

*Equal access to the courts is fundamental to the legitimacy of our system of justice and the trust and confidence of Pennsylvanians in our courts.*

*Language services for individuals who speak limited English or are deaf or hard of hearing are essential to ensure that they are able to fully participate in judicial proceedings and court services, programs and activities in which their rights and interests are at stake.*



*The Unified* JUDICIAL SYSTEM *of* PENNSYLVANIA  
LANGUAGE ACCESS PLAN

# Language Access Plan for the Unified Judicial System of Pennsylvania

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## Language Access Plan for the Unified Judicial System of Pennsylvania

### I. Introduction and Purpose

Equal access to the courts is fundamental to the legitimacy of our system of justice and the trust and confidence of Pennsylvanians in our courts. Language services for individuals who speak limited English or are deaf or hard of hearing are essential to ensure that they are able to fully participate in judicial proceedings and court services, programs, and activities in which their rights and interests are at stake. Without these services, they are effectively denied the protection of our laws. Moreover, the courts themselves have an independent interest in ensuring the integrity of communications with limited English proficient and deaf or hard of hearing court users so that the fact finder can hear evidence accurately and deliver justice fairly.

The policy of the Unified Judicial System is to provide meaningful language access for all individuals who are Limited English Proficient ("LEP") to ensure that all persons have due process and equal access to all judicial proceedings, court services, programs and activities. Ensuring meaningful language access means providing timely, accurate, and effective language services at no cost.

In addition, it is the policy of the Unified Judicial System to provide equally effective communication to individuals who are deaf or hard of hearing, in part, by providing American Sign Language interpreters at no cost to litigants, witnesses and court spectators.<sup>1</sup>

As used in this Plan, the term "Limited English Proficient" refers to individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.<sup>2</sup>

The term "deaf or hard of hearing" means an impairment of hearing or speech, which creates an inability to understand or communicate the spoken English language.<sup>3</sup>

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<sup>1</sup> The rights of deaf or hard of hearing litigants, witnesses and court spectators, as well as those who are limited English proficient, are addressed in this Language Access Plan because the Administrative Office of Pennsylvania Courts' Interpreter Certification Program has jurisdiction over American Sign Language interpreters, pursuant to the Pennsylvania Interpreter Act and accompanying regulations. The Plan does not purport to and should not be read as fully delineating the rights of litigants, witnesses and court spectators under the Rehabilitation Act and Title II of the Americans with Disabilities Act. Pennsylvania Rules of Judicial Administration Nos. 250-252 require all 60 judicial districts as well as appellate courts and Supreme Court boards and committees to appoint ADA coordinators, promulgate ADA policies and grievance procedures, and make this information available to the public. Those policies, as well as the names of the ADA coordinators for the various judicial districts, can be found on the UJS website at <http://www.pacourts.us/judicial-administration/court-programs/americans-with-disabilities-act>.

<sup>2</sup> See 42 Pa.C.S. §4402, definition of "Person with limited English proficiency."

<sup>3</sup> *Id.*, definition of "Deaf."

"Judicial proceeding" means "[a]n action, appeal or proceeding in any court of this Commonwealth."<sup>4</sup>

"Court services, programs, and activities" means services administered under the authority of the courts. This can include, for example, domestic relations, probation, pro se clinics, Alternative Dispute Resolution ("ADR"), or cases involving court-appointed counsel. Court services, programs, and activities, as defined in this Language Access Plan ("LAP"), do not include activities that, although related to court proceedings or provided in the courthouse, are not under the authority of the court. This includes, for example, services provided by the Prothonotary or Clerk of Court offices and the District Attorney's or Public Defender's office. These offices may have their own legal obligation to provide language access, but they are not covered by this Language Access Plan. *See also* Section V(D) Language Access to Services, Programs, and Activities Outside the Courtroom.

The purpose of this Plan is to provide a framework for the provision of meaningful language access for those individuals who are LEP, deaf, or hard of hearing who come into contact with courts of the Unified Judicial System of Pennsylvania. This Language Access Plan:

- (i) specifies the language access requirements applicable to Pennsylvania courts;
- (ii) assesses language access services currently available to persons who are LEP, deaf, or hard of hearing in Pennsylvania courts;
- (iii) identifies action steps that will be taken to fully implement language access requirements or planned improvements of language services; and
- (iv) provides the timeframes within which these steps will be taken.

The sixty judicial districts within the Unified Judicial System ("UJS") have created their own language access plans, based on an assessment of the language needs of their own court users, utilizing a template provided by the Administrative Office of Pennsylvania Courts ("AOPC"). Each judicial district has appointed a language access coordinator to oversee creation and implementation of its plan. These district-specific language access plans went into effect on March 1, 2015.

This was an important step toward achieving meaningful language access in the Pennsylvania courts. However, ensuring the most comprehensive access possible for persons who are LEP, deaf or hard of hearing is an evolving process. The UJS Language Access Plan ("Plan") provides additional policy guidance and a course of action for improving the provision of language access services throughout all sixty judicial districts and the appellate courts.

Judicial districts will be asked to review this Plan and to supplement and amend their district language access plans accordingly.

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<sup>4</sup> *Id.*, definition of "judicial proceeding."

## II. Legal Basis for this Language Access Plan

The Unified Judicial System of Pennsylvania is committed to ensuring meaningful access to its limited English proficient and deaf and hard of hearing court users. Title VI of the federal Civil Rights Act of 1964 states that "[n]o 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 subjected to discrimination under any program or activity receiving Federal financial assistance."<sup>5</sup> Further, Section 504 of the Rehabilitation Act requires that "[n]o otherwise qualified individual with a disability...shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794. The Americans with Disabilities Act extends the Rehabilitation Act's broad obligation to prevent discrimination on the basis of disability to all public entities regardless of Federal financial assistance. 42 U.S.C. § 12132.

Pursuant to the "Guidance to the Federal Financial Assistance Recipients" issued by the United States Department of Justice, the courts are covered "recipients" of federal funds. As such, they must, with respect to LEP parties:

- Provide qualified interpreter assistance in any judicial proceeding involving LEP parties in interest and witnesses;
- Take reasonable steps to ensure that LEP court users are given meaningful access to court programs, services, and information; and
- Provide this access free of charge.<sup>6</sup>

The Americans with Disabilities Act of 1990 and Rehabilitation Act of 1973<sup>7</sup> require courts to ensure effective communication for individuals with disabilities. To that end, public entities are required to provide appropriate auxiliary aids and services, including the provision of qualified sign language interpreters, to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity of a public entity.

In addition to the federal law, the Pennsylvania Interpreter Act, Act 172 of 2006, requires the appointment of qualified interpreters for judicial proceedings. As stated in the "legislative purpose" section of the Act,

It is hereby declared to be the policy of this Commonwealth to secure the rights, constitutional and otherwise, of persons who because of a non-English speaking cultural

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<sup>5</sup> 42 U.S.C. § 2000d. *See also* Department of Justice regulations regarding implementation of Title VI of the Civil Rights Act of 1964 at 28 C.F.R. § 42.101, *et seq.* "Title VI" as used in this Plan includes these regulations.

<sup>6</sup> *See* 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 (June 18, 2002), *available at* <https://www.gpo.gov/fdsys/granule/FR-2002-06-18/02-15207>. *See also* Letter from Assistant Attorney General, Civil Rights Division, Department of Justice, to Chief Justices and State Court Administrators (Aug. 16, 2010), *available at* [https://www.lep.gov/final\\_courts\\_ltr\\_081610.pdf](https://www.lep.gov/final_courts_ltr_081610.pdf).

<sup>7</sup> *See* 42 U.S.C. § 12131, *et seq.*; 29 U.S.C. § 794; 28 C.F.R. § 35.160 (Subpart E – Communications).

background or who because of an impairment of hearing or speech are unable to understand or communicate adequately in the English language when they appear in court or are involved in judicial proceedings.<sup>8</sup>

Regulations were also enacted pursuant to Act 172.<sup>9</sup> Among other matters, these regulations address when certified or otherwise qualified interpreters must be used; when remote interpretation may be used; how to determine the qualifications of an interpreter before appointing one; interpreter certification requirements; and interpreter rules of professional conduct.

Finally, Guidelines for the Procurement and Appointment of Interpreters (“Interpreter Guidelines”) address additional practical information about working with interpreters in the courts, including such issues as what qualifications are required of interpreters for various types of judicial proceedings and court services; how much to pay interpreters; how to search the AOPC’s Interpreter Certification Program roster; and when to report problems to the Interpreter Certification Program.<sup>10</sup>

### **III. General Principles of Language Access**

In recognition of the obligation and commitment to provide meaningful access to court users who are LEP, deaf, or hard of hearing, the Unified Judicial System acknowledges the following basic principles of language access:

- Courts are responsible for early identification of the need for language services, including, among other things, providing timely and effective notice to those in need of such services.
- Interpretation and translation must be provided by the court at no cost.
- Persons who request language access services should be provided with them, in accordance with Title VI of the Civil Rights Act and the Pennsylvania Interpreter Act.
- Language access services should be offered, even if not requested, where the need is apparent or where the ability of a person to understand and communicate in English is unclear.
- Individuals who are LEP, deaf, or hard of hearing should never be expected to use informal interpreters, such as family members, opposing parties, or their

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<sup>8</sup> See 42 Pa.C.S. § 4401.

<sup>9</sup> See Administrative Regulations Governing Court Interpreters for Persons with Limited English Proficiency and for Persons Who Are Deaf or Hard of Hearing, 204 Pa. Code ch. 221 §101, *et seq.* (2010).

<sup>10</sup> See Administrative Office of Pennsylvania Courts, *Interpreter Certification Program: Guidelines for the Procurement and Appointment of Interpreters* (Supreme Court of Pennsylvania), Mar. 27, 2013, available at <http://www.pacourts.us/assets/files/setting-1700/file-229.pdf?cb=942e36>.

counsel, nor should the courts allow them to be used.

- Having an in-person interpreter for judicial proceedings is the most effective method to ensure effective communication for LEP court participants and is strongly preferred under the law. Remote interpretation through audio-visual technology, use of Video Remote Interpreting (“VRI”) or telephone is permitted only in limited circumstances, as set out in the Pennsylvania Interpreter Act regulations.
- Courts may use bilingual staff to provide in-language assistance for general court business. Telephone or other remote interpretation may be used to assist monolingual staff. Designated bilingual staff may not be used for interpretation, unless they are also appropriately credentialed to interpret.
- Courts must provide interpreters in a timely manner.
- When there is no interpreter listed on the AOPC Interpreter Certification Program roster available for a specific language, the judicial district must request assistance from the Interpreter Certification Program (“ICP”) in locating a qualified interpreter.
- Courts must provide meaningful language access to court users who are LEP, deaf, or hard of hearing in all services, programs, and activities of the courts. This means access must be provided in judicial proceedings (both criminal and civil), and for the general business of the courts.
- Courts should consider their need for demonstrably proficient bilingual staff and should plan for recruiting and hiring staff who speak the language(s) most prevalent in the locality so they can provide timely language assistance in a way that avoids delay, denial, or effective denial of the service or benefit, or the imposition of an extra burden on an LEP person.
- Courts must identify and translate “vital” court documents and forms. Vital documents include those 1) containing or soliciting information critical for obtaining access to court and court services, 2) advising of rights or responsibilities including the consequences of violating a court order, or 3) required by law.
- This Language Access Plan applies to the appellate courts as well as to the judicial districts of Pennsylvania.
- The decision whether to appoint a foreign language interpreter in a proceeding is within the authority of the trial judge, to be exercised in accordance with Title VI and Act 172.<sup>11</sup>

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<sup>11</sup> “As a general rule, the determination of whether an interpreter is warranted in a particular case is within the sound discretion of the [trial] court. The discretion of the trial court, however, is to determine the factual question of whether an interpreter is needed; a trial court does not have discretion to decide whether a defendant who needs an interpreter has a legal entitlement to one. Thus, where the court is put on notice that a defendant has difficulty understanding or speaking the English language, it must make unmistakably clear to him that he has a right to have a competent translator assist him . . .” *In re*

- Sign language interpreters must be appointed whenever requested, by either a party or non-party to a case.
- The Unified Judicial System will strive to institutionalize the concepts and practices of this Plan in its processes.

#### IV. Language Needs in Pennsylvania

Pennsylvania is the tenth most linguistically diverse state in the country. Statewide, 1,218,174, or 10.2%, of Pennsylvania’s 12 million residents speak another language at home. They speak more than 100 languages and are dispersed throughout the Commonwealth. The most commonly spoken languages vary both within and among counties, and the influx of new immigrants brings with it emerging new languages throughout the state.

A 2014 AOPC survey of the district court administrators of Pennsylvania gives a sense of our linguistic diversity.<sup>12</sup> The languages for which interpreters were most frequently requested in Pennsylvania’s 60 judicial districts are listed below. The numbers in parentheses reflect the number of Pennsylvania judicial districts in which an interpreter for that language has been requested.

- |                                |                  |
|--------------------------------|------------------|
| 1. Spanish (60)                | 6. Arabic (16)   |
| 2. American Sign Language (51) | 7. Korean (11)   |
| 3. Mandarin Chinese (28)       | 8. Bosnian (9)   |
| 4. Russian (23)                | 9. Serbian (9)   |
| 5. Vietnamese (16)             | 10. Croatian (9) |

Data from the Penn State Data Center reflects that 14 counties in Pennsylvania have a population that is more than 10 percent LEP. A chart reflecting the top 15 counties for LEP population in Pennsylvania follows.

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*Garcia*, 984 A.2d 506, 511 (Pa. Super. 2009), citing, *inter alia*, 42 Pa. C.S. § 4412, Appointment of Interpreter. See also *Commonwealth v. Knox*, 142 A.3d 863, 868-9 (Pa Super. 2016).

<sup>12</sup> Survey distributed to District Court Administrators at language access trainings provided by the AOPC in April, 2014.



Percent of Non-English Speaking Persons by County

Source: U.S. Census Bureau; 2010-2014 American Community Survey 5-Year Estimates<sup>13</sup>

County	Total Population (5 years and over)	Speak only English	% Speak only English	Spanish	% of population Spanish speaking	All Other Non-English Speaking	% Other Non-English Speaking	Total LEP Citizens	% LEP Population
Lehigh	333,274	258,859	77.7%	51,074	15.3%	23,341	7.0%	74,415	22.3%
Philadelphia	1,440,405	1,125,246	78.1%	145,257	10.1%	169,902	11.8%	315,159	21.9%
Berks	388,412	322,101	82.9%	50,956	13.1%	15,355	4.0%	66,311	17.1%
Lancaster	491,624	414,705	84.4%	31,849	6.5%	45,070	9.2%	76,919	15.6%
Monroe	160,381	136,803	85.3%	13,417	8.4%	10161	6.3%	23,578	14.7%
Montgomery	762,889	664,123	87.1%	25,555	3.3%	73,211	9.6%	98,766	12.9%
Northampton	283,711	248,472	87.6%	20,237	7.1%	15,002	5.3%	35,239	12.4%
Chester	476,502	419,001	87.9%	26,197	5.5%	31,304	6.6%	57,501	12.1%
Delaware	526,934	465,003	88.2%	14,120	2.7%	47,811	9.1%	61,931	11.8%
Pike	54,495	48,473	88.9%	3,041	5.6%	2,981	5.5%	6,022	11.1%
Bucks	593,904	529,337	89.1%	18,272	3.1%	46,295	7.8%	64,567	10.9%
Dauphin	253,181	225,667	89.1%	12,293	4.9%	15,221	6.0%	27,514	10.9%
Lebanon	126,697	113,351	89.5%	8,879	7.0%	4,467	3.5%	13,346	10.5%
Centre	149,665	134,771	90.0%	2,469	1.6%	12,425	8.3%	14,894	10.0%
Union	42,870	38,772	90.4%	1,703	4.0%	2,395	5.6%	4,098	9.6%

<sup>13</sup> Prepared by AOPC Research and Statistics based upon "Languages Spoken at Home by Ability to Speak English for the Population 5 Years and Over", Table B16001, U.S. Census Bureau, 2010-2014 American Community Survey 5-Year Estimates, available at

[https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_15\\_5YR\\_B16001&prodType=table.](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_5YR_B16001&prodType=table)

The following reflects the top 10 non-English languages spoken in the Commonwealth in general, as opposed to solely in the courts:

Top 10 Foreign Languages Spoken in Pennsylvania<sup>14</sup>

Language:	# of People:	% of Population
Spanish	541,221	4.4%
Chinese (Mandarin, Cantonese, or other dialects)	78,148	0.6%
Other West Germanic Languages <sup>15</sup>	61,423	0.5%
German	48,433	0.4%
Italian	43,948	0.4%
French	39,453	0.3%
Vietnamese	37,423	0.3%
Russian	36,081	0.3%
Other Asian languages <sup>16</sup>	36,343	0.3%
Korean	29,222	0.2%

The Pennsylvania Department of Labor and Industry’s Office for the Deaf and Hard of Hearing estimates that 8.6% of Pennsylvania’s population is deaf or hard of hearing.<sup>17</sup> This percentage is based on the national deaf and hard of hearing population figures. Accordingly, assuming a total population in the Commonwealth of 12,308,788 and applying the 8.6% assumption yields a deaf or hard of hearing figure of 1.1 million people.<sup>18</sup> Other sources give varying figures on the extent of the deaf and hard of hearing population in the Commonwealth. American Sign Language is second only to Spanish in terms of the frequency with which interpreters are requested in Pennsylvania's courts.

The AOPC will review updated figures on the LEP, deaf, and hard of hearing populations utilizing Pennsylvania's courts’ annual data gleaned from the Language Access Data Collection (“LADC”) tool created by the AOPC Information Technology department and utilized by the judicial districts to track the provision of interpreters. The AOPC will also review figures on these

<sup>14</sup>*Id.*

<sup>15</sup> "Other West Germanic Languages" is a designation of the PSDC, and includes Dutch, Pennsylvania Dutch, Afrikaans and Frisian.

<sup>16</sup> "Other Asian languages," likewise a designation of PSDC, include Dravidian languages (Malayalam, Telugu, Tamil), and Turkic languages (Turkish, Turkmen, Tungus).

<sup>17</sup> See Pennsylvania Department of Labor and Industry, Office for the Deaf and Hard of Hearing, "How Many People in Pennsylvania are Deaf or Hard of Hearing?," available at <http://www.dli.pa.gov/Individuals/Disability-Services/odhh/odhh-resources/Documents/PA%20Demographics%20How%20Many%20Pennsylvanians%20are%20Deaf%20or%20Hard%20of%20Hearing.pdf>.

<sup>18</sup> *Id.*

populations as they become available through the U.S. Census Bureau and the Pennsylvania Office for the Deaf and Hard of Hearing, and take them into account in future planning for language access services.

## V. Language Services and How to Use Them

### A. Oral Language Services

#### 1. Interpreters

***Qualified in-person interpreters provide the best communication experience for judicial proceedings involving court users who are LEP or who communicate using sign language. The Interpreter Certification Program ("ICP") orients, tests, and certifies interpreters to work in Pennsylvania courts. District Court Administrators and Language Access Coordinators should be familiar with the ICP's Interpreter Roster, should utilize it as their first resource for securing interpreting services, and should be aware that the ICP can assist them with locating interpreters in rare languages and can answer the full range of questions relating to working with interpreters.***

#### **Current Status**

While the AOPC ICP orients, tests, and certifies interpreters to work in our courts, it is the language access coordinators for the individual judicial districts who arrange for and schedule those interpreters to provide services for specific court events.<sup>19</sup>

The UJS provides interpreters for all courtroom hearings in compliance with Title VI; the rules and policies set forth in the Pennsylvania Interpreter Act;<sup>20</sup> the regulations under the Act;<sup>21</sup> and the Guidelines for the Procurement and Appointment of Interpreters issued by the AOPC.<sup>22</sup> Interpreter request and waiver forms are available on the Interpreter Certification Program page of the UJS website.<sup>23</sup>

The ICP maintains a statewide roster of certified and otherwise qualified interpreters who may work in the courts. The roster is available to court staff and the public online.<sup>24</sup> The geographic and time availability of each interpreter is included in the roster, along with the interpreter's language or languages of expertise. Judicial officers and the judicial

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<sup>19</sup> As noted in the template created by the AOPC and utilized by the judicial districts to create their own language access plans, "[t]he language access coordinator for this judicial district ensures this plan is followed, advises the court on potential updates to this plan, and coordinates provision of language access services for the judicial district as they arise."

<sup>20</sup> See Act 172 of 2006, 42 Pa.C.S. § 4401, *et seq.*

<sup>21</sup> See 204 Pa. Code ch. 221 §101, *et seq.*

<sup>22</sup> See *Guidelines for the Procurement and Appointment of Interpreters*, available at [http://www.pacourts.us/assets/files/setting-410/file-229.pdf#search=%22procurement appointment of interpreters%22](http://www.pacourts.us/assets/files/setting-410/file-229.pdf#search=%22procurement%20appointment%20of%20interpreters%22).

<sup>23</sup> See *Interpreter Program*, The Unified Judicial System of Pennsylvania (Mar. 2003), available at <http://www.pacourts.us/judicial-administration/court-programs/interpreter-program>.

<sup>24</sup> See *Interpreter Roster*, The Unified Judicial System of Pennsylvania, available at <http://www.pacourts.us/judicial-administration/court-programs/interpreter-program/interpreter-roster>.

districts must give preference to the appointment of a certified interpreter for language access issues in all judicial proceedings, unless a certified interpreter is not available.

Otherwise qualified interpreters should also be selected from the statewide roster. Where the judicial district cannot locate an interpreter in the needed language on the interpreter roster, the Interpreter Guidelines dictate that districts should request assistance from the ICP by completing the interpreter request form available on the Interpreter Program page of the UJS website. In addition, for all questions and complaints regarding the role of an interpreter, payment, ethical and performance issues, etc., districts should contact the Interpreter Certification Program Administrator.<sup>25</sup>

The Guidelines for the Procurement and Appointment of Interpreters, referenced as "Interpreter Guidelines" on the Interpreter Certification Program's website, are an additional resource for language access coordinators. The Guidelines include standard rates for compensating interpreters, as well as a chart designating the different proficiency levels of interpreter who should be appointed for different types of cases.<sup>26</sup> For example, a "master" level (e.g., highest level of achievement on the proficiency exam taken by interpreters) interpreter should be used for a capital case, as the consequences of inadequate interpretation are more significant than they would be for a less serious matter.

Finally, in conjunction with 2014 policy guidance issued by the AOPC, the regulations under the Interpreter Act do the following:

- provide a system for the procurement and appointment of interpreters;<sup>27</sup>
- require that in-person, certified interpreters be given preference over otherwise qualified and/or telephonic interpreters;<sup>28</sup>
- establish a compensation fee schedule;<sup>29</sup>
- establish requirements for interpreter certification;<sup>30</sup>
- adopt rules of professional conduct and a disciplinary policy for judiciary interpreters;<sup>31</sup>

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<sup>25</sup> The ICP at the AOPC can be reached via email or phone at 215.560.6300 or [interpreterprogram@pacourts.us](mailto:interpreterprogram@pacourts.us). The Interpreter Program's webpage provides a wealth of information, including interpreter request forms, an interpreter waiver form, and a variety of resources for present and potential court interpreters, including the annual program calendar for the Interpreter Program (including dates of the ICP orientation, held multiple times per year in Pittsburgh, Harrisburg, and Philadelphia), information about the written and oral parts of the certification exam and the dates when it is given, continuing education resources, and resources to assist working interpreters.

<sup>26</sup> See *Guidelines for the Procurement and Appointment of Interpreters*, The Unified Judicial System of Pennsylvania, available at [http://www.pacourts.us/assets/files/setting-410/file-229.pdf#search=%22procurement appointment of interpreters%22](http://www.pacourts.us/assets/files/setting-410/file-229.pdf#search=%22procurement%20appointment%20of%20interpreters%22).

<sup>27</sup> See 204 Pa. Code ch. 221 § 201, *et seq.*; see also Interpreter Certification Program, Administrative Office of Pennsylvania Courts, Supreme Court of Pennsylvania, *Guidelines for the Procurement and Appointment of Interpreters* (2013), available at <http://www.pacourts.us/assets/files/setting-1700/file-229.pdf?cb=942e36>.

<sup>28</sup> See 204 Pa. Code ch. 221 § 203.

<sup>29</sup> 204 Pa. Code ch. 221 Schedule E.

<sup>30</sup> 204 Pa. Code ch. 221 §§ 301-311.

<sup>31</sup> 204 Pa Code ch. 221 §§ 401-407.

- provide an oath<sup>32</sup> to be administered to both in-person interpreters and remote interpreters (i.e., when video remote or telephonic interpretation is utilized);
- set the conditions for remote interpretation<sup>33</sup> (can only be used (1) when efforts to secure a live interpreter have been exhausted, and (2) for non-evidentiary hearings expected to last 30 minutes or less and for which only one interpreter is being used);
- require the use of a voir dire (and provide a sample voir dire) for qualifying otherwise qualified and remote interpreters;<sup>34</sup>
- define how waivers are to be conducted;<sup>35</sup>
- require that interpreters be provided free of charge to all LEP individuals who are "principal parties in interest," which includes a plaintiff or defendant in a protection from abuse case, a defendant, parent of a defendant, or direct victim in a juvenile matter, a defendant or direct victim in a criminal proceeding, a named party in any other judicial proceeding, or a person who brings an action on behalf of a minor or incompetent person<sup>36</sup>; and
- require that interpreters be provided free of charge to all deaf or hard of hearing court users, whether parties to a case, witnesses, family members, or spectators.<sup>37</sup>

### **Required Action**

The judicial districts, in particular the Language Access Coordinators, should continue to be trained regarding the availability of the Interpreter Certification Program ("ICP") as a resource, how to utilize the ICP roster, and how to utilize effective management and cost-saving practices for delivery of quality interpreting services in their courts, such as calling interpreter cases promptly so that the interpreter can move on to other courtrooms, and scheduling interpreter cases in the same courtroom on specific days of the week or at specific times of the day. See also Section IX Training and Continuing Education, regarding training of interpreters.

### **Projected Timeframe**

Starting within one month of the approval of the UJS Language Access Plan and ongoing.

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<sup>32</sup> *Id.* § 106.

<sup>33</sup> *Id.* § 104.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* § 105.

<sup>36</sup> *Id.* §§ 102(o), 107(b).

<sup>37</sup> *Id.* § 108. In this regard, the regulations under the Pennsylvania Interpreter Act mirror the Americans with Disabilities Act, which provides a greater scope of coverage in two ways: (1) a public entity such as a court need not be a recipient of federal funds in order to be bound by the ADA, and (2) deaf individuals, whether a principal party in interest to a case or not, have a right to a free sign language interpreter upon request. See [https://www.ada.gov/briefs/prakel\\_soi.pdf](https://www.ada.gov/briefs/prakel_soi.pdf) for a discussion of these issues.

### **Responsible Staff**

The AOPC Coordinator for Court Access and Interpreter Certification Program Administrator and Judicial District Language Access Coordinators.

## **2. Bilingual Staff**

***Court staff who are demonstrably proficient in languages other than English can serve as a valuable resource for communication with LEP and deaf or hard of hearing court users outside the courtroom, but courts need guidance regarding assessment of language skills, a policy governing use of staff to facilitate communication, and training.***

### **Current Status**

Staff use their bilingual skills at their discretion, or at the direction of their district court administrator. Staff who can communicate in a language other than English, including sign language, do not undergo any statewide assessment of their proficiency in that language unless they complete the requirements for the Pennsylvania ICP. There is no policy or statewide training on how bilingual staff should use their language skills for communication outside the courtroom.

### **Required Action**

- When vacancies occur, and acknowledging that demographics can change periodically, courts should strive to recruit demonstrably proficient bilingual staff in the language that is most common in that county, especially in situations where a court's usage of telephonic interpreting for a particular language becomes a significant expense.
- A policy, language assessment process, and specific training should be created to ensure that court staff who identify as bilingual are able to provide accurate service in both English and another language. Training should include legal terminology and ethical limitations. The policy should also prohibit unauthorized staff from providing service in another language and bar bilingual staff without an interpreting credential from interpreting.

### **How This Can Be Accomplished**

The AOPC should, in concert with stakeholders, develop a policy for the use of designated bilingual court staff in providing court services in languages other than English in places of court contact with the public, excluding judicial proceedings for which the ICP has already been established. Places of court contact with the public include, but are not limited to, clerks' offices, filing desks, information desks, security stations, and offices for payment of court fees and fines.<sup>38</sup>

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<sup>38</sup> We encourage employees at these locations to implement the practices set forth in this Plan, while acknowledging that some may not be employees of the UJS and are therefore not subject to its authority and control.

To the extent bilingual media are available in a given county, courts should make an effort to utilize the media - newspapers, radio, and websites - to advertise for bilingual employees. In addition, courts should conduct outreach to high schools, community colleges and universities as a possible source of bilingual employees to assist LEP individuals, where appropriate, outside the courtroom.<sup>39</sup>

### **Projected Timeframe**

Policies should be developed within twelve months of approval of the statewide Plan. A language assessment process and training program should be created within eighteen months of approval of the statewide Plan. Implementation should begin immediately thereafter.

### **Responsible Staff**

The AOPC should provide leadership and work with judicial court staff, the proposed Monitoring and Evaluation Team, (see Section XI), and other stakeholders.

## **B. Written Language Services**

### **1. Court Forms and Documents**

***The translation of vital forms and documents so that LEP individuals have equal access to needed information and court services is a critical aspect of meaningful access to the courts.***

### **Current Status**

Some court forms have been translated and appear on the UJS website. A package of 11 Protection from Abuse ("PFA") forms has been translated into 11 languages commonly spoken by LEP court users in Pennsylvania.<sup>40</sup> As required by the underlying statute, the Protection from Sexual Violence and Intimidation ("PSVI") forms were translated into Spanish and posted on the UJS website on the effective date of the enabling legislation, July 1, 2015.<sup>41</sup> Finally, a package of bilingual criminal protective orders has been translated into five top non-English languages (Mandarin Chinese, Khmer/Cambodian, Russian, Spanish, and Vietnamese), and also appears on the UJS website.<sup>42</sup>

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<sup>39</sup> When testing bilingual candidates for positions within the courts, courts should keep in mind the following considerations: (1) all candidates for bilingual positions should be tested consistently, (2) a qualified person or vendor should perform the assessment of candidates, (3) a determination will need to be made about the required level of skill for the bilingual position, as a threshold matter, and (4) pay differentials or bonuses, if offered, must be given in a consistent fashion. When considering issues such as whether to develop bilingual positions or job titles, AOPC Legal is available as a resource to discuss and advise on relevant employment laws.

<sup>40</sup> These appear on the "Forms/For the Judiciary" page of the UJS website, at <http://www.pacourts.us/forms/for-the-judiciary/> (scroll down to "Bilingual Forms").

<sup>41</sup> The PSVI forms are split, with some appearing on the "Forms/For the Judiciary" page, <http://www.pacourts.us/forms/for-the-judiciary/> (scroll down to "Order of Relief from Sexual Violence or Intimidation") and some on the "Forms/For the Public" page, <http://www.pacourts.us/forms/for-the-public/> (scroll down to "Protection of Victims of Sexual Violence and/or Intimidation").

<sup>42</sup> These are available at <http://www.pacourts.us/forms/for-the-judiciary/> (scroll down to "Bilingual Criminal Protective Orders").

At this time, no state standards exist for the use of certified translators or high-quality written translation services. Each county manages its own documents and forms translation process without any particular criteria or quality control. Some counties even use machine translation software with no human oversight. This may result in low quality translation and incomplete or even erroneous information for our LEP populations.<sup>43</sup>

### **Required Action**

Due to the complexity of high-quality translation, the Supreme Court should assign to a Monitoring and Evaluation Team<sup>44</sup> the task of developing policies and best practices related to document translation. In addition to translation, the Monitoring and Evaluation Team should also be tasked with identifying vital documents and prioritizing them to be translated upon availability of funding.

The Monitoring and Evaluation Team should work with courts to provide samples and templates of multilingual information for court users that are applicable on a statewide basis and adaptable for local use. The Monitoring and Evaluation Team should collaborate with interpreter and translator organizations and courts to develop a legal translation glossary, taking into account regional differences, to maintain consistency in the translation of legal terms and adopt an appropriate style manual guide.

The prioritization process should consider which vital documents are used most, the gravity of consequences for not having that information or document in one's own language, and the documents most often sight-translated by interpreters in courts.<sup>45,46</sup>

Ultimately, the prioritization process must be consistent with the Department of Justice ("DOJ") guidance on vital documents, as well as on how to determine for which language groups vital documents must be translated.

For the purpose of this Language Access Plan, vital documents include documents 1) containing or soliciting information critical for obtaining access to court and court services, 2) advising of rights or responsibilities including the consequences of violating a

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<sup>43</sup> It is also important to recognize, however, that not all languages have a written component, and some LEP persons may also have literacy challenges in their native language. Any strategies to provide translated materials should consider the manner of delivery of these materials to account for these factors, such as creating video and/or audio of the information otherwise available in writing.

<sup>44</sup> See Section XI Implementation, Monitoring, and Evaluation.

<sup>45</sup> For example, Minnesota has developed a matrix to determine and prioritize which documents need to be translated. The matrix looks at the "frequency of use and the direct effect the form may have on the court user's access to justice, loss of liberty and other vitally important factors." See Minnesota Judicial Branch Policy/Procedures: Translation of Court Forms, Section VII.B. Procedures- Prioritizing Requests for Translation, *available at* [http://www.mncourts.gov/mncourtsgov/media/scao\\_library/LAP/MN\\_LAP-FINAL-July-2016.pdf](http://www.mncourts.gov/mncourtsgov/media/scao_library/LAP/MN_LAP-FINAL-July-2016.pdf).

<sup>46</sup> See also resources regarding best practices in procurement of translation services at [https://www.lep.gov/interp\\_translation/trans\\_interpret.html](https://www.lep.gov/interp_translation/trans_interpret.html).



court order, or 3) required by law. Documents for consideration should include not only court documents but informational handouts, as well.

Regarding the language groups for which vital documents must be translated, DOJ guidance states that:

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.<sup>47</sup>

The process for translation should consider available resources such as the National Center for State Courts' Guide to Translation of Legal Materials prepared by the Professional Issues Committee of the Consortium.<sup>48</sup> The translation process should involve the selection of professional certified translators to translate the vital documents. To ensure that translated materials are (1) accurate and (2) understandable by the widest range of speakers of that language, the recommended process entails three layers: translation, editing, and reviewing by a subject matter expert. The primary translator would consult with an editor who should also be a certified translator, as long as certification exists for that language, to edit the work product for accuracy and completeness. An additional reviewer, who is a subject matter expert, should also review or proofread the work product after it has been edited. A subject matter expert should always be used when translating legal documents, orders and forms. A subject matter expert is recommended, though not required, when translating informational documents. Concerns about accuracy and completeness should be communicated back to the translator. Adjustments should be incorporated and reviewed again.

The translations of local court website information should use similarly qualified translators.

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<sup>47</sup>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, 41464 (June 18, 2002).

<sup>48</sup> Guide to Translation of Legal Materials, Prepared by the Professional Issues Committee, National Center for State Courts (April 2011), available at <http://ncsc.contentdm.oclc.org/cdm/ref/collection/accessfair/id/232>.

### **How This Can Be Accomplished**

In order to ensure that translation of court forms and documents on the state and local levels proceeds in a coordinated and timely manner and addresses the range of document translation implementation concerns, the Monitoring and Evaluation Team should be charged with developing a translation plan addressing the following:

- Determination of which documents will be translated at the state level, so that judicial districts will know what documents they must translate themselves.
- Working with the AOPC to develop translation-related provisions in the template for local language access plans requiring judicial districts to determine and explain:
  - The criteria and process they will use to identify vital documents;
  - The process they will use for translation of documents determined to be vital, including the name and qualifications of the entity that will be doing the translation; and
  - The languages in which translation will be done, based upon data reflecting the numbers of foreign language speakers in the judicial district.
- Determination of appropriate timeframes for completion of the work outlined above.
- Assisting judicial districts with methods for integrating translated documents into current and future case management systems and overseeing this process. (This will help to ensure that translated vital documents are readily available to judges and court personnel via court case management systems.) These documents will also be integrated into state-controlled case management systems such as the CPCMS and the MDJS, and will continue to be posted on the UJS website.<sup>49</sup>

### **Projected Timeframe**

Establish and operate the Monitoring and Evaluation Team no later than 60 days after approval of the statewide Language Access Plan.

### **Responsible Staff**

The AOPC is working with District Court Administrators and Language Access Coordinators.

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<sup>49</sup> In addition, court forms already translated by various judicial districts are posted at the "Documents" tab of Language Access Data Collection, ("LADC"), the computer application developed by AOPC IT for gathering data on the provision of language access services. See Section VII Keeping Data on the Need for and Use of Language Access Services.

## 2. Signage

***Signage in the courthouse, magisterial district courts, and other court buildings and departments must allow all persons needing access to the courts the ability to locate areas of service or information.***

### **Current Status**

Most signs are in English only. Court buildings are generally owned by, and therefore under the control of, the counties rather than the courts. Signage in these buildings is likewise purchased and controlled by the counties.

### **Required Action**

Given the current status, the following considerations should be taken into account, by the courts and county executive alike:

There are three general types or areas of signage:

- (1) Informational: a walk-in court user needing to know where to find someone to provide language access services. For example, "Do You Need a Court Interpreter," or the AOPC-provided Right to Interpreter signs - these should be placed near the entrance to the facility;
- (2) Directional: a walk-in court user needing to know where to find an office or other court location, such as the Self-Help Center. Building signs and way finding information would need to be translated; and
- (3) Online: a court user trying to find out about language access services might do so by checking the court's website, where that court's language access plan should be posted.

### **How This Can be Accomplished**

- 1) Treat courthouse signage as though it is in a public facility (such as an airport), and use international symbols. Some local and very specific signs may still need to be translated.
- 2) Use digital signs, which are easier to update and, in most cases, can handle foreign language characters.
- 3) Consider creating a video and/or audio of the information. Not all languages have a written component, and some LEP or deaf persons may have literacy challenges.
- 4) Translate pages and improve visibility of translated content on local court websites. Websites provide important information and therefore could be considered vital documents. At the very least, there should be an easily identified webpage that has been translated in that court's top languages that could provide necessary alerts and website directions.<sup>50</sup>

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<sup>50</sup> It should be noted that when translations are provided through such services as Google Translate, quality is often inconsistent, and translation errors can render such translated information legally incorrect and unusable.

- 5) Use clear and intuitive visual navigational cues for "way finding" to minimize confusion. Common important public spaces include information desks, elevators, stairs, and restrooms.
- 6) Use of a Courthouse Signage Self-Evaluation may be helpful.<sup>51</sup>
- 7) Consider key locations for bilingual signs, including: clerks' offices, main hallways, holding cells, bulletin boards, and law libraries.

### **Projected Timeframe**

Depending on financial resources and the desired level of permanency and professional appearance, it might take several months (paper signs and webpages) to several years (digital screens) to gain approval for and production of bi- or multilingual signage.

### **Responsible Staff**

District Court Administrators, Language Access Coordinators, in concert with their County Commissioners.<sup>52</sup>

## **C. Use of Remote Technology**

***When used in compliance with the regulations under the Interpreter Act, the appropriate use of remote technology - video remote interpreting, video conferencing, or telephone interpreting - can be a valuable additional language access resource, where in-person interpreters and bilingual staff are not available.***

### **Current Status**

Many but not all of the judicial districts have contracts with telephone interpreting services. Some districts take advantage of video conferencing equipment for interpreting purposes. No districts currently utilize true video remote interpreting.<sup>53</sup>

The Interpreter Act regulations specify that "interpretation in person is strongly preferred"<sup>54</sup> and set forth significant limitations on the permissible use of telephone interpreting in court proceedings. In brief, the order of preference for language access

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<sup>51</sup> See *Language Access Planning and Technical Assistance Tool for Courts*, p.14, no. 6-13, available at [https://www.lep.gov/resources/courts/022814\\_Planning\\_Tool/February\\_2014\\_Language\\_Access\\_Planning\\_and\\_Technical\\_Assistance\\_Tool\\_for\\_Courts\\_508\\_Version.pdf](https://www.lep.gov/resources/courts/022814_Planning_Tool/February_2014_Language_Access_Planning_and_Technical_Assistance_Tool_for_Courts_508_Version.pdf).

<sup>52</sup> Acknowledging that each judicial district must individually seek funding from its county commissioners for signage, the Monitoring and Evaluation Team will consider developing and then disbursing to the districts templates for signage and web content, to promote best practices and uniformity of design throughout the Unified Judicial System.

<sup>53</sup> Video Remote Interpreting (VRI) uses video conferencing technology behind a firewall over dedicated lines offering a high-speed, wide-bandwidth video connection that delivers high-quality video images that allow for sign and spoken language interpreting services. The LEP person and English speakers are located together at one location, typically in a courtroom with a web camera (or other video technology), while the interpreter works from a remote location. VRI allows for simultaneous and consecutive interpretation and private communication between the LEP and his or her attorney. The parties can see each other and the interpreter via individual monitors or large screen. The interpreter controls where his or her voice goes and who hears his or her interpretations. The entire proceeding can be recorded for the record, including the interpreter's renditions.

<sup>54</sup> See Comment to 204 Pa. Code ch. 221 § 104.

services in the courtroom is (1) an in-person interpreter, (2) interpretation via video conferencing or video remote interpreting, and (3) telephone interpreting.

The regulations specify that telephone interpreting in court proceedings is only permissible where a good faith effort to obtain an in-person interpreter has been made and was unsuccessful; interpreting via "remote technology allowing for two-way simultaneous communication of image and sound," i.e., videoconferencing or VRI, is unavailable; and the proceeding is expected to be no more than 30 minutes in duration, is non-evidentiary, and does not involve more than one interpreter.<sup>55</sup> The exceptions to these requirements are preliminary arraignments, emergency PFA proceedings, or emergency proceedings under the Older Adult Protective Services Act.<sup>56</sup>

Where telephone interpreting is used, the court must conduct a voir dire to assess the qualifications of the interpreter, unless the court has previously utilized this particular interpreter.<sup>57</sup> The interpreter must be sworn in, just as in-person interpreters are sworn in.<sup>58</sup> Although preferred over telephone interpreting, the Interpreter Act regulations set forth identical restrictions on the permissible use of interpreting via "simultaneous audiovisual technology": the proceeding must be non-evidentiary, must be expected to last no more than 30 minutes, and must not involve more than one interpreter.<sup>59</sup>

### **Required Action**

As to telephone interpreting: all judicial districts will be required to secure the services of telephone interpreting providers.<sup>60</sup>

The AOPC will provide the districts with information about the cost, contact information, and number of languages provided by the different vendors of telephonic interpreting services for their use in selecting the best vendor for their needs.

Districts will provide the AOPC with the name of the telephonic interpreting vendor with whom they have contracted as soon as they complete the contract process. As noted in Section IX Training and Continuing Education, judges, Language Access Coordinators and court employees should continue to receive training on the appropriate use of telephone interpreting.

As to Video Remote Interpreting: the AOPC will investigate at least two options: (1) participating in the pilot VRI project being implemented by the National Center for State

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<sup>55</sup> See 204 Pa. Code ch. 221 § 104(b).

<sup>56</sup> See *Id.* § 104(c).

<sup>57</sup> See *Id.* § 104(b).

<sup>58</sup> See *Id.* § 106.

<sup>59</sup> *Id.* § 104(a).

<sup>60</sup> The Monitoring and Evaluation Team will consider developing standards regarding the appropriate equipment to be utilized for telephone interpreting. The districts will continue to receive training as to the permissible scope of telephone interpreting, and the fact that telephone interpreters are not certified through the ICP and must therefore be voir dired to ascertain their qualifications, then sworn in using the oath provided under the regulations. See 204 Pa. Code ch. 221 § 106.

Courts depending solely on the National Center's national interpreter database to provide interpreting services; and (2) creating its own VRI pilot project, including a call center using interpreters certified through the Interpreter Certification Program and using the National Center's database to supplement resources for languages not represented on the ICP roster.<sup>61</sup>

### **Projected Timeframe**

Judicial districts will be required to secure contracts with telephone interpreting providers within six months of the approval of this Language Access Plan.

The AOPC will complete an investigation of options for creating a VRI program within two years of the approval of this Plan.

### **Responsible Staff**

The AOPC, working with District Court Administrators and Language Access Coordinators.

## **D. Language Access to Services, Programs, and Activities Outside the Courtroom**

***Language access requirements apply not only to judicial proceedings, but also to a wide range of services, programs, and activities outside the courtroom that are administered under the authority of the court, i.e., provided by or contracted for by the court.***

***Meaningful access to services outside the courtroom is a vital component of equal justice for LEP and deaf or hard of hearing persons. This was recognized by the American Bar Association in Standard 6 of its Standards for Language Access to the Courts:***

***An LEP person denied participation in such programs due to lack of language access may suffer extended jail time, the delayed return of a child, loss of access to driving and professional licenses or simply a less expedient resolution of the case.<sup>62</sup>***

***In this context, examples of court services outside the courtroom include the following if administered under the authority of the court: services of the domestic relations office, the juvenile and adult probation offices, pro se clinics, some Alternative Dispute***

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<sup>61</sup> In recognition of the need for a high-quality, clear, consistent image for purposes of conveying information via sign language, the regulations under the Americans with Disabilities Act set forth very specific technical requirements for VRI. See 28 C.F.R. § 35.160(d). The regulation also requires that staff be provided with training in the use of VRI.

<sup>62</sup> See *ABA Standards of Language Access to the Courts*, p. 69, available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_standards\\_for\\_language\\_access\\_proposal.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf).

***Resolution programs (ADR),<sup>63</sup> family court custody education and mediation programs, drug and alcohol evaluation and treatment, mental health evaluation and treatment, anger management classes, domestic violence programs, safe driving classes, and other diversionary and educational programs.<sup>64</sup>***

***The means by which the court is able to enforce language access requirements to services outside the courtroom varies depending upon who provides the service. Some court services, such as domestic relations and probation, are court departments, staffed by court personnel and directly provided by the court. Other services, such as drug and alcohol evaluation and treatment, may be provided by the court through contract with outside vendors. There are also some services that, while ordered by the court, may be provided by entities that are not administered by the court directly nor administered by the court through contract with a vendor.<sup>65</sup> Examples of such services might include competency examinations or assessments mandated by the legislature.***

### **Current Status**

Current language access practices with regard to court services, programs, and activities are highly variable from one judicial district to another.

### **Required Action**

Judicial districts must ensure that persons who are LEP<sup>66</sup> are afforded meaningful language access to all court services and activities under the authority of the court.

### **Services provided by the court:**

Judicial districts are required to provide language access to services, programs, and activities that are provided by the court.

Under Pennsylvania law, in-person interpretation is clearly the preferred method of providing language access to persons who are LEP and/or deaf or hard of hearing during judicial proceedings. However, in-person interpretation is not necessarily required for all

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<sup>63</sup> Some ADR programs such as mandatory arbitration are proceedings for which interpreters are provided as in any other proceeding.

<sup>64</sup> Note that there are some services that, although related to a court case, are voluntary and are not provided by the court. An example of such a voluntary court-related program is private arbitration or mediation of a dispute. (This does not include compulsory judicial arbitration of civil claims less than \$50,000, which, although the dollar threshold amounts may differ among judicial districts, is nonetheless mandatory in most judicial districts. See 42 Pa.C.S. § 7361.) Judicial districts and the AOPC are not obligated to provide language access to voluntary programs unless they are administered under the authority of the court.

<sup>65</sup> The Monitoring and Evaluation Team, in its discretion, may consider whether these categories should be redefined to require that the court provide language assistance in programs under its management or control that are not provided by staff or contractors.

<sup>66</sup> The Americans with Disabilities Act and Rehabilitation Act require courts to provide appropriate auxiliary aids and services, including qualified sign language interpreters to allow deaf or hard of hearing court users to have equally effective communication to all court services, programs, and activities.

court services outside the courtroom, where other means of language access may be appropriate.

Judicial districts must review their services, programs, and activities, and develop protocols for how best to provide meaningful language access for their LEP court users. Each judicial district should consider the language needs of its service area and the reasonable steps that the judicial district will take to ensure meaningful access for all LEP persons to court-managed programs and services. Judicial districts may use an array of language services, including, but not limited to, demonstrably proficient bilingual staff, bilingual staff who are appropriately credentialed to interpret, staff interpreters, contracted in-person, telephone, and video remote interpreters, translated written materials, and webinars or other activities conducted in languages other than English.

As part of the overall analysis of how judicial districts will provide meaningful access, the need for written translation of documents used outside judicial proceedings should be evaluated in accordance with the DOJ guidance, which directs courts to consider “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.”<sup>67</sup> When information solicited or communicated via written documents is necessary for participation in court services, programs, or activities but the documents are not available in a translated form, the information must be solicited or communicated in the primary language, spoken or signed, of the person who is LEP or deaf or hard of hearing.<sup>68</sup>

#### **Services contracted for by the court:**

In many judicial districts, certain court programs and services are provided by private, third party vendors under contract with or paid by the court. Judicial districts are responsible to ensure that meaningful access is provided to LEP persons by vendors of these services and should review and seek adjustment of contract terms accordingly. Many, but not all, of these vendors receive federal funds and therefore have their own independent obligation under Title VI and the Rehabilitation Act to take reasonable steps to ensure meaningful access to LEP and deaf and hard of hearing persons.

Judges should consider how an LEP person or a person who is deaf or hard of hearing can effectively receive services from or participate in a program run by a vendor

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<sup>67</sup> 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, 41463 (June 18, 2002).

<sup>68</sup> This required action to solicit or communicate the information in a written document via the spoken or signed language of the LEP, deaf or hard of hearing user applies when a vital document is not available in a court user’s language, whether the reason is that the language does not meet the Department of Justice’s threshold of 5% or 1000 persons, the court has not finished translating all vital documents that do meet the threshold, or for some other reason.



contracted for by the court before ordering individuals to attend, participate, or receive such programs or services.

While the court itself is not ordinarily the branch of government that contracts with providers, the court should be mindful to engage the executive branch and suggest contract language that requires compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and other applicable laws and regulations.

### **Court-ordered services which are neither provided by nor contracted for by the court:**

Court-ordered programs or activities are those which a litigant is ordered to complete. In some cases, completion is a precondition to access to the courts, as when a family court litigant is required to attend a child custody education seminar. In other cases, it may be part of a criminal sentence, or a diversionary program to seek a more favorable outcome in a criminal case, such as drug and alcohol evaluation and treatment, or mental health evaluation and treatment. Some court-ordered activities, such as probation supervision, may continue for a number of years after a court proceeding. In some cases the services ordered by a court are either provided by the court or contracted for by the court.

In other cases, however, an LEP, deaf, or hard of hearing person may be ordered or permitted to participate in a service, program, or activity provided by an entity not under the authority of the court which fails to provide appropriate language assistance, auxiliary aids, or services. Judicial officials and staff should avoid requiring a party to participate in a program, service, or activity in which a party is unable to participate or from which a party is unable to benefit on account of language or disability. Courts should consider whether alternatives may be made available, and, if not, whether a waiver of the requirement may be permitted.<sup>69</sup>

In such situations, as noted above, it is important to be mindful of the leadership role that courts play in the community and the ability this gives them to influence the practices of organizations upon which LEP persons depend for services. As stated by the ABA:

Courts play pivotal roles in leadership, education, and resource development to ensure that language access services are accessible to LEP communities, not just because of the courts' knowledge of the number and type of services needed, but also because of their authority to order, require, and contract for those services. Courts are well situated to identify the appropriate providers for referrals of individual litigants, to coordinate with community providers to

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<sup>69</sup> See *ABA Standards of Language Access to the Courts*, pp. 69-76, available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_standards\\_for\\_language\\_access\\_proposal.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf).

develop programs, to exercise leadership in assessing current needs and services and to help develop future resources. Courts are also in the best position to identify providers who have failed to deliver language access services and encourage them to develop adequate services or discontinue referrals to those organizations. Where courts currently have limited contact with provider organizations, they should develop outreach and community contacts to ensure that the LEP individuals they refer are adequately served.<sup>70</sup>

### **Projected Timeframe**

Within the first twelve months following approval of the Language Access Plan, a policy for addressing the various services provided or managed by the court must be in place (i.e., documents identified and prioritized for translation; hiring and training of bilingual employees, etc.). Within 24 months of approval, the judicial district must make reasonable efforts to ensure vendors contracted or otherwise subject to control by the court are complying with Title VI, the Rehabilitation Act, and the ADA.

### **Responsible Staff**

Judicial districts with guidance and support from the AOPC and the Monitoring and Evaluation Team.

## **VI. Early Identification of the Need for Language Services**

***Pennsylvania regulations governing the procurement of court interpreters emphasize the importance of notifying the court “of the need for an interpreter as soon as is practicable after learning of the need.”<sup>71</sup> Effective methods for providing for early identification of the need for language services and notification of the court are critical.***

***Early identification and notice to the court that an LEP or deaf or hard of hearing person requires language assistance is vital in order to ensure that arrangements for a qualified interpreter can be made. Not only does this protect the rights of the LEP person or the person with a disability, it also helps to ensure efficient operation of the court by avoiding the need to continue cases because no interpreter is available on short notice. Early identification and notice also helps avoid reliance on phone interpretation as a fall back because there was insufficient time to arrange for in-person interpretation.<sup>72</sup> The need for early notice is heightened with regard to Magisterial District Court hearings, where the majority of litigants are unrepresented and, without some form of notice of their right to language services in advance of the hearing, likely will not know they can ask for an interpreter until they arrive at court and are informed by court staff or by notice posted in the court office.***

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<sup>70</sup> *Id.* at 70.

<sup>71</sup> See 204 Pa. Code ch. 221 §§ 201(a)(1) and (2).

<sup>72</sup> Phone interpretation for court hearings poses risks to due process because of the variable quality of phone technology, the variable competency of phone interpreters to interpret legal matters, the inability of the interpreter to see the action and communication in the courtroom, and the limitations on the ability of the interpreter, parties, judge, and court staff to hear each other. Video remote interpreting has similar limitations.

**Other states have also recognized the importance of early identification of the need for language services. For example, California's Strategic Plan for Language Access emphasizes that:**

***[F]ailure to identify the language needs of LEP court users early enough in the court process causes ripple effects throughout the system. When the need for a court interpreter is not identified in advance of a court appearance, courts and litigants may be forced to rely on untrained interpreters, ... to provide language services. ... [T]he use of untrained interpreters can have serious and potentially dangerous consequences. ... Early identification makes it possible for courts to schedule qualified interpreters efficiently when calendaring cases in the various courtrooms where they are needed. It similarly allows courts to assign bilingual staff more efficiently to appropriate areas within the courthouse, and to share court interpreters across counties through the cross-assignment process when staff interpreters are not available in one court but free in another.<sup>73</sup>***

### **Current Status**

While the importance of early identification of the need for language services is clear, judicial districts currently lack sufficient guidance and essential tools, such as an advance notice of the right to such services, needed to accomplish early identification.

### **Required Action**

Below is a comprehensive set of policies and procedures designed to assist courts in identifying the need for language assistance at the earliest possible point in time.

#### **1. Advance Notice of the Right to Language Services**

Judicial districts will inform individuals of their right to a sign language interpreter and language services using the following forms of notice. To ensure uniformity these notices will be produced and translated by the AOPC.

- A Notice of the Right to Language Services (hereafter “Notice of Language Rights”) in English and the five most commonly spoken languages in the judicial district, providing a phone number to call as well as an email address where a request for an interpreter may be sent. The content of the Notice will be substantially as follows:

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<sup>73</sup> See Strategic Plan for Language Access in the California Courts at 29 (January 6, 2015), attachment 1 to Report to the Judicial Council for Business Meeting on January 22, 2015, available at <http://www.courts.ca.gov/documents/jc-20150122-itemK.pdf>.

*You have the right to an interpreter at no cost to you. To request an interpreter, please inform court staff at [location], call (800)-xxx-xxxx or email the Court at xxxxxxxxxxx@xxxxx.<sup>74</sup>*

- The Notice of Language Rights poster, which has already been produced and distributed by the AOPC. The poster provides notice of the right to an interpreter in dozens of languages spoken across the state. It states:

*You have the right to an interpreter at no cost to you. Please point to your language. An interpreter will be called. Please wait.*

- "I Speak" cards in the five most common languages spoken in the judicial district, as well as a card in English for deaf or hard of hearing persons. Each card will be printed in English and the second language. The non-English version should inform the reader as to the use of the card, while the English version should include instructions to staff as to the procedures to follow to assist the card holder.

Using Russian as an example, the card, in Russian will read substantially as follows:

*My name is \_\_\_\_\_. The language I speak is Russian. Please find someone who is qualified to provide language assistance so that we can talk to each other. Thank you.*

The card for those who are deaf or hard of hearing will read substantially as follows:

*My name is \_\_\_\_\_. I am deaf or hard of hearing. My language is \_\_\_\_\_. To talk with me, please use:  Interpreter  CART<sup>75</sup>  Assistive Listening Device  Writing  Speechreading.  
(Please check off or point to the method you would like to use.)*

## **2. Multiple Mechanisms for Providing Notice**

A key strategy for ensuring early identification of the need for language services is to provide notice early on and continuously throughout a case, in multiple locations using multiple methods. The following methods will be used by judicial districts to accomplish this.<sup>76</sup>

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<sup>74</sup> As appropriate, districts may amend the Notice of Language Rights to include a statement to the effect of: "This is an important notice. If you do not understand what it says, you should take it to the Court for translation as soon as possible."

<sup>75</sup> See Communication Access Realtime Translation, available at <http://www.acscaptions.com/subpages/CART.asp>.

<sup>76</sup> This is in addition to the obligation of lawyers, court staff, and justice partners under 204 Pa. Code ch. 221 §201(a) to provide notice to the court as soon as practicable upon learning that an LEP or deaf or hard of hearing party, witness, or victim requires language services.

### Notice of Right to Language Services

The Notice of Language Rights will be sent with every hearing notice and subpoena, whether the case is civil or criminal, including hearings in Magisterial District Courts. See *Appendix, Example 1*.

### Posters in the Courthouse and Offices in the Court System

The Notice of Language Rights Posters<sup>77</sup> shall be placed prominently and in close proximity to court or office staff in:

- All court or court office reception/information desks or kiosks.
- Other locations such as court offices, court office halls and lobbies, bulletin boards, and law libraries.

### I Speak Cards

The “I Speak” cards will be displayed in all court or court office reception/information desks or kiosks and any other locations where posters are displayed, so that LEP or deaf or hard of hearing persons can simply show the card to court or other staff to communicate their need for an interpreter.

**NOTE:** The Notice of Language Rights Poster and the “I Speak” cards serve complementary functions. The advantage of the Poster is that it includes the right to an interpreter message in many different languages, which is necessary to ensure that LEP persons who do not speak one of the five languages most commonly spoken in the judicial district are informed of their right to an interpreter and, by pointing to their language on the poster, can inform court staff of their need for assistance in their language. The disadvantage of the poster is that it is not portable. LEP persons who can communicate in one of the five most common languages can pick up an “I Speak” card in their language and carry it with them. This would be useful, for example, when the court staff they initially encounter send them to another office in the courthouse. In this case, the LEP person can simply take the card with them to the next office and show it there.

See *Appendix, Example 2*.

### Other Forms of Notice

**Court brochures.** Notice of Language Rights and the appropriate contact information for requesting an interpreter will be included on all court brochures and informational materials.

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<sup>77</sup> These are the “Right to Interpreter” posters referenced above, which were produced by the AOPC and distributed to the judicial districts in the spring of 2015.

**Websites.** Notice of Language Rights and the appropriate contact information for requesting an interpreter shall be posted on the court’s website.<sup>78</sup>

**Oral notice.** Judges and court staff are encouraged to announce the availability of interpreters at the beginning of court sessions where appropriate. For the benefit of LEP persons who are illiterate in their own language and speakers of languages that do not have a written component, judicial districts might consider developing a video recording with captions informing LEP persons of their right to language services and:

- Playing the video in waiting rooms or other areas outside the courtroom where persons wait before appearing in court.
- Making use of the video to inform the public generally about the availability of language services for LEP persons.

**Public Notice.** Judicial districts will provide information about language rights and availability of a sign language interpreter:

- To the public, justice partners,<sup>79</sup> legal aid agencies, community-based organizations, groups working with LEP populations, and any consulates or embassies located in the county.
- At court-community events and in public service announcements in the media, including bilingual media.  
*See Appendix, Example 3.*

### **3. System for Receiving and Processing Requests for Language Services**

Even the most effective process for providing notice of the right to language services will only work if the LEP person, the person with a disability and court staff can understand each other when a person contacts the court to request an interpreter. Recognizing this, the AOPC will investigate possible approaches for efficiently and effectively receiving and processing requests for language services. This includes researching:

- Use of a statewide automated multilingual phone system to request an interpreter. (A multilingual phone system for requesting interpreter services could be

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<sup>78</sup> Judicial districts should work with counties to encourage website improvements to make non-English content, such as translated court forms, more visible.

<sup>79</sup> Justice partners could include law enforcement agencies, public defenders, district attorneys, local bar associations, county and city jails, child protective services, domestic violence shelters, and others. See also Section X Outreach to Court Users and Communities.

implemented either locally or statewide where the LEP person would call a toll-free number (at the county or state level) and through a series of prompts identify the language he or she speaks. The call would go to the appropriate court office where staff will access a telephonic interpreter to assist the caller and court staff via a three-way call.)

*See Appendix, Example 4.*

- Use of a statewide web-based system or application to request an interpreter.
- Use of text messaging as an option for LEP persons or persons who are deaf or hard of hearing to communicate their need for language services.<sup>80</sup> This could be done as part of a statewide system or locally. The AOPC will consider piloting a text messaging option with one or more judicial districts.

In the interim, judicial districts must ensure that they are able to respond to requests for language services and other communication from persons who are LEP or deaf or hard of hearing. To that end, judicial districts must have in place language services to respond to LEP persons who contact court staff to inform them of their need for language services, whether the court is contacted in person or via phone, TDD, email, website portal, or mail.

#### **4. Methods for Early Identification of the Need for Language Services in Addition to Self-identification.**

While self-identification is an important means of identifying the need for language services, other methods are also needed. While courts should encourage individuals to identify themselves as in need of language services, courts should not rely on that entirely. Some LEP persons or persons with disabilities may decline to request language services because they misjudge the level of English proficiency necessary to communicate effectively in a court setting, or they may be afraid of discrimination or bias. The obligation of lawyers, court staff, and justice partners to provide notice to the court of a person's need for language services is established by regulation,<sup>81</sup> however, more steps need to be taken to ensure compliance.

- Judicial districts will reinforce to lawyers, court staff, and justice partners, whenever appropriate, of their duty to notify the court of the language services needs of LEP court users or individuals with disabilities, including parties, witnesses, or other persons with a significant interest,<sup>82</sup> at the earliest possible point of contact with the

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<sup>80</sup> The technology exists to set up phone numbers through which texts can be received. Texts received are forwarded automatically to an email account.

<sup>81</sup> See 204 Pa. Code ch. 221 § 201(a).

<sup>82</sup> Persons with a significant interest includes: victims; legal guardians or custodians of a minor involved in a case as a party, witness, or victim; and legal guardians or custodians of adults involved in a case as a party, witness, or victim.

LEP person or person with a disability. This information should be included, for example, in CLE programs for attorneys. See Section IX(E) Training Attorneys.

- Judicial districts shall establish protocols by which justice partners, in particular, can indicate to the court that an individual requires a sign language interpreter or language services at the earliest point of contact with the court system.<sup>83</sup>

##### **5. Documentation of Language Needs.**

Once the need for language services has been identified, it should be recorded in the court's case file and/or case management system, so that arrangements for interpretation and translation of documents, such as notices, for upcoming judicial proceedings or court services, programs, and activities outside the courtroom can be made ahead of time.<sup>84</sup> Judicial districts will clearly and consistently document language needs in the case management system and/or any other case record or file, as appropriate given a court's existing case information record system, and include this capability in any future system upgrades or system development.

##### **Projected Timeframe**

Within six months of approval of the UJS Language Access Plan, the AOPC will translate and produce a Notice of Language Services and I Speak cards for the judicial districts after considering suggestions regarding content and design of the notices from the Monitoring and Evaluation Team. For example, a different notice that advises the reader that the content of the court notice is important and the court can provide translation assistance can be devised to be part of important documents even if they do not involve a court appearance. Judicial districts will begin using these notices, as outlined in Subsection 2 above, within three months of receiving them from the AOPC.

Within nine months of the approval of the UJS Language Access Plan, judicial districts will:

- Begin using other forms of notice, as outlined in Subsection 2 above;
- Develop and implement a system to ensure that court staff are able to respond to requests for language services and other communications from persons who are LEP or deaf or hard of hearing, as outlined in Subsection 3 above;

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<sup>83</sup> For example, state police might consider including a one-sentence notice on their citations, asking litigants to notify the court if they need an interpreter. See footnote 79, above, for a listing of justice partners.

<sup>84</sup> As noted at footnote 76, above, there is an ongoing responsibility of the parties to a case to notify the court of the need for language access services. Due to cases being continued, communication between attorneys, parties, and judicial and court staff, including the Language Access Coordinator, is critical. This will ensure that resources are not wasted, and interpreter services are available when necessary. As the Language Access Coordinator will require advance notice to schedule or reschedule an interpreter, judicial districts should make every effort to note the need for interpreter services in case files and other case records, and include the capability to do so in future case management system development or upgrades.



- Establish and implement protocols for identifying language access needs of LEP court users and individuals who are deaf or hard of hearing, as well as protocols by which justice partners may indicate to the court an LEP or person with a disability's need for language services, as outlined in Subsection 4 above; establish protocols for staff to record language needs of parties with whom they have contact; and
- Develop and implement a system for recording the language needs of LEP persons or persons who are deaf or hard of hearing in the court's case file and/or case management system, or other language services management system utilized by the judicial district, as outlined in Subsection 5 above.

Within nine months of the approval of the UJS Language Access Plan, the AOPC will complete an investigation of possible approaches for efficiently and effectively processing requests for language services, including those approaches listed in Subsection 3 above.

### **Responsible Staff**

Judicial districts will have primary responsibility for implementing the policies and procedures in this Section, except for those tasks specifically assigned to the AOPC. The AOPC will provide leadership and work with the judicial district Language Access Coordinators, the Monitoring and Evaluation Team, and other stakeholders.

## **VII. Keeping Data on the Need for and Use of Language Access Services**

***For purposes of monitoring the effectiveness of its language access program, tracking changes in language needs, and supporting funding requests at both the state and local level, the UJS has developed a computer application called Language Access Data Collection ("LADC").***

### **Current Status**

Until recently, there was no standardized procedure throughout the UJS for gathering data on the provision of language access. Practices were district-specific, and varied greatly from district to district. Cumberland County and the First Judicial District (Philadelphia) have fairly sophisticated systems. Lehigh County generates a statistical report on "Interpreting and Translation Assignments." In contrast, in many judicial districts, especially those with lower percentages of LEP court users, language access data gathering has been more limited.

The judicial districts have been notified via the instructions in a Language Access Plan template (provided to them in the fall of 2014 and used as the basis for their language access plans, which became effective in March, 2015) that they would be asked to maintain data on requests for and the provision of language access services in judicial proceedings and throughout the courthouse. This information will be gathered and reported for the purpose of making decisions as to allocation of resources and to determine needed improvements and changes to the Language Access Plans. The AOPC convened a focus group composed of district court

administrators who have provided feedback on the usability of the form and computer function.

LADC was piloted in the nine judicial districts that comprised the data gathering focus group in the fall of 2015. AOPC IT provided a training webinar on three different dates to all of the districts in the fall of 2015. As of the writing of this Plan, all but three judicial districts are inputting interpreter request data into LADC.

#### **Required Action**

All 60 judicial districts will input their language access data into LADC. In addition, all judicial districts will be required to have developed a system of marking case files and scheduling documents with an "interpreter needed" designation in their case management systems within a year of the approval of this Language Access Plan. Finally, AOPC IT will provide a similar designation on statewide case management platforms such as CPCMS and MDJS.

#### **Projected Timeframe**

This will be an ongoing effort by the AOPC and Language Access Coordinators in the judicial districts. Consideration will be given to rolling out a data collection mechanism for the provision of language access services at the counter - by Clerks and Prothonotaries - within 24 months after approval of this Plan. Within six months of the approval of this Language Access Plan, the AOPC will create annual reports reflecting the above-cited data.

#### **Responsible Staff**

The AOPC and judicial district Language Access Coordinators.

### **VIII. Qualification Requirements for Interpreters and Translators**

*The AOPC's Interpreter Certification Program manages the orientation, testing, certification, and ongoing monitoring of interpreters for both Pennsylvania's courts and administrative (executive) agencies.<sup>85</sup>*

#### **1. Interpreters**

##### **Current Status**

The AOPC ICP has jurisdiction over and certifies both foreign language interpreters and interpreters for individuals who are deaf or hard of hearing. All interpreters currently working and those who would like to work with the Pennsylvania courts and in administrative hearings held by state and local executive agencies must register and become qualified through the certification program.

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<sup>85</sup> 42 Pa.C.S. § 4411.









- Training will be conducted at: the Philadelphia Trial Judge Education Program and the training program targeted to Magisterial District Judges who are not lawyers; New Judge School; Magisterial District Judge (“MDJ”) School; the Pennsylvania Conference of State Trial Judges; and continuing education programs for MDJs as well as at the annual President Judge/Pennsylvania Association of Court Management (“PJ/PACM”) Conference and other appropriate venues where both specific training and routine updates on policy and practice can be provided.
- Court Administrators should speak with their President Judge to convene a Board of Judges meeting for language access training and to provide training to other judges.
- The AOPC will develop a bench card for judges that covers the following topics:
  - Sample questions to assess the limited English proficiency of a party or witness;
  - The interpreter waiver;
  - Voir dire questions for an interpreter who is not certified;
  - The interpreter oath;
  - An explanation of the role of an interpreter for the judge to give to the LEP party/witness with the assistance of the sign language or spoken language interpreter; and
  - Instructions to read to the jury prior to the start of the proceeding.

**Projected Timeframe**

- A Training Manual will be developed within twelve months of approval of the Language Access Plan.
- Training will begin within twelve months of approval of the Language Access Plan. As an initial goal, the AOPC should develop training for the Pennsylvania Conference of State Trial Judges in July, 2017.
- Bench cards within three months of approval of the Language Access Plan.
- Webinar and conference training within one year of approval of the Plan.

**Responsible Staff**

The AOPC Coordinator for Court Access, in consultation with judicial district Language Access Coordinators.

***B. Training Appointive Judicial Officers***

**Required Action**

All appointive judicial officers should receive initial training, whether current staff or when newly hired, and refresher training periodically thereafter. The training should be standardized statewide but adapted to address local procedures. Training should include all of the topics for judges.

### **Projected Timeframe**

New employee information packets will be created within three months of the approval of the UJS Language Access Plan and a webinar training session will be created within one year thereof.

### **Responsible Staff**

The AOPC will work in conjunction with District Court Administrators and Language Access Coordinators to coordinate training.

## ***C. Training Language Access Coordinators***

### **Required Action**

To ensure continuity of knowledge and process across the Commonwealth, training for judicial district Language Access Coordinators will include all of the topics for judges and appointive officers, plus:

- o The responsibilities of the Language Access Coordinator to manage protocols, resources, and training for the judicial district;
- o The UJS and judicial district's language access plans and the importance of local procedures and quick reference tools for presiding judicial officers; quasi-judicial officers, and court staff;
- o Court document translation policy and procedure, including how to identify vital documents that should be translated;
- o Use of the Language Access Data Collection ("LADC") tool and the importance of data collection;
- o How to conduct training for new hires and other court personnel so they receive information about language access policies, procedures, and resources as soon as possible;
- o Where to find and how to use the UJS interpreter roster, bilingual staff, telephone interpreter services, and document translation services;
- o The appropriate procedure for conducting a waiver of interpreter by the LEP litigant;
- o The process for accepting and recording complaints and other feedback about language access services; and
- o The requirements and timeframes for "Required Actions" under this document.

The AOPC will create an email listserv for Language Access Coordinators so they can share information and consult each other on questions or issues that arise in their judicial districts. The AOPC will also explore whether the LADC tool can serve as a forum for Language Access Coordinators to post information and consult each other.

The AOPC will create an online compendium of training resources easily accessible to Language Access Coordinators and court staff via the LADC website. The compendium will address



resources for working with persons who are LEP, deaf, or hard of hearing. Among many other materials, it will contain glossaries of court terms and complaint forms in multiple languages. Judicial districts should be able to contribute to the compendium.

The AOPC will create a training manual with a section for each type of court participant (e.g., judge, appointive judicial officer, Language Access Coordinator, court staff) that can be used to train all who have the potential to encounter a person who is LEP, deaf, or hard of hearing. While the information may overlap, each section could contain specific information for the person fulfilling a specific job within the courthouse and at other locations where court services and programs are provided. The training manual will assist Language Access Coordinators in developing and providing training.

### **Projected Timeframe**

The email listserv, online compendium of training resources, and training manual will be completed within twelve months of the approval of the Plan. The status of training for Language Access Coordinators, which has already begun, should be reviewed at least six months from the date of the approval of the Plan.

### **Responsible Staff**

The AOPC.

### ***D. Training Court Staff***

***Training should be conducted regularly and using a variety of methods, including a training manual, videos, online training modules, and other materials. Any previously developed training, such as the New Mexico Language Access Center's training modules, could be used for part of court staff's training, but that training needs to be augmented to address gaps such as communicating with people who are deaf or hard of hearing and local language access resources and procedures. Ongoing training should take place via updates at the Pennsylvania Association of Court Management conferences during the year and in other manners for all court staff.***

### **Required Action**

- All court staff should receive initial training, whether current staff or when newly hired, and refresher training periodically thereafter. The training should be standardized statewide but should include information about local procedures. Training should include all of the topics for judges, plus
  - issues such as stress and frustration with being unable to communicate with someone who is LEP or deaf or hard of hearing;
  - procedures for receiving both informal feedback and formal complaints regarding failure to provide or inadequate language access services. See Section XII.

- Bilingual staff should also receive training on the parameters of their role (see also Section V(A)(2) regarding Language Services and How to Use Them - Oral Language Services – Bilingual Staff.)

### **Projected Timeframe**

Training materials will be developed and all court staff should receive initial training within twelve months of the approval of the Plan.

### **Responsible Staff**

The AOPC will work in conjunction with District Court Administrators and Language Access Coordinators to coordinate with the various court divisions to coordinate training of this group.

## ***E. Training Attorneys***

### **Required Action**

- As with the court personnel, training for attorneys should include the same training identified for judges. In addition, lawyers should receive training about:
  - Funds available via state and local bar associations to reimburse for sign language and CART interpreters used to communicate with clients or potential clients who are deaf or hard of hearing.
  - Local judicial district language access procedures and practices.
- Training for attorneys should occur in a variety of ways:
  - A continuing legal education (“CLE”) course curriculum should be developed with the Pennsylvania Bar Institute;
  - Language access policies, practices, and issues should be integrated routinely into Pennsylvania Bar Institute and other CLE programs, especially those regarding court procedure and practice.
  - Judicial districts, working with local bar associations, could present a standardized CLE curriculum that could incorporate local policies and procedures, including the role of and contact information for the judicial district Language Access Coordinators.
  - Training could be conducted during the county's Bench-Bar meetings, as well as Lunch and Learn meetings with local bar associations.
  - The County Conference of Bar Leaders, attended by local bar association leaders, offers another opportunity for training and updates, as do in-house CLEs offered by and for local government attorneys, e.g., district attorneys and county solicitors.
  - Meetings involving the local judicial district language access coordinator.
- A "best practices" curriculum for attorneys should be created to ensure consistent training across the Commonwealth.

### **Projected Timeframe**

The coordination with PBI and a curriculum will be completed within one year of the approval of the statewide language access plan. Training will begin during year two of the UJS Language Access Plan.

### **Responsible Staff**

The AOPC in conjunction with the Monitoring and Evaluation Team will work to develop a standard curriculum and initiate contact with the Pennsylvania Bar Institute. Language Access Coordinators could organize local CLEs.

## ***F. Training Interpreters***

### **Required Action**

- Training for this group should be conducted as an "orientation" to local judicial district court processes and procedures and should include:
  - Handbook on local practices;
  - Information regarding common forms and procedures used within the courthouse and in court cases; and
  - Any additional information that could supplement what is provided by the AOPC at the ICP.
    - Training could consist of a local orientation session and a handbook or manual.
    - Once developed, training materials could be widely shared among judicial districts.

### **How This Can Be Accomplished**

This will be accomplished at the county level by the District Court Administrators and Language Access Coordinators in cooperation with the AOPC.

### **Projected Timeframe**

A program will be put in place within six to twelve months of the approval of the statewide language access plan.

### **Responsible Staff**

District Court Administrators and Language Access Coordinators with assistance from the AOPC as needed.

## X. Outreach to Court Users and Communities

***Outreach to the LEP and deaf or hard of hearing communities, organizations who serve these communities, court system partners, and potential professional court interpreters is critical to raise awareness of language access services offered by the courts and to ensure meaningful access to the courts.***

### **Required Action and Current Status**

- A. Judicial districts should conduct outreach to the LEP and deaf or hard of hearing communities regarding the right to language access services (or other appropriate auxiliary aids and services for deaf or hard of hearing persons), how to access these services, and how to effectively utilize the services (e.g., working with interpreters or CART<sup>92</sup> services).

Currently, the AOPC posts information on the UJS website ([www.pacourts.us](http://www.pacourts.us)) listing Language Access Coordinators for each judicial district. Each judicial district should individually post information on language access and the Americans with Disabilities Act on their local websites. The AOPC should add conspicuous, multilingual website notices regarding the availability of language assistance and encourage the districts to do so when feasible. Judicial districts should also conduct outreach via the media (including multilingual media), websites where people who are deaf or hard of hearing routinely seek information, and advocacy groups that work with the LEP and deaf or hard of hearing communities. Information on language access services should also be routinely available in an accessible manner at courthouses and court offices.

- B. The AOPC and judicial districts should inform community organizations who serve LEP and the deaf or hard of hearing populations about the courts' legal obligation to provide sign language interpreters or language services, how to obtain these services, and how to use interpreters effectively. Community organizations include: social services agencies, local foundations, and local and state agencies such as the Pennsylvania Department of Labor and Industry's Office for the Deaf and Hard of Hearing.
- C. Language Access Coordinators at the local judicial district level should contact agencies and provide information on the above-mentioned topics. The AOPC Coordinator for Court Access should also reach out to statewide organizations that advocate for, or serve, these communities, such as the Governor's Advisory Commission on Asian Pacific American Affairs, the Governor's Advisory Commission on Latino Affairs, the Pennsylvania Human Relations Commission, the state and local Children's Roundtables, and county criminal justice advisory boards. Judicial districts should encourage feedback on the provision of language access services. Faith, civic and community associations, and school districts should be included.

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<sup>92</sup> CART, or Communication Access Realtime Translation, is a process through which a provider types what is being said in a meeting or hearing into a stenotype machine, and the captioning is then displayed on a small or large screen, depending on the setting or number of hard of hearing participants.

- D. Judicial districts should inform justice partners about the courts' legal obligation to provide language services and sign language interpreters, how to obtain language services and sign language interpreters, and how to use interpreters effectively.

The UJS, in concert with the Pennsylvania Bar Association, should develop Continuing Legal Education seminars for attorneys, and distribute information and/or meet with other system partners.

- E. The AOPC and individual judicial districts should develop and implement a plan to recruit more professional interpreters to work in the courts.

Currently, the Pennsylvania Supreme Court/AOPC Interpreter Certification Program information is available on the Supreme Court's website (<http://www.pacourts.us/>). Information about this program, and other interpreter training opportunities, should be distributed to organizations and agencies that work with or communicate with individuals who may be interested in becoming court certified interpreters. Information should also be distributed via the media and local judicial district websites.

#### **How This Can Be Accomplished**

The AOPC, judicial districts, and a Monitoring and Evaluation Team should develop standard information for widespread outreach, such as a handout or brochure and a training module that can be incorporated into local and statewide continuing legal education programs.<sup>93</sup>

#### **Projected Timeframe**

Outreach should begin within the first year of approval of the Plan and should be ongoing.

#### **Responsible Staff**

The AOPC Coordinator for Court Access, in consultation with judicial district Language Access Coordinators.

### **XI. Implementation, Monitoring, and Evaluation**

***The statewide language access plan must be evaluated regularly to track implementation, assess progress, identify gaps, and update the plan, policies and procedures.***

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<sup>93</sup> There are many possible methods for recruiting people to work as court interpreters, including participating in local job fairs, especially those geared toward immigrants, communicating with local universities, developing recruitment brochures or pamphlets, offering opportunities for prospective court interpreters to shadow current court interpreters to see how they function in the courtroom, creating a list of interpreter training and certification programs and conducting focused outreach to them, contacting professional organizations such as the National Association of Judiciary Interpreters and Translators, and informing local universities and community organizations about court interpretation as an employment option.

### **Current Status**

There is no designated entity or process for evaluating both progress toward implementation and the effectiveness of the UJS Language Access Plan.

### **Required Action**

A Monitoring and Evaluation Team will be created to review and evaluate implementation of the UJS Language Access Plan as well as the county plans to ensure meaningful access to the courts. This team should include internal and external stakeholders in the provision of language access services in the courts, including members of the current Language Access Advisory Group. Stakeholders should include a judicial officer, a court administrator, a court interpreter, a legal services provider, an attorney who routinely works with LEP court users, representatives of LEP and deaf or hard of hearing communities, and AOPC staff. The team should:

- o prioritize and track implementation, assess progress, identify gaps, and update the plan;
- o coordinate with relevant stakeholders;
- o advise on or recommend additions and changes to policies, procedures, and regulations that affect implementation of the Plan;
- o review complaint information and feedback received by the AOPC and courts;
- o recommend best practices as to training, making sure that new employees are receiving proper guidance and that other employees are receiving regular updates on changes in practice or procedure, as well as refresher training on important and/or challenging aspects of language access compliance;
- o review data from LADC;
- o discuss changes in the UJS interpreter roster with the Interpreter Certification Administrator, to evaluate the effect of increases or decreases in the number of certified, qualified, and registered interpreters;
- o provide feedback to the AOPC Coordinator for Court Access in determining when county language access plans should be updated and what issues should be addressed, and assist the AOPC in the development of templates for updated county plans; and
- o oversee the performance of the tasks related to translation of court forms and documents described in Section V(B).

### **How This Can Be Accomplished**

The Supreme Court should create a Monitoring and Evaluation Team for the Plan, assigning the AOPC responsibility for recommending the membership and providing staffing.

### **Projected Timeframe**

The Monitoring and Evaluation Team will be appointed immediately upon approval of the Plan. Plan implementation will be monitored on an ongoing basis and the Plan should go through an annual formal evaluation.

## **Responsible Staff**

The AOPC Coordinator for Court Access.

## **XII. Monitoring and Evaluation of the Language Access Plan: Complaint/Feedback Procedure**

*Developing methods to monitor and evaluate language services offered and provided by the courts is critical to maintaining timely, effective, and appropriate language assistance and to ensuring meaningful access to the courts.*

### **Current Status**

Currently, local judicial districts have complaint procedures and forms written in English and Spanish that are to be posted on their websites, along with their language access plans. It is important for the AOPC to collect complaint information and feedback statewide on a routine basis to monitor the provision of language services, to address judicial district-specific issues, and to incorporate feedback into statewide planning and implementation.

### **Required Action**

#### **A. Complaints**

**Complaints** are information provided formally, generally in writing, with the expectation of a formal review and response from the court. As part of the development of individual judicial district language access plans, each district has a Language Access Plan Complaint Procedure and Form.

- The AOPC will collect, maintain, and review data/statistics relating to the number, nature, and disposition of complaints under this Plan twice a year.
- Each judicial district will record all complaints received regarding language access that are submitted either in writing or orally.
- The complaint procedures from each district's language access plan will be posted on the local judicial district's website and in court materials in other commonly used languages, in addition to English and Spanish.
- The AOPC will also post information about complaint procedures in formats accessible to LEP persons and persons who are deaf or hard of hearing and offer a way to submit feedback about language services and accommodations via the Unified Judicial System website.

#### **B. Feedback**

**Feedback** is information - either positive or negative - informally provided to the court concerning the provision of language access services, with no expectation of a formal review and response. Feedback is important in evaluating an individual judicial district's language access plan, policies and procedures, as well as the UJS Plan, and will be used to determine if services are being provided as required and whether the services are effective.

- Feedback could also be gathered by the judicial districts in whatever ways are deemed appropriate by individual judicial districts.
- Judicial districts are encouraged to share feedback with the AOPC for the purpose of monitoring, evaluating, and improving language access policies, procedures, and services. The AOPC will develop a mechanism to facilitate the sharing of information with the AOPC and among judicial districts.

**Responsible Staff**

The AOPC will work with each judicial district to oversee these Plan provisions.

**Projected Timeframe**

These mechanisms will be implemented within one year after approval of the Plan, prior to completion of the first annual evaluation of the Plan. Evaluating complaints and feedback will be an ongoing process.



## APPENDIX

### Appendix to Section VI, Early Identification of the Need for Language Services

The following scenarios illustrate the problems faced by LEP persons trying to do business in the courthouse and how the different types of notice proposed in Section VI address these problems.

#### **EXAMPLE 1:**

Maritza Santiago is a LEP tenant and single parent of two children. Her Landlord is seeking to evict her, alleging that she is behind in her rent. The Landlord has filed an action for possession and back rent with a Magisterial District Justice (“MDJ”). Ms. Santiago would like to present her side of the story, but knows she is not capable of doing this in English. Her children speak English, but she does not want to get them involved by asking them to interpret.

When Ms. Santiago receives the notice of the hearing before the MDJ, it includes a Notice of Language Rights, explaining in Spanish, and in other languages, that she has the right to an interpreter. She is very relieved and immediately calls the 800 number listed on the Notice to request a Spanish interpreter. When she arrives at the hearing, the MDJ’s office, because it had sufficient advance notice from Ms. Santiago of her need for an interpreter, has arranged to have a certified Spanish interpreter present in person. Through the interpreter Ms. Santiago is able to understand what the Landlord and the MDJ are saying at the hearing and she is able to tell her side of the story.

#### **EXAMPLE 2:**

Maria Silva has been harassed and stalked by a man she once dated. She was told by the police that she should go the courthouse and apply for a Protection from Abuse order. Ms. Silva’s native language is Portuguese and she is not fluent in English.

Ms. Silva goes to the courthouse and approaches the information kiosk. Posted next to the kiosk is the Notice of Language Rights poster. She gets the attention of the court staff person and points to Portuguese on the poster. The court staff person, using a telephone interpreter service, gets a Portuguese interpreter on the line. Through the interpreter the court staff person explains to Ms. Silva that she should go to Family Court, where they can help her complete a Petition for a Protection from Abuse Order. Also next to the kiosk are “I Speak” cards. There is one in Portuguese, as this is one of the five most commonly spoken languages in the county, and the court staff person hands one to Ms. Silva and explains, through the interpreter, that she can show it whenever she needs language assistance.

Ms. Silva takes the “I Speak” card and shows it to the PFA coordinator at Family Court. The PFA coordinator gets the interpreter service on the phone and, with the help of the interpreter, assists Ms. Silva in completing the PFA petition (writing verbatim what Ms. Silva says as

interpreted by the interpreter). Through the interpreter, she instructs Ms. Silva how to file the petition and how the PFA process works.

**EXAMPLE 3:**

Jane and John Wong are the parents of Evan Wong, who is in the juvenile justice system. Mr. and Mrs. Wong speak only Mandarin. Evan has a lawyer, but the court must be notified that his parents, who wish to participate in the proceeding involving their son, will need an interpreter. As a result of effective outreach to justice partners, Evan's lawyer knows that he can either submit an interpreter request form himself for Mr. and Mrs. Wong or he can give them the 800 number on the Notice of Language Rights form and they can request an interpreter on their own.

**EXAMPLE 4:**

Sergei and Natasha Petrov are being sued by a collection agency and have a hearing in Magisterial District Court. They speak Russian and are not proficient in English. With the hearing notice they received was Notice of Language Rights informing them that they have the right to an interpreter. They call the 800 number listed on the Notice of Language Rights and hear a series of prompts in several different languages. One is a prompt in Russian that says "If you speak Russian, press 3." They do so and their call is routed to court staff who, based upon the prompt selected, is able to identify Russian as the language spoken by the Petrovs. Court staff then contacts the court's telephone interpreter service and is connected with a Russian interpreter for what is now a three-way call.

Court staff is able to ask the Petrovs through the interpreter for the docket number and the time and date of their hearing. She tells the Petrovs that a Russian interpreter will be at the hearing in person to interpret for them. The Petrovs are relieved and grateful that language services will be provided to them.