

To: OCR Regional Directors

From: Russlynn Ali, Assistant Secretary

Date: November 5, 2010

Re: Internal OCR Staff Guidance: Title VI Standards for Communication with Limited English Proficient Parents

I. Introduction

This document provides OCR staff with guidance for processing OCR complaints and compliance reviews at the elementary and secondary level involving national origin minority parents who are limited English proficient (LEP). It also may be used by OCR field offices to provide technical assistance to schools or school districts (also referred to as local educational agencies or LEAs) that seek help in determining their legal obligations to LEP parents, and in investigating complaints about the services, or lack of services, that schools or districts are providing to LEP parents.

This guidance is informed in part by the numerous complaint investigations and compliance reviews OCR has conducted regarding communication with LEP parents. In addition, OCR's May 25, 1970 policy memorandum on LEP (discussed in Section II.A below) addresses parent communication, and OCR's work in this area is further informed by guidance issued by the U.S. Department of Justice (DOJ) that is discussed more fully below. OCR supplements the DOJ analysis where appropriate to discuss issues that are specific to Department of Education (ED) recipients and to OCR's enforcement interests. In light of the continuing importance of this issue, and to ensure a consistent approach to recurring LEP parent communication issues, OCR is issuing this additional, more comprehensive guidance.

Section II of this guidance summarizes OCR's authority under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§2000d – 2000d-7 (Title VI), with respect to LEP parents, including a review of applicable OCR policy statements, Executive Order (EO) 13166 (regarding ensuring that recipients of Federal financial assistance provide meaningful access to services for LEP persons), and DOJ's guidance following the issuance of EO 13166. The guidance then discusses how OCR staff should view issues that arise in OCR case processing and technical assistance activities, including:

- The meaning of limited English proficiency and the identification of such parents who are LEP (Section III.A);
- Defining the legal obligation to provide language assistance (Section III.B);

- Defining the term “parents,” and determining which adults schools have an obligation to assist (Section III.C);
- School or district-based plans to provide language assistance (Section III.D);
- Notice to parents regarding language assistance (Section III.E);
- Use of appropriate staff to provide language assistance (Section III.F);
- Use of family members, friends and minor children to provide language assistance (Section III.G);
- Translation of certain types of documents (Section III.H);
- How the size of a particular language group, or the size or resources of a school or district, affects the services provided (Section III.I);
- Special issues regarding LEP parents of students with disabilities (Section III.J);
- Relationship of OCR guidance to state laws on providing language assistance to parents (Section III.K); and
- Summary of remedies in compliance reviews and investigations involving LEP parents (Section III.L);

The guidance also includes a Conclusion (Section IV), as well as an Appendix that describes approaches recipients may want to consider in providing language access to LEP parents.

II. Sources of OCR Authority

A. Title VI and Primary Sources of Interpretation

Title VI. Under Title VI, “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.” OCR has long taken the position that this language includes the parents of students enrolled in a school district, in addition to the students themselves.

OCR has historically taken this approach in its resolution letters and letters of finding, citing the regulations implementing Title VI, for the principle that OCR has authority to require school districts to provide services to both LEP students and parents. These regulations state that recipients of Federal financial assistance may not, directly or

through contractual or other arrangements, on the ground of race, color, or national origin, exclude persons from participation in its programs, deny them any service or the benefits of its programs, or subject them to separate treatment. See 34 C.F.R. § 100.3(a) and (b). It is national origin status, specifically, and the limited English proficiency that may result from that, which invokes Title VI jurisdiction.

May 25, 1970 Memorandum. OCR interpreted the statutory and regulatory language of Title VI to include both students and parents in its May 25, 1970 memorandum to school districts, which was titled “Identification of Discrimination and Denial of Services on the Basis of National Origin,” 35 Fed. Reg. 11595 (July 18, 1970). (available at <http://www2.ed.gov/about/offices/list/ocr/docs/lau1970.html>).¹ This memorandum, which addressed a variety of LEP-related issues, stated: “School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.”

Lau v. Nichols. The U.S. Supreme Court adopted OCR’s 1970 memorandum in Lau v. Nichols, 414 U.S. 563 (1974), and, in reference to LEP students, quoted from the OCR memorandum, stating, “where the inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.” The Court further stated that, “there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.”

In Lau, the Supreme Court did not directly address the section of OCR’s memorandum that was specific to LEP parents, or otherwise discuss the provision of language assistance to LEP parents. However, OCR has generally considered the Court’s affirmation in Lau of OCR’s 1970 policy memorandum to extend to OCR policy regarding LEP parents as well as LEP students.²

¹ This memorandum was issued before the Department of Education was created, when OCR was a part of the Department of Health, Education and Welfare.

² Lau cited with approval Title VI implementing regulations making clear that recipients of federal aid have affirmative obligations to individuals generally, not merely students. Namely, the Court noted that the regulations specify recipients may not “[p]rovide any service, financial aid, or other benefit to *an individual* which is different, or is provided in a different manner, from that provided to others under the program” nor may recipients “[r]estrict *an individual* in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program.” 414 U.S. at 567, citing 45 C.F.R. § 80.3(b)(1) (now 34 C.F.R. § 100.3(b)(i)(ii) and (iv)) (emphasis added). These regulations unambiguously and repeatedly referenced a recipient’s obligations related to “individuals.” This broad authority, expressly endorsed by Lau, can include parents as well as students. Lau also recognized the Department’s specific authority to promulgate rules, regulations, and orders pursuant to

In addition, the DOJ guidance to LEP recipients, discussed extensively below, also takes the view that Lau addressed discrimination against “LEP persons” generally:

The Supreme Court, in Lau v. Nichols, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education and Welfare, including a regulation similar to that of DOJ, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination.³

B. Other OCR LEP Policy Statements

OCR’s Vocational Education Guidelines. OCR’s “Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs,” originally published at 44 FR 17162 (March 21, 1979) and presently codified at 34 C.F.R. Part 100 Appendix B, specifically include LEP parents among the parties to whom schools are required to provide information. The guidelines address LEP parents in two contexts: annual public notification of nondiscrimination, and nondiscriminatory promotional materials.⁴ In these contexts, the Vocational Education Guidelines state that “if a recipient’s service area contains a community of national origin minority persons with limited English language skills,” then the recipient’s annual notice or promotional materials must be made available “to that community in its language.”

Internal OCR Guidance Documents. Three OCR internal memoranda, from 1984, 1985 and 1991, address the provision of services to LEP students. These memoranda are posted on OCR’s website.⁵ The 1985 and 1991 memoranda refer briefly to collecting information from parents and sharing information with parents;⁶ however, none of the

section 602 of Title VI, and the more general power to “fix the terms on which [the Federal Government’s] money allotments to the States shall be disbursed.” 414 U.S. at 567-69. A LEP policy that includes assistance to parents falls squarely under OCR’s power to “fix the terms” of how federal funds are utilized.

³ U.S. Department of Justice, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons” (67 Fed. Reg. 41455, 41458 (June 18, 2002) (DOJ Recipient LEP Guidance).

⁴ See 34 C.F.R. Part 100, Appendix B, §§ IV-O, V-E.

⁵ See Memorandum from the Assistant Secretary to Regional Civil Rights Director, Region VIII (Sept. 11, 1984); Memorandum from the Assistant Secretary to Enforcement Office Directors (Dec. 3, 1985), (OCR 1985 Memorandum); and Memorandum from the Assistant Secretary to OCR Senior Staff (Sept. 27, 1991) (OCR 1991 Memorandum), all available at <http://www2.ed.gov/about/offices/list/ocr/ellresources.html>.

⁶ The 1985 memorandum states: “Many school districts screen students using information such as a language assessment test, *information from parents*, or structured interviews, to determine which language minority students may need further assessment and possible placement into an alternative

three documents directly addresses the requirement for services to LEP parents that is found in the 1970 memorandum.

C. **Executive Order Number 13166 and Its Implementation**

Executive Order (EO) Number 13166. EO 13166, which was issued in August 2000, is titled “Improving Access to Services for Persons with Limited English Proficiency.” Among other things, it requires Federal agencies to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries. Each agency was directed to draft guidance, specifically tailored to its recipients, which addressed communication with LEP applicants and beneficiaries in a manner consistent with guidance (discussed below) from DOJ that was issued on the same day as the EO.⁷

Guidance from DOJ. In August 2000, DOJ published the guidance referenced in the EO, “Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons with Limited English Proficiency” (DOJ 2000 LEP Guidance). This guidance set forth “general principles” for Federal agencies to apply in crafting guidance documents for recipients pursuant to the directive in the EO. The guidance introduced a four-factor analysis test to determine whether recipients of Federal financial assistance are taking reasonable steps to ensure the meaningful access of LEP individuals. The four factors were:

- (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;
- (2) the frequency with which LEP individuals come in contact with the program;
- (3) the nature and importance of the program, activity, or service provided by the program; and
- (4) the resources available to the grantee/recipient and costs.⁸

program.” (*emphasis added*). The 1991 memorandum states, with respect to reasons justifying a lack of participation by LEP students in a school district’s gifted/talented or other specialized programs: “OCR will also consider whether the recipient has conveyed these reasons to students and *parents*.” (*emphasis added*).

⁷ The full text of EO 13166 can be viewed at <http://www.lep.gov/13166/eolep.htm>.

⁸ DOJ 2000 LEP Guidance, 65 Fed. Reg. 50123, 50124–50125 . DOJ reiterated its directive that all Federal agency guidance should be consistent with the DOJ 2000 LEP Guidance in a subsequent memorandum to Federal agencies. See Memorandum from the Assistant Attorney General for Civil Rights to Heads of Departments and Agencies, General Counsels and Civil Rights Directors (Oct. 26, 2001).

In June 2002, DOJ issued a guidance document specific to its recipients.⁹ The DOJ Recipient LEP Guidance repeated the four-factor analysis test that was introduced in 2000 and expanded upon it in detail. The stated intent of this guidance was to suggest a balance of interests: ensuring meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.¹⁰ DOJ's four factors were designed as a "flexible and fact-dependent standard," with the understanding that "the flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed."¹¹

OCR adopts DOJ's analysis herein, modifying it and supplementing it where appropriate, to discuss issues that are specific to ED recipients and to OCR's enforcement interests.¹²

III. Guidelines for OCR Case Processing and Technical Assistance Activities

A. What is the obligation of a school or district to identify parents who need language assistance?

1.) What does it mean for a parent to be limited English proficient and in need of language assistance?

Limited English proficiency in parents — as in students — reflects how well an individual can speak, read, write and comprehend English relative to the standard expected of native speakers of English. All four domains of language proficiency — speaking, reading, writing and comprehending — are significant to understanding the need for services and assistance, and what types of service and/or assistance may be appropriate. As DOJ has stated, "Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or 'LEP,' entitled to language assistance with respect to a particular type of service, benefit, or encounter."¹³

⁹ See DOJ Recipient LEP Guidance, 67 Fed. Reg. 41455. In January 2001, DOJ issued earlier guidance for its recipients. See "Guidance for Federal Financial Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 66 Fed. Reg. 3834 (Jan. 16, 2001). The DOJ Recipient LEP Guidance was issued after DOJ republished the 2001 guidance for public comment.

¹⁰ DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41459.

¹¹ *Id.*

¹² OCR's decision to follow, as appropriate, the DOJ Recipient LEP Guidance is consistent with Executive Order 12250, which directs the Attorney General to "coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of certain Federal antidiscrimination laws, including Title VI. See Executive Order 12250, Section 1-201, available at <http://www.justice.gov/crt/cor/byagency/eo12250.php>.

¹³ DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41459.

Whether a parent is considered LEP may vary with the service, benefit or encounter at issue. That is, “LEP status may be context-specific.”¹⁴ For example, a parent “may have sufficient English language skills to communicate basic information,” but may not have sufficient skills to communicate the detailed, specific information that may be needed in a particular context.¹⁵ It is the context of the situation, and the parent’s needs, which matters. Thus, even a parent who can communicate effectively with school staff regarding everyday matters may require different services when he or she is seeking interpretation for a disciplinary hearing where various witnesses will be called, or an individualized education program (IEP) meeting where complex and technical information regarding the child’s disability will be discussed.

In addition, a parent does not have to be of limited proficiency in speaking, reading, writing *and* comprehending English in order to be LEP.¹⁶ It is only necessary that a parent be of limited English proficiency in at least one of these areas and get assistance as needed. For example, a parent may be a fairly fluent reader of written English, but need assistance in understanding and communicating spoken English. A school or district that is not providing interpreter assistance at a parent teacher conference to a LEP parent who reads but does not understand spoken English may be in violation of Title VI’s prohibition of excluding -- on the grounds of national origin -- persons from participating in, denying the benefits of, or otherwise subjecting to discrimination under a program receiving Federal financial assistance.

2.) Can parents be considered LEP even if their children are not identified as English language learners?

Yes. A parent’s LEP status is independent of his or her child’s limited English proficiency. Thus, even if a child has not been identified as LEP, or has been reclassified/exited from LEP programs, a parent may still be LEP and in need of services.

¹⁴ DOJ “Planning Tool: Considerations for Creation of a Language Assistance Policy and Implementation Plan for Addressing Limited English Proficiency in a Law Enforcement Agency.” http://www.lep.gov/resources/LEP_Corrections_Planning_Tool.htm. (“LEP status may be context-specific – an individual may have sufficient English language skills to communicate basic information (name, address, etc.) but may not have sufficient skills to communicate detailed information (e.g., medical information, eyewitness accounts, information elicited in an interrogation, etc.) in English.”).

¹⁵ *Id.*

¹⁶ See DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41457, 41459 (defining LEP individuals as those with “a limited ability to read, write, speak *or* understand English”) (emphasis added).

3.) How should districts identify parents who may need translation or interpretation services?

Although schools and districts cannot be expected to know of the existence of *every* LEP parent, schools and districts can be held to reasonable expectations about their efforts to determine the presence of LEP parents, and to provide assistance to these parents once identified. Such efforts may include home language surveys,¹⁷ interaction between parents and staff, and taking into account that LEP students, whom districts have an obligation to identify, also may have LEP parents.¹⁸

Under the terms of DOJ's four-factor analysis, basic knowledge of one's LEP population is necessary for a recipient of Federal financial assistance to assess the reasonableness of its actions. Thus, for example, a school or district would have to know the general size of its LEP population, and basic characteristics of that population such as languages spoken, in order to assess the first DOJ factor, "The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee." The second DOJ factor, "The frequency with which LEP individuals come in contact with the program," also cannot be properly determined without knowledge of the size and other basic characteristics of the LEP parent population.

4.) How should schools determine whether a parent is LEP?

Generally, schools should take a parent at his or her word that he or she needs language assistance. Schools should not administer tests to determine a parent's language proficiency.

5.) Are parents who are LEP required to approach a school and affirmatively identify themselves as being LEP?

No. However, OCR should consider information regarding parents' self-identification as LEP and their requests for assistance in holding schools and districts to reasonable expectations about efforts to determine the presence of LEP parents, and to provide assistance to these parents once identified.

¹⁷ School districts may choose to include on home language surveys or registration forms questions like: "Do you wish to receive communications in a language other than English? If so, please specify." This may serve as a simple, cost effective way to assess the need to serve all LEP parents in need of communication services.

¹⁸ Cf. DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41460 ("When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and defendants encounter the legal system.").

B. Defining the Legal Obligation to Provide Language Assistance

1.) How should OCR determine whether a school or district is meeting its obligation to “adequately notify” LEP parents and to provide parents with “meaningful access”?

In its 1970 memorandum, OCR stated, “School districts have the responsibility to *adequately notify* national origin-minority group parents of school activities which are called to the attention of other parents. Such notice *in order to be adequate* may have to be provided in a language other than English.” (*emphasis added*) In its guidelines, DOJ stated, “recipients of Federal financial assistance have a responsibility to ensure *meaningful access* to their programs and activities by persons with limited English proficiency (LEP)”¹⁹ (*emphasis added*). These terms are interchangeable and reference the same legal standard.

Both “adequately notify” and “meaningful access” mean that a parent who is LEP – based on his or her ability to read, speak, write or understand spoken English – is not to be excluded from, or denied the benefits of, the school district’s programs. Both standards are intended to be applied on a fact-dependent, case-by-case basis.

C. Defining “Parents,” or Those Adults Who Schools Have an Obligation to Assist

1.) Are schools or districts obligated to provide language assistance to a relative, friend, noncustodial parent or other non-legal guardian who approaches school or district staff seeking this assistance?

Whether a school or district is obligated under Title VI to provide requested assistance to a LEP adult is highly fact-dependent and therefore may vary from situation to situation. If the school is obligated to provide the requested communications to similarly situated persons in English, or the school would otherwise provide the information in English to similarly situated persons, then the school must not discriminate in the provision of this information by denying language assistance to a LEP individual.²⁰ This is a threshold determination that should be made at the outset in such situations. Afterwards, if it has been determined that the school/district must provide

¹⁹*Id.*, at 41455.

²⁰ If there are other, pertinent reasons why the school or district has denied information or services, Title VI discrimination may not exist. For example, a school that would not provide student disciplinary records to a noncustodial grandparent, or discuss those records with a noncustodial grandparent, may not be in violation of Title VI if a noncustodial grandparent who is LEP either requests those records and asks for a translation of them, or otherwise obtains the records and requests a translation of them or interpretation services to discuss them.

language assistance, the DOJ's four factors should be referenced for evaluating the extent of the school/district's obligations.

D. School or District-Based Plans for Providing Language Assistance

1.) Can OCR require a school or district to use a particular type of language assistance measure for LEP parents?

No. OCR should give districts discretion concerning how they attempt to provide language assistance to LEP parents. Thus, OCR should not prescribe a specific language assistance measure that a school district must adopt. However, the district may violate Title VI if it does not take reasonable steps to ensure that its chosen approach is implemented in a manner that gives LEP parents meaningful access to school-related information.

2.) Must a school or district have a written plan on how it will provide assistance?

No. OCR strongly recommends that schools and districts, particularly those with significant populations of LEP parents, have written plans for providing LEP parents with communication services, as a written plan is an administrative method toward ensuring that effective language services are in place for LEP parents. However, OCR cannot require districts to have written plans—unless OCR has made a finding of a Title VI violation, and determines that a written plan is an appropriate remedy for the violation.²¹ Absent such a finding and determination, schools and districts have flexibility in deciding whether to have a written plan. Depending on the facts and circumstances involved, OCR may also negotiate with recipients the requirement to create a written plan as a part of a resolution agreement.²² If a school/district does not have a written plan, the District still has the underlying obligation to provide meaningful access to the LEP parents that it serves.²³

3.) What are the elements of effective language assistance plans?

In order to assess the effectiveness of its language assistance to LEP parents, school districts should consider a range of factors, including:

- Current LEP populations in service area or population affected or encountered;

²¹ See DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41455 (“[T]he Department elects at this juncture to strongly recommend but not require written language assistance plans.”).

²² See OCR Complaint Processing Manual, Section 302.

²³ See DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41456, 41464.

- Frequency of encounters with LEP parents;
- Nature and importance of activities to LEP parents;
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed;
- Whether existing assistance is meeting the needs of LEP parents;
- Whether staff knows and understand the LEP plan or approach (whether or not it is written) and how to implement it; and
- Whether identified sources for assistance are available and viable.²⁴

In addition, consistent with DOJ’s advice, school districts should, where appropriate, have a process for determining whether new documents, programs, services and activities need to be made accessible for LEP parents, and they may need to provide notice of any changes in services to LEP parents and to district staff.²⁵

4.) How often do schools/districts have to monitor their plans, written or otherwise, to provide services to LEP parents?

OCR may encourage, but generally not require, schools and districts to monitor their plans or approaches to LEP parent assistance, written or otherwise. Districts with successful plans for communicating with LEP parents do not violate Title VI by not regularly monitoring those plans. However, as with the creation of a plan, in the event OCR finds a violation, OCR may determine that monitoring of a school or district plan is an appropriate remedy for the violation. Depending on the facts and circumstances involved, OCR may also address recipient monitoring of plans as part of a resolution agreement entered into prior to OCR’s determination of compliance and issuance of a resolution letter.

E. Notice to Parents and Staff Regarding Language Assistance

1.) Are there requirements with respect to informing LEP parents of language assistance services?

As DOJ stated, once a recipient has decided that it needs to provide language assistance, “it is important for the recipient to let LEP persons know that those services are

²⁴ See *id.*, at 41459-414560, 41465.

²⁵ See *id.*, at 41465.

available and that they are free of charge.”²⁶ This is because LEP parents, absent notification, may be unaware of the existence of language assistance services or how to obtain those services. In notifying LEP parents of language assistance, school districts should provide notice in a language that parents will understand.²⁷

2.) Can LEAs promote meaningful access for LEP parents by informing school staff about LEP parents and the procedures for obtaining language assistance services?

Yes. In order to provide parents with meaningful access, it may be necessary for schools to train staff members who have direct contact with LEP parents about the procedures for obtaining assistance for LEP parents. Similarly, a district may find it helpful to have the level and extent of staff training expand as the expected degree of contact with LEP parents expands.²⁸

F. Use of Appropriate Staff to Provide Language Assistance

1.) Are there requirements for the qualifications or training of staff that schools or districts use to provide interpretation or translation?

OCR, under Title VI, expects districts to provide language assistance for LEP parents effectively, with appropriate, competent staff — or appropriate and competent outside resources. It is not sufficient for the staff to be merely bilingual. DOJ advises that, “Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.”²⁹ DOJ also states that formal certification as an interpreter is helpful, but not required.³⁰

DOJ further advises recipients to ensure that:

²⁶ *Id.*

²⁷ *See id.*

²⁸ *See* DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41465 (“The more frequent the contact with LEP persons, the greater the need will be for in-depth training.”).

²⁹ *Id.*, at 41461.

³⁰ *Id.*

- Interpreters “[h]ave knowledge in both languages of any specialized terms or concepts peculiar to the entity’s program or activity and of any particularized vocabulary and phraseology used by the LEP person.”
- “Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group’s vocabulary and phraseology.” DOJ suggests the use of community organizations to help recipients determine whether “a document is written at a good level for the audience.”³¹

Districts also should ensure that its interpreters are trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality. As the Federal Interagency Workgroup on Limited English Proficiency has stated, “Professional interpreters and translators are subject to specific codes of conduct and should be well-trained in the skills, ethics, and subject-matter language. Those utilizing the services of interpreters and translators should request information about certification, assessments taken, qualifications, experience, and training. Quality of interpretation should be a focus of concern for all recipients.”³² However, in some instances using a professional interpreter or translator is not necessary or possible, and it may be suitable to use a bilingual staff member – but only if the bilingual staff is appropriately qualified. “Assessment of ability, training on interpreter ethics and standards, and clear policies that delineate appropriate use of bilingual staff, staff or contract interpreters and translators, will help ensure quality and effective use of resources.”³³

2.) If a district uses the services of a private company, or other entity such as a community group, to provide written translations and/or oral interpretations, is the district responsible for the quality and content of those translations and/or interpretations?

Yes. A district cannot dissolve its Title VI responsibilities by using a private or outside contractor, or other entity such as a community group, to do translations and/or interpretations. It is still the responsibility of the district to provide meaningful access, and this cannot be achieved if the translations or interpretations are incompetent or inaccurate.³⁴

³¹ *Id.*, at 41464.

³² <http://www.lep.gov/faqs/faqs.html>.

³³ *Id.*

³⁴ See Title VI regulation, at 34 C.F.R. 100.3(b)(2) (In determining the types of services or benefits to provide, a recipient “may not, directly or through contractual or other arrangements, utilize criteria or

G. Use of Family Members, Friends and Minor Children

1.) Is it acceptable for schools or districts to use family members, friends – even children – to help in the provision of language assistance?

Generally, no. The use of family members, friends and children to help in providing language assistance to parents may raise issues of confidentiality, privacy, or conflict of interest, according to DOJ, which also states that, in many circumstances, such persons “are not competent to provide quality and accurate interpretations.”³⁵ For these reasons, DOJ stated, recipients “should not plan to rely on these individuals to provide meaningful access to important programs and activities.”³⁶

DOJ did acknowledge that LEP individuals may feel more comfortable with a family member, friend or other person of their choosing acting as an interpreter, and stated that LEP individuals should be permitted to use an interpreter of their choosing if they desire to do so. However, even when LEP parents have voluntarily chosen to provide their own interpreter or translator, a school or district may, depending upon the circumstances of the encounter, still need to provide its own interpreter or translator to ensure accurate interpretation or translation of critical information, especially if, but not limited to, situations where the competency of the LEP parents’ chosen interpreter is not established.³⁷ For example, in situations in which highly consequential topics will be discussed, such as a student disciplinary hearing, it may be in the district’s best interest to provide its own interpreter, even if the parent has brought along his or her own person to assist in interpretation.³⁸

Moreover, “extra caution” should be used by schools or districts when the LEP person chooses to use a minor child as an interpreter or translator.³⁹ Although there is no *per se* ban on the use of children, the use of minor children raises particular concerns about competency, quality and accuracy of interpretations.⁴⁰ Thus, OCR should subject the

methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin....”); *See also note 60, infra.*

³⁵ DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41462.

³⁶ *Id.*

³⁷ *Id.*, at 41463.

³⁸ *See id.*, at 41462-63 (“Where precise, complete and accurate interpretations or translations of information and/or testimony are critical for law enforcement, adjudicatory, or legal reasons, or where the competency of the LEP person’s interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well.”).

³⁹ *Id.*, at 41463.

⁴⁰ *See id.*, at 41462 - 63.

use of children as interpreters and translators to particular scrutiny, especially where children are being asked to convey information about their own education (thus raising concerns about conflict of interest), and/or to convey complex information, such as information related to special education or related aids and services for children with disabilities. Under these circumstances, the use of children is never advisable.

In addition, as discussed in the DOJ guidance, school districts should ensure that the LEP parent's decision to use a family member or friend is voluntary, that the LEP parent is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP parent knows that a competent interpreter could be provided by the school district at no cost.⁴¹

H. Translation of Certain Types of Documents

1.) Can OCR require schools or districts to translate certain types of documents?

The failure to provide written translations of certain types of documents is not a *per se* violation of Title VI. Rather, the determination of whether the failure to translate certain documents denies a LEP parent meaningful access, in violation of Title VI, must be made on a case-by-case basis. In determining whether "meaningful access" would be assisted by a written translation, districts or schools should first consider the kind of information that is included in the document and whether it is important for LEP parents to have this information in writing.

In considering the translation of important documents, OCR should be mindful of DOJ's advice regarding the translation of "vital written materials." DOJ stated that recipients "may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program," adding that: "Whether or not a document (or the information it solicits) is 'vital' may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner."⁴² The third of DOJ's four analysis factors also is especially pertinent here. Of this third factor -- "The nature and importance of the program, activity, or service provided by the program to people's lives" -- DOJ has stated, "The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed."⁴³

⁴¹ See *id.*, at 41463.

⁴² *Id.*

⁴³ *Id.*, at 41460.

There may be appropriate circumstances in which a district may find it more feasible to orally interpret a document and not translate it – including, for example, if the LEP parent’s native language does not have a written component, if the LEP parent is illiterate, if the LEP parent’s native language is less common, the document is less vital, or if obtaining a professional translator in a particular language is prohibitively expensive or difficult, given the resources available to the school district. These same considerations may be applicable to a district’s assessment of whether to provide a verbatim written translation of a particularly lengthy document. It may be appropriate for a district or school to provide a mix of written translations and oral interpretations. In providing only an oral interpretation of a document, or just a translation of key portions, the district should ensure that the LEP parent is still provided meaningful access and is placed, essentially, on the same footing as a non-LEP parent.

Based on the DOJ LEP Recipient Guidance and OCR’s historical field experience, more important activities – especially those that are compulsory or consequential – should receive greater attention with respect to effective communication with LEP persons. Historically, according to an internal review of OCR cases, in practice OCR has not treated the phrase from the 1970 memorandum “school activities which are called to the attention of other parents” as equivalent to all means of, and occasions for, communication between school districts and LEP parents. Rather, OCR has focused on activities of particular importance. It is appropriate that OCR not *per se* exclude any activity brought to the attention of English-speaking persons from those activities about which LEP parents should get adequate notice through either oral interpretation or translation of written documents. It is also appropriate, however, that OCR in its enforcement activities gives greater focus to those programs and activities that are more important to LEP parents’ access to school district programs and activities, and that have greater consequences for LEP parents.

While this is a fact-specific determination to be made on a case-by-case basis, a review of OCR’s historical enforcement practices shows that the types of documents related to a school’s or district’s most important activities may include:

- procedures related to parents’ rights to receive procedural safeguards in the context of providing children with disabilities with a free appropriate public education (FAPE) under Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Individuals with Disabilities Education Act (IDEA);⁴⁴

⁴⁴ As discussed in Section J.1 below, implementing regulations for IDEA, which is not enforced by OCR, include requirements regarding the provision of certain information to parents whose native language is not English. See 34 C.F.R. § § 300.322(2)(e), 300.503(a), (c). There are no express requirements regarding interpretation, translation or other forms of language assistance for LEP parents in Section 504’s implementing regulations.

- meetings in which parents participate in eligibility and placement decisions affecting their children with disabilities;⁴⁵
- disciplinary notices and procedures;
- registration/enrollment forms, emergency notification forms and other forms most commonly used by the district to communicate with parents;
- report cards and student progress reports;
- parent-teacher conferences or meetings;
- parent handbooks and fact sheets;
- academic options and planning, including gifted and talented programs, alternative language programs, and counseling and guidance services; and
- screening procedures that request information from parents about the child's language background and the parents' preferred language for communication with the school.

Some states have their own statutes, not enforceable by OCR, which specifically state the types of documents that must be translated for LEP parents. These state statutes, such as California's Education Code § 51101.1,⁴⁶ Massachusetts's ALM GL ch. 71A, § 2A,⁴⁷ or Rhode Island's R.I. Gen. Laws § 16-71-2,⁴⁸ may be used as resources by OCR in

⁴⁵ This includes IEP meetings required under IDEA and meetings to determine eligibility and placement under Section 504.

⁴⁶ This state law functions as a bill of rights for LEP parents, and specifically relates to parents who are LEP and the parents of students who have been identified as LEP. It states: "A school district shall take all reasonable steps to ensure that all parents and guardians of pupils who speak a language other than English are properly notified in English and in their home language...of the rights and opportunities available to them pursuant to this section," including, among others, the right to receive "the results of their child's performance on standardized tests...;" "To be given any required written notification, under any applicable law, in English and the pupil's home language;" and "To participate in school and district advisory bodies in accordance with federal and state laws and regulations." Another section of the California Education Code, § 48985 (discussed *infra* and in the Appendix), contains document translation obligations based on the percentage of students enrolled who speak a specific language.

⁴⁷ This state law specifies that, in regard to bilingual education plans, "In a school district with 20 or more limited English proficient students in any 1 language group, no district plan or updated district plan shall be submitted to the commissioner until after a public hearing, with due notice to interested parties, has been held on such plan...Notices to parents or legal guardians of limited English proficient students required by this section shall, to the maximum extent possible, be in a language understandable by the parents or legal guardians." This law also requires that report cards and progress reports, including but

its field operations, to provide other perspectives on some of the documents that may be of heightened importance.

2.) What are the DOJ “safe harbor” provisions? What should OCR’s response be if a school district says that it is in compliance with Title VI because it has satisfied the DOJ safe harbor provisions?

In its guidance, DOJ describes safe harbor as follows:

Safe Harbor. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The DOJ recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.⁴⁹

In considering DOJ’s “safe harbor” provisions, OCR staff should keep in mind that the requirement to provide meaningful access exists regardless of whether the district relies on the provisions for the translation of vital documents. As DOJ stated in its guidance, “in drafting the safe harbor and vital documents provisions of the Recipient LEP Guidance, the Department sought to provide one, but not necessarily the only, point of reference for when a recipient should consider translations of documents (or the

not limited to reports regarding a child’s proficiency, “to the maximum extent possible, be written in a language understandable to the parents and legal guardians of such students.”

⁴⁸ This state law, part of the Rhode Island Educational Bill of Rights, specifies, “The parents or guardians of each child enrolled in an elementary or secondary school within the state, or the student if over the age of eighteen (18), shall annually be notified in writing by the school district responsible for the operation of the school of their rights under this chapter. Agencies and institutions of elementary and secondary education shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.”

⁴⁹ DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41463-64. Other federal agencies also have adopted a “safe harbor” standard. See, e.g., the limited English proficiency guidance of the U.S. Department of Health and Human Services, 68 Fed. Reg. 47311, 47319 (Aug. 8, 2003), available at <http://www.justice.gov/crt/cor/lep/hhsrevisedlepguidance.php>.

implementation of alternatives to [providing written translations of] such documents) in light of its particular program or activity, the document or information in question, and the potential LEP populations served.”⁵⁰ Moreover, the requirement to provide meaningful access remains for those LEP populations who are not present in large enough numbers or percentages to satisfy the safe harbor provisions.

Thus, satisfying – or failing to satisfy – the DOJ safe harbor provisions is **not** a dispositive indicator of whether a district has met its Title VI obligations. Whether a district has met its Title VI obligations must be determined on a case-by-case basis. Safe harbor provisions should simply be used as a reference. If a district asserts that it is in compliance with Title VI in light of its reliance on the DOJ safe harbor provisions, OCR staff should analyze such claims in light of the following:

- A district may *not* be in compliance with Title VI, even if it appears to have met the safe harbor provisions by translating some vital documents for its major language groups, if the district has failed to translate (or to otherwise effectively communicate by, for example, orally interpreting or otherwise conveying) all of the documents that are, in that particular district and in that particular circumstance, vital.
- A district could be in compliance with Title VI if it has met the safe harbor provisions for the translation (or other means used to effectively communicate, such as oral interpretation) of all of the documents that are, in that particular district and in that particular circumstance, vital and there are no other compliance issues concerning meaningful access for the LEP populations that it serves. For example, a district seeking to fulfill its Title VI obligations, for the written translation of documents, through the “safe harbor” provisions for its major language populations would also have to provide meaningful access for parents who are not from a major language group.
- A district also could be in compliance with Title VI even if it has not met the safe harbor provisions if the district is otherwise providing meaningful access.

There are many ways to provide meaningful access, including through written summaries of some documents or oral interpretation of other documents, depending upon the circumstances and the nature of the document.⁵¹ DOJ’s four-

⁵⁰ DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41456.

⁵¹ See *id.*, at 41463 (“The failure to provide written translation under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English.”).

factor analysis⁵² provides the method to determine whether a district is providing meaningful access.

I. Size and Resources: How to Gauge the Impact of the Size of the LEP Parent Population, or the Size and Resources of the School or District, on the Assistance Required

1.) How does a school's or district's obligation to assist LEP parents differ based on the size of its LEP parent population -- i.e., the number of LEP parents who speak a particular language?

LEP parents are entitled to language assistance, and a public school or district is obligated to make reasonable efforts to address those needs. The determination of whether efforts are reasonable may vary based on the size of the LEP parent population, with more extensive interpretation and translation programs necessary where there is a large number of LEP parents who have a common native language, and less extensive programs necessary where there are relatively few LEP parents who have a particular native language.⁵³ The second of the DOJ factors, "The frequency with which LEP individuals come in contact with the program," is also pertinent to such "size" discussions. In explaining this second factor, DOJ stated:

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. . . . It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution."⁵⁴

Thus, it would be helpful for a district or school to identify and categorize the native languages of its LEP parents, distinguishing those that are more common from those that are less frequently encountered. For the languages that are more common, a district or school may want to consider a range of formal programs to provide language

⁵² See *id.*, at 41459-61; see also Section III.C., *supra*.

⁵³ See *id.*, at 41459 ("One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population.").

⁵⁴ *Id.*, at 41460.

assistance, including having assigned, trained and appropriately qualified staff to assist with translations and interpretations, and making translations and interpretations available on a pro-active basis, without waiting for requests from parents. For languages that are less common, a district may want to consider a range of less formal programs, such as contracting with independent companies (including those providing telephonic interpreter services), individuals or community groups to provide language assistance, or, additionally, not translating some documents until a request from a LEP parent is received. However, it should be emphasized that parents from less frequently-encountered language groups are still entitled to language assistance and must be provided meaningful access.⁵⁵ For those languages that are less prominent or where translation is not feasible, districts should ensure that parents have been advised, in a language they understand, of whom in the school or district to contact if they need assistance in understanding written information or communicating with school district staff.

2.) How does the extent of the services a school or district is required to provide to assist LEP parents differ based on the resources of the district?

DOJ states that smaller recipients with fewer resources may not be expected to provide the same level of language assistance to LEP parents that recipients with greater resources are expected to provide.⁵⁶ Districts with resource limitations, whether small or large, still have an obligation to provide meaningful access to LEP parents, and limited financial resources do not justify a failure to remedy a Title VI violation. The fourth of the DOJ factors, “The resources available to the grantee/recipient and costs,” is especially pertinent here. DOJ states:

A recipient’s level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, “reasonable steps” may cease to be reasonable where the costs imposed substantially exceed the benefits.⁵⁷

This is not a question of *whether* to provide meaningful access to LEP persons, but a standard for *how* it is to be accomplished by taking reasonable steps within cost

⁵⁵ *Cf. id.* (“[E]ven recipients that serve LEP persons on an unpredictable or infrequent basis should use this [four-factor] balancing analysis to determine what to do if an LEP individual seeks services under the program in question.”).

⁵⁶ *See id.*, at 41460.

⁵⁷ *Id.*

constraints.⁵⁸ For example, a district with fewer resources may choose to hire independent contractors who work on a freelance basis, assisting with translations or interpretations as requested. The district also may choose to work with non-profit community groups for assistance in providing translations and interpretations, whereas a district with more resources may, depending on the circumstances, have its own assigned staff with specialized training in translating and interpreting.

3.) What advice can OCR give to recipients to help them contain costs in providing assistance to LEP parents?

As DOJ noted in its 2002 guidance, recipient concerns about resources and costs can often be reduced by technological advances, the sharing of language assistance materials and services, and reasonable business practices.⁵⁹ These and other such approaches are discussed in further detail in the Appendix. In brief, among the methods by which schools and districts, including those with fewer resources, may provide meaningful access to LEP parents are the following:

- centralize language assistance services;
- share materials and resources between LEAs and schools by creating clearinghouses for translated documents or secure translation contracts to allow LEAs or groups of schools to spread the costs of providing language access;
- collect and disseminate good practices;
- translate parent information and/or use summary pages in parents' native language that lead parents to more comprehensive information;
- use bilingual staff who are appropriately trained and qualified to serve as interpreters and/or translators;
- collaborate with community groups;⁶⁰

⁵⁸ See *id.*, at 41456-57 (discussing comments regarding the “potential abuse of cost considerations” and concluding that, despite these concerns, DOJ would not eliminate cost “as a factor in all cases when determining the appropriate ‘mix’ of reasonable language assistance services determined necessaryThe Department continues to believe that costs are a legitimate consideration in identifying the reasonableness of particular language assistance measures.”); see also *id.* at 41459 (“The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed.”).

⁵⁹ See *id.*, at 41460.

⁶⁰ It is important to note that while collaboration with community groups can be very beneficial, the obligation to provide language access remains on the recipient. Districts can enter into an agreement

- establish resource centers for parents;
- incorporate Internet and computer technology to better utilize limited resources; and
- monitor the adequacy of language assistance services, including compliance with policies and practices.

J. Communication with LEP Parents of Students with Disabilities, and Federal and State Laws Regarding Parents of Children with Disabilities and Other Exceptional Children

1.) Does Title VI require schools and districts to interpret or translate for parents communications related to the special needs of a child with a disability, such as referrals for evaluation, placement in special education, or IEP meetings?

Title VI's ban on national origin discrimination relates to the rights of LEP parents, independent of their children's disability, limited English proficiency, or other special needs. In these circumstances, Title VI is implicated because of parents' right to be "adequately notif[ied]" of information that is brought to the attention of other parents, and of their right to "meaningful access" to the school and district programs and activities that are provided to parents (e.g., information provided to parents about their child's education through written notices, meetings, etc.). However, under Title VI, the fact that a child of an LEP parent has a disability does not give the parent more rights than an LEP parent whose child does not have a disability.

In evaluating the extent of parental language assistance that may be appropriate, however, the third DOJ factor, "The nature and importance of the program, activity, or service provided by the program to people's lives," may be of heightened importance for the parents of a special needs child. In enforcement activities, OCR has included documents related to disabilities and special needs on its list of the types of documents with heightened importance that schools/districts are encouraged to translate.

Regulations implementing the IDEA, not enforced by OCR, *require* that at IEP meetings, "The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English."⁶¹ IDEA regulations also require that notice regarding initiating, changing, or refusing to

with a community group to provide these language services, assuming the community group is competent to do so.

⁶¹ 34 C.F.R. § 300.322(2)(e).

initiate or change the identification, evaluation, placement or provision of FAPE of a child protected by IDEA must be provided “in the native language of the parent ... unless it is clearly not feasible to do so.”⁶² OCR staff may inform LEP parents and districts or schools of this obligation. However, these IDEA regulations are independent of Title VI and not enforced by OCR, although, as stated above and elsewhere throughout this document, the nature and importance of the activity or document to the parent – regardless of whether his or her child has a disability as defined by IDEA, Section 504, or is not disabled at all -- is a key factor in determining the reasonableness of a district’s or school’s actions in providing language assistance.⁶³

2.) Are state laws regarding language assistance for LEP parents who have children with disabilities relevant?

Certain state laws, not enforced by OCR, specifically require language assistance to the parents of disabled children, as well as to parents of other students with special needs, such as those who have been identified as LEP, primarily through imposing obligations to provide LEP parents with specified information (usually, certain written notice) in the parents’ native or primary language.⁶⁴ Although OCR does not enforce these laws, knowledge about their requirements may be helpful in pursuing voluntary compliance in the event of a violation or in technical assistance activities, because schools and districts may be more likely to see as reasonable specific language access actions that already exist elsewhere.

K. Relationship to State Laws That May Restrict Language Assistance to Parents

1.) How should this guidance be read in conjunction with state laws that expressly condition schools’ and districts’ obligation to provide certain information to LEP parents in their native or primary language on, for example, schools or districts making a “good-faith effort” to do so,⁶⁵ or “when the appropriate foreign language resources are readily available,”⁶⁶ or “to the extent

⁶² 34 C.F.R. § 300.503(a), (c).

⁶³ For example, in order for an LEP parent to have meaningful access to an IEP or Section 504 plan meeting, it may be necessary to have the meeting interpreted, and/or to have IEPs, Section 504 plans or related documents translated into the parent’s native language.

⁶⁴ See, e.g., California: Cal Ed Code § 52173, Cal Ed Code § 56506; Illinois: 105 ILCS 5/14C-4; Indiana: Burns Ind. Code Ann. § 20-30-9-9; Kansas: K.S.A. § 72-988; Massachusetts: *ALM GL ch. 71A, § 2A, ALM GL ch. 71B, § 3*; Minnesota: Minn. Stat. § 125A.091, Minn. Stat. § 125A.42, Minn. Stat. § 124D.60; Mississippi: Miss. Code Ann. § 37-23-137; New Jersey: N.J. Stat. § 18A:35-22; New York: NY CLS Educ § 4410; North Carolina: N.C. Gen. Stat. § 115C-109.5; Ohio: ORC Ann. 3323.05, Oregon: ORS § 343.159; Virgin Islands: *17 V.I.C. § 289*; Wisconsin: Wis. Stat. § 115.96.

⁶⁵ Tex. Educ. Code §§ 21.057; 28.006; 28.0211.

⁶⁶ N.C. Gen. Stat. § 115C-391(d5).

practicable,”⁶⁷ or, only if “the governing body determines that it is necessary for the parent or legal guardian to understand the notice?”⁶⁸

Schools and districts (and states) must understand that it can be a violation of Federal law, under Title VI, to not provide language assistance to a national origin minority parent who is LEP. Thus, even if state law does not obligate a school or district to provide language services to LEP parents, the Title VI obligation of “adequate notice”⁶⁹ and taking “reasonable steps to provide meaningful access”⁷⁰ applies. Whether a violation of Title VI exists should be assessed with reference to the OCR guidance as expressed herein.

2.) Are school districts’ Title VI obligations affected if the districts are subject to local or state “English only” laws?

No. Although the Supreme Court has not ruled on the merits of this issue,⁷¹ consistent with the DOJ guidance and Federal agency policy, OCR takes the position that Title VI obligations take precedence over conflicting state or local laws. The DOJ guidance states: “Some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of Federally assisted services to persons with limited English proficiency.”⁷² In addition, as the Federal Interagency Workgroup on Limited English Proficiency has stated:

All recipients of federal funds and all federal agencies are required by law to take reasonable steps to provide meaningful access to limited English proficient

⁶⁷ Nev. Rev. Stat. Ann. §§ 391.097, 391.098.

⁶⁸ *Id.*, at §§ 386.552, 386.360.

⁶⁹ See OCR 1970 Memorandum, at 2.

⁷⁰ See DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41459.

⁷¹ See *Alexander v. Sandoval*, 532 U.S. 275 (2001) (holding that there is no private right of action to enforce disparate impact regulations under Title VI, but not reaching the question of whether Alabama’s practice of administering driver’s license exams only in English, pursuant to a state law making English the official language, violates Title VI).

⁷² DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41459. See also Letter from Loretta King, Acting Assistant Attorney General for Civil Rights, to Drew Edmondson, Attorney General of Oklahoma (April 14, 2009), available from http://www.lep.gov/guidance/guidance_index.html (discussing a proposed English-only amendment in Oklahoma and stating that Title VI’s “nondiscrimination requirement -- including rules applicable to the provision of services to the LEP population – applies notwithstanding state adoption of English-only constitutional amendments or English-only laws or ordinances.”).

persons. This means that, even if recipients operate in jurisdictions in which English has been declared the official language under state or local law, these recipients continue to be subject to federal nondiscrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

All recipients should be aware that despite the state's or local jurisdiction's official English law, Title VI and the Title VI regulations apply. Thus, recipients must provide meaningful access for LEP persons. State and local laws may provide additional obligations to serve LEP individuals, but cannot compel recipients of federal financial assistance to violate Title VI.⁷³

⁷³ <http://www.lep.gov/faqs/faqs.html>.

L. Summary of Remedies in Reviews and Investigations Involving LEP Parents

1.) What remedies may OCR obtain when an investigation or review involving LEP parents is resolved by a Resolution Agreement without a finding? What remedies can OCR obtain when OCR finds a violation of Title VI in an investigation or review involving LEP parents?

As discussed throughout this guidance, and summarized below, OCR staff have a range of potential remedies available in ensuring that schools and districts do not exclude LEP parents from, or deny them the benefits of, the school or district’s programs on the basis of parents’ national origin. As noted in Q&A B.1, whether a district or parent is violating Title VI with respect to the rights of LEP parents is determined on a case-by-case basis. Similarly, the appropriate remedies in each case should be shaped by the specific facts and circumstances presented. Thus, if OCR has conducted a thorough investigation, gathered strong evidence, and is attempting to reach a resolution agreement, OCR should be in a stronger negotiating position, even absent a finding of a Title VI violation, and on this basis may be able to require – not merely recommend and encourage -- the remedies discussed in the first column below.

		When Negotiating a Resolution Agreement, But Do Not Have a Finding of Title VI Violation	If OCR Finds a Pertinent Violation of Title VI
What OCR May Do Under Title VI	Adoption of a Particular Approach to Language Assistance	Cannot require that a district or school adopt a particular approach to language assistance. [Source: DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41459.]	Cannot require that a district or school adopt a particular approach to language assistance. [Source: DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41459.]
	Written Plans for Language Assistance	In negotiation, may seek to have recipient agree to a written plan for providing language assistance. [Sources: OCR’s May 1970 memorandum; DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41455-56; 41464.]	May require recipient to have a written plan for providing language assistance. [Sources: OCR’s May 1970 memorandum, DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41455-56; 41464.]
What OCR May Do Under Title VI	Monitoring of Plans (Written or Unwritten) for Language Assistance	In negotiation, may seek to have recipient agree to monitor its plan or approach for language assistance. [Source: DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41465.]	May require recipient to monitor its plan or approach for language assistance. [Source: DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41465.]

	When Negotiating a Resolution Agreement, But Do Not Have a Finding of Title VI Violation	If OCR Finds a Pertinent Violation of Title VI
Identifying LEP Parents	May require that recipient take a parent at his or her word that he or she needs language assistance. ⁷⁴ [Sources: DOJ Recipient LEP Guidance at 41465; Title VI regulation at 34 C.F.R. § 100.3 (b)(2).]	May require that recipient take a parent at his or her word that he or she needs language assistance. [Sources: DOJ Recipient LEP Guidance at 41465; Title VI regulation at 34 C.F.R. § 100.3 (b)(2).]
Ascertaining Size of LEP Parent Population	May require recipient to have made reasonable attempts to determine the presence of LEP parents, and to provide assistance to these parents once identified. [Sources: DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41459-60, 41464-65.] ⁷⁵	May require recipient to have made reasonable attempts to determine the presence of LEP parents, and to provide assistance to these parents once identified. [Sources: DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41459-60, 41464-65.]
Notifying LEP Parents of Available Assistance	May require recipient to notify LEP parents, in language that they understand, of availability of free language assistance. [Source: DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41465.] ⁷⁶	May require recipient to notify LEP parents, in language that they understand, of availability of free language assistance. [Source: DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41465.]

⁷⁴ OCR may require this action even when no violation is found, because taking parents at their word about their need for language assistance is essential to identification of these individuals, and thus to ensuring their meaningful access. It is essential for recipients to meet their obligation to ensure that language assistance is provided to parents in a timely manner.

⁷⁵ OCR may require this action even when no violation is found, because the identification of LEP parents is essential to ensuring these parents’ meaningful access. See DOJ Recipient LEP Guidance, at 41464-65 (determining the number or proportion of LEP persons eligible to be served, and the frequency of their contact with the program “requires recipients to identify LEP persons with whom it has contact.”); cf. OCR September 1984 Memorandum at 6 (as to students) (school districts’ obligation to identify LEP students is an outgrowth the obligation to serve these students).

⁷⁶ Like making reasonable efforts to determine the presence of LEP parents, OCR may require this action even when no violation is found because notifying LEP parents of available assistance is essential to ensuring parents’ meaningful access. See DOJ Recipient LEP Guidance, at 41465.

What OCR May Do Under Title VI	Staff Training	When Negotiating a Resolution Agreement, But Do Not Have a Finding of Title VI Violation	If OCR Finds a Pertinent Violation of Title VI
	Interpreter and Translator Qualifications	<p>In negotiation, may seek to have recipient agree to staff training that includes notifying staff of the availability of language assistance services for LEP parents, identification of the LEP parents who need interpreter and translation services, contact information for qualified interpreters and translators, and information about which documents have been translated and into which languages. Extent of training may vary with the extent of parental contact. [Source: DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41465.]</p>	<p>May require staff training that includes notifying staff of the availability of language assistance services for LEP parents, identification of the LEP parents who need interpreter and translation services, contact information for qualified interpreters and translators, and information about which documents have been translated and into which languages. Extent of training may vary with the extent of parental contact. [Source: DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41465.]</p>
	<p>In negotiation, may require that translators and interpreters the recipient uses are effective, appropriate and competent – and not merely bilingual (whether recipient’s own staff or outside resources are used). [Source: DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41461-64.]</p> <p>May recommend or encourage, but not require, formal certification of interpreters or translators. [Source: DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41461, 41464.]</p>	<p>May require that translators and interpreters the recipient uses are effective, appropriate and competent – and not merely bilingual (whether recipient’s own staff or outside resources are used). [Source: DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41461-64.]</p> <p>May require formal certification of interpreters or translators. [Source: DOJ Recipient Guidance, 67 Fed. Reg. at 41461, 41464.]</p>	

		When Negotiating a Resolution Agreement, But Do Not Have a Finding of Title VI Violation	If OCR Finds a Pertinent Violation of Title VI
What OCR May Do Under Title VI	Use of Children, Family Members and Friends as Interpreters or Translators	May discourage, but not prohibit, the use of family members, friends and children to help in providing language assistance to parents if requested by the parent. In negotiation, may require, if a LEP parent insists on using a family member, friend, or child for interpretation or translation, that the school or district provide its own interpreter or translator to ensure accurate interpretation or translation, if the information to be conveyed through translation or interpretation is vital. Although there is no <i>per se</i> ban on the use of children, a Title VI violation may in some circumstances occur because children were used as interpreters or translators. [Source: DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41462-63.]	May prohibit the use of family members, friends or children to help in providing language assistance to parents, depending on the particular facts of the violation. May also require, if a LEP parent insists on using a family member, friend, or child for interpretation or translation, that the school or district provide its own interpreter or translator to ensure accurate interpretation or translation, if the information to be conveyed through translation or interpretation is vital. [Source: DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41462-63.]
	Translation of Vital Documents	In negotiation, may seek to have recipient agree to translate or orally interpret vital documents, consistent with the DOJ Four Part Analysis. Such analysis of documents should be conducted on a case-by-case basis. [Source: DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41463.]	May require that recipient translate or orally interpret vital documents, consistent with the DOJ Four Part Analysis. Such analysis of documents should be conducted on a case-by-case basis. [Source: DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41463.]

IV. Conclusion

As discussed in this internal staff guidance, case processing and technical assistance activities concerning recipients' communication with LEP parents requires the application of broad principles and fact-intensive analysis. If you have questions about this document, please contact the Program Legal Group, at 202-453-6014.

APPENDIX: Detailed Information about SEA, LEA and School Practices

This appendix describes a number of approaches that SEAs, LEAs and school recipients may want to consider when providing language services to LEP parents. These approaches may serve as a resource to address compliance problems, and/or in technical assistance activities. Neither the approaches, nor the SEAs, LEAs or schools referenced in this Appendix, are intended to be exhaustive; Enforcement Office staff may be aware of other activities designed to ensure adequate notice/meaningful access for LEP parents.

In addition, although this appendix references policies and practices to assist Enforcement Office staff, OCR is not specifically endorsing any particular program or approach. In researching these approaches, PLG did not “look behind” the information provided (most often in SEA, LEA or school web sites) to independently investigate whether the policies and practices are being carried out as described.¹ Some of the approaches discussed below may be more vulnerable to inadequate implementation; these vulnerabilities are referenced in their specific context.

The policies and practices discussed in the appendix are being utilized at various levels of the education system, *i.e.*, by SEAs, LEAs and individual schools. Any recipient interested in adopting these approaches will likely need to evaluate the policy or practice (both as designed and as implemented), and to make necessary modifications to ensure LEP parents receive adequate notice/meaningful access.²

¹ Moreover, even on their face, aspects of some of the policies and practices OCR reviewed raise questions and concerns. For example, although a California state statute mandates that, if 15% or more of students in a school speak a primary language other than English, all notices, reports, statements or records sent to the parents or guardians must be translated, the statute is silent as to what services, if any, should be provided to LEP parents who do not speak a language that meets the 15% threshold. See Cal. Ed. Code § 48985(a), available at <http://www.cde.ca.gov/ls/pf/cm/educode48985.asp>. Similarly, a New York City Department of Education (NYCDOE) regulation requires the provision of translation and interpretation services for parents who speak any of nine “covered languages,” and also requires parental notification, signage, and forms to be available at schools where more than 10% of students speak a language that is neither English nor a covered language. See New York City Chancellor’s Regulation A-663, available at <http://docs.nycenet.edu/docushare/dsweb/Get/Document-151/A-663%20Translation%203-27-06%20.pdf>. The NYCDOE regulation states that NYCDOE “may provide translation and interpretation services beyond those outlined” in the regulation, but does not provide any criteria or other guidance for doing so. *Id.* An Illinois State Board of Education guidance document advises LEAs to work with community groups to provide language assistance services, but also suggests that parents “can be asked in advance” to bring their own adult translators to meetings where “oral communication skills are essential.” See http://www.isbe.state.il.us/bilingual/pdfs/involving_families.pdf (*Contra* DOJ Recipient LEP Guidance, 67 Fed. Reg. 41455 at 41462-63 (June 18, 2002) stating that recipients “should generally offer competent interpreter services free of cost to the LEP person,” and consider whether to provide their own interpreter where there are questions regarding the competency of an interpreter chosen by an LEP person.).

² *Cf.* Memorandum from the Assistant Secretary to Enforcement Office Directors (Dec. 3, 1985) and Memorandum from the Assistant Secretary to OCR Senior Staff (Sept. 27, 1991), available at

With these caveats, strategies for appropriate discussions with recipients may include:

Providing Centralized Translation and Interpretation Services: An SEA or LEA may directly provide translation and interpretation services throughout the SEA or LEA,³ or coordinate contracts for the provision of these services.⁴ An SEA or LEA may also undertake the cost of translating certain commonly-used or sample policies or documents for use by school districts or by schools within an LEA, or for distribution to the public.⁵

<http://www2.ed.gov/about/offices/list/ocr/ellresources.html>. (OCR policy documents, stating that in determining whether recipients provide LEP students with alternative language programs that are likely to be effective, OCR can examine whether recipients evaluate the alternative language program and makes modifications to the program when they are needed. (citing *Castaneda v. Pickard*, 648 F.2d 989 (5th Cir. 1981)). See also DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41465 (“Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services and activities need to be made accessible for LEP individuals”).

³ For example, pursuant to the New York City Chancellor’s Regulation, the NYCDOE Translation and Interpretation Unit provides translation services for documents authored and requested by schools and NYCDOE offices, in-person interpretation services for certain meetings, hearings and events, and telephone interpretation services. See <http://schools.nyc.gov/Offices/Translation/default.htm>. The Translation and Interpretation Unit provides information regarding the types of documents it will translate at no cost for schools and the types of events for which it will provide interpreters. See *Summary of Chancellor’s Regulation A-663: Translations and Available Resources*, effective September 5, 2006, at <http://schools.nyc.gov/Offices/Translation/ChancellorRegulation/Default.htm>; Translation Services, <http://schools.nyc.gov/Offices/Translation/TranslationServices/Default.htm>; Interpretation Services, <http://schools.nyc.gov/Offices/Translation/InterpretationServices/Default.htm>; Over-the-phone Interpretation Services, <http://schools.nyc.gov/Offices/Translation/phoneInterpretationServices/Default.htm>. The Minneapolis Public Schools Multicultural/Multilingual Department acts as a “dispatcher” for all schools’ translation and interpretation requests. See [http://ell.mpls.k12.mn.us/Translation Interpreter Request Forms.html](http://ell.mpls.k12.mn.us/Translation_Interpreter_Request_Forms.html).

⁴ Cf. DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41462 (“Contract interpreters may be a cost-effective option when there is no regular need for a particular language skills.”).

⁵ For example, the NYCDOE Translation and Interpretation Unit provides online translation resources for schools, such as bilingual glossaries, common signs, language cards and standard forms and policies. See <http://schools.nyc.gov/Offices/Translation/Archives/Default.htm>; <http://schools.nyc.gov/Offices/Translation/TipsandResources/Default.htm>. Montgomery County, Maryland translated its academic calendar into five languages and posts these calendars online. See <http://www.mcps.k12.md.us/info/calendars/>. Individual middle schools in Miami-Dade County, Florida and Minneapolis, Minnesota post dress codes online in English and Spanish. See <http://cms.dadeschools.net/moodle/mod/resource/view.php?id=78> (Centennial Middle School, Miami-Dade County); <http://folwell.mpls.k12.mn.us/Uniforms.html>. (Folwell Middle School, Minneapolis).

Enacting Laws or Promulgating Regulations that Require LEAs and Schools to Take Certain Actions: Recipients may specifically require LEAs and schools to provide certain translation and/or interpretation services.⁶

Facilitating Resource Sharing Among LEAs and Schools: An SEA or LEA may establish a clearinghouse to provide LEAs and schools with access to translated documents.⁷ An SEA or LEA may also want to establish policies to encourage participation in such a clearinghouse.⁸ LEAs and schools may find that they need to take steps to ensure that

⁶ For example, in California, the state law regarding the translation of documents concerns “notices, reports, statements, or records sent to the parent or guardian ... by the school or school district,” and imposes its obligations on LEAs and schools. See Cal. Ed. Code § 48985(a), *supra* n. 1. New York City’s Chancellor’s Regulation A-663 identifies certain translation and interpretation services that will be provided by the NYCDOE, but also requires that schools provide students who speak one of nine “covered languages” with “individual, student-specific information” concerning (at least) health, safety, legal or disciplinary matters and the entitlement to public education or placement in special education, LEP or “non-standard academic” programs. See New York City Chancellor’s Regulation A-663, *supra* n. 1, at Section V.B. In addition, the NYCDOE Translation and Interpretation Unit does not provide interpretation for “school-based” events; NYCDOE advises schools to make use of “translation/interpretation funding allocations” for “local interpretation needs.” See NYDOE “On-site Interpretation Services,” available at <http://schools.nyc.gov/Offices/Translation/InterpretationServices/Default.htm>. Other jurisdictions require translation of specific documents. For example, Rhode Island’s Educational Bill of Rights requires LEAs to provide parents and students with annual notification of their rights under the law, and to “provide for the need to effectively notify parents of students identified as having a primary or home language other than English.” See R.I. Gen. Laws § 16-71-2. Massachusetts state law specifies, in regard to transitional bilingual education plans, that notices required by the law “shall, to the maximum extent possible, be in a language understandable by the parents or legal guardians.” See Mass. ALM GL ch. 71A, §2A.

⁷ The California SEA has established a searchable centralized electronic clearinghouse of translated documents. The clearinghouse allows school districts and schools to make available and share translated documents in order to reduce duplication of translation efforts. The SEA does not review the quality of the translated documents posted by contributing LEAs and schools, however; the SEA website includes a disclaimer stating that LEAs and other agencies disseminating the translated documents available in this catalog are ultimately responsible for the documents’ content and accuracy. See California Department of Education, Clearinghouse for Multilingual Documents, <http://www.cde.ca.gov/ls/pf/cm/>.

⁸ With respect to the California SEA clearinghouse, a 2006 report by the California State Auditor found that LEA and school participation in the clearinghouse was been low, with only 12 districts throughout the state making translated documents available through the clearinghouse. Based on visits to LEAs and schools, the State Auditor found that although most LEAs had heard of the clearinghouse, most schools had not. In addition, some LEAs that had already translated documents reported that they saw little benefit to themselves in putting the time and effort into posting their translations online for other LEAs. California State Auditor, *California Public Schools: Compliance with Translation Requirements is High for Spanish but Significantly Lower for Some Other Languages*, at 30-34 (October 2006), available at www.bsa.ca.gov/pdfs/reports/2005-137.pdf (California State Auditor’s Report). After California’s document translation statute was amended to require SEA monitoring of LEA compliance with the law, the SEA encouraged LEAs with common needs for translations to consider creating “language translations consortia,” prepared special data reports to assist LEAs in locating other LEAs with common language needs, encouraged LEAs to use the document clearinghouse and provided information about how to participate in the clearinghouse. See Enclosure B to Letter from Gavin Payne, Chief Deputy

the documents they choose from the clearinghouse are fully applicable to their specific jurisdiction and accurately convey all information included in the English-language versions distributed locally.

Collection and Dissemination of “Good Practices” for LEAs and Schools: An SEA or LEA may provide recommendations, including information about “good practices” for communicating with LEP parents, either in conjunction with, or separately from, recommendations regarding the education of LEP students.⁹

Informing Parents of the Availability of Language Assistance Services: An SEA, LEA or school may pursue a variety of methods designed to ensure that LEP parents are aware of interpretation, translation and other language assistance services, such as providing parents with a document describing the availability of these services in a language parents can understand,¹⁰ displaying notices in schools and administrative offices regarding the availability of language assistance services in a language parents can understand,¹¹ posting on LEA or school websites information about the availability of

Superintendent of Public Instruction, to County and District Superintendents, *Local Translation of Parental Notifications to be Monitored* (February 2007), available at <http://www.cde.ca.gov/ls/pf/cm/gavinab680ltr.asp>.

⁹ For example, the Nevada Department of Education gives guidance to LEAs in developing State-mandated “education involvement accords” for parental involvement, including information about the availability of assistance to LEP parents. Nevada’s guidance notes that “schools often encounter parents who speak a language other than English and who would like assistance in communicating with their child’s teacher, school staff, and/or district,” states that schools and school districts “are required to provide information relative to the availability of assistance for these parents,” and includes some suggestions, such as informing parents (in their native language) about how to contact the LEA’s “English as a Second Language Coordinator,” and informing parents (in their native language) how to request a language interpreter or translated material. See <http://www.doe.nv.gov/parents/accord.attachment/310010/AccordGuidance-Final.pdf>. The Ohio Department of Education’s Community Collaboration Model for School Improvement recommendations to help schools minimize barriers to communication, including those created by language, include translating all communications for parents into the family’s primary language, and having “translators” available for parent meetings, conferences and home visits. <http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEDetail.aspx?page=3&TopicRelationID=1180&ContentID=8835&Content=34262>.

¹⁰ For example, New York City schools and NYCDOE offices must provide parents whose primary language is a “covered language” within the meaning of the New York City Chancellor’s Regulation with a “Bill of Parents Rights and Responsibilities” that describes parents’ rights to translation and interpretation services. See New York City Chancellor’s Regulation A-663, *supra* n. 1, at Section VII.A. See also DOJ Recipient LEP Guidance, 67 Fed. Reg. 41455 at 41465 (“Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information.”).

¹¹ For example, all New York City schools and NYCDOE offices must post this information “in a conspicuous location at or near the primary entrance” in each “covered language” addressed in the New York City Chancellor’s Regulation. See New York City Chancellor’s Regulation A-633, *supra* n. 1, at Section VII.B. See also DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41465 (“When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate

language assistance services and how these services can be obtained;¹² working with community-based groups to disseminate information;¹³ providing information in a telephone voicemail menu;¹⁴ or including notices in non-English media.¹⁵

Translated Parent Handbooks and Other Parent Information: An SEA or LEA may collect school policies into a parent handbook that is translated for use by LEP parents,¹⁶ or publish parent newsletters online in languages other than English,¹⁷ or provide translated versions of documents on its website.¹⁸

Use of a Native Language Summary or Cover Page: An SEA or LEA may attach a cover page to English language notices sent to parents indicating how the parent may request a translated copy or receive oral interpretation of the content of the notice. The SEA or LEA may use the cover page when it is not possible to translate a document,¹⁹ or for parents in small language minority populations.

languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services.”).

¹² For example, this information must be posted on the NYCDOE website, in each “covered language” addressed in the New York City Chancellor’s regulation. See New York City Chancellor’s Regulation A-633, *supra* n. 1, at Section VII.E. The Tucson Arizona Unified School District Interpreter/Translator Services website page includes a notice that informs LEP persons that interpreter services are provided at no cost and directs LEP parents to ask their child’s school principal for more information, and includes links to this notice in more than 60 languages. See <http://www.tusd.k12.az.us/contents/depart/interpreter/index.html>.

¹³ See DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41465.

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ For example, the Los Angeles California Unified School District has translated its parent handbook into six languages and made all foreign language versions of the handbook available online. See http://notebook.lausd.net/portal/page?_pageid=33,161841&_dad=ptl&_schema=PTL_EP.

¹⁷ For example, the home page of the Los Angeles High School website includes offers of parent newsletters in Spanish and Korean. See http://www.lausd.k12.ca.us/Los_Angeles_HS/Parents/index.htm.

¹⁸ For example, the website of the San Francisco Unified School District (SFUSD) Translation Department includes English/Chinese and English/Spanish resources, including links to translated SFUSD policies, program descriptions, forms and other information. See http://portal.sfusd.edu/template/default.cfm?page=chief_dev.translation. The Tucson Arizona Unified School District Interpreter/Translator Services website page includes links to forms translated into 12 languages. See <http://www.tusd.k12.az.us/contents/depart/interpreter/index.html>.

¹⁹ For example, when the NYCDOE Translation and Interpretation Unit or a school or office is temporarily unable to provide translation of a document into one or more of eight “covered languages,” it must provide, in addition to any other assistance, a cover letter or notice in the appropriate language, indicating how the parent can request free translation of the document. See

Use of Bilingual Staff: SEAs and LEAs and schools may hire bilingual staff members who are competent to translate and interpret for LEP parents, and who can carry out these tasks without conflicts of interest.²⁰

Collaboration with community groups to provide competent interpretation and translation: An LEA or school may work with community volunteers to provide oral interpretation for LEP parents.²¹ These volunteers may be particularly helpful when there is a need to interpret information that is, in relative terms, of less critical importance,²² or information that is less complex and does not include technical or specialized terms. An LEA or school must, however, ensure that these volunteer interpretation services are provided in a competent manner, with trained volunteers who are knowledgeable about applicable standards of confidentiality and impartiality.²³ An LEA or school may also collaborate with community organizations as a means of ensuring that a translated document is written at the appropriate level for the audience.²⁴

<http://schools.nyc.gov/Offices/Translation/TipsandResources/Default.htm> and <http://schools.nyc.gov/Offices/Translation/FAQ/Default.htm>.

²⁰ For example, the California State Auditor found that most of the schools the Auditor visited used their own in-house bilingual staff to translate school-specific notices, that the LEAs visited used in-house translation units to translate district-level notices, and that 40% of the 230 documents in the CDE clearinghouse had been translated by certified staff translators. See California State Auditor's Report, *supra* n. 8 at 9-10, 32. See also DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41461 (June 18, 2002). ("When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options.... If bilingual staff are ... used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting.... In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter.").

²¹ For example, the Illinois State Board of Education's "Strategies for Success in Involving Immigrant and Refugee Parents" include establishing partnerships between schools and community-based organizations to provide translation services. See http://www.isbe.state.il.us/bilingual/pdfs/involving_families.pdf. See also DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41462 ("[U]se of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances.").

²² See DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41462 (Volunteers "may be particularly useful in providing language access for a recipient's less critical programs and activities.").

²³ See *id.*

²⁴ See *id.*, at 41464 (discussing community organizations as a means to help ensure that documents that have been directly translated from English do not result in a translated document that is written at a much more difficult level than the English version).

Developing Strategies for Oral Communication: An SEA, LEA or school may communicate orally rather than providing written notice, especially when communicating with parents who are among a small language minority population or when communicating with a population that speaks a language without a standard written form. An SEA, LEA or school may use the services of a telephone language line or videoconferencing for this purpose.²⁵ An SEA, LEA or school may also use non-English media to convey information.²⁶ As with other means of communication, recipients must ensure that the interpreters used are competent to interpret any technical or legal terms specific to the educational context that may be important to the communication.²⁷ If documents (*e.g.*, an IEP, a document summarizing the student’s progress, a discipline report) are being discussed, oral interpreters should have an adequate opportunity to review the document prior to the communication.²⁸

Use of resources center for LEP parents: An LEA may create a resources center for LEP parents that provides information about language services and is staffed by personnel who can communicate with LEP parents.²⁹

Modified Websites and Online Documents in Languages Other Than English: An SEA or LEA may create websites with non-English content, and post information such as forms, school calendars or parent handbooks. These websites are considered modified versions of the SEA or LEA English-language website, in that they may not contain the totality of information on an English-language website.³⁰ Recipients choosing this

²⁵ For example, the California State Auditor found that LEAs and schools used methods such as an “autodialer” for announcements of school meetings and exams and “computer-telephone” systems. See California State Auditor’s Report, *supra* n. 8 at 16 and Table A.3.

²⁶ For example, the California State Auditor found that LEAs and schools placed announcements on Spanish radio and television stations and in local Spanish newspapers, and scheduled weekly radio time on Vietnamese, Russian, Hmong and Mien radio programs to communicate with parents. See California State Auditor’s Report, *supra* n. 8 at 16 and Table A.3.

²⁷ See DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41462.

²⁸ *Cf. id.* (regarding telephone interpreters specifically).

²⁹ For example, the Minneapolis Public Schools offers a “New Families Center,” where parents can find out about the language services offered at each school and receive information about registering their children for school. See <http://ell.mpls.k12.mn.us/home.html>. In Fairfax County Virginia, bilingual “community liaisons” support student registrars by providing information about school and community services, including by responding to the Fairfax County parent information phone line in Spanish and Korean, and by facilitating a “Getting to Know FCPS” parent orientation in Arabic, English, French, Korean and Spanish. See http://www.fcps.edu/cco/fam/CommunityLiaisons_000.htm.

³⁰ For example, the Fairfax County Virginia Public Schools maintain modified websites in seven languages (Arabic, Chinese, Farsi, Korean, Spanish, Urdu and Vietnamese), including forms, school calendars and parent handbooks (handbook not provided in Chinese). See <http://www.fcps.edu/otherlanguages/arabic.htm>; <http://www.fcps.edu/otherlanguages/chinese.htm>;

option should also ensure, however, that the modified websites are maintained and updated to the same extent as websites with English language content.

Automatic Translation of Websites: An SEA, LEA, or school may include a link on their website or otherwise refer users to a third-party website such as Babel Fish or Google Translate, to provide real-time translation of website content from English to one of a number of other languages.³¹ Using technology often called “machine translation” or “automatic translation,” such websites automatically provide instant translations of words, phrases, or entire web pages. Recipients choosing this option should, however, note concerns that automatic translation technology has yet to achieve its potential and cannot be assumed to be reliable.³² In addition, automatic-translation tools presently cannot read and translate text that is embedded in images, which is often viewed in banners and navigation buttons.

Maintaining online “links” to other sources of information: An SEA, LEA or school may provide parents with online links to sources of information that is not controlled by the LEA, but that LEP parents may find helpful.³³

<http://www.fcps.edu/otherlanguages/farsi.htm>; <http://www.fcps.edu/otherlanguages/korean.htm>; <http://www.fcps.edu/otherlanguages/spanish.htm>; <http://www.fcps.edu/otherlanguages/urdu.htm>; <http://www.fcps.edu/otherlanguages/vietnamese.htm>. Montgomery County Maryland maintains modified websites in five languages (Chinese, French, Korean, Spanish and Vietnamese). <http://www.mcps.k12.md.us/>. New York City maintains modified websites in eight languages (Arabic, Bengali, Chinese, Haitian Creole, Korean, Russian, Spanish and Urdu). <http://schools.nyc.gov/default.aspx>. Minneapolis Public Schools publishes its Parent-Family Feedback Survey online in Spanish, Somali and Hmong. <http://www.mpls.k12.mn.us/Parents.html>.

³¹ For example, the home page (and only the home page) of Centennial School District 12 in Circle Pines, Minnesota, includes a Babel Fish tool at the bottom to translate that page into French, German, Italian, Spanish, or Portuguese. Use of the tool translates most text on the page, but it does not translate navigation elements such as buttons and “fly-out” menus, including a button and menu labeled “Parents.” <http://www.isd12.org/>. The home page and numerous secondary pages of Rowland Independent School District in Rowland Heights, California, include a Google Translate tool at the top to translate the page into one of 23 listed languages. Use of the tool translates most text on the page, including fly-out menus, but not labels on numerous navigation buttons, including “Parent Resources” and “Enroll Your Child.” <http://www.rowlandschools.org/>. (*Note to Enforcement Office staff:* Security filters on the EDNet system are designed to block access to translation sites, such as those discussed here. Consequently, attempts to demonstrate the use of the translation tools using an office computer may not be successful).

³² The Help page at Babel Fish notes: “No computer program can translate correctly 100% of the time.” <http://babelfish.yahoo.com/help#g1>. The Frequently Asked Questions page at Google Translate advises: “Even today’s most sophisticated software ... doesn’t approach the fluency of a native speaker or possess the skill of a professional translator. Automatic translation is very difficult, as the meaning of words depends on the context in which they’re used. While we are working on the problem, it may be some time before anyone can offer human quality translations.” http://www.google.com/intl/en/help/faq_translation.html#quality.

³³ For example, the Minneapolis Public Schools English Language Learner web page provides links to parent and student organizations, children’s literature in other languages, as well as materials and online

Monitoring the adequacy of language assistance services: In compiling this appendix, PLG found indications that ensuring consistent compliance with language assistance policies and practices is an ongoing challenge for recipients.³⁴ Thus, SEAs and LEAs should take steps to determine whether and to what extent policies and practices to provide LEP parents with meaningful access/adequate notice are being followed. An SEA or LEA may adopt monitoring and accountability practices such as advising LEAs or schools of language assistance requirements,³⁵ designating staff responsible for

support resources for teachers. See http://ell.mpls.k12.mn.us/Helpful_Links.html. Miami-Dade County Public Schools provides a Spanish list of links to outside websites for parents of students. See <http://bilingual.dadeschools.net/spanish/Recursos.asp>. The Rhode Island Department of Education web site includes links to a Spanish web-based service that provides information, activities and advice for educators and Spanish-speaking families of LEP children. See <http://www.ride.ri.gov/applications/ell/family-and-community/> and <http://www.colorincolorado.org/newsletters/boletin>.

³⁴ For example, the California State Auditor found that California schools did not always translate documents, particularly with respect to languages other than Spanish, as required by state law. See California State Auditor's Report, *supra* n. 8 at 13-29. The State Auditor also found that SEA monitoring of LEA compliance with the law had been limited. See *id.* As a result of amendments to the state statute, the California SEA is now required to monitor LEA compliance. See Cal. Ed. Code § 48985(b). In New York City, advocacy groups have alleged that there is continued noncompliance with New York City Chancellor's Regulation A-663. See Advocates for Children of New York and the New York Immigration Coalition, *A Bad Start to the School Year: Despite New Regulation Immigrant Parents Still Face Major Language Barriers* (September 2006), available from <http://www.advocatesforchildren.org/reports.php> (alleging inconsistent availability of translated materials and uneven knowledge of interpretation services among high school registration centers shortly before and after the effective date of the New York City Chancellor's Regulation); Advocates for Children of New York and the New York Immigration Coalition, *School Year filled with Missed Communication: Despite Chancellor's Regulation, Immigrant Parents Still Face Language Barriers* (June 2007) (*Missed Communication*), available from <http://www.advocatesforchildren.org/reports.php> (alleging continuing problems, including parents not receiving parent-teacher notices or reports cards in their native language, lack of signage regarding parents' rights to translation and interpretation, and lack of interpretation for school-based meetings); Advocates for Children of New York, *Our Children, Our Schools: A Blueprint for Creating Partnerships Between Immigrant Families and New York City Public Schools* (March 2009) at 15-16, available from <http://www.advocatesforchildren.org/reports.php> (alleging that despite the New York City Chancellor's Regulation, "language continues to be a major barrier" to immigrant parent participation, and that "[f]rom school events to school voicemails, parents whose primary language is not English have limited language access," and that LEP parents whose primary language is other than Spanish "face much larger hurdles.").

³⁵ For example, under the amended California translation statute, the California SEA must notify LEAs, by August of each year, of the schools within the LEA and the primary languages other than English, for which the translation of documents is required by state law. See California Education Code Section 48985(c). The SEA sent California LEAs a letter regarding the amended statute, attaching a document with suggested methods for LEA implementation of the statute. See letter from Gavin Payne, Chief Deputy Superintendent of Public Instruction, to County and District Superintendents, *Local Translation of Parental Notifications to be Monitored* (California SEA Letter) and Enclosure B (February 2007), available at <http://www.cde.ca.gov/ls/pf/cm/gavinab680ltr.asp>.

determining compliance with language access policies and practices,³⁶ providing staff training on language access policies and practices,³⁷ informing LEAs or schools of monitoring activities,³⁸ and gathering information about parents' perceptions of the effectiveness of language assistance through formal complaints or other means.³⁹

³⁶ New York City advocates recommended this practice to promote compliance with New York City Chancellor's Regulation A-663. See *Missed Communication*, *supra* n. 34 at 2, 23.

³⁷ See DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41465. New York City advocates recommended staff training as a way to promote compliance with New York City Chancellor's Regulation A-663. See *Missed Communication*, *supra* n. 34 at 3, 23-24.

³⁸ See, e.g. California SEA Letter, *supra* n. 35 (advising LEAs of new state law requirements and describing SEA monitoring activities).

³⁹ For example, the SFUSD uses a complaint form regarding district translation or interpretation services, which is provided on its website in English, Spanish and Chinese. The district's website informs parents that the complaint form may be completed in parents' "home language" and provides information about where the form may be submitted. See http://portal.sfusd.edu/template/default.cfm?page=parents.free_translation. The Governing Board Policies of the Tucson Arizona Unified School District include a "complaint/dispute resolution" process for parents who "believe they are not getting the interpreter/translation services they need to reasonably access information." See <http://www.tusd.k12.az.us/contents/govboard/SectK/KBF-R.html>. The district's website also includes a statement soliciting feedback, comments and recommendations about its language access procedures. See <http://www.tusd.k12.az.us/contents/depart/interpreter/feedback.html>.