

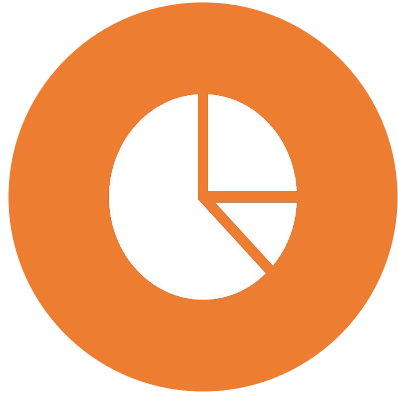
Serving Limited English Proficient Clients

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Acknowledgments for presentation content:

**Jessica De Loureiro, Esq. Justice center of southeast ma,
Lauren DE Oliveira, Esq. Community legal aid, Fitchburg office,
Germán chiriboga, University of Massachusetts CHAN MEDICAL SCHOOL
tere ramos, esq., Ramos law**

Topics to be Discussed



IMMIGRANT POPULATION
IN MASSACHUSETTS



LANGUAGE ACCESS LAW



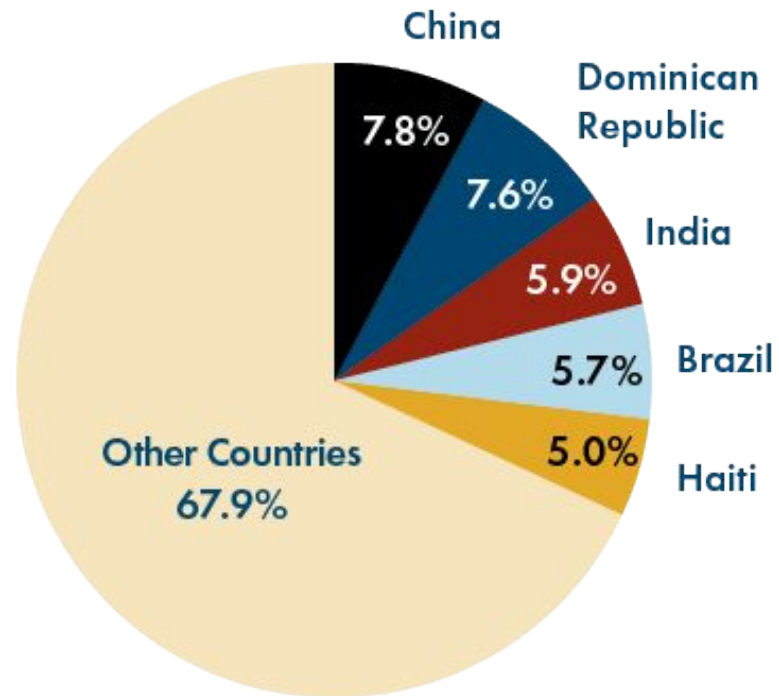
WORKING WITH
INTERPRETERS

Persons who are best served in a language other than English.

- Nothing replaces communicating with a client in their preferred language.
- Native speaker
- Non native speaker who is culturally competent.

What is the Immigrant population in MA?

The five largest immigrant populations in MA are from:

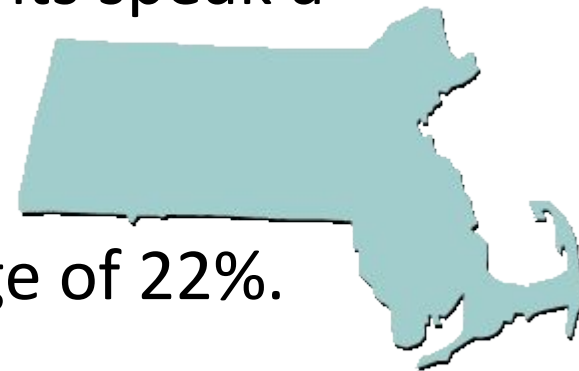


Source: U.S. Census 2017 American Community Survey



Limited English Proficient Persons in MA

- Massachusetts is one of the most linguistically diverse states in the country.
- Close to 25% of Massachusetts residents speak a language other than English.
- This is higher than the national average of 22%.



Why is language access important?

When language access is not provided, barriers exist to:

- Access important benefits and services
- Understand, exercise and preserve important rights and
- Comply with applicable responsibilities.

Language access should be contemplated as a possible factor in every case one handles. The pandemic has brought to light how critical language access is to access UI benefits, defend oneself in a court from an eviction or to obtain and understand COVID-19 information regarding vaccination, protection from the virus and how to stop the spread.

Who is a Limited English Proficient (LEP) person?

- Individual with a limited ability to do any of the follow

- Read
- Write
- Speak
- Understand



- **One may be able to have a conversation in English but nonetheless need an interpreter in court, at government agencies, schools, etc.**

Enforcement of Title VI of the Civil Rights Act of 1964— National Origin Discrimination Against Persons with Limited English Proficiency; Policy Guidance, 65 Fed. Reg. 50123 (Aug. 16, 2000).

Definitions of Interpretation and Translation

- Interpretation (oral)
- Translation (text)
- Written
- Sight

Simultaneous

Consecutive

What law covers Deaf and Hard of Hearing Persons?

The **Americans with Disabilities Act of 1990** (42 U.S.C. Section 12101) is a civil rights law that prohibits discrimination based on disability.

This law governs the rights of deaf and hard of hearing persons to receive effective communication in employment, state and local governments and places of public accommodation.

What law governs Language Access?

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or **national origin** in programs or activities **that receive federal financial assistance**. 42 USC § 2000d

Under federal law, Title VI of the Civil Rights Act, all recipients of federal funding must take reasonable steps to provide meaningful access.



National Origin

In *Lau v. Nichols* (1974), the Supreme Court held that **language is a proxy for national origin** and that national origin discrimination includes failing to provide LEP individuals “meaningful access” to recipient programs.



How is a Recipient defined?

- Entity that receives federal financial assistance and/or operates a program or activity.
- Includes grants, sub-grants, loans, equipment, federal property (whether it is leased or provided), personnel.
- Title VI coverage extends to **all** recipient and sub-recipient operations.

Executive Order 13166

- In 2000, Bill Clinton signed Executive Order 13166, providing further guidance on language access in all federally funded programs.
- This EO designated the DOJ to establish guidance to clarify Title VI obligations to assist recipients in developing guidelines for services to individuals with limited English proficiency. *65 Fed Reg. 50123*

Guidance, Directives and Rules of Professional Conduct

- Department of Justice (Guidance and Directives)
- Federal Agency Guidance (i.e., HUD, HHS, DOL, etc.)
- ABA Model Rules of Professional Conduct -
 - Rule 1.1 A lawyer shall provide competent representation to a client.
 - Rule 1.4 Effective communication between lawyer and client.
- ABA's Formal Ethics Opinion 500 issued Oct. 6, 2021, examines a lawyer's duties of communication and competence with a client in situations involving language access or when a client may have non-cognitive physical conditions affecting their ability to communicate, such as a hearing or speech disability.

“Meaningful” Access

- DOJ Guidance states that all recipients must take reasonable steps to provide “meaningful access.”
- Recipients must apply a four-factor analysis to determine what is “meaningful” access.

1	The number or proportion of Limited English Proficient (LEP) persons eligible to be served or likely to be countered by the program	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 to people’s lives;	4	The resources available to the grantee/ recipient and costs.

Source: DOJ Guidance 65 Fed. Reg. 50123-50125)

Obligations for Written Translation

- Four factor analysis will identify languages of the community
- Recipient must provide translations of **VITAL DOCUMENTS**.
 - If 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, it is considered strong evidence of compliance.
 - Translation of other documents, if needed, can be provided orally
- 41464 Federal Register / Vol. 67, No. 117 / Tuesday, June 18, 2002 / Notices

Obligations for Oral Interpretation

- **Oral interpretation must be provided for all LEP individuals.**
- LEPs who speak low incidence languages not identified in four factor analysis - recipients do not have to provided written translation of documents but **MUST** provide them with an oral interpretation of the documents.
 - If there are fewer than 50 persons in a language group that reaches the five percent trigger for written translations, 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.

What are Vital Documents?

- Depending on the frequency of the language, important written information that **must** be translated!
- These include:
 - Applications for benefits agency provides
 - Complaint and intake forms
 - Notices of rights or program administration
 - Appeal notices
 - Assessments used to determine eligibility or services
 - Standard forms that are considered “vital” to a program
 - Content on website

When a person self-identifies as LEP, the agency should offer these notices in the individual’s preferred language.



Language Access Plan

DOJ Guidance strongly recommends recipients create a Language Access Plan – a document that spells out how and when language access will be provided.

65 Fed Reg 50124



What Does This All Mean?

LEP individuals have the same right as anyone else to use public programs in **their** preferred language.

In all:

- ✓ schools
- ✓ courts
- ✓ public housing
- ✓ public programs
- ✓ **In most:**
- ✓ hospitals
- ✓ doctors' offices
- ✓ administrative agencies

Staff of public programs must:

- ✓ Speak in the person's language
- ✓ Help them as quickly as they can
- ✓ Respect the client's culture

Enforcement of Title VI

- DOJ can investigate complaints and enforce Title VI protections.
- There are also federal and state statutes that provide for language rights. Advocates should look to substantive areas of law for statutes, e.g., Fair Housing Act
- These laws may provide broader protections to LEP individuals and a private right of action in court.

Massachusetts Language Access Law

- MGL c. 151B prohibits discrimination due to race, color, religious creed, national origin, ancestry or sex.
- MA Executive Order 526 – prohibits discrimination by state agencies, including language access.
 - Guidance – A&F Administrative Bulletin #16: Language Access Policy and Implementation Guidelines. Office of Access and Opportunity of the A&F office shall receive complaints, The Guidelines provides guidance for state agencies to:
 - improve access to LEP persons,
 - reduce disparities and delays in the provision of state services/programs to LEP persons and
 - increase agency effectiveness and satisfaction.
- Statutes and regulations specific to state agencies: courts, DUA, MassHealth, DTA etc.
- Local or City Ordinances – City of Boston Ordinance *Establishing Language and Communications Access for City Services*

Language Access in MA State Agencies

Agency Website

- Should explain how to access an interpreter if one is needed

Language Access Plan

- should describe how they will provide service to LEP individuals
- should detail the complaint procedure if an individual does not receive language access

IMPORTANT to identify these procedures ahead of time for your LEP clients.

Working with Interpreters

Legal Services of New Jersey

<https://www.youtube.com/watch?v=pVm27HLLii>

[Q](#)

When to use an interpreter

- Offer an interpreter to all persons whose primary language is not English – even if they converse with you/others in English.
- When applicant/client responses do not match questions posed in English
- When you or applicant/client relies on another method of communication
- New client? Intake information should reflect client's preferred language.

Who is an appropriate interpreter?

Appropriate

Professional

Trained/knowledgeable

Qualified

Impartial

Inappropriate

Minor Children

Doesn't know subject or terms

Unqualified to interpret

Partial or biased.

Logistics

- Schedule additional time.
- Ensure client can understand and is comfortable with interpreter.
- Ask client to “teach back” critical information
- Explain confidentiality – both for you and interpreter
- Ensure the conversation is between you and the client
- Avoid compound questions

Logistics (cont'd)

Maintain eye contact with the client (if in person)

Speak directly to the client using the first person

No side conversations with client or interpreter

Speak clearly, plainly and slowly NOT loudly

Avoid legal jargon, acronyms and idioms

Pause for interpretation

What to instruct the interpreter?

- All information is confidential
 - Interpret everything that is said
 - Use the first and second person
 - Use same grammatical construction as the speaker
-
- Interpret the meaning as accurately as possible
 - ○ Ask speakers to pause, repeat, and slow down
 - ○ Ask for clarification or a timeout
 - Explain legal terms to the interpreter beforehand

DO NOT:

- Have side conversations
- Answer for the advocate or LEP person
- Do not omit, edit, or polish what was said

What to instruct the client?

- Explain the role of the interpreter: to be a conduit ONLY
- ★ Speak slowly and speak only one or two sentences at a time
- ★ Be patient - the interpreter may ask you to slow down or repeat what you just said
- ★ Allow the interpreter to finish interpreting before speaking, even if you understand what was said
- **DO NOT:**
 - **Have side conversations**
 - **Ask the interpreters any questions. Please address all questions and concerns with me, your advocate.**

Examples of instructions to clients

- **The interpreter is here to help us communicate, please speak directly to me and the interpreter will interpret what you say word-for-word.**
- **★ The interpreter has ethical guidelines that he/she must follow. Everything said in this meeting will be confidential.**
- **★ The interpreter cannot answer your questions or give you advice about your case. If you have questions, please ask me.**
- **★ Please speak clearly and in short sentences so the interpreter can accurately interpret everything you say. It's important that I understand what you're saying. If there is something that you do not understand, please tell me.**

Working with Telephone Interpreters

- ★ Get the interpreter's name or ID number at onset of call.
- ★ Give context and introductions to both interpreter and client.
- ★ Verify the client's understanding – both directly and indirectly.
- ★ Pause.
- ★ Report problems to your supervisor immediately.
- ★ Schedule ahead of time if using rare language.
- ★ If possible, use Zoom/Video

Working with Interpreters Virtually

- Interpreter must have visible and clear access to the LEP and all participants.
- Speaking must be slower and in shorter sentences to account for video lag time.
- If possible, use captions for the LEP person in their preferred language.

Additional Considerations & Barriers

- Ask yourself:

What assumptions
am I making?

What bias am I
bringing?

What cultural
understanding of
issues does the Client
bring?

**Listen to
the
Client!**

- What understanding of
systems and bureaucratic
processes does the Client
have?

Post Debrief with Interpreter

- How did this meeting go?
- Were there any moments where you felt you had to go beyond your role?
- Were there instances when had to add or subtract what was said?
- What suggestions do you have for how I can be more sensitive or more responsive to the client's culture?

How to know things are NOT going well?

- ★ Interpreted answers are much shorter or longer than client's response
- ★ Interpreted answers and responses do not appear to make sense
- ★ Interpreter frequently reformulates or changes words mid-sentence
- ★ Interpreter or client appears flustered, frustrated, or confused
- ★ Interpreter repeatedly asks for clarification
- ★ Client corrects interpreter or appears to disagree with the translation
- ★ Client opts to start speaking in English anyway

What to do when things go awry?

- **If you think the interpretation is not going well, STOP!**
- ★ If you suspect that the interpreter is editing, adding, or subtracting:
 - remind him/her/they to interpret everything that is said and to be a conduit
 - ask the interpreter if he/she/they needs a break
 - if necessary, get a different interpreter
 - If you are the interpreter, ask for a break. If you cannot understand the client, let the advocate know.

Court Interpreters

- MGL C. 221C - Court Interpreters for the Trial Court
- Pursuant to 221C - Standards and Procedures of the Office of Language Access (updated in 2020)
 - To provide judges, attorneys, and court personnel with essential information regarding the utilization of language access services for the Massachusetts Trial Court, and to provide interpreters with principles and protocols to follow when interpreting through the Office of Language Access
- MA Trial Court's Language Access Plan - 2014

Accessing Interpreters in Court

“Every clerk, recorder, registers [sic] office is staffed with personnel that are responsible for receiving interpreter needs and entering interpreter requests when scheduling court hearing events into MassCourts.”

-MA Trial Court Office of Language Access

Accessing Court Interpreters in Court (cont'd)

Standards and Procedures, 8.03 Procedures to Request Court Interpreters,...

(A) All interpreter requests by court personnel must be made through MassCourts, whether for plaintiffs, defendants, witnesses, or other individuals who must understand, testify, or otherwise participate in a court event.

(B) Requests or changes to existing requests for court interpreters within 48 hours of the events must first be entered into MassCourts and then followed with an email to OLA. Email requests for Spanish interpreters to spanishaccess@jud.state.ma.us. For court interpreters of languages other than Spanish or "LOTS," email lotsaccess@jud.state.ma.us.

Accessing Interpreters in Court (cont'd)

- Request interpreter as soon as you become involved in the case.
- Best to do it through MassCourts.
- Contact the court multiple times prior to scheduled hearing (up to the week of the proceeding) to confirm interpreter request received and interpreter will appear.

Accessing Interpreters in Court (cont'd)

All clerks' offices have language line. When there is no one available who speaks the LEP person's language, ask the staff person to use the language line.

Accessing Interpreters in Court (cont'd)

All ASL interpreter requests must be made through the MA Commission for the Deaf and Hard of Hearing.

<https://www.mass.gov/how-to/how-to-request-an-asl-interpreter-or-cart-provider>

Translation Committee in the Courts

The Committee provides translations of court forms, documents, and web text in the requested languages.

The Committee does NOT provide translations of individual case documents: e.g. Guardian Ad Litem reports, Affidavits, etc.

Working with a Court Interpreter

- Standards and Procedures Section 4.0 - The Code of Professional Conduct for Interpreters in the Trial Court
- Role:
 - Interpret (but not give) legal advice.
 - Translate but not explain legal forms.
 - Conduit of communication only. No side conversations with attorney or client.
- Advocates should:
 - provide context to interpreter to assist them with interpretation
 - provide expert witness reports or depositions to allow interpreter to familiarize him/herself with technical and/or legal terminology
- NOTE: OLA's position on court interpreter's role is that services are provided for the proceeding only and not to be used by attorneys to communicate with their clients outside of proceeding in hallways, etc. . Enforcement of this varies by court.

Issues with the Interpreter in Court

- No show
- Not competent
- Conflict of interest
- Unprofessional

What to do if you have issues with the interpreters

- Notify OLA by filing a **Language Access Complaint** - https://macourtsystem.formstack.com/forms/language_access_complaint
 - No show, competency or conflict of interest
- File a complaint with **Office of Workplace Rights and Compliance**- https://macourtsystem.formstack.com/forms/complaint_of_discrimination_harassment_and_or_retaliation
 - unprofessional, discriminatory, etc.

Language Access Bill

- **H3084/S1990 An Act Relative to Language Access and Inclusion**
 - Elements
 - Mandate, standardize and enforcement language access requirements
 - Advisory Board would provide oversight, technical assistance and guidance to comply with mandates
 - Provide a private right of action for limited English proficient individuals in court when they are not provided language access by a public facing agency

Language Access Resources

- MassLegalServices.org: Language Access Section
- <https://www.masslegalservices.org/library-directory/language-access>
www.lep.gov
- MassLegalService.org: Working with Interpreters Guide
- <https://www.masslegalservices.org/content/working-interpreters-training-guide>

Language Access Resources (cont'd)

- Get Involved! The Language Access Coalition (LAC) is a group of legal advocates
- across Massachusetts interested in language access issues in the courts, state
- agencies and legal services. LAC works to advance the rights of Limited English
- proficient (LEP) clients in these fora. Join the list serve on MassLegalServices.org.
- Language Access Incident Report Form:
- <https://www.masslegalservices.org/content/language-access-incident-report-form>

QUESTIONS?

