

LANGUAGE ACCESS: KNOW THE LAW

Did you know that the law requires translation and interpretation of information for parents of New York City's schoolchildren?

The school system has a legal responsibility to provide information to parents in a language they can understand...

This is an outline of the important laws and regulations that require translation and interpretation services.

Title VI of the Civil Rights Act of 1964 (Title VI) and Office of Civil Rights (OCR)

Recipients of federal funds, such as state and local education agencies, may not discriminate on the basis of race, color, or national origin.

In Lau v. Nichols, the U.S. Supreme Court held that, under Title VI, English Language Learners are entitled to equal educational opportunity and language assistance.¹

- I. The Department of Education's Office of Civil Rights (OCR) – Policy guidelines on equal notification rights for language minority parents.
 - a. "Districts have the responsibility to **adequately notify national origin minority group parents** of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be **provided in a language other than English.**"²
 - b. OCR cases have required the following: -- whether or not a school/district is complying with the list below can be ascertained by calling the district or the school and requesting either information or services:
 - Existence of standardized system for translation of documents
 - Creation of a list of translators for all languages in the district
 - Translation of student handbooks, grade cards, and other notices
 - Qualified interpreters at parent/teacher conference and other meetings that parents are invited to attend
 - Interpreters at IEP meetings, required background in special education; required semiannual training for interpreters that includes basic information about special education issues, terminology, procedures, protocol, and standardization
 - Notification to all staff that they may not rely on other students for interpretation services nor assume that parents will either rely on family members for language assistance
 - Notices to students including but not limited to newsletters, school calendars, student handbooks, report cards, progress reports, disciplinary notices, field trip notices, notices of social events, graduation requirements, qualifications for extracurricular activities and athletics, and public address announcements.
 - Translation of documents provided to parents during the disciplinary process
 - Daily newspapers or bulletins distributed to students which contain information about school and district activities
 - Maintenance of a directory of qualified interpreters
 - Translation of suspension notices, long-term notices and expulsion notices to parents
 - Dissemination of translations of all summer school announcements and parental information

¹ 414 U.S. 563 (1974).

² U.S. Department of Education, "Identification of Discrimination and Denial of Services on the Basis of National Origin," 35 Fed. Reg. 11,595 (1970), 34 C.F.R. §100.3(b)(2) (1996), p. 2.

2. The U.S. Department of Justice Policy Guidance on “Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency” (LEP Guidance) issued pursuant to Executive Order 12250 and Department of Justice Regulations

Four essential factors to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons. These factors are:

- a. Number or proportion of LEP individuals – the number or proportion of people affected by language barriers determines the extent of the program’s obligation to provide language assistance.
 - ❑ In New York City, where 50% of the public school students come from a family in which a language other than English is spoken, the obligation of the Board of Education to provide language access should be extensive. The guidance also states that Title VI obligations apply even where there are few LEP individuals or only one individual.
- b. Frequency of contact with the program
 - ❑ “[I]f an LEP individual accesses a program on a daily basis, [e.g., as they must in attending elementary or secondary school] a recipient has greater duties than if the same individual’s program or activity contact is unpredictable or infrequent.”
 - ❑ “It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution.”
 - ❑ However, the guidance states that a duty exists even for lower-frequency languages and for those individuals who come into infrequent or unpredictable contact with the program.
- c. Nature and importance of the program
 - ❑ “Decisions by a Federal, State, or local entity to make an activity compulsory [such as elementary and secondary school attendance] can serve as strong evidence of the program’s importance.”
 - ❑ “The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed.”
- d. Resources available
 - ❑ “Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns.”
 - ❑ “Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance.”

Note: The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to **provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.**

Title I of the No Child Left Behind Act

“Local educational agencies and schools, to the extent practicable, shall provide full opportunities for the participation of **parents with limited English proficiency**...including providing information and school reports...in a language and form such parents understand.” (see Title I handout)

Translation services required for:

- Information related to school and parent programs, meetings, and other activities
- Written parental involvement policy
- Notices and information regarding parental involvement policy
- Information about programs under the parental involvement provisions of Title I
- Description and explanation of the curriculum in use at the school
- Description and explanation of the forms of academic assessment used to measure student progress
- Description and explanation of the proficiency levels students are expected to meet
- Description and explanation of the school's promotion policy
- State Report Card
- District and School Report Cards
- Information on child's level of achievement in each of the State academic assessments
- Notification that parent may request information regarding the professional qualifications of child's teacher and/or paraprofessional
- If applicable, notice that child has been assigned to, or taught for 4 or more consecutive weeks by, a teacher who is not highly qualified as defined by Title I

Interpretation services required for:

- Advisory Council meetings (???)
- Annual meeting to inform parents of their school's participation under the parental involvement provisions of Title I and to explain the requirements of these provisions and the right of the parents to be involved
- Parent teacher conferences

The **Bilingual Education Act** was eliminated in 2002 and incorporated into Title I. Under this section, districts must notify parents before placing their children in bilingual education or ESL programs.

Such notices must provide a thorough explanation of the child's placement issues including:

- The student's English proficiency
- Assessment method
- Educational status
- Educational needs and prospects
- The nature and range of different available programs
- Instructional goals of the program
- The benefits, nature, and past educational results of the program
- The alternatives.

This section requires that such information be provided “**in an understandable and uniform format and, to the extent practicable, provided in a language that the parents can understand.**”

New York State Commissioner's Regulations Part 154

Notice of Placement in Bilingual Ed or ESL

- New York State law states unconditionally that **parents of ELL students** "shall be notified, in English and the language they understand, of their child's placement in an instructional bilingual or English as a Second Language program and their options..."³

School Related Information

- the same state law also provides that the Board of Education has a responsibility to "distribute to the parents, or other persons in parental relation to pupils with limited English proficiency, school related information in English or when necessary the language they understand."⁴

Guidelines for Programs under Part 154 of Commissioner's Regulations for Pupils with Limited English Proficiency (SED, 1998) (confirmed as still effective policy)

Districts' and schools' responsibilities

- "Districts must make every effort to ensure that parents of guardians of LEP students are made to feel welcome and comfortable in their children's schools. Every effort must be made to establish a communication system which will allow parents or guardians to fully understand the school officials and directives. Parents of LEP children are often LEP themselves and usually unfamiliar with the New York State school system. **It is the school's responsibility to inform the parents of the school program and provide all other school related information in a language they understand.**"

Parent Notification Requirement

- "Parents or guardians must be notified of their child's placement in the transitional bilingual education or free-standing ESL program. If one or both parents or guardians do not understand English, such notification and **all school-related information must be made available to them in the language they understand.**"

Parent Biannual Meetings

- School districts "must make an effort to meet" with the parents or guardians of LEP students at least twice a year to help them "understand the goals of the program and to show them how they might help their children with their educational program. Every effort must be made to conduct these meetings in the language the parents or guardians understand."

The Family Education Rights and Privacy Act (FERPA) / School Records

Federal Requirements

- "an agency or institution of elementary or secondary education shall effectively notify parents [of their rights regarding school records] who have a primary home language other than English."⁵

Local Requirements

- The New York City Board of Education Chancellor's Regulations require that the

³ 8 N.Y.C.R.R. §154.

⁴ 8 N.Y.C.R.R. §154.

⁵ 34 C.F.R. §99.7.

“principal or head of office shall provide for notification [of their rights regarding student education records] in the dominant language to parents of students identified as having a primary or home language other than English” at least once a year.⁶

School Leadership Teams

Memo from David Klasfeld, BOE, dated March 20, 2000 on “School Leadership Team Election Guidelines for Parent Members”:

“In schools with a high percentage of non-English speaking parents, notices must be prepared in both English and the other language(s). The district office must provide assistance with the translation of parent notices, as required. The attached sample notice will be available in Spanish, Russian, Korean, Chinese, and Haitian-Creole.”

ADDITIONAL PROTECTIONS FOR SPECIAL EDUCATION STUDENTS

IDEA (Individuals with Disabilities Education Act)

Detailed notice provided to parents at any time that it proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of education services to the child “in the native language of the parents, unless it is clearly not feasible to do so”⁷

Procedural safeguards notice, provided in the native language of the parent.⁸ that includes a full explanation of all the procedural safeguards afforded to parents and students.⁹

New York State Education Commissioner’s Regulations on Special Education

Withdrawal of Referral

- An agreement between parent and building administrator that provision of additional general education support services will make referral unwarranted and withdrawn must be provided to the parent in his or her native language.

Evaluation Results

- School-age: must be provided to the parents or persons in parental relation in their native language or mode of communication.
- Preschool: must be provided in English and when necessary, in the native language of the parent or other mode of communication used by the parent unless it is not feasible to do so.

Prior notice

- Written prior notice to parents before the district proposes to or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student written in language understandable to the general public, and provided in the native language of the parent unless it is clearly not feasible to do so.

⁶ N.Y.C. Chancellor's Reg. A-820, § VI(A)(3).

⁷ 20 U.S.C. §1415(b)(4); 34 C.F.R. §300.503(c).

⁸ 20 U.S.C. §1415(d)(2); 34 C.F.R. §300.504(c).

⁹ 20 U.S.C. §1415(d); 34 C.F.R. §300.504.

CSE meetings

- The school district must take whatever action is necessary to ensure that the parent understands the proceedings at the meetings of the CSE, including arranging for an interpreter for parents with deafness or whose native language is other than English.

Procedural Safeguards Notice

- the school district must ensure that the procedural safeguards notice is provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

Impartial Hearing

- at all stages of the [hearing], where required, interpreters fluent in the native language of the student's parent, shall be provided at district expense.

<p style="text-align: center;"><i>Guidelines for Services to Students with Limited English Proficiency and Special Education Needs in New York State</i></p>

Parental Involvement During Assessment

- The "parent's preferred language of communication" is verified by the referral form, or if the language is not indicated on the form, by reviewing schools records or from initial contact with the parent.
- "The language of the parent will determine the need to provide bilingual services during conferences and in all communication (written and oral) with the parent
- "A bilingual professional should be obtained for all conferences with parents. A list of bilingual school social workers can be found in the *New York State Directory of Bilingual School Psychologists and Other Pupil Services Personnel*. If after efforts to find a bilingual social worker been followed and one cannot be found, the efforts must be documented. In this case, a trained translator can assist during the assessment process. The parent may choose to bring his/her own translator, once advised the use of technical language. The bilingual professional must document that due process rights were explained to the parents in their language."

Notice

- "All written notices must be translated into the preferred language, if other than English, of the parents."

IEPs

- "A translation of the IEP must be provided in the parent's preferred language."

Evaluations

- "Assessment reports should be orally translated in the preferred language of the parent"