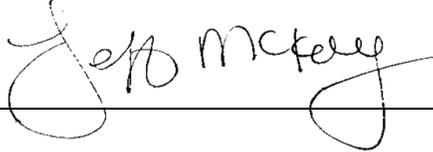


 Corrections and Community Supervision DIRECTIVE	TITLE Cultural and Language Access Services		NO. 4490
			DATE 1/15/2016
SUPERSEDES DIR #4490 Dtd. 7/20/2015	DISTRIBUTION A B	PAGES PAGE 1 OF 11	DATE LAST REVISED
REFERENCES (Include but are not limited to) Directives #2611, 4040, 4041, 4470, 4483, 4804, 4805; Policies #1.01, 1.04; Executive Order #26; Title VI of the Civil Rights Act of 1964; Omnibus Crime Control and Safe Streets Act of 1968; Article 15 of the NYS Human Rights Law	APPROVING AUTHORITY 		

- I. PURPOSE:** To establish policy and procedures to ensure that all individuals with Limited English Proficiency (LEP) who have contact with the New York State Department of Corrections and Community Supervision (DOCCS or Department) have meaningful access to DOCCS programs, services, and benefits.

In an effort to expand the provision of interpretation and translation services to inmates, releasees, relatives, friends, and visitors, and to increase compliance with Federal guidelines, the Department sets forth the following policy to be implemented Statewide.

II. BACKGROUND

- A. Title VI of the Civil Rights Act of 1964 (Title VI) (42 U.S.C. § 2000d) and its implementing regulations, and the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act) (*id.* § 3789d(c)(1)) and its implementing regulations, prohibit recipients of Federal financial assistance from discriminating against individuals on the basis of, among other protected classes, national origin. Violations of Title VI and the Safe Streets Act may occur if appropriate language assistance is not provided to LEP individuals (whose primary languages are usually tied to their national origin), which may limit access to the same programs, services, or benefits that recipients of Federal financial assistance provide to everyone. To assist the language access compliance efforts of recipients of Federal financial assistance from the U.S. Department of Justice (DOJ), the DOJ issued a guidance document for recipients entitled Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002).
- B. In addition to Title VI and the Safe Streets Act, the New York State Executive Law, Article 15, and the Human Rights Law prohibit national origin discrimination, making it illegal to discriminate because of a person's birthplace, ancestry, culture, or primary language. Further, New York State Executive Order #26, Statewide Language Access Policy, directs State agencies, such as DOCCS, to provide language access services to LEP individuals. Based on this Executive Order, DOCCS developed a Language Access Plan which describes Departmental policy for the provision of language access services to individuals with LEP.

III. ROLE OF THE OFFICE OF CULTURAL AND LANGUAGE ACCESS SERVICES: The Office of Cultural and Language Access Services, formerly known as the Division of Hispanic and Cultural Affairs, is responsible for implementing DOCCS' Language Access Plan and related procedures, coordinating and tracking the Department's language assistance efforts, and ensuring that individuals with LEP can access the Department's programs, services, and benefits. The Office is part of the Division of Education and under the general direction of the Director of Education.

IV. DEFINITIONS

- A. Bilingual: The ability to speak two languages fluently and communicate directly and accurately in both languages.
- B. Cultural Competency: A mindset and skills set that promote respectful interaction and effective performance in a culturally diverse environment.
- C. Coordinator of Cultural and Language Access Services: The position that serves to monitor and oversee all matters related to language access.
- D. Interpretation: The act of listening to verbal communication in one language and orally converting it into another language, while retaining the same meaning. Interpreting is a sophisticated skill needing practice and training, and should not be confused with simple bilingualism.
- E. Language Access Coordinator: The Language Access Coordinator (LAC) will be designated by the Commissioner and will serve as the Commissioner's designee regarding language access and LEP issues.
- F. Language Access Plan: A document that sets forth the parameters for the provision of language assistance services to individuals with LEP.
- G. Individuals with Limited English Proficiency: An individual whose primary language is not English and who has a limited ability to read, speak, write, or understand English. An individual with limited English proficiency may be competent in certain types of communication (e.g., speaking or understanding), but still be limited English proficient for other purposes (e.g., reading or writing).
- H. Plain Language: The simplest, most straightforward method of expressing an idea. Documents shall be translated into plain language.
- I. Primary/Dominant Language: The language in which an individual is most effectively able to communicate.
- J. Qualified Interpreter: An individual who (1) is able to communicate accurately in both English and the other language being interpreted, (2) understands and follows the same rules, such as those governing privileged and confidential information, that apply to all DOCCS employees, (3) adheres to other applicable interpreter ethical standards governing confidentiality, accuracy, impartiality, conflicts of interest, and the maintenance of professional distance, (4) protects the safety and security of DOCCS facilities and Community Supervision Offices, and (5) is culturally competent. Qualified interpreters may include contract vendors that provide interpretation services by telephone, in person, or by video, as well as correction staff and volunteers.
- K. Translation: The transfer of written text from one language into an equivalent written text in another language. Translation requires special knowledge and skills.

- L. Vital Documents: Documents which contain essential information about available programs, services, benefits, or activities, access to which is essential in order to receive them, benefit from them, or participate meaningfully in them. Vital documents are required to be translated, in plain language, into the six most common languages identified by New York State as well as any other commonly spoken languages identified by DOCCS.

The following are examples of vital documents:

1. Forms, applications, or notices (e.g., language access complaint form; grievance forms; medical, dental, and mental health forms; forms for reporting lost or issued items; merit time and presumptive release forms; temporary release program forms; forms for reasonable accommodations; forms for terms of release; forms for religious goods and services); and
2. Complaint documents and procedures, including those related to PREA complaints.

V. GENERAL CONSIDERATIONS IN INTERACTING WITH LEP INDIVIDUALS

- A. It is the policy of DOCCS that individuals with LEP shall receive free language assistance so that they can access the same programs, services, and benefits that are available to individuals who are not limited English proficient, whether DOCCS provides that program, service, or benefit directly or indirectly, such as through a contract or a Memorandum of Understanding. It is especially important to ensure that the length of an LEP inmate's incarceration or an LEP individual's post-release status is not adversely affected because of any failure to provide free language assistance to that person. If it is an undue burden to provide qualified interpretation or translation services for a program, then an individual with LEP cannot be penalized for nonparticipation and DOCCS must waive the program requirement.

In instances where the individual with LEP has program participation waived, the facility must request the waiver from the Director of Education in Central Office. This procedure will begin with the Education Supervisor making the request for a waiver to the Deputy Superintendent for Program Services who will send the request to the Director of Education in Central Office. In facilities where there isn't an assigned Education Supervisor, a Supervising Offender Rehabilitation Coordinator (SORC) will have the corresponding duties.

If the inmate with LEP is in other areas of the facility, other than programs, and is in need of language assistance, "Referral Form for Inmates with Limited English Proficiency," [Form #4490E](#), should be completed by the staff person who encounters the inmate and sent to the Education Supervisor for further action. In facilities where there isn't an assigned Education Supervisor, a SORC will have the corresponding duties.

If the inmate with LEP is unable to participate in a required program, other than Academic Education, the staff person responsible for that program will complete [Form #4490E](#) and submit it to the Education Supervisor or SORC.

Inmates with LEP enrolled in Academic or Vocational Education who are unable to participate in the program, will have a referral form, [Form #4490E](#), completed by the teacher/instructor and submitted to the Education Supervisor or SORC. For LEP inmates enrolled in academic or vocational programs, who are removed due to LEP, the required Education Waiver forms from Directives #4804 or #4806 must be completed in addition to [Form #4490E](#).

B. Use of Inmates/Releasees, Family Members, Friends, or Minors as Interpreters or Translators

1. Generally, staff shall not rely on an inmate/releasee, an LEP individual's family member or friend, or a minor as an interpreter or a translator for communications with an individual that involve sensitive, confidential, or privileged information or that create a conflict of interest. For instance, these individuals should not be relied on to interpret for classification reviews, medical or mental health encounters, investigations, inmate tier hearings, community preparation interviews, or administrative segregation hearings. Reliance on inmates/releasees, family members, friends, or minors for these types of communications could result in a breach of confidentiality, a conflict of interest, or an inadequate interpretation or translation. This general prohibition does not apply during exigent circumstances, such as where an extended delay in obtaining qualified interpretation services could compromise an inmate's/releasee's safety, the performance of first-response duties in connection with a report of sexual abuse, or the investigation of an inmate's/releasee's sexual abuse allegations.
2. Upon consent by an individual with LEP, DOCCS may allow that person to use an inmate/releasee, a family member, or a friend as an interpreter in which the topic of conversation is not sensitive, confidential, or privileged in nature (e.g., asking questions about the location of an office, an office's hours of operation, or seeking to reschedule an appointment). Where a staff member allows an individual with LEP to use an interpreter of his or her choosing, the individual with LEP must complete a written consent/waiver form, [Form #4490A](#), "Waiver of Right to Free Oral Interpretation Services."

VI. IDENTIFYING INDIVIDUALS WITH LIMITED ENGLISH PROFICIENCY: It is important to identify an individual with LEP and his or her primary language.

- A. Available Resources: To assist staff in identifying an LEP individual's primary language, DOCCS has distributed "I Speak" cards to staff (hardcopy to Community Supervision offices and an electronic version to facilities) and placed "Language Identification Tool" posters at locations where staff may encounter individuals with LEP. The Coordinator of Cultural and Language Access Services/LAC ensures that these resources are readily available to employees throughout the Department.

B. Inmates

1. At Reception Centers: To determine the primary language of an inmate, staff members conduct an oral interview of that inmate. During this interview, the employee asks questions from a language dominance questionnaire prepared by DOCCS. Based on an inmate's answers to the questions posed during this interview, the staff person determines whether an inmate's dominant language is English, Spanish or another language, or otherwise lacks a primary language preference. Additionally, staff asks the inmate what his or her native language is and whether he or she has a language preference. The inmate's primary language shall be included in the inmate tracking database and on the inmate's identification card.
2. At General Confinement Facilities: The English oral proficiency of an inmate who speaks Spanish or another foreign language will be evaluated at a general confinement facility. Departmental Directive #4804, "Academic Education Program Policies," outlines the policy and procedures for identifying an inmate's language dominance, identifying an inmate's English proficiency, and tracking an inmate's progress in learning English. The primary language will also be identified in the inmate's Departmental identification card.

C. Releasees: By the time an inmate has reached releasee status, his or her language dominance/language access services needs have already been identified and addressed. Community Supervision staff should refer to the releasee's files to continue providing the identified language access services needs.

D. Visitors and Other Members of the General Public: To facilitate telephonic interpretation communications with LEP individuals visiting DOCCS facilities or offices, staff members shall rely on an "I Speak" card or the "Language Identification Tool" poster to identify an LEP individual's primary language. In addition, these individuals can self-identify their primary language.

VII. PROVISION OF INTERPRETATION SERVICES: The following procedures are set forth for the provision of culturally competent interpretation services once a staff member determines that an individual has limited English proficiency and identifies that person's primary language. In addition, DOCCS staff has contact information about the telephonic interpretation vendors that are available to provide interpretation services Statewide. Telephonic interpretation vendors also have the capacity to assist with the identification of languages other than Spanish.

A. Inmates (Including Releasees under Community Supervision)

1. Staff shall determine the primary language of an inmate by consulting DOCCS' inmate/releasee tracking database or by inspecting an inmate's identification card.

2. Staff shall secure qualified, culturally competent interpretation services through one of DOCCS' telephonic interpretation vendors, facility staff, or the Department's Office of Cultural and Language Access Services. It is the Education Supervisor's responsibility to determine which situations require qualified interpretation services, such as: orientation, classification reviews, investigations, inmate tier hearings, administrative segregation hearings, the grievance process, Program Committee interviews, the visitation process, Parole Board proceedings, Community Supervision encounters, etc. In those facilities without an assigned Education Supervisor, a SORC will assume the responsibility. The Nurse Administrator, or health professional in charge at the facility's health services area, will make this determination during medical and/or mental health encounters. All staff members will check the inmate's record and/or identification card to ensure that appropriate language identification will occur.

In Facilities: When the Education Supervisor or SORC is not available, the Watch Commander will evaluate a request for interpretation services. Once the Education Supervisor, SORC, or Watch Commander determines that services are needed, he or she will grant permission to staff to secure language assistance through a telephonic interpretation vendor, a staff interpreter, or the Office of Cultural and Language Access Services. In exigent circumstances, staff may provide language assistance through an inmate, an LEP individual's family member or friend, or a minor until a qualified interpreter becomes available; however, staff should document any instance when, in such circumstances, they relied on an inmate, an LEP individual's family member or friend, or a minor to provide language assistance.

In Community Supervision Offices: When the Bureau Chief (BC) is not available, the Regional Director (RD) will be notified. Upon a determination that interpretation services are needed, the BC or RD will grant permission to staff to secure language assistance through a telephonic interpretation vendor, a staff interpreter, or the Office of Cultural and Language Access Services. In exigent circumstances, staff may provide language assistance through a releasee, an LEP individual's family member or friend, or a minor until a qualified interpreter becomes available; however, staff should document any instance when, in such circumstances, they relied on a releasee, an LEP individual's family member or friend, or a minor to provide language assistance.

- a. If the inmate/releasee tracking database or the inmate's identification card lacks information about the primary language of an individual with LEP, staff shall use an "I Speak" card or point to a "Language Identification Tool" poster to determine the inmate's/releasee's primary language. If such a card or poster is not available, then staff shall secure guidance from the Education Supervisor or SORC/BC. In cases when the Education Supervisor/Bureau Chief is not available, the Watch Commander/Regional Director will provide guidance. In addition, staff will have the telephone numbers for DOCCS' telephonic interpretation vendors.

- b. If it was necessary to identify the inmate's/releasee's primary language during the encounter, then the employee shall notify the Education Supervisor or SORC, who will update the inmate/releasee tracking database and notify the facility Identification Officer so that the identification card will include the inmate's/releasee's primary/dominant language.
 3. Due to the quasi-judicial nature of the Parole Board's proceedings, qualified interpretation services will only be provided by a culturally competent vendor or DOCCS staff members in the Spanish-speaking parenthesis.
- B. In-Person Encounters with Visitors and Other Members of the General Public
 1. Once staff members identify the primary language of visitors and other members of the general public, as stated in Section VI-D above, staff provides the visitor or other member of the general public with an appropriate copy of the Visitor's Guidelines, which is available in the following languages: Chinese, Haitian Creole, Italian, Korean, Polish, Russian, and Spanish. If DOCCS does not have a translated version of the Visitor's Guidelines available in the LEP individual's primary/dominant language, then staff persons should secure telephonic interpretation services pursuant to the procedure outlined in Section VII-A-2 above.
 2. Each facility Superintendent/Regional Director will submit a plan of action to the Director of Education on how staff at the facility/area office will provide a qualified, culturally competent staff person for in-person interpretation services or telephonic interpretation to those members of the public who require oral language assistance. The plan will be kept on file in the Watch Commander's/Bureau Chief's Office and in the Division of Education.
- C. Telephonic Encounters with Members of the Public
 1. At Facilities: Each facility Superintendent will submit a plan of action to the Director of Education on how staff at the facility will provide telephonic interpretation services to those members of the public who require interpretation services. The plan will be kept on file in the Watch Commander's Office and in the Division of Education.
 2. At Community Supervision Area Offices: Staff shall ask the individual calling what language they speak and, as the first step, endeavor to obtain a qualified, culturally competent staff member to provide assistance in that language. If staff cannot identify an individual's primary language or a staff member is not available to serve as an interpreter, then the staff person who answered the call must secure interpretation services through one of DOCCS' telephonic interpretation vendors.
 3. At Central Office Units: Staff shall ask the individual calling what language they speak, and in the case of Spanish-speaking individuals, staff from the Office of Cultural and Language Access Services can interpret. Regardless of whether staff can identify the individual's primary language, staff will contact an employee from the Office of Cultural and Language Access Services to secure interpretation services through one of DOCCS' telephonic interpretation vendors.

VIII. PROVISION OF TRANSLATION SERVICES

A. Office of Cultural and Language Access Services

1. DOCCS will translate vital documents into the most common non-English primary languages identified by New York State and any other languages identified by the Department. In addition to English, the following languages have been identified in New York State as the most common: Chinese, Haitian Creole, Italian, Korean, Russian, and Spanish.
2. DOCCS has translated various vital documents into the most common non-English primary languages, including the following:
 - The Prevention of Sexual Abuse: What Inmates Need to Know, and other educational materials based on the Prison Rape Elimination Act (PREA);
 - COMPAS Assessment;
 - Visitors' Guide; and
 - Suicide Prevention Pamphlet
3. DOCCS will translate any vital documents into the most common non-English primary languages regarding safety and security at the facilities and inmate release issues following approval procedures as set forth in Section XI-A-2 of this directive.
4. Process for translating documents: The Office of Cultural and Language Access Services will coordinate translation services for correctional facilities, regional/area offices, and Central Office units. To maintain appropriate levels of safety, security, and good order at all facilities and regional/area offices, DOCCS requires staff to adhere to the following procedure for document translations.
 - a. Official DOCCS translation requests in Spanish shall be submitted to the Coordinator of Cultural and Language Access Services. The Coordinator shall provide the requested translation services, free of charge to correctional facilities, regional/area offices, and Central Office units.
 - b. Official DOCCS translation requests in languages other than Spanish: Staff at the facility or regional/area office will scan the document and e-mail it to the Coordinator of Cultural and Language Access Services requesting permission to translate the document into a language other than Spanish. The Coordinator will contact facility or regional/area office staff and if approved will direct facility staff to submit the document for translation with the appropriate contract vendor. Contract vendor costs for translation requests involving languages other than Spanish are billed directly to the facility or regional/area office making the request.
 - c. The Office of Cultural and Language Access Services ensures that plain language is used in translation of materials to ensure that they are accessible to readers in a range of literacy levels.
 - d. The Coordinator of Cultural and Language Access Services/LAC reviews and approves all in-house document translations, or may secure a certification of accuracy from the vendor or other service provider that produced the translation.

- e. The Office of Cultural and Language Access Services will provide translated forms and documents available on the DOCCS website and appropriate internal shared drives.

5. Staff shall provide individuals with LEP with appropriate translated documents.

IX. LANGUAGE ACCESS GRIEVANCE PROCEDURES

- A. The Coordinator of Language Access Services/LAC ensures that individuals are notified of the right to file a language access complaint and that they may utilize [Form #4490B](#), "Access to Services in Your Language: Complaint Form." The notice, which is translated into the most common non-English languages, is posted in areas where it is easily seen by the public and on the Department's website, and is available to the public upon request.
- B. In addition to the above complaint form, inmates can file grievances using Directives #4040, "Inmate Grievance Program," and #4041, "Inmate Grievance Program-Modification Plan." Releasees can send their complaints to the Coordinator of Language Access Services/LAC in Central Office. Visitors and others can submit complaints in accordance with Directive #2611, "Discriminatory Treatment Complaints-Procedures for Visitors."

- X. TRAINING:** The Coordinator of Cultural and Language Access Services/LAC and the Director of the Training Academy are responsible for administering the DOCCS training program on language access services. The training program includes the components identified in DOCCS' Language Access Plan and is provided to staff consistent with that Plan.

XI. FACILITY LANGUAGE ACCESS REVIEW COMMITTEE

Each Superintendent will designate the Deputy Superintendent for Program Services, or designee, as Chairperson of the Facility Language Access Review Committee. The Committee will consist of representatives from Program Services, Administration, Security, and Health Services, and the Regional Director's designee from Community Supervision. The Education Supervisor (or an SORC at facilities without an Education Supervisor) will co-chair the Committee and will be responsible for the oversight of the Committee's day-to-day operations. The Committee will meet monthly and the Chairperson will submit a monthly report to the Coordinator of Cultural and Language Access Services/LAC at the Division of Education, [Form #4490C](#). The purpose of this Committee is to monitor the language access program and all language access complaints.

Additionally, any interpretation or translation services provided to any inmate, releasee, or visitor will be reported on the DOCCS Language Access Plan Compliance Report, [Form #4490D](#). The Chairperson of the Committee will file this report to the Deputy Superintendent for Program Services by the 5th of the following month, who will in turn submit the report to the Coordinator of Cultural and Language Access Services/LAC on the 5th of each month.

- A. The Committee's functions are as follows:

1. Serve as a liaison between the Coordinator of Cultural and Language Access Services/LAC and facility staff who facilitate the provision of telephonic interpretation services.

2. Submit for review to the Coordinator of Cultural and Language Access Services/LAC any Departmental or official document in English, including a newly issued document and any update to an existing document, to determine whether or not it should be classified as a vital document. The Coordinator of Cultural and Language Access Services/LAC will make this assessment based on the nature, frequency, importance, and relevance to the institutional needs of inmates, releasees, or benefit to the public of the programs, services, or benefits at issue. Before submitting any vital documents for translation, the Coordinator of Cultural and Language Access Services/LAC will forward those materials to the appropriate Deputy Commissioner for review and approval.
 3. Contact the Central Office Language Access Review Committee about any issues regarding language access services that may arise at the facility or regional/area office level, such as questions regarding in-person interpretation, over-the-phone interpretation, or translation.
 4. Serve as a liaison between the inmates and the Inmate Grievance Program.
- B. The Deputy Superintendent for Program Services will coordinate with each facility's Business Office to establish:
1. An account with a language access contract vendor; and
 2. Protocols for monitoring the responsible facility department and/or staff members' usage of interpretation/translation services and ensuring their accountability for incurred costs.

XII. CENTRAL OFFICE LANGUAGE ACCESS REVIEW COMMITTEE

- A. The Deputy Commissioner for Program Services established the Central Office Language Access Review Committee. This Committee consists of representatives from Program Services, Facility Operations, Information Technology Services, Administrative Services, and Counsel's Office, Diversity Management, and Community Supervision, as needed. The Central Office Language Access Review Committee will be chaired by the Coordinator of Cultural and Language Access Services/LAC and will meet quarterly.
- B. A report from the Office of Cultural and Language Access Services about DOCCS' provision of language access services to individuals with limited English proficiency, including information about the activities of each Facility Language Access Review Committee and language access complaints, and a report from DOCCS' Business Office about DOCCS' reliance on language services vendors shall be generated for use by the Central Office Language Access Review Committee.
- C. The functions of the Central Office Language Access Review Committee shall be the following:
 1. Reviewing the reports from the Office of Cultural and Language Access Services regarding the frequency of DOCCS encounters with individuals with LEP, their primary languages, and the oral and written language access services provided to these individuals.
 2. Reviewing the reports from the Office of Cultural and Language Access Services regarding language access complaints.

3. Reviewing the reports from the Department's Business Office regarding the usage of language access services contract vendors for translation and over-the-phone interpretation services.
4. Determining which documents are vital documents that should be translated, in plain language format, into languages other than Spanish, following approval procedures as set forth in Section XI-A-2 of this directive.
5. Reviewing how the DOCCS General Library Services considers the needs of individuals with LEP individuals when acquiring library materials (Directive #4470, "General Library Services").
6. Reviewing how the DOCCS Law Library Services provides language access services to individuals with LEP (Directive #4483, "Law Libraries, Inmate Legal Assistance and Notary Public Services").
7. Assisting Education Supervisors or SORCs at the facility level with respect to language dominance determinations (Directive #4804, "Academic Education Program Policies").
8. Providing technical assistance to facilities regarding DOCCS' Language Access Plan and related policies and procedures.
9. On an annual basis, reviewing and revising the Language Access Plan, based on this directive and related policies and procedures.
10. On an annual basis, reviewing this directive to determine whether to revise it, based on DOCCS' experience in providing language access services.
11. Preparing all quarterly and annual reports including summaries of the Facility Language Access Review Committee Monthly Report, Language Access Plan Compliance Monthly Report, Referral Form for Inmates with Limited English Proficiency, Monitoring Report for the Governor's Office, and Language Access Reporting Tool.

XIII. PRIVILEGED OR CONFIDENTIAL INFORMATION: All privileged or confidential information obtained during the course of providing culturally competent language access services shall only be disclosed to authorized persons. Authorized recipients of any person's health information shall adhere to the Health Insurance Portability and Accountability Act (HIPAA), the Health Services Policy Manual, other applicable legal requirements, and applicable professional licensure requirements. When DOCCS relies on external interpreters or translators, these individuals are subject to HIPAA requirements as well.