

To: Indiana’s Workforce System

From: Indiana Department of Workforce Development (DWD)

Date: January 24, 2024

Subject: DWD Policy 2023-07
Language Accessibility and Language Access Plans

Purpose

This guidance communicates the Indiana Department of Workforce Development’s (DWD) Language Access Plan (LAP) and provides information regarding the prohibition against national origin discrimination as it affects persons with Limited English Proficiency (LEP), particularly under the requirements of the Workforce Innovation and Opportunity Act (WIOA) Section 188 and its implementing regulations at 29 CFR 38. This LAP applies to each program operated by DWD. Although WIOA language access requirements apply to Title I grant recipients (Recipients),¹ DWD’s language access strategy is intended to apply broadly across operation of any agency programs (Programs).

DWD is charged with the duty to ensure that each Program and any DWD sub-recipient partners (Partners) comply with all relevant federal requirements involving LEP applicants/recipients of Program information, benefits, and services. Similarly, Partners must ensure language access requirements are met within their own programming and, further, must ensure that their sub-recipients also meet these requirements. DWD’s LAP is effective immediately and will be reviewed on an ongoing basis, at minimum every two years. The LAP will remain active until rescinded.

References

- WIOA Sections 121 and 188
- 29 CFR Part 38
- TEN 28-16 *Best Practices, Partnership Models, and Resources Available for Serving English Language Learners, Immigrants, Refugees, and New Americans*
- DWD Policy 2016-09 *Equal Opportunity and Nondiscrimination Guidance Letter*
- United States Department of Labor Language Access Plan Fiscal Year 2023²

Definitions³

Babel Notice. A short notice included in a document or electronic medium (e.g., website, app, email) in multiple languages informing the reader that the communication contains vital information and explaining how to access language services to have the contents of the communication provided in other languages.

¹ See 29 CFR 38.4(zz). In addition, one-stop Partners, as defined in section 121(b) of WIOA, are treated as “recipients” and are subject to the nondiscrimination and equal opportunity requirements of this part, to the extent that they participate in the one-stop delivery system.

² <https://www.dol.gov/sites/dolgov/files/OASAM/crc/files/FY2023-LAP.pdf>.

³ 29 CFR 38.4-38.9.

Employment-related Training. Training that allows or enables an individual to obtain skills, abilities and/or knowledge designed to lead to employment.

LEP Individual. An individual whose primary language for communication is not English and who has a limited ability to read, speak, write, and/or understand English. An LEP individual may be competent in English for certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).

LAP. A written language access plan which assists in ensuring that LEP individuals have meaningful access to WIOA Title I-financially assisted programs and activities.

Meaningful Access. Language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed, or inferior as compared to programs or activities provided to English proficient individuals.

Primary Language. An individual's primary language is the language in which they most effectively communicate, as identified by the individual.

Qualified Interpreter for an Individual who is LEP. An individual who demonstrates expertise and ability to communicate information effectively, accurately, and impartially, in both English and the other language, and identifies and employs the appropriate mode of interpreting, e.g., consecutive, simultaneous, or sight translation.

Vital Information. Information, whether written, oral, or electronic, that is necessary for an individual to understand how to obtain any aid, benefit, service, and/or training or required by law. Examples of documents containing vital information include, but are not limited to applications, consent and complaint forms; notices of rights and responsibilities; notices advising LEP individuals of their rights under this part, including the availability of free language assistance; rulebooks; written tests that do not assess English language competency but rather assess competency for a particular license, job, or skill for which English proficiency is not required; and letters or notices that require a response from the beneficiary or applicant, participant, or employee.

Content

Reasonable Steps to Ensure Meaningful Access for LEP Individuals

Programs and Partners are required to take reasonable steps to ensure that LEP individuals have meaningful access to their programs and activities, such as:⁴

- Conducting an assessment of an LEP individual to determine their language assistance needs.
- Providing oral interpretation and written translation of both hard-copy and electronic materials, in the appropriate non-English languages, to LEP individuals.
- Conducting outreach to LEP communities to improve service delivery in needed languages.

⁴ 29 CFR 38.9(b)(1).

Reasonable steps for providing meaningful access to training programs⁵ may include, but are not limited to the following:

- Written training materials in appropriate non-English languages by written translation, or by oral interpretation, or summarization.
- Oral training content in appropriate non-English languages through in-person, remote or video interpretation, or telephone translation.

Programs and Partners should ensure that every program delivery method, whether it be in person, electronic, or by phone, conveys in the appropriate language how an LEP individual may effectively learn about, participate in, and/or access any aid, benefit, service, or training available to them. It should also be noted that as new methods for the delivery of information or assistance are developed, Programs are required to take reasonable steps to ensure that LEP individuals remain able to learn about, participate in, and/or access any aid, benefit, service, or training available to them.⁶

Language Assistance Services

Language assistance generally comes in two forms: oral interpretation or written translation. Programs and Partners must ensure that, above all, these services are free of charge and provided in a timely manner. An LEP individual must be given adequate notice about the existence of interpretation and translation services and that they are available free of charge. Language assistance will be considered timely when it is provided at a place and time that ensures equal access and avoids the delay or denial of any aid, benefit, service, or training.⁷

Interpreter Services

Programs and Partners shall not require an LEP individual to provide their own interpreter. Furthermore, Programs and Partners shall not rely on an LEP individual's minor child or adult family or friend to interpret or facilitate communication, except for the following circumstances:

- In emergency situations while awaiting a qualified interpreter.
- When the information conveyed is of minimal importance to the services to be provided.
- When an LEP individual specifically requests that an accompanying adult provide language assistance and they agree to provide assistance to the individual. If a local area permits an accompanying adult to serve as an interpreter for an LEP individual, it must make and retain a record of the LEP individual's decision to use their own interpreter.

Finally, where precise, complete, and accurate interpretations or translation of information and/or testimony are critical for adjudicatory or legal reasons, Programs and Partners can still provide their own, independent interpreter, even if an LEP individual wants to use their own interpreter as well. This also applies in cases where the competency of the interpreter requested by the LEP individual is not established.⁸

⁵ 29 CFR 38.9(b)(2).

⁶ 29 CFR 38.9(c).

⁷ 29 CFR 38.9(d)(e).

⁸ 29 CFR 38.9(f).

Concerning Vital Information

For languages spoken by a significant portion of the population eligible to be served or likely to be encountered, Programs and Partners must translate vital information in written materials into these languages. These translations must in turn be readily available upon request in hard copy or electronically. Written training materials offered or used within employment-related training programs are excluded from these translation requirements. However, in all cases, Programs and Partners must take reasonable steps to ensure meaningful access for LEP individuals.

For languages not spoken by a significant portion of the population eligible to be served or likely to be encountered, Programs and Partners must take reasonable steps to meet the particularized language needs of LEP individuals who seek to learn about, participate in, and/or access the aid, benefit, service, or training that is available to them. Vital information may be conveyed orally if not translated.

Programs and Partners must also be sure to include a Babel Notice, indicating that language assistance is available in all communications of vital information. This includes letters or decisions in hard-copy or electronic formats, such as email.⁹

Further, to the extent otherwise required by 29 CFR Part 38, once a recipient becomes aware of the non-English preferred language of an LEP beneficiary, participant, or applicant for aid, benefit, service, or training, the recipient must convey vital information in that language.

Developing a Written LAP

Programs and Partners that develop, implement, and periodically revise an LAP are more likely to fulfill their obligation of taking reasonable steps to ensure meaningful access to programs and activities by LEP individuals. Developing and implementing an LAP has many benefits, including providing Program and Partner staff with a roadmap for establishing and documenting compliance with nondiscrimination obligations and ensuring that LEP individuals receive the necessary assistance to participate in the programs and activities of a Program and Partner.¹⁰

When developing an LAP, the following elements should be addressed, as they provide a clear framework that will ensure meaningful access to LEP individuals:

- The process the Program or Partner will use to determine the language needs of individuals who may, or may seek to, participate in programs and activities (self-assessment or needs assessment) that receive financial assistance under WIOA Title I.
- The results of assessment (e.g., identifying the LEP populations to be served by the Program).
- Timelines for implementing the LAP.
- All language services to be provided to LEP individuals.
- The manner in which LEP individuals will be advised of available services.
- Steps LEP individuals should take to request language assistance.
- The manner in which Program or Partner staff will provide language assistance services.

⁹ 29 CFR 38.9(g).

¹⁰ In addition to sharing a written LAP with Programs and Partners, state and local EO Officers can view the DWD SharePoint to access additional language access trainings and share resources with their colleagues.

- What steps must be taken to implement the LAP (e.g., creating or modifying policy documents, employee manuals, employee training material, posters, websites, outreach materials, contracts, and electronic and information technologies, applications, adaptations).
- The manner in which Program or Partner staff will be trained.
- Steps the Program or Partner will take to ensure quality control, including monitoring implementation, establishing a complaint process, addressing complaints in a timely manner, and obtaining feedback from stakeholders and employees.
- The manner in which the Program or Partner will document the provision of language services.
- The schedule for revising the LAP.
- The individual(s) assigned to oversee implementation of the LAP (e.g., LAP Coordinator or Program Manager).
- Allocation of resources to implement the LAP.

It should be noted that the elements of a successful LAP are not fixed and must be tailored to the Program's or Partner's specific programs and activities. Over time, the LAP will need to be revised to reflect the following:

- New recommendations and government guidance.
- Changes in the Program's or Partner's operations as well as the experiences and lessons learned.
- Changing demographics.
- Stakeholder and beneficiary feedback.¹¹

For additional information on best practices and resources for serving individuals with substantial cultural and language barriers to employment, Programs and Partners are encouraged to review *TEN 28-16 Best Practices, Partnership Models, and Resources Available for Serving English Language Learners, Immigrants, Refugees, and New Americans*.

Action

To ensure that reasonable steps are taken to allow meaningful access for LEP individuals, DWD's Programs will develop their own program-specific language access procedures in alignment with this guidance. Further, DWD highly recommends that its sub-recipient Partners develop their own written LAPs.

Effective Date

Immediately.

Ending Date

Upon rescission.

¹¹ 29 CFR 38.9 Appendix.

Additional Information

Questions regarding the content of this publication should be directed to policy@dwd.in.gov.