



POLICY NO. 22A
LIMITED ENGLISH PROFICIENCY POLICY, AMENDED

PURPOSE

The purpose of this policy is to transmit federal and state policy guidance regarding the prohibition against national origin discrimination as it affects persons with limited English proficiency (LEP).

SCOPE

The guidance in this policy applies to the Mendocino County Workforce Investment Board (WIB) and other Workforce Investment Act (WIA) Title I grant recipients and subrecipients.

BACKGROUND

The Civil Rights Act of 1964 and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance. Section 188 of the WIA contains the nondiscrimination and equal opportunity provisions. These provisions prohibit discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, or participation in WIA Title I financially assisted programs and activities, including participation by citizens and noncitizens eligible to participate in Title I programs. The WIA Directive WIAD01-21 provided federal and state requirements regarding nondiscrimination and equal opportunity procedures.

As required by Executive Order 13166 entitled "Improving Access to Services for Persons with Limited English Proficiency," issued by the President on August 11, 2000, The Department of Labor (DOL) Civil Rights Center (CRC) published policy guidance in the Federal Register (January 17, 2001) regarding the prohibition against national origin discrimination as it affects persons with limited English proficiency. The policy guidance was issued pursuant to the requirements of Title VI of the Civil Rights Act and Section 188 of WIA.

Based on the public comments received in response to the January 17, 2001, guidance and further instructions from the Department of Justice, the DOL published revised policy guidance in the Federal Register on May 29, 2003.

The Dymally-Alatorre Bilingual Services Act (DABSA) was signed into law in 1973 to eliminate language barriers that preclude persons, who either because they do not speak or write English, or because their primary language is other than English, from having equal access to public services. The law pertains to state and local agencies, and excludes school districts and officers.

REFERENCES

- Section 188 of the Workforce Investment Act of 1998
- Federal Register Part XIII (Volume 66 Number 11) Civil Rights Center; Enforcement of Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination as it Affects Persons With Limited English Proficiency; Notice (January 17, 2001)
- Dymally-Alatorre Bilingual Services Act, California Government Code Section 7290-7299.8
- WIA Directive WIAD01-21, Subject: Nondiscrimination and Equal Opportunity Procedures (June 25, 2002)
- WIA Directive WIAD04-20, Subject: Limited English Proficiency (May 12, 2005).

POLICY

It is the policy of the WIB to ensure that eligible LEP persons have meaningful access to WIA Title I funded programs and services.

GUIDELINES

The CRC revised policy guidance in the Federal Register on May 29, 2003. The revised guidance does not create new obligations or requirements but rather clarifies standards consistent with case law and well-established legal principles developed under Title VI. The purpose of this guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons. The policy guidance reiterates DOL's longstanding position that in order to avoid discrimination against LEP persons on the grounds of national origin, recipients must take reasonable steps to ensure that such persons receive, free of charge, the language assistance necessary to afford them access to the programs, services, and information those recipients provide.

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. The DOL's revised LEP guidance includes an individualized assessment that balances four factors that should be applied when assessing language needs and deciding reasonable steps. The objective of the four-factor analysis is to suggest a reasonable balance that ensures meaningful access by LEP customers to critical services while not imposing undue burdens. The four-factor analysis includes:

- 1) The number or proportion of LEP persons served or encountered in the eligible services population;
- 2) The frequency with which LEP persons come in contact with the program;
- 3) The nature and importance of the program, activity, or service provided by the recipient; and
- 4) The resources available to the recipient and costs.

Recipients have two primary ways to provide language services: Oral interpretation either in person or via a telephone interpretation service and written translation. The correct mix of

language assistance services should be based on what is both necessary and reasonable in light of the four-factor analysis.

When oral interpretation is needed and is reasonable, recipients should consider the following options: ensuring the competence of the interpreters, hiring bilingual staff, hiring staff interpreters, contracting for interpreters, using telephone interpreters' lines, using community volunteers or using family members or friends.

When using written translation services, the recipient should make a determination regarding the kinds of documents to be translated, the language subject to interpretation, and the expertise of the translator(s).

The Dymally-Alatorre Bilingual Services Act requires that, when state and local agencies serve a "substantial number of non-English speaking people," they must employ a "sufficient number of qualified bilingual staff in public contact positions" and must translate documents explaining available services into their clients' languages. The DABSA allows local agencies discretion in establishing the level and extent of bilingual services they provide.

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan. A written plan is not required, but is highly recommended by the state. One-Stop Career Centers should address the following five elements when developing their own LEP service plan:

- 1) Identification of LEP persons who need language assistance;
- 2) Use of language assistance measures;
- 3) Staff training;
- 4) Information dissemination to LEP persons; and
- 5) Monitoring and oversight, including updating the LEP plan.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process. Detailed explanations of the above five elements, as well as the four-factor analysis, are provided in the Federal Register. The Federal Interagency Work Group at www.lep.gov provides tools and resources to assist One-Stop Career Centers when developing and assessing a plan for LEP services.

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