2018

2018 CLAC Conference Express Lesson:
USE OF BILINGUAL STAFF

(WHO, WHAT, WHY, AND HOW)

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A. BASICS ON BILINGUAL STAFF

1. WHAT is the legal basis for language access outside the courtroom?

- **Title VI of the Civil Rights Act of 1964** provides that:

  "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.''

- **Department of Justice (DOJ) Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons** states:

  "Under Department of Justice (DOJ) regulations, implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq. (Title VI), recipients of Federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with Limited English Proficiency (LEP)."

  "Under that order (Executive Order 13166), every federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from "restrict[ing] an individual in any way of the enjoyment of any advantage or privilege enjoyed by others receiving any service….."

- **DOJ's May 2011 Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs** states:

  *"The goal of all language access planning and implementation is to ensure that your agency communicates effectively with limited English proficient (LEP) individuals.1 As the Attorney General notes in his Memorandum to all Federal Agencies Regarding the Federal Government's Renewed Commitment to Language Access Obligations Under Executive Order 13166, this requires ensuring **effective communication at all points of contact** between an LEP person and your agency."*

  "Agencies should avoid using family members, children, friends, and untrained volunteers as interpreters because it is difficult to ensure that they interpret accurately and lack ethical conflicts."

2. WHO are bilingual staff?

As defined *by* the *American Bar Association – Standards for Language Access in Courts*:

"Bilingual Staff. Individuals who are proficient in English and another language and who communicate directly with an LEP individual in their common language. This term is intended to be read broadly to include individuals who are proficient in multiple languages."

Bilingual staff may:

- include staff ranging from clerks to senior managers to judges with some level of language proficiency in a language other than English; and

- have varying proficiency in their 2nd language. Some may be able to only greet others in their 2nd language, others may be able to provide necessary information, and some may have native like proficiency.

Court systems vary in how bilingual staff are employed, managed, and trained. As such, bilingual staff may include staff who:

- self-identify as bilingual and have unconfirmed language proficiency levels;

- have confirmed language proficiency in their 2nd language;

- are hired into bilingual positions;

- are not hired into bilingual positions;

- are unaware and/or untrained as to limitations on the use of their bilingual skills;

- receive specific training on limitations of practice, effective communication assistance, etc.; and/or

- all the above.

3. HOW can bilingual staff improve court accessibility?

"Hiring, training, and retaining a cadre of bilingual language service providers is essential for the continuity of language service in the legal system.…..The DOJ (2002b) and ABA (2011) recognize that the hiring of bilingual staff is an effective way for courts to provide language-access services."[1]

Depending on language skill and training received, bilingual staff can:
* provide communication assistance outside the courtroom in a wide variety of scenarios. Communication assistance can range from direct communication with court users in their 2nd language to informal interpreting between another clerk and the court user. For example, an LEP court user comes to the courthouse counter for help with an English traffic citation that he/she does not understand. A bilingual staffer either speaks directly to the court user in their 2nd language to describe the content of the traffic citation or provides communication assistance or informal interpreting between another staffer and the LEP court user; and

* assist LEP individuals with filling out court forms.

4. WHY use bilingual staff to provide communication assistance?

* Immediate service to court users in their language at counters, over the phone, before or after court events, etc;

* Savings on interpreting costs since no interpreting service is needed;

* Efficient use of bilingual staff and court interpreters; and

* Cultural brokerage, which means providing additional cultural information to the LEP (without providing legal advice) so that LEP court users can understand the process better. For example: The meaning of a notary public.

    Note: Mary Ann Jezewski, Ph. D. (in Jezewski, M.A. & Sotnik, P. (2001) Cultural Brokering: Providing Culturally Competent Rehabilitation Services to Foreign-Born Persons.) defined culture brokering as "the act of bridging, linking or mediating between groups or persons of differing cultural backgrounds for the purpose of reducing conflict or producing change."

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[1] Roseann D. González, Victoria F. Vásquez, and Holly Mikkelson*, Fundamentals of Court Interpretation: Theory, Policy and Practice: Second Addition* (Durham: Caroline Academic Press, 2012), 275.

5. HOW do you ensure proper and efficient use of bilingual staff?

- Establish policies that define who, what, where and how bilingual staff should be used;

- Establish a process to confirm the language proficiency level of bilingual staff *(See NSCS surveys: "ALTA/LTI Oral Proficiency Interview Procedures" and "Oral Proficiency Interviews")*;

- Establish mandatory specific training for bilingual staff; and

- Ensure mandatory language access training for all judiciary employees and judges explains the differences between and proper use of bilingual staff and court interpreters.

B. COMPARISON BETWEEN NEW MEXICO AND NEW JERSEY *(What does your state do?)*

Two Different States		
Context	**New Mexico Courts**	**New Jersey Courts**
Court structure	Unified	Unified
Labor environment	Non-union	Union
Interpreting demand	FY 17: 37,997 billable hours (court interpreters)	Nearly 75, 000 completed activities in 90+ languages, 85% Spanish
Staff positions with bilingual titles?	Yes – Language Access Specialist who are trained and certified bilingual judiciary employees. A Language Access Specialist is a bilingual employee of the New Mexico Judiciary who is recognized in writing by the Administrative Office of the Courts as having successfully completed the New Mexico Center for Language Access Language Access Specialist Certification program and is in compliance with the related continuing education requirements.	Yes – Qualified Bilingual Staffer The New Jersey Civil Service Commission qualifies bilingual staff using a multiple-choice BICAT (Bilingual Communicative Ability Test), which is only available in Spanish.
Policy on Use of Bilingual Staff	Supreme Court Rules allow Language Access Specialists to interpret in the courtroom if no certified/qualified interpreter is reasonably available. However, since AOC schedules interpreters for the courts and remote interpreting is available, Language Access Specialists are not scheduled for in-court proceedings. Language Access Plan Language Access Specialist Certification Program Policies and Procedures Judges' Portal	Language Access Plan, Standard 1.5 Use of Qualified Bilingual Staff in the Provision of Direct Services to LEP Individuals The delivery of direct services to persons who are LEP shall be provided by qualified bilingual staff or by court staff with the assistance of a court interpreter. If an LEP person has communication issues with a qualified bilingual staffer, a court interpreter shall then be provided. Because the record of all statements made in a court proceeding must be reflected in English, and because it is of critical importance that all such statements must be understood by all persons in the courtroom, bilingual judges are strongly discouraged from even briefly communicating with an LEP person in a language other than English, unless the communication is immediately repeated in English.

Pay differential for bilingual staff?	Yes	No
Fundamentals training for all court staff on language access that addresses the limited role of bilingual staff?	Yes	No statewide training. However, counties provide fundamentals training to court staff on language access basics including use of bilingual staff and interpreters, and specific training for bilingual staff.
Fundamentals training for bilingual staff on providing communication assistance?	12 week online certification program	No statewide training. However, some counties provide specific training to bilingual staff.
Specific training for bilingual staff on interpreting basics?	Same as above. Bilingual staff must be admitted into the program and successfully complete the 12-week online program in order to be certified. Upon certification, Language Access Specialists must comply with 4 CEUs to remain certified. An annual in-person symposium and a series of webinars are offered throughout the year.	No
Examples of Cultural Brokerage	Testimonial from Navajo Language Access Specialist: *"The majority, if not all, the Navajo people I have assisted with interpreting have stated they are very thankful for a Navajo speaking clerk to assist with communication. One elderly Navajo couple have been working Pro Se in a Guardianship case. They stated it's so much easier to understand and it's not so intimidating to come to court to handle their family issues. The Navajo couple shook my hand with tears in their eyes being very thankful that District Court is able to provide a Navajo interpreter to assist. The couple did state there are many other businesses that need the same kind of service for the Navajo speaking people. I am thankful to be able to assist Navajo speaking parties and customers. I am confident the people are receiving the same level of service as English speaking customers."*	New Jersey Judiciary Warns Litigants against Notarios Públicos Who Are Not Authorized to Practice Law The notice, available in Spanish and posted on the Spanish webpage, is used to inform litigants. It is available at: https://njcourts.gov/public/assets/jt/2015/jtb151207/litigants.pdf.

Possible Challenges That Vary by State

1.	Lack of policies and guidance regarding bilingual staff.
2.	No or limited structure for confirming bilingual staff language skills.
3.	Lack of understanding among court staff and judges on differences between bilingual staff and interpreters.
4.	Lack of training for monolingual and bilingual staff on the various types of language services and specifically what bilingual staff can and cannot do.
5.	Improper use of bilingual staff to do things they are not trained or qualified to do such as serving as interpreters and translators.
6.	Labor issues such as overuse and/or misuse of bilingual staff and no pay differential.
7.	Lack of or inaccurate statistics on use of bilingual staff.
	NEW MEXICO CHALLENGES
8.	In certain courts, especially in rural areas where only one Language Access Specialist may be available for the entire court, Language Access Specialists may provide services outside their regular area of work within the courthouse. This poses a challenge because courts are understaffed.
9.	Providing CEU opportunities and tracking CEUs throughout the year is time consuming.
10.	Difficulty in recruiting LOTS.
11.	On *very* rare occasions, a judge/court may decide to proceed with a Language Access Specialist instead of requesting a court interpreter.

C. IMPORTANCE OF TRAINING

"Because bilingual staff members often provide introductory and ongoing information to individuals seeking relief in court, they must be trained to effectively bridge the language gap between LEP persons and various legal actors…...

Without adequate training and supervision, bilingual staff may not have the required skills to bridge the language gap or to ensure that LEP individuals are provided the same services as their English-speaking counterparts. For example, bilinguals who acquired their non-English language exclusively at home frequently have no knowledge of legal terminology and tend to use codeswitching [the alternating or mixed use of two or more languages, especially within the same discourse.] *to compensate for this deficiency. When codeswitching occurs in communication with a native foreign language speaker, the problem increases, because LEP individuals may understand little or nothing of what is being said……*

Those who acquire foreign language skills at school in the U.S. do not fare much better. Frequently, they have rudimentary knowledge of the foreign language and resort to either inserting English terms when they do not know the correct translation, or oversimplifying a message to convey it with their limited language proficiency. An additional problem occurs when partially bilingual court employees, in trying to understand a foreign language speaker, record incorrect information in a file because their limited proficiency impedes their comprehension."[2]

Judges, court staff, and bilingual court staff need routine training on the basics of:

- language access policy and services;

- the various types of language access services including;

- the distinctive roles of bilingual staff and court interpreters;

- appropriate and effective communication assistance that bilingual staff can provide outside of court; and

Bilingual staff need additional training regarding:

- Limitations of practice (i.e. what they can and cannot do, legal information versus advice, when to call an interpreter, etc.);

- Guidelines for effective communication;

- Protocols and techniques for providing effective informal interpreting; and

- Cultural brokerage.

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[2] González, Vásquez, Mikkelson, *Fundamentals of Court Interpretation*, 275.

D. AVAILABLE RESOURCES

1. Language Access Basic Training (LABT) Training Module, which includes:
   https://nmcenterforlanguageaccess.org/cms/en/courts-agencies/about-language-access-basic-training

   - *Fundamentals* module for all court staff – free https://www.nmcenterforlanguageaccess.org/lafund/

   - Bilingual Skills – Building module *(for bilingual employees only)*

   - Bilingual Skills – Assessment module *(for bilingual employees only)*

2. Language Access Specialist Certification Program (12-week Online):
   https://www.nmcenterforlanguageaccess.org/cms/en/training/language-access-specialist-certification

3. DOJ's February 2014 Language Access Planning and Technical Assistance Tool for Courts:

4. American Bar Association (ABA) – Standards for Language Access in Courts

ABA Standards - *EXCERPTS*

Standard 5.2

Courts should determine the most appropriate manner for providing language access for services and programs with public contact and should utilize translated brochures, forms, signs, tape and video recordings, bilingual staff and interpreters, in combination with appropriate technologies.

Standard 5.2 BEST PRACTICES
iii. Hiring bilingual staff who speak languages that are frequently encountered in the court's jurisdiction is a particularly effective way to provide langauge access services. Bilingual staff in a court program can provide the same information they provide to English-speaking individuals, whether in a clerk's office, filing office, cashier's office, or other court service, directly to LEP persons. Although able to speak another language, bilingual staff are not hired as interpreters, but instead communicate directly with the LEP person in a shared language….

Courts should ensure that bilingual staff providing direct services are competent in all languages in which they will communicate. Some bilingual staff persons may become certified by the court work as interpreter, but courts should avoid using them in legal proceedings if possible, as the two roles may be in conflict and court raise ethical concerns….

Court should also limit the use of a bilingual staff member as an interpreter in situations outside of the courtroom to very low-risk, basic communications….

Standard 6.4
Courts should require the use of the most appropriate manner for providing language access for the services and programs covered by this *Standard* and should promote the use of translated signs, brochures, documents, audio and video recordings, bilingual staff, and interpreters.

Standard 8
The court system and individuals should ensure that interpreters, bilingual staff, translators used in legal proceedings and in courthouse, court-mandated and court-offered services, are qualified to provide services.

Standard 8.2
Courts should ensure that bilingual staff used to provide information directly to persons with limited English proficiency are competent in the language(s) in which they communicate.

Standard 8.4
Court should establish or participate in a comprehensive system for credentialing interpreters, bilingual staff, and translators that includes pre-screening, ethics training, an orientation program, continuing education, and a system to voir dire language services providers' qualifications in all settings for which they are used.

Standard 10.5
The office should coordinate the credentialing, recruitment, and monitoring of language services providers to ensure that interpreters, bilingual staff, and translators possess adequate skills for the setting in which they will be providing services.

5. The NCSC's SharePoint site at https://extranet.ncsc.org/CICEP/SitePages/Home.aspx includes prior NCSC surveys regarding bilingual staff. After you enter your NCSC User name and Password and arrive at the NCSC SharePoint site home page:
    - Select **AA-Program Managers**
    - Select **Members Only** Folder
    - Select **CLAC Inquiries** Folder
    - Select inquiries starting with "**ALTA/LTI Oral Proficiency Interview Procedures;**" "**Bilingual**," **and "Oral Proficiency Interviews."**
    - Note: Users can also search the Tables of Contents inside the **CLAC Inquiries** folder.

    (See the three screenshots below.)

Screenshot #1

State Court Interpreter Testing Site ▸ Home
A collaborative site supporting language access and state court interpreter testing programs.

State Court Interpreter Testing Site

Actions
Shared Calendar
Tasks and ToDos

Administration
Announcements
Manage Groups, Users, and Permissions
Resources Links

Libraries
AA-Program Managers

Lists

Recycle Bin
All Site Content

CICEP News and A
There are currently no act

CICEP Resource Li
☐ https://extranet.ncsc.c

✚ Add new link

State Court Interpreter Testing Materials Site

Welcome to the NCSC's Exam Central!

This site supports the administration and rating of state court interpreter written and oral examinations. Program Managers have their own state folders under the AA-Program Managers' library and will be able to request materials to administer the exams. The raters have access only to their own folders and are able to rate the exams as requested by the program manager.

From time to time, there may be an announcement placed in the upper right hand corner of this page.

Screenshot #2

State Court Interpreter Testing Site ▸ AA-Program Managers ▸ Members Only ▸ All Documents ▾
Collection of exam materials needed to administer and rate examinations.

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4-Program Managers
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copian, Gaianee
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gcaoili, Aurelio
lin, Karim
rbiser, Diana
rboleda, Pia
siye, Kay
ahr, Cathy
arger, Kenneth
ayles, Jennifer
ayley, Lilly
earce, Yvette

☐ Type	Name	Modified	Modified By
📁	2016 CLAC Conference Presentations	6/13/2016 2:07 PM	NCSCAD0\japperson
📁	2017 CLAC Conference Materials	6/6/2017 3:29 PM	NCSCAD0\japperson
📁	CLAC Inquiries	7/10/2017 12:14 PM	Mayra Miranda
📁	CLAC Resources	5/25/2017 12:56 PM	NCSCAD0\japperson
📁	SJI-LEP Grants--State Final Reports	4/9/2015 12:23 PM	NCSCAD0\japperson
📁	Test Maintenance Status Reports	1/29/2014 2:48 PM	Mayra Miranda
📁	Testing Manuals and Reference Documents	1/29/2014 2:06 PM	Mayra Miranda
📄	CLAC Inquiries Table of Contents 020118	2/2/2018 9:30 AM	NCSCAD0\japperson
📄	CLAC Members 02 07 18	2/7/2018 4:58 PM	NCSCAD0\japperson
📄	Listserv Interpreter Requests (January 31, 2018)	2/1/2018 12:03 PM	NCSCAD0\japperson
📄	Logging in, Downloading and Uploading docs in NCSC Sharepoint	10/28/2014 9:14 AM	Mayra Miranda
📄	NCSC Rater Conference Calls - December 2014 Notes 1-30-15	1/30/2015 12:41 PM	NCSCAD0\k.brooke
📄	NCSC Rater Conference Calls - December 2015 Notes 12-14-15	10/21/2016 11:27 AM	NCSCAD0\k.brooke
📄	NCSC Rater Conference Calls - October 2016 Notes 10-21-16	10/21/2016 11:26 AM	NCSCAD0\k.brooke
📄	NCSC Rater Expert List-as of February 2017	2/28/2017 3:36 PM	NCSCAD0\k.brooke
📄	NCSC SharePoint Site - A User's Guide for Program Managers - February 2015	2/13/2015 1:32 PM	NCSCAD0\k.brooke

✚ Add document

2018 CLAC CONFERENCE EXPRESS LESSON: USE OF BILINGUAL STAFF

Screenshot #3

New Mexico

Language Access Coordinator Contact
Paula Consuelo, Statewide Program Manager
Administrative Office of the Courts Language Access Services
237 Don Gaspar
Santa Fe, NM 8700
Phone: (505) 827-4822 (Main number); (505) 827-4822 (Statewide Program Manager)
Email: Paula Couselo aocpvc@NMCOURTS.GOV
Website: https://languageaccess.nmcourts.gov/language-access-plans.aspx

New Jersey

Language Access Coordinator Contact
Brenda Carrasquillo, Statewide Program Manager
Language Services Section
Administrative Office of the Courts
Richard J. Hughes Justice Complex
25 Market Street
Trenton, NJ 08625-0988
Phone: (609) 809-2900 x52371
Email: Brenda.Carrasquillo@njcourts.gov
Website: http://www.njcourts.gov/public/langsrvc.html