

Utilization of Language Services for Clients with Limited English Proficiency Protocols

I. STATEMENT OF GOALS

The US Census Bureau, 2008-2012 American Community Survey, estimated that 29,786 people or 9.9% of the residents in Erie County speak English less than “very well” and speak another language at home; in Niagara County 5.1% of the residents speak English less than “very well” and speak another language at home; in Genesee County 4% of the residents speak English less than “very well” and speak another language at home; in Orleans County 6.4% of the residents speak English less than “very well” and speak another language at home; and in Wyoming County 5.1% of the residents speak English less than “very well” and speak another language at home.

Legal Services programs must ensure that this language limitation does not create barriers to our services for those clients with limited English proficiency (“LEP”). This policy is promulgated to ensure that clients of Neighborhood Legal Services, Inc., have full, relevant access to the services they need, notwithstanding their limited English proficiency. NLS is committed to providing quality legal services to clients in their primary language. NLS recognizes that meaningful access, effective client communication and the provision of quality legal services LEP clients require the provision of language services in an appropriate language in the form of oral interpretation and, where required by this policy, translation services.

NLS recognizes that it is responsible for communicating with the client in an appropriate language and will do so by providing services through a bilingual case handler or by providing free, competent language services at all stages to allow communication between monolingual English speaking staff and the client.

NLS recognizes that interpreting and translation is an extremely skilled profession which requires education and training to acquire sufficient fluency in two languages and proper interpreting and translation skills.

NLS acknowledges that its clients are entitled to confidentiality and privacy, and that the utilization of interpreters and translators must be consistent with maintaining the client’s secrets and confidences in accordance with the applicable rules of professional conduct. Therefore, NLS adopts the following policy concerning the provision of oral interpretation and translation services to ensure that its staff can communicate effectively with LEP individuals and provide adequate information and legal assistance.

II. ASSESSMENT OF NEED

The applicability of parts of the LEP policy is determined by the number of LEP eligible individuals in our service area. NLS defines an LEP person as one who “cannot speak, read, write or understand” the English language at a level that permits them to interact effectively with health care providers and social service agencies. As of July 27, 2010, the Multilingual Education in the Buffalo Public Schools Community Meeting released the top ten (10) languages spoken at home as Spanish, Karen, Somali, Arabic, Burmese, Nepali, Kirundi, Vietnamese, Kpelle, French and Swahili. Therefore, NLS has assessed the number of LEP households, including linguistically isolated households, and people who speak English with varying degrees of proficiency.

Four Major Language Groups:

Spanish includes Spanish, Spanish Creole, and Ladino.

Other Indo-European languages include most languages of Europe and the Indic languages of India. These include the Germanic languages, such as German, Yiddish, and Dutch; the Scandinavian languages, such as Swedish and Norwegian; the Romance languages, such as French, Italian, and Portuguese; the Slavic languages, such as Hindi, Gujarati, Punjabi, and Urdu; Celtic languages; Green, Baltic languages; and Iranian languages.

Asian and Pacific Island languages include Chinese; Korean; Japanese; Vietnamese; Hmong; Khmer; Lao; Thai; Tagalog or Pilipino; the Dravidian languages of India, such as Telugu, Tamil, and Malayalam; and other languages of Asia and Pacific, including the Philippine, Polynesian, and Micronesian languages.

All Other languages include Uralic languages, such as Hungarian; the Semitic languages, such as Arabic and Hebrew; languages of Africa; native North American languages, including American Indian and Alaska native languages; and indigenous languages of Central and South America.

III. INTERPRETING

- A. NLS shall provide interpreters by hiring bilingual staff where possible, by contracting with outside interpreter services provided by the International Institute, by contracting with volunteer community interpreters where available and appropriate (however NLS will not depend solely on unpaid support from community organizations which have their own programs to operate), and by use of telephone interpreting services when other component services are not timely available.
- B. Staff are encouraged to use professional interpreters and this policy explicitly discourages reliance on the use of family members and friends of clients.
1. Minor children of clients should not be permitted to serve as interpreters and their use should be discouraged, except for the most routine conversations (e.g. to schedule an appointment, obtain name and address) or in the event of an extreme emergency when there is no other resource and only until the services of a bilingual interpreter can be obtained.
 2. If a client insists on using the services of an adult family member or friend, the client shall be advised of his/her right to receive language services free of charge.

The services of a professional interpreter, whenever possible, shall be utilized for the purposes of this preliminary conversation with the client, which shall take place out of the presence of the family member/friend. The family/friend shall be advised that a private conversation is necessary because of the attorney-client privilege. If the client answers affirmatively to any of the aforementioned inquiries, the staff member should strongly encourage the client to utilize the services of a professional interpreter. In doing so, the staff member shall be sensitive to any cultural issues and the impact on the attorney-client relationship. The client's choice, and the fact that this procedure was implemented, will be noted in the file. Depending on the circumstances, the staff person may request that the client allow an interpreter hired by NLS to be present to ensure the adequacy of interpretation.

- C. NLS will ensure that any person providing interpretation services for its clients understands their obligation to maintain client confidentiality.
 - 1. When the interpretation occurs in person, the interpreter shall execute an agreement to maintain confidentiality.
 - 2. When NLS utilizes a telephone language interpreting service:
 - a. NLS shall execute or obtain an agreement with the service regarding confidentiality.
 - b. When the service is utilized, the staff member shall remind the interpreter regarding the provisions of the agreement.
 - 3. When the client's adult family member or friend is utilized as an interpreter, the case handler will document that they explained to the client that NLS cannot prevent the family member/friend from disclosing the client's confidences or secrets, and that the client was offered free interpretation services. The case handler shall further document in his/her case notes that the client waived his/her right to free interpretation services, and chose to use his/her adult family member/friend as an interpreter.
- D. Regardless of who is providing interpretation services, the case handler shall explain to the interpreter the need for confidentiality, and shall reach an agreement regarding the mode of interpretation.
- E. NLS will post waiting room notices in multiple languages that interpreting services are available. NLS staff doing intake in locations other than NLS offices will utilize language identification tools which allow individuals seeking services to identify their language needs to staff. NLS will aim to provide recorded phone messages to notify callers of their right to interpretation or translation services.
- F. At the first contact with the client by support and intake staff, a client's need for language services will be assessed. This assessment shall include a statement of the client's primary language, that is, the language in which the client is most comfortable

speaking. If the client indicates a primary language other than English, the client will be asked whether the client is able to read in English or his/her primary language and which language is preferred for reading. The results of these inquiries shall be noted in TIME.

- G. An interpreter shall be utilized whenever the client OR the staff person thinks one would be helpful. The staff person must be confident that he/she can understand the client completely, and is able to accurately understand the facts of the case and the client's intentions/goals, even if the client denies that an interpreter is necessary.
- H. No prior approval shall be required for the procurement of language services when needed.
- I. NLS shall inquire as to the training and competency of any individuals with whom NLS contracts to provide interpreter services and NLS shall make every effort to select and/or contract with those individuals who have the skills needed to interpret: sufficient fluency and training in modes of interpretation and translation and the ethical standards.
- J. All LEP clients shall be informed that they can exercise the right to complain/grieve to the Supervising or Managing Attorney by calling the NLS office.

IV. TRANSLATION

- A. Translation services and documents may be provided by in-house staff, volunteers, community agencies, other legal services providers, websites or paid or commercial services.
- B. All documents, translated by whatever means, shall be translated accurately. Translation services will be provided, to the fullest extent possible, by qualified individuals with an adequate education and background in both languages, an ability to communicate precisely (content and grammar), and a knowledge of the legal system, court and litigation processes and legal terminology. All translated routine and form documents will be reviewed for quality and accuracy by a second translator. Other documents will be reviewed from time to time, and as resources permit, by a second translator for accuracy and quality.
- C. Staff are encouraged to use professional translators and this policy explicitly discourages the use of family members and friends of clients. NLS staff shall follow the procedures set forth with respect to the use of using family and friends to provide language services, maintaining the attorney-client privilege and ensuring the adequacy of the language services. The case handler will document in the case file that this procedure was followed and that the case handler explained to the client that NLS cannot prevent the family member/friend from disclosing the client's confidences

or secrets, and that the client waived his/her right to free translation services, and chose to use his/her family member/friend as a translator.

D. If the translator is not an NLS staff member, the case handler shall explain to the translator the need for confidentiality, and their obligation to maintain confidentiality. The translator shall execute an agreement to maintain confidentiality. The case handler will also inform the client of the impact of using a third party as a translator on the attorney-client privilege.

E. Case-Related Legal Services

1. When providing case-related legal services to LEP clients, NLS staff will consider whether any written materials produced or which are parts of the case should be translated. Written materials shall be translated from English to a clients' native language if necessary to ensure effective communication and client participation and understanding. Case file documentation will include which documents were translated, and copies of the documents in both languages shall be kept in the case file.

2. When providing case-related legal services to LEP clients who have indicated that they are unable to read in English, case handlers will consider whether any written materials produced or which are part of the case should be translated in order to ensure effective communication and client participation and understanding. If so, sight translation, in which a qualified interpreter reads the document and tells the client what it says, shall be employed. The case file should document that sight translation was utilized for certain written materials, and document which written materials were so translated.

3. NLS staff may determine that translation of case-related, written materials, for example, routine correspondence with a third party or large and complicated documents, may be unnecessary, impractical or counterproductive. Sight translation may then be utilized as an alternative, and utilization thereof, including which documents were so translated, will be documented in the case file.

4. NLS staff, when writing to clients in their native language, shall strive to write at a level addressed to the client's educational and literacy level, and in a manner that can be understood by the client.

- F. Informational materials about NLS and community legal education materials produced and/or distributed by NLS shall be translated into the clients' native language on an as needed basis and will be reviewed and revised annually. Translation of informational materials about NLS and community legal education materials produced and/or distributed by NLS will be translated into clients' native languages in accordance with future revised needs assessments or Special Project needs. Upon request, and when appropriate, NLS will provide sight translation of any community legal education or other outreach or informational materials that it produces and distributes.

V. SUPERVISION AND EVALUATION

At the time of case closure and supervisory review and sign-off, supervisors will review each case to determine if the need for language services was addressed. In connection with evaluation of a staff interpreter's job performance, the additional responsibility of providing interpretation shall be considered. In connection with evaluation of any staff person's performance, compliance with the LEP Policy shall be assessed. Consideration will be given to adjust the compensation and duties of bilingual staff so that they are not treated unfairly or overburdened by extra work. Consideration will be given to adjust the caseload of advocates representing LEP clients through an interpreter or translator.

VI. TRAINING

- A. NLS case handlers will be trained periodically on how to work with interpreters, language resources, and making services accessible and inviting to LEP clients. The Executive Director will designate a staff member as the LEP responsible person for facilitating such training.
- B. Any bilingual staff who is sufficiently fluent in two languages to be utilized as interpreters or translators shall receive appropriate training in the various modes of interpretation and translation (e.g. consecutive, simultaneous, summarization, sight translation) and their proper use, as well as the ethical standards governing interpreters and translators. Although staff interpreters will not necessarily be expected to employ the techniques required of courtroom interpreters (e.g. maintaining high level of formality with no interaction with speaker, using the same level of language as the speaker and not explaining colloquialisms, not interpreting gestural language), and may be called upon to offer their opinion to clarify cultural differences that are reflected in language usage, the staff interpreter shall make it clear that she is doing so, and shall otherwise accurately and faithfully interpret.