



924 Cherry Street, 4th floor
Philadelphia, PA 19107-2411
E-mail: spaoletti@friendsfw.org

Telephone: (215) 733-0878
(800) 729-1607
Fax: (215) 733-0876

Direct: Sarah Paoletti (215) 733-0878, ext. 130

March 7, 2003

Mattie C. Condray
Senior Assistant General Counsel
Office of Legal Affairs
Legal Services Corporation
750 First Street, NE
Washington, DC 20002-4250
Via Electronic Mail: mcondray@lsc.gov

Re: LSC Limited English Proficiency Guidance – Request for Comments

Dear Ms. Condray:

Friends of Farmworkers, Inc. submits these comments in response to LSC's request for comments published in the Federal Register on January 9, 2002, regarding the issuance of guidance (formal or informal) on LEP compliance. Founded in 1975 as the Farmworker Civil Liberties Project of the ACLU, Friends of Farmworkers is a Pennsylvania statewide non-LSC legal services program for migrant and seasonal agricultural workers.

Friends of Farmworkers represents the Comité de Apoyo a los Trabajadores Agrícolas ("CATA"), the Farmworker Support Committee, a non-profit farmworker membership organization with offices in Pennsylvania and New Jersey, and membership in Puerto Rico, Mexico and the Eastern United States, whose membership consists primarily of Spanish-speaking LEP individuals. Friends of Farmworkers submits these comments on CATA's behalf.

INTRODUCTION

It is of critical importance that LSC address the provision of services to LEP communities by its recipients, as an ever-increasing percentage of eligible clients in need of services do not speak English as their primary language. A comparison of the Census 1990 and Census 2000 statistics demonstrate this demographic trend. The Latino population in Pennsylvania, for example, has increased 69.6% from 1990 to 2000. While some of this can be attributed to a significant undercount of immigrant populations in 1990, there is no denying that the immigrant populations, and specifically the LEP immigrant populations, are significant and are growing.

In Pennsylvania, according to the 2000 U.S. Census, 972,484 people, 8.4% of the population, speak a language other than English in their home, and of those, 368,257 individuals have been identified as speaking English less than “very well.” Of those identified as speaking English less than “very well,” 140,502 speak Spanish, 138,542 speak other Indo-European languages, and 76,183 speak Asian and Pacific Island languages.

In its just-released Final Report, the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System devoted an entire Chapter to the largely unmet needs of LEP litigants participating in one way or another in Pennsylvania’s judicial system. As part of the Report’s preparation, a survey was conducted to identify the number of languages spoken by the responding agencies’ constituents, and 28 different languages were identified. The Report further notes that in the calendar year 2000, the First Judicial District of Pennsylvania (Philadelphia County) received requests for interpreters in 57 different languages. Clearly, an individual that needs an interpreter to communicate in judicial proceedings will also need an interpreter and other language assistance in communicating with his or her attorney, where that attorney is not fully fluent in the client’s primary language. And the standards for interpretation need to be just as rigorous, as a misunderstanding due to language barriers between an attorney and client could be fatal to the client representation.

Although we have been unable to find data specifically linking LEP populations to those populations living in poverty, Census 2000 data and related data information clearly support our contention that due to changing demographics, LSC grantees must address language access issues. In September 2002, the U.S. Census Bureau issued its report, Poverty in the United States: 2001, Bernadette D. Proctor and Joseph Dalaker, detailing the racial and ethnic breakdown of persons living in poverty, and thus providing the context necessary for understanding the need for LSC recipients to address language access issues. The poverty rate for Hispanics is reported at 21.4 percent in 2001. According to the report, the number of poor Hispanics rose to 8.0 million in 2001, up from 7.7 million in 2000; the number of poor Asian and Pacific Islanders rose to 1.27 million, up slightly from 1.26 million in 2000. 5.2 million of those living below poverty in 2001 were foreign born, 1.1 million of whom were naturalized citizens.

Unfortunately, despite the clear evidence of growing LEP communities eligible for LSC-funded services, anecdotal evidence reveals that many LSC-grantees are not accessible to LEP clients, and therefore, at worst are not serving those communities at all, or, at best are not providing the same level of services to their LEP clients as they are to their fully English-proficient clients. This can be attributed to lack of awareness of the existence of the LEP populations; lack of understanding of the barriers faced by LEP persons in accessing services; and a lack of understanding of language access issues, such as the need for quality and professional interpreter services and recognition of the need to translate all signs and written informational materials into an LEP person’s primary language; and, of course, lack of resources.

The results are manifold. LEP clients are not accessing services because they do not know services are even available to them. When LEP clients do try to get services, they may be unable to effectively communicate with the intake person, or with the attorney assigned to their case. In some instances, as experienced by Friends of Farmworkers and similar migrant

farmworker legal services programs, legal services programs without Spanish-language capacity refer all Spanish-speakers to the migrant program, even in situations where they are the appropriate agency for the services sought. Similarly, community agencies that serve as a vital source of referrals and community educators are often forced to provide interpreter and translation services to anyone they refer, straining their capacity, and dampening their enthusiasm for providing the important links to the community.

It is important to note, however, that there are legal services programs across the country who have made a commitment to ensuring language minorities access to their services, and who have made great strides, and are continuing to make strides, to ensure that their services do not discriminate against LEP individuals. Some programs have recognized the need to have a language access policy, in which they make a commitment to ensure non-discrimination on the basis of language. Some programs are making concerted efforts to hire attorneys, paralegals and other staff who are bilingual or multilingual, and who can communicate directly with the LEP clients. In addition, programs are seeking in their new hires a greater ethnic diversity, in an effort to address not simply the language barriers, but the related cultural barriers as well. Recognizing that it may not be possible to have staff who can speak the primary language of every client that calls or walks through the door, programs have contracted either individually or together with other programs, with the Language Line, as well as in person interpreter agencies. Unfortunately, it is our belief and experience that these programs are in the minority.

THE ROLE OF LSC IN ENSURING NON-DISCRIMINATION OF LEP CLIENTS

LSC seeks comments on “whether guidance (formal or informal) from LSC on LEP compliance would assist grantees, or, alternately, whether there is some other form of information sharing that LSC can facilitate among grantees to help ensure all grantees are in compliance with LEP related requirements.” As a threshold matter, it is our position that this need not be an either/or proposition. LSC should issue formal guidance on LEP compliance, and can also play an extremely valuable role in ensuring compliance with said guidance through information sharing and other technical assistance designed to help grantees in their compliance efforts.

LSC has raised the question as to whether grantees are in fact subject to the requirements of Title VI of the Civil Rights Act. This issue has been addressed in the Comments submitted by the National Immigration Law Center, and we adopt those Comments herein. We would like to add, however, that LSC does not need to decide that issue definitively before deciding whether it should issue a Guidance, because, as is noted in the Request for Comments, LSC Grant assurances prohibit national origin discrimination. Discrimination on the basis of language has long been deemed tantamount to national origin discrimination and therefore, LSC rightly plays a role in ensuring that equal services are provided to LEP individuals, as it clearly has a role in ensuring that equal services are provided regardless of national origin.

1. LSC SHOULD ISSUE A FORMAL GUIDANCE

LSC should issue a formal Guidance to all grantees, as federal agencies have done, consistent with the mandate of Executive Order 13166. It is not necessary for LSC to issue regulations: regulations could create confusion among programs which, as recipients of federal funding through different federal agencies such as DOJ or HHS, would then be subject to LSC regulations and federal Guidances on the same issue; and, the issuance of regulations may leave grantees feeling as though they have been unjustifiably subjected to an additional regulatory burden. However, doing nothing is simply not a viable option. As discussed above, LSC has a clear role in ensuring nondiscrimination against LEP clients, and therefore has a responsibility to provide leadership to the its grantees on this issue.

In order to avoid confusion or conflicting standards, LSC should look to model its Guidance after that issued by DOJ, as the DOJ Guidance has served as the model for other federal agencies and thus will provide the greatest consistency. In doing so, LSC must be mindful that its guidance should be tailored to the legal services community, and should be careful to address specific issues that arise in the context of providing legal services, as they differ from those that may arise in the provision of other services and programs operating with DOJ funding. Though, what is most important at this time is that LSC issue a Guidance, providing the impetus for programs to address the language access needs of their clients and shortcomings of their services to their LEP communities.

2. LSC SHOULD TAKE ADDITIONAL MEASURES TO ENSURE COMPLIANCE WITH GUIDANCE

LSC can and should play a valuable role in working with its grantees to ensure access to services to LEP clients, through the collection and dissemination of information on ideas and best practices from grantees with experience serving LEP persons, and through the provision of other technical assistance. For example, LSC can distribute model Language Access Policies. LSC could also enter into a contract with Language Line, by which all LSC grantees could access Language Line when needed for interpreter services at a reduced rate. In Pennsylvania, Friends of Farmworkers has been working with Language Line on an umbrella contract that will include all of the PLS funded programs and all of the public interest legal organizations funded by the Philadelphia Bar Association that wish to participate, under which each program will have a separate contract with separate billing, but Language Line will aggregate all the usage of all the organizations that are covered by the master agreement for purposes of determining bulk rate discounts. LSC can also collect and disseminate training information on the use of interpreters, as it is common for people to mistakenly believe that anyone who is bilingual can serve as an interpreter, and to not deal with issues of conflict and attorney-client privilege or confidentiality when using a third party as an interpreter, such as a family member or friend. LSC can also consider the number of different languages in which services are provided, or need to be provided, in making its grant allocations.

3. ENFORCEMENT OF LEP NON-DISCRIMINATION

As stated above, LSC has the clear authority, both under its grant assurance contracts and under Title VI, to enforce the non-discrimination of LEP persons. However, we also agree that LSC does not necessarily have the training or the resources to effectively do so without any

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outside expertise and assistance. We therefore propose that an Advisory Council be created, comprised of LEP advocates, staff of LSC recipient programs and other stakeholders. Such a Council will have greater credibility in ensuring non-discrimination, as it will have the expertise, as well as the practical experiences needed to understand how services can be most effectively provided in the legal services context.

CONCLUSION

It is beyond time for LSC to act on ensuring that the needs of its grantees LEP clients are met. At a time when many legal services organizations are advocating on behalf of their LEP clients that federal, state and local agencies must take measures to ensure access for their clients, few legal services organizations have done anything to ensure that access exists within their own programs. This needs to change, and will only do so when and if LSC takes a leadership role through the issuance of a formal Guidance and technical assistance.

Please feel free to contact Sarah Paoletti at 215-733-0878, ext. 130, or spaoletti@friendsfw.org, if you have any questions.

Sincerely,

Sarah H. Paoletti
Staff Attorney