DEPARTMENT OF JUSTICE

Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency; Policy Guidance

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Policy guidance document.

SUMMARY: This Policy Guidance Document entitled “Enforcement of Title VI of the Civil Rights Act of 1964: National Origin Discrimination Against Persons with Limited English Proficiency (LEP Guidance)” is being issued pursuant to authority granted by Executive Order 12250 and Department of Justice Regulations. It addresses the application of Title VI’s prohibition on national origin discrimination when information is provided only in English to persons who do not understand English. This policy guidance does not create new obligations but, rather, clarifies existing Title VI responsibilities.

Department of Justice Regulations for the Coordination of Enforcement of Non-discrimination in Federally Assisted Programs (Coordination Regulations), 28 C.F.R. 42.401 et seq., direct agencies to “publish title VI guidelines for each type of program to which they extend financial assistance, where such guidelines would be appropriate to provide detailed information on the requirements of Title VI.” 28 CFR § 42.404(a). The purpose of this document is to set forth general principles for agencies to apply in developing such guidelines for services to individuals with limited English proficiency. The Policy Guidance Document appears below.


ADDRESSES: Coordination and Review Section, Civil Rights Division, P.O. Box 66560, Washington, D.C. 20035–6650.

FOR FURTHER INFORMATION CONTACT: Merrily Friedlander, Chief, Coordination and Review Section, Civil Rights Division, (202) 307–2222.

Helen L. Norton, Counsel to the Assistant Attorney General, Civil Rights Division.

Office of the Assistant Attorney General
Washington, D.C. 20530
August 11, 2000.

TO: Executive Agency Civil Rights Officers
FROM: Bill Lann Lee, Assistant Attorney General, Civil Rights Division


This policy directive concerning the enforcement of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., as amended, is being issued pursuant to the authority granted by Executive Order No. 12250 and Department of Justice regulations. It addresses the application to recipients of federal financial assistance of Title VI’s prohibition on national origin discrimination when information is provided only in English to persons who do not understand English. This policy guidance does not create new obligations but, rather, clarifies existing Title VI responsibilities.

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This policy directive concerning the enforcement of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., as amended, is being issued pursuant to the authority granted by
the basis of national origin. The Court observed that “[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents’ school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by” the Title VI regulations.5 Courts have applied the doctrine enunciated in Lau both inside and outside the education context. It has been considered in contexts as varied as what languages drivers’ license tests must be given in or whether material relating to unemployment benefits must be given in a language other than English.6

Link Between National Origin And Language

For the majority of people living in the United States, English is their native language or they have acquired proficiency in English. They are able to participate fully in federally assisted programs and activities even if written and oral communications are exclusively in the English language.

The same cannot be said for the remaining minority who have limited English proficiency. This group includes persons born in other countries, some children of immigrants born in the United States, and other non-English or limited English proficient persons born in the United States, including some Native Americans. Despite efforts to learn and master English, their English language proficiency may be limited for some time.7 Unless grant recipients take steps to respond to this difficulty, recipients effectively may deny those who do not speak, read, or understand English access to the benefits and services for which they qualify.

Many recipients of federal financial assistance recognize that the failure to provide language assistance to such persons may deny them vital access to services and benefits. In some instances, a recipient’s failure to remove language barriers is attributable to ignorance of the fact that some members of the community are unable to communicate in English, to a general resistance to change, or to a lack of awareness of the obligation to address this obstacle. In some cases, however, the failure to address language barriers may not be simply an oversight, but rather may be attributable, at least in part, to invidious discrimination on the basis of national origin and race. While there is not always a direct relationship between an individual’s language and national origin, often language does serve as an identifier of national origin.8 The same sort of prejudice and xenophobia that may be at the root of discrimination against persons from other nations may be triggered when a person speaks a language other than English.

Language elicits a response from others, ranging from admiration and respect, to distance and alienation, to ridicule and scorn. Reactions of the latter type all too often result from or initiate racial hostility * * * *. It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis.9

While Title VI itself prohibits only intentional discrimination on the basis of national origin,10 the Supreme Court has consistently upheld agency regulations prohibiting unjustified discriminatory effects.11 The Department of Justice has consistently adhered to the view that the significant discriminatory effects that the failure to provide language assistance has on the basis of national origin, places the treatment of LEP individuals comfortably within the ambit of Title VI and agencies’ implementing regulations.12 Also, existing language barriers potentially may be rooted in invidious discrimination. The Supreme Court in Lau concluded that a recipient’s failure to take affirmative steps to provide “meaningful opportunity” for LEP individuals to participate in its programs and activities violates the recipient’s obligations under Title VI and its regulations.

All Recipients Must Take Reasonable Steps To Provide Meaningful Access

Recipients who fail to provide services to LEP applicants and beneficiaries in their federally assisted programs and activities may be discriminating on the basis of national origin in violation of Title VI and its implementing regulations. Title VI and its regulations require recipients to take reasonable steps to ensure “meaningful” access to the information and services they provide. What constitutes reasonable steps to ensure meaningful access will be contingent on a number of factors. Among the factors to be considered are the number or proportion of LEP persons in the eligible service population, the frequency with which LEP individuals come in contact with the program, the importance of the service provided by the program, and the resources available to the recipient.

1 Number or Proportion of LEP Individuals

Programs that serve a few or even one LEP person are still subject to the Title VI obligation to take reasonable steps to provide meaningful opportunities for access. However, a factor in determining the reasonableness of a recipient’s efforts is the number or proportion of people who will be excluded from the benefits of services absent efforts to remove language barriers. The steps that are reasonable for a recipient who serves one LEP person 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


6 For cases outside the educational context, see, e.g., Sandoval v. Hogan, 7 F. Supp. 2d 1234 (M.D. Ala. 1998), affirmed, 197 F.3d 484 (11th Cir. 1999), rehearing and suggestion for rehearing en banc denied, 211 F.3d 133 (11th Cir. Feb. 29, 2000) (Table); petition for certiorari filed May 30, 2000 (No. 99–9906) [giving drivers’ license tests only in English violates Title VII]; and Pabon v. Levine, 70 F.R.D. 674 (S.D.N.Y. 1976) (summary judgment for defendants denied in case alleging failure to provide unemployment insurance information in Spanish violated Title VII).

7 Certainly it is important to achieve English language proficiency in order to fully participate at every level in American society. As we understand the Supreme Court’s interpretation of Title VI’s prohibition of national origin discrimination, it does not in any way disparage use of the English language.

8 As the Supreme Court observed, “[l]anguage permits an individual to express both a personal identity and membership in a community, and those who share a common language may interact in ways more intimate than those without this bond.” Hernandez v. New York, 500 U.S. 352, 370 (1991) (plurality opinion).

9 Id. at 371 (plurality opinion).


11 Id. at 293–294; Guardians Ass’n v. Civil Serv. Comm’n, 463 U.S. 582, 584 n.2 (1983) (White, J.); 623 n.15 (Marshall, J.); 642–645 (Stevens, Breyer, Blackmun, JJ.); Lau v. Nichols, 414 U.S. at 569; id. at 571 (Stewart, J., concurring in result). In a July 24, 1994, memorandum to Heads of Departments and Agencies that Provide Federal Financial Assistance concerning “Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964,” the Attorney General directed agencies “should ensure that the disparate impact provisions of your regulations are fully utilized so that all persons may enjoy equally the benefits of federally financed programs.”

12 The Department’s position with regard to written language assistance is articulated in 28 CFR § 42.405(d)(1), which is contained in the Coordination Regulations, 28 CFR Subpt. F, issued in 1976. These Regulations “govern the respective obligations of Federal agencies regarding enforcement of title VI.” 28 CFR § 42.405. Section 42.405(d)(1) addresses the prohibitions cited by the Supreme Court in Lau.
possible and if so, have a plan of what to do if a LEP individual seeks service under the program in question. This plan need not be intricate; it may be as simple as being prepared to use one of the commercially available language lines to obtain immediate interpreter services.

(2) Frequency of Contact with the Program

Frequency of contacts between the program or activity and LEP individuals is another factor to be weighed. For example, if LEP individuals must access the recipient’s program or activity on a daily basis, e.g., as they must in attending elementary or secondary school, a recipient has greater duties than if such contact is unpredictable or infrequent. Recipients should take into account local or regional conditions when determining frequency of contact with the program, and should have the flexibility to tailor their services to those needs.

(3) Nature and Importance of the Program

The importance of the recipient’s program to beneficiaries will affect the determination of what reasonable steps are required. 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. For example, the obligations of a federally assisted school or hospital differ from those of a federally assisted zoo or theater. In assessing the effect on individuals of failure to provide language services, recipients must consider the importance of the benefit to individuals both immediately and in the long-term. A decision by a federal, state, or local entity to make an activity compulsory, such as elementary and secondary school attendance or medical inoculations, serves as strong evidence of the program’s importance.

(4) Resources Available

The resources available to a recipient of federal assistance may have an impact on the nature of the steps that recipients must take. For example, a small recipient with limited resources may not have to take the same steps as a larger recipient to provide LEP assistance in programs that have a limited number of eligible LEP individuals, 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. Claims of limited resources from large entities will need to be well-substantiated.13

Written vs. Oral Language Services

In balancing the factors discussed above 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 factors previously mentioned.14 Recipients often communicate with the public in writing, either on paper or over the Internet, and written translations are a highly effective way of communicating with large numbers of people who do not speak, read or understand English. While the Department of Justice’s Coordination Regulation, 28 CFR §§ 42.405(d)(1), expressly addresses requirements for provision of written language assistance, a recipient’s obligation to provide meaningful opportunity is not limited to written translations. Oral communication between recipients and beneficiaries often is a necessary part of the exchange of information. Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons “effectively to be informed of or to participate in the program” in the same manner as persons who speak English.

In some cases, “meaningful opportunity” to benefit from the program requires the recipient to take steps to assure that translation services are promptly available. In some circumstances, instead of translating all of its written materials, a recipient may meet its obligation by making available oral assistance, or by commissioning written translations on reasonable request. It is the responsibility of federal assistance-granting agencies, in conducting their Title VI compliance activities, to make more specific judgments by applying their program expertise to concrete cases.

Conclusion

This document provides a general framework by which agencies can determine when LEP assistance is required in their federally assisted programs and activities and what the nature of that assistance should be. We expect agencies to implement this document by issuing guidance documents specific to their own recipients as contemplated by the Department of Justice Coordination Regulations and as HHS and the Department of Education already have done. The Coordination and Review Section is available to assist you in preparing your agency-specific guidance. In addition, agencies should provide technical assistance to their recipients concerning the provision of appropriate LEP services.

13 Title VI does not require recipients to remove language barriers when English is an essential aspect of the program (such as providing civil service examinations in English when the job requires person to communicate in English, see Frontera v. Sindell, 522 F.2d 1215 (6th Cir. 1975)), or there is another “substantial legitimate justification for the challenged practice.” Elston v. Talladega County Bd. of Educ., 997 F.2d 1394, 1407 (11th Cir. 1993). Similar balancing tests are used in other nondiscrimination provisions that are concerned with effects of an entity’s actions. For example, under Title VII of the Civil Rights Act of 1964, employers need not cease practices that have a discriminatory effect if they are “consistent with business necessity” and there is no “alternative employment practice” that is equally effective. 42 U.S.C. § 2000e–2(k). Under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, recipients do not need to provide access to persons with disabilities if such steps impose an undue burden on the recipient. Alexander v. Choate, 469 U.S. at 306. Thus, in situations where all of the factors identified in the text are at their nadir, it may be “reasonable” to take no affirmative steps to provide further access.

14 Under the four-part analysis, for instance, Title VI would not require recipients to translate documents requested under a state equivalent of the Freedom of Information Act or Privacy Act, or to translate all state statutes or notices of rulemaking made generally available to the public. The focus of the analysis is the nature of the information being communicated, the intended or expected audience, and the cost of providing translations. In virtually all instances, one or more of these criteria would lead to the conclusion that recipients need not translate these types of documents.