

# Promising Practices for Language Access in Federal Administrative Hearings and Proceedings

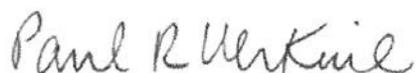


A Report from the September 22, 2011 Workshop

February 3, 2012

On behalf of the Administrative Conference of the United States and the Department of Justice, we want to thank each of the federal agency representatives who attended our workshop on Promising Practices for Language Access in Federal Administrative Hearings and Proceedings. The workshop provided attendees an opportunity to explore the challenges and solutions for providing language assistance services to limited English proficient individuals in administrative hearings and proceedings.

We hope that you find this report useful as you work to fulfill your commitment to Executive Order 13166 by ensuring that Limited English Proficient (LEP) individuals have meaningful access to agency administrative hearings and proceedings, programs, services and information.



Paul R. Verkuil  
Chairman  
Administrative Conference of the United States



Mark B. Childress  
Senior Counselor  
Access to Justice Initiative  
United States Department of Justice



Thomas Perez  
Assistant Attorney General  
Civil Rights Division  
United States Department of Justice

## About the Sponsors of the Workshop

### The Access to Justice Initiative

The U.S. Department of Justice established the Access to Justice Initiative in March 2010 to address the access to justice crisis in the criminal and civil justice system. The mission of the Access to Justice Initiative is to ensure that the justice system is fair and accessible to all, irrespective of wealth and status, and that the justice system delivers fair outcomes efficiently. Its staff works within the Department of Justice, across federal agencies, and with state, local, and tribal justice system stakeholders to increase access to counsel and legal assistance, and for improvements to the justice delivery systems that serve people unable to afford lawyers. More information about the Access to Justice Initiative is available at <http://www.justice.gov/atj/>.

### The Administrative Conference of the United States

The Administrative Conference of the United States (ACUS) is an independent federal agency dedicated to improving the administrative process through consensus-driven applied research, providing nonpartisan expert advice and recommendations for improvement of federal agency procedures. Its membership is composed of innovative federal officials and experts with diverse views and backgrounds from both the private sector and academia.

The Administrative Conference is committed to promoting improved government procedures including fair and effective dispute resolution and wide public participation and efficiency in the rulemaking process by leveraging interactive technologies and encouraging open communication with the public. In addition the Administrative Conference's mandate includes fostering improvements to the regulatory process by reducing unnecessary litigation, and improving the use of science and the effectiveness of applicable laws. More information about the Administrative Conference of the United States is available at <http://www.acus.gov/>.

### The Civil Rights Division's Federal Coordination and Compliance Section

The Civil Rights Division's Federal Coordination and Compliance Section of the U.S. Department of Justice (FCS) operates a comprehensive, government-wide program of technical and legal assistance, training, interagency coordination, and regulatory, policy, and program review, to assure that federal agencies consistently and effectively enforce various landmark civil rights statutes and related Executive Orders that prohibit discrimination in federally assisted programs and in the federal government's own programs and activities. More information about the Federal Coordination and Compliance Section is available at <http://www.justice.gov/crt/about/cor>. More information on the Federal Interagency Working Group on Limited English Proficiency led by FCS can be found at [www.lep.gov](http://www.lep.gov).

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## INTRODUCTION

The number of Limited English Proficient (LEP) individuals who participate in federal administrative hearings and proceedings has sharply increased in recent decades. The U.S. Census Bureau American Community Survey estimates that over 24 million individuals in the United States speak English “less than very well” and would be considered LEP.<sup>1</sup> Currently, LEP individuals account for over eight percent of the U.S. population.<sup>2</sup> On August 11, 2000, President Clinton issued Executive Order 13166 for the purpose of improving access to services for persons with limited English proficiency.<sup>3</sup> The Executive Order directed federal agencies to develop and implement a system by which LEP persons can meaningfully access the agency’s services. In the years that followed, federal agencies took a number of steps, including creating the Interagency Working Group on Limited English Proficiency in 2002 to improve language access.

On February 17, 2011, Attorney General Eric Holder issued a memorandum reaffirming the “Federal Government’s Renewed Commitment to Language Access Obligations under Executive Order 13166.”<sup>4</sup> The memorandum acknowledged the need for federal agencies to fully comply with Executive Order 13166 and provided further guidance on steps to take to improve language access. Recognizing the need for greater language access in federal administrative hearings and proceedings, in September 2011, the U.S. Department of Justice’s Civil Rights Division and the Access to Justice Initiative partnered with the Administrative Conference of the United States to convene a working group of over 70 Administrative Law Judges, General Counsel, directors, officers, attorneys, and other related personnel from federal agencies for a workshop on Promising Practices for Language Access in Federal Administrative Hearings and Proceedings.

The goal of the workshop was to explore how agencies can enhance their ability to provide language access through the use of interpreters, websites, and administrative practices and ensure that LEP individuals have meaningful access to administrative hearings and proceedings pursuant to Executive Order 13166. The workshop was also an opportunity to discuss the role of the interpreter and introduce tools and resources for ensuring effective language assistance services.

This report summarizes the productive panel discussions held during the one-day workshop that explored the challenges and solutions for providing language assistance services to LEP individuals in administrative hearings and proceedings.

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<sup>1</sup> U.S. Census Bureau, American Community Survey, Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for the United States: 2006-2010, <http://go.usa.gov/nZ1>; Pandya, Chhandasi, Jeanne Batalova, and Margie McHugh. 2011. “Limited English Proficient Individuals in the United States: Number, Share, Growth, and Linguistic Diversity.” Washington, DC, Migration Policy Institute, <http://www.migrationinformation.org/integration/LEPdatabrief.pdf>.

<sup>2</sup> Id.

<sup>3</sup> Executive Order 13166 (August 11, 2000) <http://www.justice.gov/crt/about/cor/Pubs/eolep.php>.

<sup>4</sup> Memorandum, Attorney General Eric Holder (February 17, 2011) [http://www.lep.gov/13166/AG\\_021711\\_EO\\_13166\\_Memo\\_to\\_Agencies\\_with\\_Supplement.pdf](http://www.lep.gov/13166/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf).

## LANGUAGE ACCESS IN ADMINISTRATIVE PROCEEDINGS CHECKLIST<sup>5</sup>

1. Create a record and track the number of LEP individuals who participate in or engage with the agency's administrative proceedings. (Data collected may include whether language assistance services are needed, the primary language of communication with the LEP person; the type of language assistance services provided, if any; cost estimates for the provision of language assistance services.)
2. Ensure the agency provides notice of language assistance services, including through a hotline number.
3. Ensure multilingual content on the agency's website related to the administrative proceeding is user-friendly, accurate, and up to date.
4. Identify and translate vital documents or information related to administrative proceedings.
5. Ensure that LEP individuals in administrative proceedings are asked the language that they speak and understand best, and provide interpreter services in that language.
6. Develop strategies to identify language service needs ahead of time from parties, counsel, or other involved agencies so that hearings need not be postponed or delayed on account of language service needs and to ensure greater efficiency.
7. Wherever feasible, use in-person interpretation; interpret everything said during the proceeding, not just communication directed to or from the LEP individual.
8. Implement robust quality control measures for the evaluation of interpreters, including ongoing training.
9. Provide training to all agency employees who interact with the public, including Administrative Law Judges, on providing access and services for LEP persons.
10. Implement a process for the receipt of feedback from LEP "users" of the administrative proceeding.
11. Explore sharing arrangements with other agencies to maximize access to language assistance services.
12. Implement a language access plan.

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<sup>5</sup> This checklist is based on current policies and practices shared by several federal agencies.

## SUMMARY OF WORKSHOP PROCEEDINGS

### A. Keynote Remarks

Keynote and opening remarks were provided by Paul R. Verkuil, Chairman, Administrative Conference of the United States; Mark B. Childress, Senior Counselor, Access to Justice Initiative, U.S. Department of Justice; and Thomas Perez, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice.

Chairman Verkuil welcomed attendees, provided an overview of the Administrative Conference of the United States and explained that the Workshop was about access to government and the importance of ensuring that rules are made accessible to everyone. Senior Counselor Mark Childress emphasized that for tens of millions of people, achieving fair outcomes in the justice system most critically depends on removing barriers to access. Mr. Childress stressed that if people do not understand what is going on in hearings then the proceedings become a dead end. Assistant Attorney General Thomas Perez stated that Washington needs a passion to work together and that today's workshop is about good government. Mr. Perez provided a history of Executive Order 13166 which had the purpose of ensuring that LEP individuals had equal access to proceedings. Mr. Perez emphasized the importance of leadership to ensuring that language access is considered a "must-do" part of doing business, and that the costs of failure to communicate can be far greater than the cost of providing language services.

### B. Panel One – Language Access in Administrative Hearings and Proceedings

Panelists were Judge Jack Weil, Assistant Chief Immigration Judge, and Karen Manna, Chief, Language Services Unit, both of the Executive Office of Immigration Review (EOIR), along with Judge Roxanne Fuller, Administrative Law Judge with the Social Security Administration (SSA). The panel was moderated by Michael Mulé, attorney with the U.S. DOJ Civil Rights Division's Federal Coordination and Compliance Section. The panel focused on implementation and administration of language access programs in administrative proceedings, and also focused on working with interpreters through the administrative hearing process.

1. Judge Jack Weil, Assistant Chief Immigration Judge, and Karen Manna, Chief, Language Services Unit, EOIR

#### The Importance of Language Access

Judge Weil emphasized that it can be frustrating, disorientating, and frightening to participate in an administrative proceeding when you do not understand the language of the proceeding. He stressed the importance of ensuring that people who participate in federal administrative hearings understand and are able to exercise their rights just as those who speak English. Judge Weil explained that federal administrative proceedings and hearings implicate several rights including:

- The Right to Due Process
- The Right to be Present, and
- The Right to Assistance of Counsel

Judge Weil outlined EOIR procedures for ensuring meaningful access for LEP individuals, noting that the agency has provided language access in 314 languages in over one million cases. In his opinion, having an interpreter present during the hearing is ideal because nonverbal cues communicate as much or more than verbal cues. However, non-verbal cues can also be obtained when using Video teleconferencing. Moreover, interpreter availability issues often necessitate the use of telephonic interpreters.

### Scope of Interpretation

Judge Weil described EOIR's evolution to having all portions of administrative hearings interpreted for LEP individuals. In other words, not just the portions of the proceeding where the LEP individual is speaking or being spoken to, but any verbal communication that occurs, including, for example, a judge's remark to the court clerk about the documents provided by the individual. The purpose of this expansive scope of interpretation is to make sure the LEP individual is a full participant to the proceedings and that the proceedings are entirely transparent.

### Language Determinations

Judge Weil discussed the importance of language determination which entails determining the language that the person speaks and understands best. As explained by Judge Weil, just because a person speaks Spanish is not reason to assume that this is the appropriate language for interpretation and translation.

### Role of the Interpreter

Ms. Manna, Chief of the Language Services Unit of EOIR, shared her perspective on the appropriate role of the interpreter in federal administrative proceedings. She explained that an interpreter is a language mediator that allows persons to participate meaningfully in the proceeding. The goal of the interpreter is to convey the full and accurate meaning of what is being said without additions, omissions, or editing, while maintaining the same register, tone, and style of the speaker, which is not necessarily done by repeating word for word what is said by the speaker. She explained that accuracy is the heart of interpreting.

### Modes of Interpretation

Ms. Manna and Judge Weil pointed out that interpretation and translation are often confused. While interpretation involves communicating a speaker's words orally, translation involves conveying meaning from written text to written text. They also described three different modes of interpretation:

- **Simultaneous Interpretation:** The practice of interpreters summarizing communication should be discouraged, because one interpreter's summary may be completely different from the intended communication. Instead, interpreters should use simultaneous interpretation or consecutive mode of interpretation. Simultaneous interpretation involves continuous conveyance with the interpreter lagging slightly behind the speaker.
- **Consecutive Interpretation:** Alternatively, consecutive mode takes place when the interpreter waits for the speaker to conclude statements before interpreting.
- **Relay Interpretation:** Relay interpreters can be used when an interpreter familiar with the language of the LEP individual may not be English proficient but can interpret the language into

another language accessible to a second interpreter, such as from an indigenous language into Spanish. The second interpreter then interprets from Spanish to English. At least two interpreters are used to interpret the LEP individual's primary language into English.

### Quality Control Measures

Ms. Manna and Judge Weil discussed the importance of control measures to ensure that federal agencies use quality interpreters. According to the speakers, contract interpreters used by EOIR are required to attend actual hearings as part of their orientation and training. The interpreters must have at least one year of specialized experience interpreting non-routine material consecutively and simultaneously in a judicial environment. They must have a comprehensive knowledge of the linguistic aspects of court interpretation and a mastery of vocabulary, grammar, syntax, idiom, colloquialism, culturally-based terms, and technical terms in English and a foreign language. The speakers also noted that EOIR interpreters must pass a language proficiency test and skills assessment which is modeled on the requirements used by the federal judiciary and many state courts. Additionally, interpreters are evaluated to ensure that they are capable of providing the interpretation needed during proceedings. EOIR also adheres to the National Center for State Courts' Ten Canons of Professional Responsibility for Interpreters in the Judiciary.<sup>6</sup> Ms. Manna and Judge Weil provided several recommendations to help ensure a quality language access program. These included:

- Interpreter training programs.
- Guides and resources for interpreters.
- Establishment of standards and protocols for interpreters including appropriate attire and breaks.
- Establishment of an organization structure that ensures that the administrative agency has the ability to provide interpretation for all required languages (including procedures for when an interpreter is not available for a particular language).
- Use of oath for interpreters swearing to provide accurate interpretation under penalty of perjury.
- Implementation of a procedure to handle complaints received about interpreters.
- Use of equipment to ensure the quality of interpreters' work such as recording equipment that allows trained personnel to review the quality of interpretation.
- Provision of assistance outside of the court to LEP individuals (this ensures that people feel that they are included throughout the administrative process).

#### 2. Roxanne Fuller, Administrative Law Judge, SSA

Judge Fuller discussed the efforts of the Social Security Administration to provide exceptional service to individuals with limited English proficiency. SSA is committed to effective, efficient, and equitable service to all claimants and beneficiaries. Judge Fuller explained that in fiscal year 2010 4.2% (or 2.9 million out of 71.3 million) of SSA claimants prefer interviews in a language other than English, with Spanish, Chinese, Vietnamese, Arabic, Korean, Russian, Armenian, Haitian-Creole, and Polish languages among the most requested. SSA uses these numbers to help plan for future language needs in administrative hearings and proceedings. SSA public affairs specialists, bilingual/bicultural employees in the field offices, and the Office of Communications' liaison conduct outreach activities to individuals with limited English proficiency.

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<sup>6</sup> "Model Code of Professional Responsibility for Interpreters in the Judiciary," [Court Interpretation: Model Guide for Policy and Practice in the State Courts](#), National Center for State Courts, Williamsburg, VA.

Judge Fuller explained that all new employees including Administrative Law Judges are provided training for providing access and services for LEP persons. SSA also uses bilingual and multilingual employees in field and hearing offices to help provide language access. Together, over nine thousand employees provide service in 138 different languages and dialects.<sup>7</sup>

### Language Services

Judge Fuller stated that SSA provides notices and forms in Spanish as well as English. Additionally, a Spanish language web site contains relevant publications and information. Other public information materials are provided in 15 languages other than English through the Multilanguage Gateway on the SSA web site, <http://www.ssa.gov/multilanguage/>.

SSA provides interpreter services free of charge to LEP individuals. This includes in-person interpreter services as well as telephonic interpreter services. The telephonic service is available 24 hours a day, seven days a week, with over 3,000 interpreters who can interpret over 150 languages and dialects. SSA interpreters are usually scheduled before hearings, but telephone interpreter services are available without prior notice. In FY 10, SSA provided foreign language telephonic interpreter services in 291,085 calls in 109 different languages and dialects. SSA also provides translation of documents including medical records.

Judge Fuller explained that agencies should have procedures in place that allow Administrative Law Judges to determine if a claimant needs an interpreter before the hearing takes place. SSA provides pre-hearing forms that allows claimants to request interpreters.

### Criteria for Foreign Language Interpreters

The SSA has several key requirements for interpreters:

- Interpreters must certify orally or in writing that they have no prior relationship to the person testifying, that they are not acting as the person's representative, and that they will accurately interpret the questions and answers.
- Interpreters cannot have any personal stake in the outcome of the case that could create a conflict of interest.
- Interpreters must agree to provide an accurate interpretation of the claimant's response, i.e., s/he must not assume or infer facts or dates not actually provided by claimant.
- Interpreters must take the following Oath: "Do you solemnly swear (or affirm) that you will accurately interpret the questions asked and the answers given in this case to the best of your ability, under penalty of perjury?"
- Interpreters must demonstrate an ability to read and write fluently in English and the foreign language of the claimant.
- Interpreters must demonstrate familiarity with basic SSA terminology.
- Interpreters must agree to comply with SSA's disclosure and confidentiality rules.

### 3. Panel Discussion

Several themes emerged in the conversation following the first panel. Selected highlights are below:

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<sup>7</sup> The number of bilingual/ multilingual employees increased from 7,861 in FY07 to 9,590 in FY 10.

- Use of Telephonic Interpreters: One workshop participant acknowledged the prevalence of telephonic interpreters in agency proceedings and asked whether this is cause for concern given Judge Weil's presentation on preference for in-person interpretation. The panelists noted that live interpreters are more costly, but recommended grouping administrative hearings by language to prevent the practice of hiring multiple interpreters for numerous languages each day. By using a language grouping method, Judge Weil pointed out, agencies can conserve money resources. The panelists noted that telephone interpreters risk poor phone quality, background noise, and can be ultimately distracting during an administrative hearing. If telephonic interpreters must be used, the panel suggested prohibiting the use of cell phones.
- Court notices: A workshop participant noted that her very small agency is just starting to see LEP issues arise and asked about providing multilingual court notices. A panelist recommended canvassing language access needs to ascertain which languages were most prevalent and providing notices in those languages.
- Translated Documents: Another participant asked whether pro se parties are required to provide copies of their translated documents. Different agencies treat this issue differently, but Judge Fuller noted that the SSA does allow claimants to submit foreign language documents that the agency translates free of charge.
- Conflicts of Interest: Conflicts of interest were discussed, and the panelists noted that interpreters provided by the agency should not also be used for communications between an attorney and her LEP client.
- Certification: Panelists noted that their agencies did not require interpreters to be court certified but they do have to be tested and must meet the Interagency Language Roundtable (ILR) standards. Additionally Ms. Manna stated that most interpreters are already certified. A panelist pointed out that creating a unique interpreter certification process can be very costly to develop, evaluate, and update.

#### C. Panel Two – Resources and Tools in Administrative Hearings and Proceedings

The second panel included Laura Godfrey, Manager, [GobiernoUSA.gov](http://GobiernoUSA.gov), from the General Services Administration (GSA), Doug Kouril, Director of Operations from the National Virtual Translation Center (NVTC); and Maria Brau, Foreign Language Program Manager from the Federal Bureau of Investigation (FBI). The panel was moderated by Funmi Olorunnipa, an attorney with ACUS. This panel focused on how various resources can be used to help provide language access in administrative hearings and proceedings and multi-language websites.

##### 1. Laura Godfrey, Manager, [GobiernoUSA.gov](http://GobiernoUSA.gov), General Services Administration

Ms. Godfrey's presentation focused on the Top 10 Best Practices for Multilingual Websites. She explained that today, people are increasingly referred to websites for information and this is no less true for LEP individuals. That said, she pointed out that there can be a major disconnect between the information a government agency provides on the English version of its website, and that which it provides on the translated version, typically in Spanish. According to Ms. Godfrey, information on multilingual websites often is not presented in a user friendly manner and is out of date. Ms. Godfrey reminded workshop participants that providing accessible and accurate information for LEP individuals is

not just the right thing to do, but is also required to comply with Executive Order 13166. Ms. Godfrey's key recommendations for providing language access through the use of multilingual websites by federal agencies are below.

### Top 10 Best Practices for Multilingual Websites<sup>8</sup>

1. **LANGUAGE:** Ensure that website content is accessible in the language preference of users.
2. **CULTURE:** Use culturally resonant graphics, colors and images to ensure that the online experience achieves an emotional connection with the target audience.
3. **ACCESS:** Ensure that the website enables users to find the multilingual website via prominent access on the English site.
4. **URL STRATEGY:** Use a standalone dedicated URL for marketing and search optimization purposes (a redirect to the site can be used to link the stand alone site to the main site).
5. **COMPARABILITY & MAINTENANCE:** Ensure that the multilingual website is comparable to the English site and is maintained frequently.
6. **USER EXPECTATIONS:** Manage user expectations by providing notice when a user is going to navigate to an English only area or external website.
7. **TOGGLE:** Enable user to toggle between comparable content or features on the English and multilingual website if available. This allows a user to easily switch between specific pages without having to go back to the homepage.
8. **ONLINE FEATURES & FUNCTIONALITY:** Provide interactive features and functionality on multilingual websites.
9. **INTEGRATED OPERATIONS & MARKETING:** Integrate multilingual website initiatives with internal infrastructure and external consumer touch points, and into your overall online-offline strategy.
10. **ONLINE MARKETING:** Develop and execute targeted multilingual marketing program, including social media, and track results.

#### 2. Doug Kouril, Director of Operations, National Virtual Translation Center

Mr. Kouril provided an overview of the National Virtual Translator Center (NVTC), an interagency office established in 2003 for the purpose of providing timely and accurate translations to support the intelligence community and protect national security. He stated that while the Center primarily serves the intelligence community, it is also available to federal agencies, including those that conduct administrative proceedings. Mr. Kouril explained that NVTC's services are offered to any federal agency, so long as those agencies provide funding for the cost of translations. He described the benefits of using NVTC translation services to include:

#### Low Cost:

- NVTC translation costs are provided at GSA rates.
- NVTC translators are provided "at-cost." NVTC absorbs overhead costs.

#### Access to an Ever-increasing Pool of Translation Resources:

- NVTC is capable of translating documents in over 100 languages and dialects.

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<sup>8</sup> GSA, Top 10 Best Practices for Multilingual Websites, November 3, 2011, <http://www.howto.gov/web-content/multilingual/best-practices>.

- NVTCTranslators are highly qualified (3/3 on ILR scale).

Flexibility & Responsiveness:

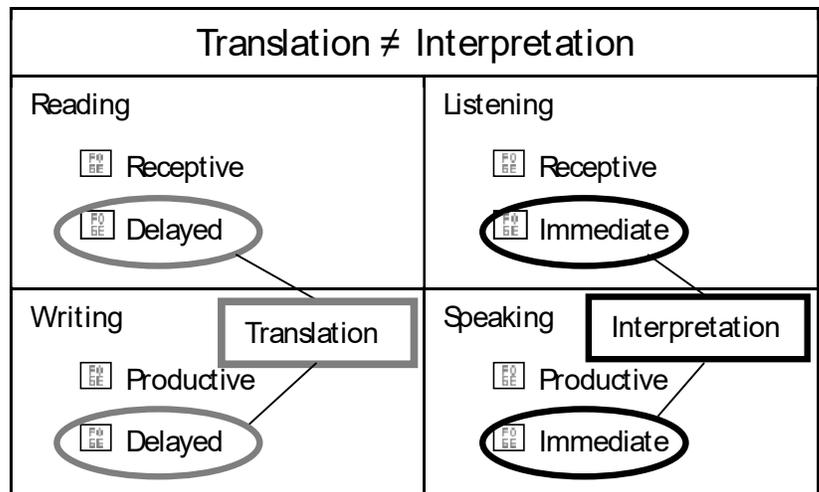
- NVTCTranslators have a broad range of subject matter expertise.
- Fast turnaround.
- Geographic flexibility.

3. Maria Brau, Foreign Language Program Manager, Language Testing and Assessment Unit, Federal Bureau of Investigation

Dr. Brau explained how the Interagency Language Roundtable (ILR) is an unfunded Federal interagency organization established for the coordination and sharing of information about language-related activities at the Federal level. She discussed the ILR standards for language skills. The ILR standards consider linguistic (e.g., congruity judgment) and non-linguistic (e.g., cultural competence, memory, voice quality) factors in describing interpretation performance.

The ILR skill level descriptions use a scale of 0 (no ability) to 5 (mastery) to characterize performance, and articulate tasks and functions appropriate for each level. Skill level descriptions exist for reading, listening, writing, speaking, translation, interpretation, and audio translation (forthcoming). Professional performance would require a score at level 3 or higher.

Dr. Brau explained that skills required for interpretation include reading, speaking, and listening in order to provide consecutive and simultaneous interpretation and sight translations. She also explained why, as detailed in this chart, the skills needed for interpretation are not the same as the skills needed for translation.



4. Panel Discussion

The follow-up discussion focused on several themes related to the panelists' presentations.

- Managerial Challenges: Several agencies reported budget constraints and staffing issues as an impediment to fully serving LEP populations. Participants agreed that resource sharing among agencies has to be a priority.
- Self-Assessment Tools: One agency reported difficulty with assessing its language access needs. The panelists suggested use of the American Community Survey to obtain the language needs of relevant populations, and also suggested seeking help from the Federal Coordination and Compliance Section of the Civil Rights Division at the Department of Justice. The Federal Interagency Working Group on LEP recently created the Language Access Assessment and Planning Tool, a helpful resource that can be found at [http://www.lep.gov/resources/2011\\_Language\\_Access\\_Assessment\\_and\\_Planning\\_Tool.pdf](http://www.lep.gov/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf).

## CONCLUSION

Federal agency participants came to the workshop ready to learn and share ideas about how to ensure that LEP individuals have meaningful access to administrative hearings and proceedings. Our keynote speakers explained the important role agencies and their leadership play in ensuring that agency services and information are accessible to LEP individuals as required by Executive Order 13166. Presenters gave participants examples of policies and procedures their agencies have implemented to ensure LEP individuals are provided access to competent language assistance services in the form of interpreters and translated materials. Participants departed the workshop with a renewed commitment and new ideas about how to address their respective agencies' language access obligations, and a recognition that despite resource challenges, there are real human costs when agencies fail to provide LEP individuals meaningful access to administrative hearings and proceedings.

## APPENDIX

1. Workshop Agenda
2. Participant List
3. Administrative Proceedings Language Access Checklist
4. Model Canon of Professional Responsibility For Interpreters in the Judiciary

# Promising Practices for Language Access in Federal Administrative Hearings and Proceedings



Thursday, September 22, 2011, 8:30 am to 12:15 pm  
Office of Justice Programs  
810 7th Street, NW  
3rd Floor, Room 3102  
Washington, DC 20531

## Workshop Agenda

8:30 - 9:00am      Registration and Continental Breakfast

9:00 - 9:30am      The Importance of Language Access in Federal Administrative Hearings and Proceedings

Paul R. Verkuil, Chairman, Administrative Conference of the United States

Mark B. Childress, Senior Counselor, Access to Justice Initiative, U.S. Department of Justice

Thomas Perez, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice

9:30 - 10:40am      Panel 1: Language Access in Administrative Hearings and Proceedings

Description - This panel will feature agencies that have substantial experience conducting hearings and proceedings involving individuals with limited English proficiency. The session will conclude with a question and answer period.

Moderator, Michael Mulé, Attorney, Civil Rights Division, U.S. DOJ

Karen Manna, Chief, Language Services Unit, Executive Office for Immigration Review,

Judge Jack Weil, Assistant Chief Immigration Judge, Executive Office for Immigration Review

Implementation and Administration of a Language Access Program in Administrative Proceedings

Judge Roxanne Fuller, Social Security Administration

Working with Interpreters in a Hearing or Proceeding

10:40 -10:50am

Break

10:50 - 11:55am

Panel 2: Resources & Tools in Administrative Hearings and Proceedings

Description - This panel will feature resources and tools for serving LEP individuals in administrative hearings and proceedings. The session will conclude with a question and answer period.

Moderator, Funmi Olorunnipa, Attorney, Administrative Conference of the United States

Laura Godfrey, Manager, GobiernoUSA.gov, General Services Administration

Meaningful Access to Agency Hearing and Proceeding Information

Doug Kouril, Director of Operations, National Virtual Translation Center

Effective Translation of Vital Hearing and Proceeding Documents

Maria Brau, Foreign Language Program Manager, Language Testing and Assessment Unit, Federal Bureau of Investigation

Assessing and Ensuring Interpreter Competency in Hearings and Proceedings

12:00 - 12:15pm

Conclusion / Next Steps

Moderators: ACUS and DOJ Staff

Description - Participants will discuss ways to continue sharing resources and best practices to provide limited English proficiency individuals with meaningful access to federal administrative proceedings.

Promising Practices for Language Access in Federal Administrative Hearings and Proceedings



Thursday, September 22, 2011, 8:30 am to 12:15 pm  
Office of Justice Programs

Washington, DC

Participant List

Name	Title	Agency/ Organization
Arnita A. Acty	Paralegal Specialist	OSHRC
Lisa Aispuro	Management Analyst	USDA, (FNS)
Wesleigh Anderson	Student Intern	DOJ, Civil Rights Div.
Lydia E. Aponte	Equal Opportunity Specialist	U.S. Dept. of the Treasury
Amanda Baran	Senior Advisor	WHIAAPI
Cristina Bartolomei	EEO Manager	DOC
Larry Beat (Jerry)	Director, OEEA	U.S. Merit Systems Protection Board
Andrea Q. Bernardo	Deputy Director for Programs	HHS, (OMHA)
Alan Beyer	Executive Officer for Executive Operations and Human Resources	SSA, (ODAR)
Flora Brown	Equal Opportunity Specialist	DOJ, Civil Rights Div.
Amy Bunk	Dir. Legal Affairs and Policy	OFF/ NARA
Zelia Marie Carter	Supervisory Management Analyst	DOJ, (U.S. Parole Commission)
Randolph Cassidy	Equal Employment Specialist	USDA, (FNS)
Andrea Cerulli	Account Manager	National Virtual Translation Center
Melanca Clark	Senior Counsel	DOJ, Access to Justice
Nigel Collie	External Affairs Program Manager	VA, (ORM)
Nina Bafundo Crimm	Attorney	NRC
Antoinette Davis	Equal Opportunity Specialist	DOT, (FTA)
Dylan Nicole de Kervor	Program Analyst	HHS, (OCR)
Terrah A. Dews	Director	HHS, (DAB)

Name	Title	Agency/ Organization
Elizabeth Ebner	EEO Director	FMSHRC
Sean Elliott	Attorney Advisor	DOJ,( Foreign Claims Settlement Commission)
Thomas Falkinburg	Trial Attorney	DOJ, Civil Rights Div.
Alexander Fernandez	Administrative Law Judge	HUD, (OHA)
Ana Victoria Gonzalez	Administrative Law Judge	EEOC
Judge Nancy J. Griswold	Chief Administrative Law Judge	HHS, (OMHA)
Karen Gross	Civil Rights Analyst	HHS, (OMS)
Deeana Jang	Chief	DOJ, Civil Rights Div.
Richard Johns	Attorney	VA
Kathy Johnson	Legislative Analyst	U.S. Access Board
Maha Jweied	Senior Counselor	DOJ, Access to Justice
Elizabeth Keenan	Senior Program Specialist	DOJ, Civil Rights Div.
David Kelly	Deputy Assistant General Counsel	NLRB
Young Kim	Civil Rights Analyst	HHS, (OMS)
Ted Kim	Director, Civil Remedies Division	HHS, (DAB)
Judge Joel A. Kravetz	Administrative Judge	EEOC
Laureen Laglagaron	Attorney-Advisor	DOJ, Civil Rights Div.
Karen Lash	Senior Counsel	DOJ, Access to Justice
Deborah Leff	Deputy Counselor	DOJ, Access to Justice
Erica Mijares	Attorney	SSA
Eleanore Miller	Senior Program Analyst	EEOC
Deborah Minor	Staff	USDA, (FNS)
Luben Montoya	Senior Civil Rights Analyst	HHS, (OCR)
Michael Mulé	Attorney-Advisor	DOJ, Civil Rights Div.
Meredith Olafson	Attorney	SBA
Funmi Olorunnipa	Attorney Advisor	ACUS
Lenore Ostrowsky	Attorney Advisor to the Office of the Staff Director	U.S. Commission on Civil Rights
Guadalupe Pacheco	Senior Health Advisor	HHS, (OMH)
Frederick Palmer	EEO Specialist	USDA, (FNS)
Denise A. Pearson	EEO Specialist	NEA
Mildred Perdomo	Asylum Officer, Management Branch	DHS, (USCIS-Asylum Div.)
Lisa Pino	Deputy Administrator	USDA, (FNS)
Judge Stephen L. Purcell	Chief Administrative Law Judge	DOL, (OALJ)
Christopher S. Randolph	Director, Medicare Operations Division	HHS, (DAB)
Kathleen O'Quinn	Special Assistant	DOJ, (CRS)

Name	Title	Agency/ Organization
Angela K. Roach	EEO Director	OSHRC
Stacy Rodgers	Senior Advisor	SSA
Judge Covette Rooney	Chief Administrative Law Judge	OSHRC
Judge Michael A. Rosas	Administrative Law Judge	NLRB
Steven Sarno	Acting Managing Attorney	EPA, (OALJ)
Lisa Schnall	Senior Attorney Advisor	EEOC
Todd R. Smyth	Senior Attorney	DOL, (OALJ)
Daniel Solomon	Administrative Law Judge	DOL, (OALJ)
Badar Tareen	Presidential Management Fellow	DOJ, Civil Rights Div.
Rebekah Tosado	Senior Advisor	DHS, (OCRCL)
Bharathi Venkatraman	Attorney	DOJ, Civil Rights Div.
John M. Vittone		ACJS
Janne Waszczak	Community Planner	DOT, (FTA)
Jean Watson	Attorney Advisor	EEOC
Jack H. Weil	Administrative Chief Immigration Judge	EOIR
Eileen J. Williams	Attorney	Consumer Product Safety Commission
Luis Wilmot	Director, Civil Rights Division	HHS, (OCR)
Sandra Winston	Director, EEO	SBA
Judge Erin Wirth	Administrative Law Judge	Federal Maritime Commission
Sharon M. Wong	Deputy Director for Coordination & Policy, Office of Diversity & Inclusion	OPM

**ADMINISTRATIVE PROCEEDINGS LANGUAGE ACCESS CHECKLIST**  
 This checklist is based on the Language Access Assessment and Planning Tool<sup>9</sup>

Does the Policy Directive...	Yes	Action Items/ Comments
1. Have a general policy statement?	<input type="checkbox"/>	
2. Contain a purpose statement?	<input type="checkbox"/>	
3. Describe any legal authority?	<input type="checkbox"/>	
4. Describe the scope of policy/who is bound by the policy?	<input type="checkbox"/>	
5. Appropriately describe the type of language assistance services that will be provided?	<input type="checkbox"/>	
6. Have information about quality control?	<input type="checkbox"/>	
7. Have definitions of terms?	<input type="checkbox"/>	
8. Have accurate/ useful/ clear definitions?	<input type="checkbox"/>	
9. Specify which parts of the language access plan will be publicly available?	<input type="checkbox"/>	
Does the Plan...	Yes	Action Items/ Comments
1. Identify a time frame for periodic reevaluation of LEP plans and related documents?	<input type="checkbox"/>	
2. Identify and assess LEP communities the agency interacts with or could interact with?	<input type="checkbox"/>	
3. Describe the leadership and governance structure for planning and implementing the agency's language access policy?	<input type="checkbox"/>	
4. Identify persons charged with implementing the plan?	<input type="checkbox"/>	
5. Describe agreements with other agencies to provide language assistance services?	<input type="checkbox"/>	

<sup>9</sup> [http://www.lep.gov//resources/2011\\_Language\\_Access\\_Assessment\\_and\\_Planning\\_Tool.pdf](http://www.lep.gov//resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf).

6. Describe timeframes, objectives, and benchmarks for the work to be completed?	FO EF	
7. Describe their method for recording and tracking the number of LEP individuals who participate in or engage with the agency's program or activity? (Data collected may include whether language assistance services are needed, the primary language of communication with the LEP person; the type of language assistance services provided, if any; cost estimates for the provision of language assistance services.)	FO EF	
8. Identify which documents or information are considered vital and need to be translated?	FO EF	
9. Prioritize the translation of vital documents and information into non-English languages?	FO EF	
10. Specify or prioritize non-English languages for translation?	FO EF	
11. Describe how the agency will ensure quality control of translations?	FO EF	
12. Describe whether and how bilingual employees are recruited, hired, identified, assessed, or trained?	FO EF	
13. Identify funding, procurement, and other resource issues? (e.g. description of when/how they hire contractors for translation or interpretation services)	FO EF	
14. Describe how the agency provides notice of language assistance services? (e.g., outreach strategies)	FO EF	
15. Describe staff training on language access policies and procedures?	FO EF	
16. Describe how to monitor and update the plan, policies, and procedures? (e.g. ongoing	FO EF	

performance evaluation)		
17. Identify a role for LEP community or other stakeholder input into the language access plan?	FO EF	
18. Describe the agency's approach to public information and multilingual content on its web site?	FO EF	
19. Describe the agency complaint procedures for LEP persons?	FO EF	
20. Include staff language access procedures?	FO EF	
21. Describes the process to provide staff training on the language access policy directives and procedures?	FO EF	
Does the Agency...	Yes	Action Items / Comments
1. Identify a main hotline number, and does this number provide multilingual access?	FO EF	
2. Have translated or multilingual material on its website that is easily accessible?	FO EF	

## Model Code of Professional Responsibility for Interpreters in the Judiciary<sup>10</sup>

### CANON 1: ACCURACY AND COMPLETENESS

Interpreters shall render a complete and accurate interpretation, translation, or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation.

### CANON 2: REPRESENTATION OF QUALIFICATIONS

Interpreters shall accurately and completely represent their certifications, training, and pertinent experience.

### CANON 3: IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias or impropriety. Interpreters shall disclose to the presiding judge any real, perceived or potential conflict of interest. Interpreters shall not accept remuneration, gifts, or gratuities in excess of their authorized compensation in the performance of their official interpreting duties.

### CANON 4: PROFESSIONAL Demeanor

Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

### CANON 5: CONFIDENTIALITY

Interpreters shall protect the confidentiality of all privileged and other confidential information.

### CANON 6: RESTRICTION OF PUBLIC COMMENT

Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential, except upon court approval.

### CANON 7: SCOPE OF PRACTICE

Interpreters shall limit themselves to interpreting, translating, or sight translating and shall not give legal advice, express personal opinions to the court, counsel, or individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

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<sup>10</sup> National Center for State Courts, Court Interpretation: Model Guide for Policy and Practice in the State Courts, Chapter 9: Model Code of Professional Responsibility for Interpreters in the Judiciary, [http://www.ncsconline.org/wc/publications/Res\\_OInte\\_ModelGuideChapter9Pub.pdf](http://www.ncsconline.org/wc/publications/Res_OInte_ModelGuideChapter9Pub.pdf).

#### CANON 8: ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE

Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the presiding judge.

#### CANON 9: DUTY TO REPORT ETHICAL VIOLATIONS

Interpreters shall report to the presiding or administrative judge any effort to influence or impede the performance of their duty or their compliance with any legal requirement, provision of this code, or other official policy governing court interpreting and legal translating.

#### CANON 10: PROFESSIONAL DEVELOPMENT

Interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields.