

Standard 4.6 on Communication in the Primary Languages of Persons Served

STANDARD 4.6 ON COMMUNICATION IN THE PRIMARY LANGUAGES OF PERSONS SERVED

STANDARD

A provider should assure that all language groups within its low income communities have access to its services and should assist persons using its services in their primary language.

COMMENTARY

General considerations

A legal aid provider has a responsibility to communicate in the language of persons seeking and using its services. A provider should have the capacity to communicate with all clients who are not proficient in English, either through bilingual staff or qualified interpreters. It should offer legal information and other forms of non-representational services in the predominant languages of the low income communities it serves. Its processes for intake should be accessible to persons from all the language groups in its service area.

The challenge of communicating effectively with members of the low income community in their own language can be complex as many legal aid providers witness diverse immigrant populations settling in their service area. Effectively serving persons with limited English proficiency¹ is often complicated by the fact that many recent immigrant communities are not familiar with the American legal system and distrust lawyers and legal process, because of their experience in their home country. In addition to addressing potential language barriers, therefore, a provider needs to be responsive to cultural issues that may inhibit some persons from accessing its service.²

It requires sustained and comprehensive effort for a provider to be accessible to all persons who have limited proficiency in English, if it is in an area with many language groups. Providers that operate in an area with only a few low income persons who do not speak English also have a responsibility to communicate effectively with the occasional individuals it serves who have limited English proficiency.

Communication with low income persons with limited proficiency in English

Communication with clients. A provider needs to assure that its practitioners have the tools necessary to represent their clients, including being able to communicate effectively with those who are not proficient in English. Clear communication between the practitioner and client is at the core of effective practice. A practitioner has a responsibility to understand the client's circumstances fully and to suggest an appropriate course of action. The responsibility to inquire

¹ "Limited English proficiency" refers to individuals who do not speak English as their primary language and who have a limited ability to speak, understand, read or write English.

² See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.4 (on Cultural Competence).

Standard 4.6 on Communication in the Primary Languages of Persons Served

into the client's circumstance exists whether the provider is offering limited or full representation.³ A practitioner who—because of a language barrier—cannot understand fully what the client is saying and asking may not be able to determine the full circumstances of the case. There is an equal risk that the client will not fully understand the practitioner's advice or explanation.

In order for its practitioners to meet their professional responsibilities to provide competent representation to the client, therefore, the practitioner either needs to communicate in the client's language directly or through a competent interpreter. This responsibility attaches both to persons who speak a language other than English and to persons who rely on American Sign Language (ASL) to communicate.

The provider should make certain that its practitioners who are not fluent in the language used by their clients understand their responsibility to use interpreters, unless it is evident that communication will be unimpaired for both the client and the practitioner without an interpreter. Interpreters should generally be provided whenever a client requests one. To ensure accuracy of the interpretation and that no breach of confidentiality occurs, the provider should procure its own interpreter and avoid using interpreters brought by the person being interviewed.⁴

Critical documents, such as correspondence explaining the client's rights and responsibilities, should be translated into the client's language and tested for readability in that language. If the client is unable to read in either language or if requested by the client, oral interpretation of documents should be provided. The provider should also be prepared to accommodate the needs of persons who are sight impaired and should recognize, for example, the need to put essential documents in a readable form, such as in Braille for persons who are blind.

In court and in administrative hearings, a provider representing a client who is not proficient in English or is hearing impaired should assure a competent interpreter is provided by the court or administrative agency. Even when an interpreter is provided by the court or administrative agency, the provider may need to have its own interpreter present to facilitate attorney-client communications. Meaningful participation in legal proceedings generally depends on the person being able to understand what the judge or hearing officer, the witnesses and the advocates are saying, as well as being able to communicate with the advocate in a confidential manner.

Communication with persons receiving non-representational services. Some low income persons seeking assistance will not be accepted as clients but will be given non-representational services in the form of legal information. Legal information may be offered in group settings or to individuals on-line or in writing, such as a brochure or a disposition letter.⁵ The provider may

³ Model Rules of Prof'l Conduct R. 1.2 (2003). *See also* ABA Standards for the Provision of Civil Legal Aid (2006): Standard 3.1 (on Full Legal Representation); Standards 3.4 (on Limited Representation); Standard 3.4-1 (on Representation Limited to Legal Advice); Standard 3.4-2 (on Representation Limited to Brief Services).

⁴ *See* The Ass'n of the Bar of the City of N. Y. Formal Op. 1995-12 (1995).

⁵ *See* ABA Standards for the Provision of Civil Legal Aid (2006), Standard 3.6 (on Provision of Legal Information).

Standard 4.6 on Communication in the Primary Languages of Persons Served

also offer instructions through clinics or other means as to how pro se litigants can represent themselves before a court or administrative body.⁶

A provider should make its non-representational assistance available in the principal languages used by persons in the low income communities it serves. Written and on-line legal information should be translated into the predominant languages used by low income persons in the service area. To the degree possible, the provider should have the capacity to hold community legal education sessions and pro se clinics in the principal languages of the communities served.

The provider should be cognizant of the degree to which the lack of capacity in English will be a factor in the course of self-representation and should instruct the person receiving the pro se support in how to obtain the participation of a competent interpreter. In some cases, a provider may determine that it will represent persons with limited knowledge of English in matters in which it would instruct others who are proficient in English to represent themselves.

It will not be possible in all instances to translate legal information materials into every language spoken in the low income community. Some persons who are not proficient in English will speak a language that is not spoken by a significant number of individuals in the low income community. In addition, some languages are not written or are read and written primarily by scholars so that translation is not practical. If legal information materials are not available in the language of a person whom the provider seeks to help, they should be orally translated, if possible.

Intake. The provider should be accessible at intake to all persons regardless of their primary language. The degree to which a provider is capable of communicating in the language of persons who are not proficient in English may determine whether such persons seek assistance in the first place and whether they follow through to get the assistance they need. It is important, therefore, that the provider signal its openness to all language groups. Signs identifying the provider should be in the major written languages of the communities it serves. The provider should have language capability among its intake personnel either in the form of bilingual staff or readily accessible interpreter services. Telephone intake systems should offer options for major languages that are identified early in any menu of options, so that non-English callers will learn that services are available in their language and not be discouraged by lengthy announcements in a language they do not understand.

Responsibilities of the provider

Provider planning to serve persons with limited proficiency in English. In planning its service delivery methods,⁷ a legal aid provider should identify the points of contact where language barriers may exist for persons seeking and receiving services and should develop strategies, plans and protocols to respond. As noted, some means of delivering services, such as centralized telephone intake, computers and pro se clinics, may be of little use to persons with limited

⁶ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 3.5 (on Assistance to Pro Se Litigants).

⁷ See ABA Standards for the Provision of Civil Legal Aid (2006): Standard 2.1 (on Identifying Legal Needs and Planning to Respond); Standard 2.2 (on Delivery Structure).

Standard 4.6 on Communication in the Primary Languages of Persons Served

English proficiency unless appropriate adjustments are made to provide meaningful services to them. Program priorities, methods of providing services, and outreach programs should be designed so that legal issues of importance to language minorities are addressed by the provider at least as well as issues of English proficient clients. Providers should consider targeting outreach at underserved language populations and developing partnerships with community based organizations that serve such groups. The provider should budget adequate resources to meet the needs of persons with limited English proficiency.

The provider should have a clear protocol for how it will respond to the needs of persons who are not proficient in English and should train its staff in its proper application. Some providers will operate in an area with few low income persons who are not proficient in English. Such providers should, nevertheless, have a protocol for responding to the needs of the occasional person who seeks services and who has limited proficiency in English. Providers should be aware of and abide by statutory provisions that exist under state and federal law that prohibit discrimination against persons on the basis of English language ability in the provision of services and benefits.⁸

Staff should be trained in the fundamental importance of responding effectively to the language needs of its low income communities and serving clients in their own language if they are not proficient in English. The provider should assure that a person with appropriate authority is assigned responsibility for assuring the effective application of the language protocol.

Bilingual services. The most effective way to communicate is directly in a language that is mutually understood by both the person being served and the provider's staff. Bilingual staff capable of providing services without the need for interpreting are, therefore, the preferred method of communicating with persons with limited proficiency in English. With appropriate training, bilingual staff may also be utilized to act as interpreters for other staff. To enhance its capacity for bilingual representation, a legal aid provider should make fluency in pertinent languages, a preferred or, where appropriate, required skill in evaluating applicants for employment. Providers should be certain that staff who communicate directly with clients in a second language have appropriate knowledge of legal terms.

Interpreter services. It is generally not possible to hire bilingual staff in every language used by persons eligible for the provider's services or to have enough bilingual practitioners to serve every client with limited proficiency in English. The provider, therefore, needs to have ready access to competent interpreter services to supplement bilingual staff and staff interpreters. Competent interpreting requires individuals with a range of skills. They need to be proficient in both languages, to be familiar with legal terms and their meaning and to understand the role of an interpreter, the need for neutrality, accuracy and completeness and the techniques that facilitate effective communication. They also need to be aware that they are an agent of the provider bound by its duty to maintain the confidentiality of the communication.

⁸ See e.g., Title VI of the Civil Rights Act of 1964 and the regulations promulgated thereunder. In addition, there may be non-statutory requirements, such as funding source guidance, contractual non-discrimination provisions and ethical standards in the provider's jurisdiction that apply to it.

Standard 4.6 on Communication in the Primary Languages of Persons Served

Interpreter services can be provided in several ways. Trained, bilingual staff can provide interpreting for other staff members who are not proficient in the language of the person being served. The provider can use professional in-person and telephone interpreters when bilingual staff are not available. In-person interpreting is preferable to telephone based interpreters.

The provider should avoid the use of informal or untrained interpreters, including family members and friends of the person being served. In particular, the provider should not allow the use of minors as interpreters, absent exigent circumstances. Informal interpreters often lack fluency in one or both languages, and rarely use proper interpreting techniques. Use of family and friends to interpret gives rise to serious risks that the interpretation will not be neutral and that the interpreter will not fully understand or be able to translate the legal options available. Furthermore, there may be times when the person doing the interpreting will have an unexpected conflict with the person being served by the provider.

Training. The provider should train staff regarding the fundamental importance of responding effectively to the language needs of its low income communities and serving clients in their own language if they are not proficient in English. They should be trained as well regarding how to assess the need for language services by clients and others, how to work with interpreters and how to access interpreting and translation services. Bilingual staff who act as interpreters for others should receive training in interpreting skills, ethics and the role of an interpreter.

Evaluation. The provider should periodically evaluate its effectiveness responding to the language needs of its low income population. It should gather data regarding the languages used in the low income populations in its service area and by the persons actually served by it. The data should be used to identify underserved language groups, to assist in prioritizing the languages most frequently encountered and to help the provider measure progress responding to the various language groups in its service area. If significant language groups are identified that are not being adequately served, the provider should develop and implement a plan to address the deficiency.