Language Access Teleconference/Webinar I

AN OVERVIEW

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Topic I: Qualifications and Use of Multilingual Staff

Speaker:

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An effective language access program consists of language services that are: 1) available and timely; 2) clearly and accurately provided by someone who has demonstrated their proficiency in two or more languages; and 3) cost effective. In Washington State, the Department of Social and Health Services (DSHS) has determined that the best way to achieve timely, accurate, cost-effective language services is through the use of bilingual employees.

Establishing a bilingual employee program consists of the following steps (see detailed slide for each step and handouts):

1. Determine if bilingual employees are right for your organization.
2. Determine how you will utilize bilingual employees.
3. Establish a bilingual skills assessment standard.
4. If formal, develop a testing instrument.
5. Description of test exercises. Establish training for bilingual skills candidates.
6. Develop a bilingual employee caseload assignment process.
7. Consider incentive pay options.
8. Develop a formal Bilingual Employee Policy – (***DSHS Bilingual Employee Policy*** – Handout)

Topic I: Questions and Answers

What was the history involved in developing the test? Who participated in test development? Please elaborate on the test development process.

In the early 1980s, the Department of Justice's Office of Civil Rights performed an audit of our agency and determined that we were not providing equal access to services to LEP clients based on the Civil Rights Act of 1964. To address this, we prioritized hiring multilingual individuals, accepting at face value their competence in non-English languages. However, we ran into problems with people simply taking high school Spanish and not being qualified as bilingual employees. It was determined through legal mandate that we should establish a formal program that would certify qualified bilingual employees and reject those who were not qualified.

Staff from the University of Washington served as consultants during the development of the testing instrument. Internally, the initiative was led by the manager of the testing and certification unit (a linguist) and we had managers of each agency review the English portion of each test. Pending each manager's approval, we translated the necessary English sections into a target language and these translations were reviewed by the university and other groups to ensure accuracy.

In terms of the test development process, there is a section in the manual that discusses the steps taken in developing the test. Part of the process involves conducting desk audits that take into account job responsibilities, and the program's materials generated by the particular office. We also look at whether the program needs oral or written language skills.

Was there union involvement in determining pay differentials at your agency?

Yes, they were involved in determining the pay and there is continuing discussion on how we move forward with this because some jobs require oral skills, others need written skills, and some positions require both. With that in mind, we have discussed having incentive pay for each of these particular skills and the union has been involved in those discussions.

How large is your staff and what type of staff do you have? Does the pay differential apply to bilingual staff who are also used as third-party interpreters?

Our agency is approximately 18,000 staff. We are a very large state agency and we cover a wide range of services including child protective services, alcohol and substance abuse, mental health issues, disability determination services, developmental disabilities, and long-term care services. I work in the welfare branch of the department that does eligibility for cash, food, and medical assistance.

The incentive pay does apply to bilingual staff who are also used as third-party interpreters. Initially, when we started our program in the 1980s, we did use a lot of staff as third-party interpreters which is one of the reasons why we created the test. But, we are moving in the direction of using these multilingual staff as direct service providers instead of interpreters and there are a couple of reasons for that. Interpreters are required to be nonbiased so if you are using a multilingual staffer as an interpreter between another staffer and a client, that may give some semblance of the interpreter not functioning neutrally or independently. There are also issues with regard to staff being "abused" – being tapped three or four times a day for their particular language skill. So even if they are being given bilingual incentive pay, it's not enough compensation for additional workload when they have to drop their work to attend to interpretation needs. Therefore, we are moving in the direction of having multilingual staff provide direct service to our multilingual clients.

Have you encountered problems in language certification when there are multiple dialects of a language?

We have encountered problems with dialects or different versions of the same language. For example, this is a hot topic for the Spanish language, which has speakers in many different countries with a variety of accents. To solve this problem, our test terminology focuses on "broadcast" Spanish, which is the type of Spanish you would hear on Univision or other Spanish-language media or newspapers. We do have a test for the Mandarin and Cantonese dialects of Chinese. However, Spanish has been a problem, since we have a migrant laborer population from Mexico but some of the people who developed the test were from South America. Therefore, we have modified the test to better mirror the language of the clients we are serving.

Is there an ethics component to the test? What topics are covered on this test? Does the test focus on the role of the bilingual employee rather than the role of the interpreter?

No, the bilingual employee test does not have an ethics component. It is difficult to test someone's ethics because he or she may answer all the questions correctly but still be unethical in their provision of language access. However, we do have a code of professional conduct that we require of all individuals that provide language services in our department.

There is an small ethics component to the Contracted Interpreter Test that DSHS conducts. The test is geared towards the role of the interpreter and there is a brief ethics component to the test: ten true-false questions on ethics.

Is sight translation the same as simultaneous translation?
No. "Sight translation" is when we give a written text to a testing candidate, they orally translate that text into the target language, and we audio record this and evaluate their performance on this test. "Consecutive interpretation" is when there is a conversation between the (limited English proficient) LEP client and an English-speaking worker. We

insert pauses into this conversation to allow for the testing candidate to interpret. "Simultaneous interpretation" is one of the tests we give to our contractors where they interpret at the same time they are hearing the source language.

The oral tests appear to test for interpreter skills. Is that needed for employees who will not be interpreting but will instead provide direct services in the second language?

Technically, it is not required, so that is something that our office is currently working on. We are looking at administering some sort of written test that does a better job measuring a person's bilingual skills rather than go through some sort of interpretation exercise. However, our test was developed back when we were relying on employees to function more as interpreters instead of our current practice, which is to use bilingual workers to provide direct service to clients.

Must third-party translators/interpreters also take this exam? Who needs to take the exam?
Our contractors take a completely separate type of exam for interpretation or translation, respectively. These exams carry a fee and we require all our offices to hire only contractors who have passed either our certification program or another certification program.

Have you developed glossaries for your programs in the languages used to serve the LEP population?

We do have some glossaries but they are fairly outdated (created 15 years ago). One of our projects is to revise those glossaries. Even at the federal level, we have changed some of the terminology that we have used, so part of that exercise is to weed out the old terminology and insert revised terms. But we do have that currently available in seven languages.

Do you permit clients to use family or friends for interpretation if that is the client's preference? If so, under what circumstances?

Our policy is that we do not allow clients to use family or friends for interpretation. The client can bring in whomever they wish (advocate, family member, or friend) but we will always use a neutral third-party interpreter to ensure accuracy of interpretation in terms of the conversation between both parties.

Topic II: Citywide Language Access by Executive Order
Speakers:

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In July 2008, Mayor Michael Bloomberg signed Executive Order (Order 120), a citywide policy on language access to ensure the effective delivery of city services. Order 120 seeks to ensure that residents with limited English proficiency have fair and equal access to crucial social services.

The Executive Order articulates standards set by the New York City Customer Service Group while allowing agency flexibility in determining their language access plan. Every agency that provides direct public services to LEP individuals must:

1. Designate a language access coordinator to oversee the creation and execution of an agency-specific internal language access policy and implementation plan.
2. Develop their language access policy and implementation plan by January 1, 2009.
    a. A four-factor analysis, based on guidance by the US Department of Justice (DOJ) effective June 12, 2002 (67 FR 41455) should be conducted, taking into account:
        i. The number of proportion of LEP persons in the eligible service population;
        ii. The frequency with which LEP individuals come into contact with the agency;
        iii. The importance of the benefit, service, information, or encounter to the LEP person (including the consequences of lack of language services or inadequate interpretation/translation); and
        iv. The resources available to the agency and the costs of providing various language services.
3. Provide services and translate public documents into at least the top six spoken languages in New York City: Spanish, Chinese, Russian, Korean, Italian, and French Creole.
4. Post visible signs about the rights to translation and interpretation.
5. Train staff on language access policies and procedures.
6. Establish an appropriate monitoring and measurement system.

What's unique about NYC's executive order?
Our executive order can serve as a good model for other cities. Structurally, our language access policy is placed under the Mayor's Department of Operations Customer Service Group Initiative ("Operations"), and it was a joint effort between Operations and the Mayor's Office of Immigrant Affairs. Having our language access policy included within Operations' mandate insures implementation as it becomes integrated into existing city-

wide priorities and infrastructure. For example, Operations is already mandated to improve customer service experience around the city, and improve customer response coordination. With this executive order, we have been able to add language access to that reporting structure. Moreover, we can also monitor accountability by tracking progress on language access through the annual Mayor's management report.

What were some of the reasons that sparked citywide action on language access?
During the summer of 2008, the city implemented a "secret shopper" evaluation, sending guides to test components of customer service, including access to services for LEP customers. The language access component came up with the lowest rating (1.9 out of 4). This score provided agencies with a sense of how big the gap is, and what needs to be accomplished post-language access executive order.

However, the "secret shopper" program was not the only impetus for citywide movement on language access. The executive order was a culmination of ten years of language access advocacy work. For several years, language access progress was made in individual agencies, but not citywide. These model policies were implemented through chancellor regulations, state regulations, or city legislation of large agencies. For example, the first language access legislation was developed in the Human Rights Administration (HRA), which developed language access policies with respect to the delivery of public benefits, namely Medicaid and food stamps. Then, mostly through state regulations, hospitals began instituting language access plans.

The executive order marks a departure from single-agency approaches to a unified plan for language access. Commissioner Guillermo Linares and former Deputy Commissioner Azadeh Khalili of the Mayor's Office on Immigrant Affairs created an interagency task force that had agencies work together on language access. The task force provided trainings, policy reports, and technical assistance, setting up the infrastructure for language access, and ultimately assisting in obtaining buy-in from agencies to go ahead with the citywide policy. With many large agencies and institutions already having a language access plan in place, and building on the results of the inter-agency task force, the Mayor obtained sufficient internal and external support to implement a city-wide language access policy.

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Mr. Lewis began his presentation by explaining that before he became the Director of Immigrant Services for the NYC Administration for Children's Services, he was a lobbyist for the New York Immigration Coalition and had fought for language access rights. Now having to implement language access policies, Mr. Lewis cautioned the participants to be careful of what you ask for — that it is very challenging to have to implement language access in a large government agency.

Challenges of Implementing Language Access Policies:

1. Most language access coordinators in government agencies do not report directly to the heads of their agencies, and consequently have the responsibility to implement language access policies, but do not have the authority to make things happen. Language access is generally viewed as a support service, rather than as a integral component of an agency's operation — like computer systems. Language access does not drive an agency, and language access coordinators need to learn how to get things done by persuasion, by seeking cooperation, and through targeted requests from top officials for assistance.

2. Budget constraints combined with competing priorities represent a second major challenge in implementing language access policies. In a period of budget cuts, it is obviously difficult to access new funding that may be necessary to start a language access initiative or to expand an existing policy. However, even if the resources are available, language access coordinators will need to get other divisions within the agency to cooperate — by having staff participate in training, implementing new practices, etc. For my agency, that can lead to questions of whether it is more important to train child protective staff in identifying child abuse or to train on best practices in using interpreters. No matter how important the issues are for those of us in the language access field it does not mean other parts of the agency have the same priorities.

3. Flexibility built in language access laws/executive orders can lead to technical compliance rather than optimal language access policies. Most laws or executive orders are a result of political compromise — advocates want specific requirements and government usually wants flexibility. In our experience, Executive Order 120 has a great deal of flexibility — flexibility in the number of languages to provide services in, the type of language access services to provide, the number of documents/notices to translate, etc. The challenge for language access coordinators is to go beyond technical compliance and to be able to secure the resources needed to implement a language access policy that results in equal access.

Topic II: Questions and Answers

Do you believe the current economic climate will adversely impact on the implementation of the Mayor's executive order? For example, will the agencies be able to hire new language access coordinators?

I think the results will be mixed across agencies. Most NYC agencies will reach into their staff and find people to perform language services. The questions will be whether these people will be coordinators on a fulltime or parttime basis with other job responsibilities. In my mind, it really is a fulltime job to develop and implement a language access policy, but it will really depend on each agency's investment in staff resources in language services.

Can you talk more about the testing program you mentioned? Did the city provide the "secret shoppers" or were they trained testers?

The city is still developing standards. For more information about this program, please see the attached document, Customers Observing and Researching Experience [CORE] Executive Summary.

What is the system for providing interpreter services at administrative hearings in NYC (such as welfare, food stamp, or subsidized housing hearings)? Are these interpreters from the agency, a local nonprofit, or are they neutral third parties?

Most of the fair hearings are administrative hearings run by the state and I believe that they do provide interpreters for the hearings but I am not sure if the actual decisions rendered are subsequently translated. I think these decisions are not translated. [Editor's note: this information was confirmed in the transcript of our chat log.]

There really has been a policy, at least in New York City, where legal documents (e.g., court orders) themselves are in English only. In our agency, this has been a problem because we send petitions to clients with allegations of abuse and neglect, those documents are only in English, and the court system is resistant to translating these documents.

The interpreters at administrative hearings come from a pool of certified translation/interpretation contractors. The state distributes a list of agencies where they have a language services contract and that enables state offices and non-profits to call upon these companies to provide language services.

How does New York City's executive order differ from President Clinton's 2000 LEP Executive Order 13166?

There is a section within NYC's executive order that is virtually identical to the presidential executive order with respect to the development of the language access plan, specifically that each plan must take into account the following four factors:
1. The number or proportion of LEP persons in the eligible service population;
2. The frequency with which the clients come into contact with the agency;
3. The importance of the benefit, service, information, or encounter to the LEP person (including consequences of lack of language services or inadequate translation/interpretation); and,
4. The resources available to the agency and the costs of providing various types of language services.

The federal policy emphasized "meaningful access" for LEP clients but didn't talk specifically about what that actually meant whereas NYC's executive order provides more clarity on what "meaningful access" would actually look like at a city-level agency (e.g., what needs to be translated, how many languages to target for translation, posting of signage).

Comment from Hawaii: We found in Hawaii that agencies can follow a template to write a language access plan, but implementation is the most difficult due to a lack of understanding of what the issues of language access are. We are now looking at training agency workers in the correct way to work with of interpreters, what makes a good interpreter, the role of bilingual staff, what language-level of bilingual staff is needed for what types of information needed, etc.

Are there any tools used to help identify the language of the client for non-bilingual staff? In other words how do non-bilingual staff identify which language interpreter to request?

At the Administration for Children's Services in New York, this is part of the state computer system, and there is a primary language indicator that needs to be completed. Interestingly, before I came, the default language in the computer system was English so if a worker took no affirmative steps, the language preference for the client would be English. Fortunately, the state was receptive and cooperative to changing this default setting to blank so now you can see if an individual is in need of language services.

This brings up the interesting question of how the initial language marked in the computer system is determined. The language marked is often a subjective assessment made by case workers and it is important to provide clients with the ability to decline interpreters if he or she feels that an interpreter is not necessary. Local Law 73 requires that interpretation must be provided for LEP clients but it is less clear how a LEP client is identified. Is proficiency self-assessed? Can a client resist a language notation? Do workers themselves assess language proficiency? These are all important questions in determining the provision of language services.

Lastly, there are also "I Speak" cards. NYC's Department of Social Services (DSS) uses a language card in about 20 languages asking if the client needs an interpreter. The client can point to their language. In Washington State, we require every one of our field offices to have a poster where clients can point to the language that they speak. In the past, we have also had flipcharts at the front desk for clients who can read their own language to identify their language preference. [Editor's note: examples of "I Speak" cards include the following, http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-4374-ENG; http://www.ncdhhs.gov/dss/county/docs/ISpeakCards2004.pdf or http://www.cdss.ca.gov/civilrights/PG584.htm].

To identify LEP callers at the Administration for Children's Services, we connect callers to our telephonic language line which identifies the language of the person. Oftentimes, this can be more efficient that the "I Speak" language cards because our workers sometimes do not carry these language cards with them.

What has been done about indigenous language not identified through "I Speak" cards?

This is definitely a challenge. In New York City for example, the Mexican community speaks many indigenous languages, so we contracted with a local Mexican nonprofit community-based agency to help us provide those languages. Working with community-based groups has been the best way we have addressed this issue.

Working with low-literacy LEP individuals is another challenge so we look to audio-visual cues to supplement "I Speak" cards or written signage. In Washington State,, we've had much more success with telephonic interpreters in terms of identifying the language and providing the service.

How are you addressing the provision of language services by agencies with which you contract to provide services?

This is a good question. NYC's executive order is actually silent on this issue. For the Administration of Children's Services, we contract with preventive and foster care agencies to provide a lot of our service and our new Requests for Proposals (RFPs) have much stronger requirements for contract agencies in terms of language service provision.

How is New York City dealing with clients that are sensory impaired (hearing and visual impairment)?

We use TTY for hearing impaired and we also use interpreters which can be quite expensive. However, there are strong Americans with Disabilities Act (ADA) requirements that require we serve both hearing and visually-impaired clients.