

 <p>NEW YORK STATE Corrections and Community Supervision</p> <p>DIRECTIVE</p>	TITLE		NO. 4490
	Cultural and Language Access Services		DATE 01/06/2020
SUPERSEDES DIR# 4490 Dtd. 08/01/19	DISTRIBUTION A B	PAGES PAGE 1 OF 10	DATE LAST REVISED
REFERENCES (Include but are not limited to) Article 15 of the NYS Human Rights Law; Executive Order #26; Title VI of the Civil Rights Act of 1964; Omnibus Crime Control and Safe Streets Act of 1968; ACA Expected Practices 4-4228, 4-4288, 4-4344, 4-APPFS-2B-01, 2-1084, 4-JCF-4C-05, 4-JCF-5A-03; Directives #2611, #4040, #4041, #4470, #4483, #4793, #4804, #4805, #9402; Policies #1.01, 1.04	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.
- 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 individuals with LEP (whose primary/dominant 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.
 - 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/dominant language. Further, New York State Executive Order #26, Statewide Language Access Policy, directs State agencies, such as DOCCS, to provide language access services to individuals with LEP. 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. **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 Director of Education oversees the office, which is part of the Division 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 skill 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 services and will serve as the Language Access Coordinator for DOCCS.
- D. Interpretation: The act of listening to verbal communication in one language and orally converting it into another language, while retaining the same meaning.
- E. Language Access Coordinator: The Language Access Coordinator (LAC) will be designated by the Commissioner and will serve as the Commissioner's designee regarding all matters related to Language Access.
- F. 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 LEP 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).
- G. Language Access Plan: A document that sets forth the parameters for the provision of language assistance services to individuals with LEP, in accordance with Executive Order #26.
- H. Plain Language: The simplest, most straightforward method of expressing an idea. Documents must be edited into plain language before being translated.
- 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 correctional facilities and Community Supervision Offices; and (5) is culturally competent.
- K. Translation: The transfer of written text from one language into an equivalent written text in another language.
- 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. 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; forms for reasonable accommodations; forms for terms of release); and

2. Complaint documents and procedures, including those related to PREA complaints.

V. GENERAL CONSIDERATIONS WHEN 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.** (Reference Directive #4793, "Earned Eligibility.")

If an inmate with LEP, who is assigned to academic, vocational, or any other required facility program, is unable to participate due to a language barrier, [Form #4490D](#), "Request for Waiver from Required Programs for Inmates with Limited English Proficiency," must be completed by the staff member in charge of the program and forwarded to the Education Supervisor (General), or to the Supervising Offender Rehabilitation Coordinator (SORC) in a facility without an Education Supervisor. The Education Supervisor or SORC must write his/her recommendation and forward to the Deputy Superintendent for Programs (DSP). The DSP must review and approve/disapprove [Form #4490D](#) and then forward it to the Director of Education for final review and approval. The Director of Education must forward a copy of [Form #4490D](#) with his/her decision to the requesting facility DSP. A copy of the completed [Form #4490D](#) must be filed in the inmate's Guidance Unit file and another copy given to the Education Supervisor or SORC. If the request for the waiver is for an inmate who is assigned to an academic or vocational program, then the required academic or vocational waivers must be completed as well. (Reference Directives #4804, "Academic Education Program Policies," and #4806, "Vocational Education.")

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

1. Generally, staff shall not rely on an inmate/parolee, an LEP individual's family member or friend, or a minor as an interpreter or a translator for communications with an individual that involves sensitive, confidential, or privileged information or that creates a conflict of interest. For instance, these individuals must 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/parolees, 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/parolee's safety or health, the performance of first-response duties in connection with a report of sexual abuse, or the investigation of an inmate's/parolee's sexual abuse allegations.

2. Upon consent by an individual with LEP, DOCCS may allow that person to use an inmate/parolee, 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 their choosing, the individual with LEP must complete [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 their primary/dominant language.

- A. Available Resources: To assist staff in identifying an LEP individual's primary/dominant 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/dominant 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 primary/dominant language is English, Spanish, or another language. 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/dominant language shall be included in DOCCS' Mainframe application 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 on the inmate's Departmental identification card.
- C. Parolees: By the time an inmate has reached parolee status, their language dominance/language access services needs have already been identified and addressed. Community Supervision staff should refer to the parolee'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/dominant 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/dominant language. The names of the contract vendors are made available to DOCCS' staff by the Coordinator of Cultural and Language Access Services.

A. Inmates and Parolees

1. Staff shall determine the primary/dominant language of an inmate by consulting DOCCS' Mainframe application or by inspecting an inmate's/parolee's identification card.
2. Staff must secure qualified, culturally competent interpretation services through one of DOCCS' telephonic interpretation vendors, facility/area office staff, or the Department's Office of Cultural and Language Access Services. It is the staff'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, Community Supervision encounters, etc. 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/parolee's record and/or identification card to ensure that appropriate language identification will occur.

In Correctional Facilities and Area Offices: Once staff determines that services are needed, they must 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/parolee, 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/parolee, an LEP individual's family member or friend, or a minor to provide language assistance.

- a. If the DOCCS' Mainframe application or the inmate's/parolee's identification card lacks information about the primary/dominant 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/parolee's primary/dominant language. If such a card or poster is not available, then staff must secure guidance from the Education Supervisor or SORC/Bureau Chief (BC). In cases when the Education Supervisor, SORC, or BC 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/parolee's primary/dominant language during the encounter, then the employee shall notify the Education Supervisor or SORC/BC, who will update the DOCCS' Mainframe application and notify the facility Identification Officer so that the identification card will include the inmate's/parolee's primary/dominant language.
 3. Every facility has a plan of action on file regarding the provision of language access services. A copy of the plan of action will be sent to the Director of Education.
- B. In-Person Encounters with Visitors and Other Members of the General Public
 1. Once staff members identify the primary/dominant 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: Bengali, 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 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: Staff members will ask the caller to state the language with which they need assistance and then secure qualified interpretation services pursuant to the procedure outlined in Section VII-A-2 above. In addition, staff must follow the procedures delineated at each correctional facility/area office regarding the provision of telephonic interpretation services.
- D. Provision of In-Person (Consecutive) Interpretation Services during Parole Board Interviews and Parole (Preliminary and/or Final) Revocation Hearings
 1. Staff must determine the primary/dominant language of a parolee by consulting DOCCS' Mainframe application or by inspecting a parolee's identification card.
 2. For Parole Board Interviews, the SORC or designee at the inmate's residing correctional facility must secure qualified, culturally competent interpretation services through one of DOCCS' in-person (consecutive) interpretation contract vendors, as part of the process for the interview to be conducted or contact the Department's Office of Cultural and Language Access Services for assistance and/or guidance.
 3. For Parole (Preliminary and/or Final) Revocation Hearings, area office staff must secure qualified, culturally competent interpretation services through one of DOCCS' in-person (Consecutive) interpretation contract vendors in coordination with the facility that serves as the fiscal agent for the area office or contact the Department's Office of Cultural and Language Access Services for assistance and/or guidance.

4. Due to the sensitive nature of these hearings/interviews, in exigent circumstances, correctional facility or area office staff must immediately contact the Department's Office of Cultural and Language Access Services for assistance and/or guidance; i.e., when the contract vendor hasn't responded to a request for interpretation services, when the contract vendor cancels within days of the hearing/interview, when the interpreter doesn't show up.
5. DOCCS' staff in the Spanish Language Parenthetic must not provide interpretation services during Parole Board Interviews or Parole Revocation Hearings.

VIII. PROVISION OF TRANSLATION SERVICES

A. Vital Documents

1. The Office of Cultural and Language Access Services is required to 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: Bengali, Chinese, Haitian Creole, Korean, Russian, and Spanish.
2. The Coordinator of Cultural and Language Access Services/LAC will review all documents received for vital document determination, based on the nature, frequency, importance, and relevance to the needs of inmates, parolees, or benefit to the public of the programs, services, or benefits at issue. All documents will be forwarded, along with the recommendation of the Coordinator of Cultural and Language Access Services, to the appropriate Deputy Commissioner for review and vital document determination.

B. All Other Translations

1. The Office of Cultural and Language Access Services will coordinate translation services for correctional facilities, area offices, and Central Office units. To maintain appropriate levels of safety, security, and good order at all facilities and area offices, DOCCS requires staff to adhere to the following procedure for document translations:
 - a. Official DOCCS translation requests in Spanish must be submitted to the Coordinator of Cultural and Language Access Services/LAC. The Coordinator must provide the requested translation services, free of charge to correctional facilities, area offices, and Central Office units.
 - b. Official DOCCS translation requests in languages other than Spanish: Staff at the facility or area office will scan the document and e-mail it to the Coordinator of Cultural and Language Access Services/LAC requesting permission to translate the document into a language other than Spanish. The Coordinator will contact the facility or area office staff and if approved, will submit the document for translation, or may direct facility or area office staff to submit the document for translation to the appropriate contract vendor.
 - 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. All translations must be reviewed and approved by the Coordinator of Cultural and Language Access Services/LAC.
 - 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.
2. Staff must provide individuals with LEP the 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 as stated in VIII-A-1 above, 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 [Form #4490B](#), inmates can file grievances using Directives #4040, "Inmate Grievance Program," and #4041, "Inmate Grievance Program-Modification Plan." Parolees can file grievances using Directive #9402, "Parolee Grievance Program." Visitors and others can submit complaints in accordance with Directive #2611, "Discriminatory Treatment Complaints-Procedures for Visitors."

- X. TRAINING:** DOCCS staff must participate in the Language Access yearly training as mandated by the Commissioner of DOCCS and will include orientation for new employees. In addition, the Coordinator of Cultural and Language Access Services/LAC will offer training on language access policies to staff at correctional facilities/area offices as needed.

- 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 Programs, Administration, Security, and Health, and any other office deemed appropriate by the Superintendent. The Education Supervisor (or a 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 [Form #4490C](#), "Language Access Monthly Report," by the last business day of each month to the Coordinator of Cultural and Language Access Services/LAC. The purpose of this Committee is to monitor language access services and all language access complaints.

Additionally, any interpretation or translation services provided to any inmate, parolee, or visitor will be reported on [Form #4490C](#). The Education Supervisor, SORC, or BC will file this report to the Deputy Superintendent for Program Services by the last business day of the month, who will in turn submit the report to the Coordinator of Cultural and Language Access Services/LAC by the last business day of the month.

Every area office is associated with a specific facility Business Office that will serve as a fiscal agent and must develop a reporting mechanism to the corresponding Deputy Superintendent for Programs regarding the provision of language access services to parolees.

When an area office provides language access services, these need to be reported on [Form #4490C](#) and submitted to the BC. The BC will send this report to the DSP of the facility that serves as the fiscal agent of the area office by the last business day of the month. The DSP will forward the report to the Coordinator of Cultural and Language Access Services/LAC by the last business day of the 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, or in-person (consecutive) 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, in accordance with Section VIII-A-2 above.
3. Contact the Central Office Language Access Review Committee about any issues regarding language access services that may arise at the facility or 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 at each facility will coordinate with each facility's Business Office to establish:

1. An account with each 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 Central Office Language Access Review Committee, under the direction of the Deputy Commissioner for Program Services, consists of representatives from Program Services, Facility Operations, 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 access services contract 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, telephonic, and in-person interpretation services.
 4. Determining which documents are vital documents that must be edited, in plain language format, and translated 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 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 and area offices regarding DOCCS' Language Access Plan, this directive, 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 Monthly Report, Referral Form for Inmates with Limited English Proficiency, and Monitoring Report for the Governor's Office.

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 Information Technology for Economic and Clinical Health (HITECH) Act, 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 and HITECH Act requirements as well.