

APPENDIX C: STATE COURT LANGUAGE ACCESS CHECKLIST

A. **Legal obligation: Provide interpreters to all LEP litigants and witnesses in all civil proceedings.**

The state likely complies with this legal obligation if it:

- _____ 1. Has a law, court rule, or other written statewide mandate requiring the appointment of an interpreter for all LEP parties and witnesses in all civil proceedings;¹
- _____ 2. Has a clear standard and guidelines for determining who is eligible for a court interpreter, including a presumption that anyone requesting an interpreter is eligible for one;
- _____ 3. Has a clear procedure for appealing denials of interpreters;
- _____ 4. Denies interpreter waivers if they are not knowingly and voluntarily made, or if a court determines an individual has limited proficiency in English; and
- _____ 5. In each of the languages in which interpreter services are commonly requested, in wording comprehensible to non-lawyers, informs all litigants, witnesses and others of their right to an interpreter, by:
 - _____ a. posting notice on the court system's website;
 - _____ b. prominently placing signs in clerks' offices, courtrooms, and all other public areas;
 - _____ c. ensuring that the first court employee to come into contact with litigants informs them of their right to an interpreter; and
 - _____ d. placing language on court documents and forms informing litigants of the right to an interpreter.

B. **Legal obligation: Do not charge for interpreters, regardless of whether litigants can pay.**

The state likely complies with this legal obligation if it:

- _____ 1. Has a law, court rule or other written mandate requiring that when an interpreter is appointed, the court system or some other governmental entity – not the LEP individual – is responsible for paying;² and
- _____ 2. Has a clear source of funding for interpreters.

C. Legal obligation: Ensure that interpreters are competent and act appropriately.

The state likely complies with this legal obligation if it:

- _____ 1. Assesses ability before appointing an interpreter by:
 - _____ a. requiring court interpreters to possess a credential requiring them to demonstrate:
 - i) fluency in both languages;
 - ii) ability to maintain the legal meaning of the original source;
 - iii) facility in the particular interpretation skill needed in that particular case (ie. simultaneous interpretation, consecutive interpretation, or sight translation of written materials);
 - iv) familiarity with the unique culture of the courtroom, any legal matters the interpreter will need to interpret, and the ethical duties of an interpreter; and
 - v) training in any special issues likely to arise in the case that require special legal knowledge or additional skills (such as domestic violence);
 - _____ b. relying on a non-credentialed interpreter only after trained, dedicated court staff assess the interpreter's qualifications; and
 - _____ c. relying on judges or other court personnel to voir dire interpreters only as a matter of last resort;
- _____ 2. Ensures that interpreters remain competent by making continuing education available, and requiring interpreters to attend such trainings;
- _____ 3. Adopts and requires adherence to an interpreter ethics code;
- _____ 4. Maintains a pool of interpreters sufficient to meet the need;

If the pool of interpreters is insufficient to meet the need, the state tries to attract interpreters by:

- _____ a. Providing compensation at a rate similar to that provided by neighboring

states,³ and by other employers in your state;⁴

- _____ b. Recruiting interpreters from professional organizations and from the community; and
 - _____ c. Establishing relationships with other states to create and access a shared pool of interpreters.
- _____ 5. Uses telephonic interpretation only:
- _____ a. For short proceedings or meetings, or instances in which a local interpreter is unavailable;
 - _____ b. With proper equipment:⁵
 - i) interpreters must have a high-quality headset with a mute button, separate dual volume control, and an amplifier; and
 - ii) everyone expected to hear the interpretation or to have their speech interpreted should have their own headset, handset, or microphone; and
 - _____ c. After interpreter and court personnel are trained on telephone interpreting protocols;
- _____ 6. Maintains records on the need and demand for interpreters;
- _____ 7. Uses census data and the court's records on the need and demand for interpreters to plan for future needs;
- _____ 8. Tells litigants whether their interpreters are credentialed, and when non-credentialed interpreters are assigned tells litigants whatever is known about the interpreter's interpreting abilities;
- _____ 9. Allows litigants and court personnel to challenge the appointment of interpreters on competence and ethics grounds;
- _____ 10. Has a disciplinary procedure for court interpreters which protects interpreters' due process rights; and

_____ 11. Has a single office or individual within the court system with responsibility for implementing and overseeing the court interpreter program.

D. Legal obligation: Ensure that judges and court personnel who come into contact with LEP litigants or witnesses act appropriately.

The state likely complies with this legal obligation if it:

- _____ 1. Trains judges in how to:
 - _____ a. Determine whether a party or witness needs the assistance of an interpreter,
 - _____ b. Determine whether a particular interpreter is competent,
 - _____ c. Use interpreters effectively, and
 - _____ d. Run courtrooms in which simultaneous or consecutive interpreting of testimony or proceedings is occurring;
- _____ 2. Trains other court personnel who come into contact with the public in how to:
 - _____ a. Determine whether a party or witness needs the assistance of an interpreter,
 - _____ b. Determine whether a particular interpreter is competent, and
 - _____ c. Use interpreters effectively;
- _____ 3. Bases performance evaluations of judges and other court personnel who come into contact with the public in part on skill in using interpreters; and
- _____ 4. Has is a formal feedback process to process complaints from litigants and interpreters about how court interpretation is handled.

E. Legal obligation: To the extent possible, ensure that LEP individuals receive the same treatment as other court participants, including by minimizing delays in their cases.

The state likely complies with this legal obligation if it:⁶

- _____ 1. Marks case files and scheduling documents with “interpreter needed” designations;

- _____ 2. Includes on notice and summons documents issued to lawyers and pro se litigants language stating that they must notify court personnel immediately if an interpreter is needed;
- _____ 3. Includes data elements in case management systems to indicate whether litigants or witnesses need interpreters;
- _____ 4. Concentrates interpreting work among as few individuals as possible;
- _____ 5. Calls interpreter cases promptly so the interpreter can move on to other courtrooms; and
- _____ 6. Schedules interpreter cases in the same courtroom on specific days of the week or at specific times of the day.

Note on how to determine if a state court is covered by Title VI: Pursuant to Title VI of the Civil Rights Act, the legal obligations detailed above apply to all state, county and municipal courts receiving federal funding.

A court is covered by Title VI if it:

- _____ 1. Is a direct recipient of federal funding;
- _____ 2. Receives federal funding as a subrecipient from another state agency or nonprofit; or
- _____ 3. Is part of a unified court system, any part of which receives federal funding.⁷

Types of federal funding commonly directed to state, county and municipal courts:

- 1. **Department of Health and Human Services** grants including:
 - a) Adult Treatment Drug Assistance;
 - b) Children’s Justice Act;
 - c) Court Improvement Program;
 - d) Promoting Safe and Stable Families Act;
 - e) Substance Abuse and Mental Health Services Administration funds
 - f) Targeted Grant to Increase the Well-Being of, and to Improve the Permanency Outcomes for Children Affected by Methamphetamine or Other Substance Abuse;
 - g) Temporary Assistance to Needy Families; and
 - h) Title IV-D Child Support Enforcement funds.

2. **Department of Justice** grants including:
 - a) Drug Court Discretionary Grant Program;
 - b) Edward Byrne Memorial Justice Assistance Grant Program;
 - c) Juvenile Accountability Block Grant;
 - d) National Criminal History Improvement Program;
 - e) NICS Act Record Improvement Program; and
 - f) Violence Against Women Act;

3. **Department of Transportation** grants including: National Highway Traffic Safety Administration funding; or

4. **State Justice Institute** grants.

Remember that even if a court is not covered by Title VI, it may be obligated to provide interpreters under a variety of federal and state constitutional guarantees.⁸

1 For our list of states that do and do not fulfill this criterion, see map 1 and Appendix D.

2 For our list of states that do and do not fulfill this criterion, see map 2 and Appendix E.

3 To find information about how neighboring states compensate their interpreters, you can refer to the compensation surveys conducted by the National Center for State Courts' Consortium for State Court Interpreter Certification. The 2007 version is available at http://www.ncsconline.org/D_RESEARCH/CISurveyResults.html.

4 To find information about how other employers in your state compensate their interpreters, you can refer to the compensation surveys conducted by the American Translators Association. The 2007 version can be ordered online at http://www.atanet.org/publications/compensation_survey.php.

5 The list of proper equipment, and additional information about telephone interpreting, can be found in National Ass'n of Judiciary Interpreters & Translators, Position Paper: Telephone Interpreting in Legal Settings (Feb. 27, 2009), available at <http://najit.org/Publications/Telephone%20Interpreting%20Position%20Paper.pdf>.

6 These criteria are taken from National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts (1995), pp. 243-44.

7 Many states make clear on their websites that they are unified. See, e.g., Ky. Ct. of Justice, History of the Kentucky Unified Court System, available at <http://courts.ky.gov/research/history.htm>; N.Y. Unified Court System, N.Y. Unified Court System, available at <http://www.courts.state.ny.us/>. The National Center for State Courts' Court Statistics Project also maintains a list of unified court systems. National Center for State Courts, Court Unification FAQ's, available at <http://www.ncsconline.org/wc/courttopics/FAQs.asp?topic=CtUnif#FAQ327> (noting that the Court Statistics Project characterizes the state court systems of the following states as unified: California, Connecticut, District of Columbia, Illinois, Iowa, Kansas, Minnesota, Missouri, North Dakota, Puerto Rico, South Dakota, and Wisconsin). And, court systems that neither self-identify nor appear on the National Center for State Courts list should be considered unified for purposes of Title VI if a single entity exercises authority over court administration and rulemaking. See *Ass'n of Mexican-American Educators v. State of Calif.*, 195 F.3d 465, 478 (9th Cir. 1999) (holding that in determining whether individual schools are part of a school system such that receipt of funding by one will bring all under the purview of Title VI, "[t]he critical issue is whether the schools are managed in relevant respects as a connected unit"), rev'd on other grounds, 231 F.3d 572 (9th Cir. 2000) (en banc).

8 See Report, § I, *infra*.