office of Federal Coordination and Compliance within the U.S. Department of Justice’s Civil Rights Division. The Office will investigate the claim, find compliance or non-compliance, and take appropriate legal action, if necessary. Non-compliant entities are given the chance to reach voluntary compliance; if they do not reach compliance status, the case can be referred for litigation or administration hearings for termination of federal funding. You can find the complaint forms, in both English and Spanish, here: <https://www.justice.gov/crt/filing-complaint>.