



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail—Return Receipt Requested

August 31, 2011

Thomas R. Merkel
Director
Hennepin County Department of Community Corrections and Rehabilitation
C-2353 Government Center
300 South 6th Street
Minneapolis, MN 55487-0533

**Re: Hennepin County Department of Community Corrections and
Rehabilitation Compliance Review – Juvenile Justice (09-OCR-0190) -
FINAL**

Dear Director Merkel:

I am writing to report the findings of the Compliance Review on language access services in the juvenile justice system in Hennepin County, Minnesota, that the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) conducted in accordance with federal regulations 28 C.F.R. §§ 42.107(a), .206.

In my letter and Data Request of April 10, 2009, I noted that the OCR had selected the Hennepin Department of Community Corrections and Rehabilitation (DOCCR or Department) for a compliance review under Title VI of the Civil Rights Act of 1964 (Title VI), the nondiscrimination provisions of the Omnibus Crime Control and Safe Streets Act (Safe Streets Act) of 1968, and the Juvenile Justice and Delinquency Prevention Act (JJDP) of 1974, which adopted by reference the nondiscrimination provisions of the Safe Streets Act. As I noted at the time, the OCR limited the scope of the compliance review to the provision of pre-adjudication juvenile justice services in Hennepin County to juveniles and their families, who, as a result of their national origin, are limited English proficient (LEP).¹ An LEP person is an individual whose primary

¹ Throughout this Compliance Review Report, the terms “family” and “families” include parents and legal guardians.

language is not English and who has a limited ability to read, write, speak, or understand English.²

Background

Title VI, the Safe Streets Act, and the JJDPa prohibit discrimination in the delivery of services based on national origin.³ National origin discrimination may include the failure of a recipient of federal financial assistance to take reasonable steps to provide LEP persons with meaningful access to federally assisted programs and activities. To assist financial aid recipients in meeting their statutory obligation to serve LEP beneficiaries, the DOJ published guidance in June 2002.⁴ Using the technical assistance standards in the DOJ Guidance, the OCR initiated this Compliance Review to determine whether the Department provides language services to LEP juveniles and their families.⁵

The OCR focused on the pre-adjudication services provided by two components of the Department: (1) the Juvenile Detention Center (JDC or Center) and (2) the Juvenile Probation Division (JPD or Probation).⁶

After a thorough evaluation of the pre-adjudication services provided by the Center and Probation, including responses to the OCR's Data Request and the information that the OCR gathered during an onsite visit, which included interviews with senior administrators, staff members, and probation officers, we are issuing the following Compliance Review Report.

Within the limited scope of the Compliance Review, the OCR concludes that the Department is not fully compliant with its obligation to take reasonable steps to provide meaningful access to its services to LEP individuals. The Compliance Review report also contains recommendations for assisting the Department in improving language services at

² In responding to the OCR's Data Request, the Department provided information on the services it provides to deaf and hard-of-hearing individuals. The scope of the compliance review does not include this service population. Where the County and the Department have issued policies linking the LEP and deaf-and-hard-of-hearing communities, the OCR advises issuing separate guidance on serving each of these distinctive communities.

³ The JJDPa instructs recipients to identify and mitigate disproportionate minority contacts. Although the Compliance Review does not address this issue directly, an analysis of the services being provided to LEP youths may have a correlation with the incidence of minority contacts.

⁴ See U.S. Department of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (2002) [hereinafter DOJ Guidance].

⁵ Although some juveniles may be English proficient, their families may not be. The Compliance Review examined services not only to LEP juveniles but also to the LEP families of juveniles. The OCR considers both groups as beneficiaries of federally assisted services.

⁶ The Department has a number of components. In the organizational chart that the Department provided, additional components serving juveniles included the County Home School (CHS), Joint Care Management, and Juvenile Detention Alternatives. The Department also has components that serve adult offenders. In this Compliance Review Report the term "Probation" refers only to the services provided to juveniles and their families.

the Center and Probation to ensure compliance with Title VI, the Safe Streets Act and the JDP.

Compliance Review Report

Part I of the Compliance Review Report assesses the Department's obligation to provide services to LEP juveniles and their families. Part II reviews the Department's oral and written language assistance policies. Part III addresses the Department's development of an effective language assistance plan.

I. Assessing the Obligation to Provide LEP Services

This section of the Compliance Review Report closely tracks the DOJ Guidance. According to the DOJ Guidance, a recipient's obligation to take reasonable steps to ensure meaningful access to programs and activities for LEP persons requires an analysis that balances four factors: (1) the number or proportion of LEP individuals who are likely beneficiaries of a recipient's services; (2) the frequency of contacts the recipient has with LEP beneficiaries; (3) the nature and importance of the program, activity, or service the recipient provides; and (4) the resources that that the recipient has available to provide language assistance services and the costs.⁷ In considering the application of these four factors to the Department, the OCR offers the following observations and recommendations.

A. Number or Proportion of LEP Individuals in the Service Population

One factor in assessing what language services recipients should provide to LEP beneficiaries is the number or proportion of LEP persons of a particular language group in the eligible service population. The greater the number or proportion of likely LEP beneficiaries, the greater is the need for language services.

Although the Department has not provided information on the number or proportion of LEP individuals within its service population, the OCR found relevant information on the language demographics of Hennepin County from the U.S. Census Bureau.⁸ According to the Census Bureau, for the years 2005 to 2009, the total population in Hennepin County, age five and older, was 1,056,473. In this population, 894,448 people spoke English only, and 162,025 people spoke English "less than very well." The OCR interprets the Census Bureau's classification of persons with the ability to speak English "less than very well" as an indication of LEP status. The Census Bureau further refined

⁷ See DOJ Guidance 67 Fed. Reg. 41459-61.

⁸ U.S. Census Bureau, American Factfinder, Hennepin County, Minnesota, 2005-2009 American Community Survey 5-Year Estimates, American Community Survey, <http://factfinder.census.gov> (last visited Aug. 4, 2011).

the description of the LEP population, age five and older, in Hennepin County from 2005 to 2009 as follows: 30,626 LEP people had Spanish as their primary language; 9,147 LEP people had another Indo-European language as their primary language; 18,805 LEP people had an Asian or Pacific Islander language as their primary language; and 12,569 LEP people had some other language as their primary language.

Recommendation

In light of the census data showing the significant LEP communities in Hennepin County, the Department should develop the capacity to provide language services to LEP beneficiaries, particularly to the large LEP community whose primary language is Spanish.

B. Frequency of Contacts with LEP Persons

1. Invoices from Language Services Vendors

The Department has some data on the frequency of its contacts with LEP persons from the invoices that it has received from the vendors⁹ that provide interpretation services to beneficiaries. In response to the OCR's Data Request, the Department provided the OCR with interpretation invoices for the calendar years 2007 and 2008. The following charts show for each language the number of times the Department requested and received interpretation services for beneficiaries from its vendors in 2007 and 2008:

2007	
Languages	Encounters
Arabic	5
Hmong	11
Korean	1
Laotian	5
Oromo	3
Somali	11
Spanish	87
Russian	2
Vietnamese	5

⁹ The data comes from the invoices of the following language service providers in 2007 and 2008: A-Z Friendly Languages, Inc.; Garden & Associates, Inc.; the University Language Center; the Minnesota Language Connection; and the Minnesota State Court. According to the Department, the totals do not include the language services provided at State Court hearings at which Department members were present. It is also noteworthy that there were no invoices from Language Line Services, the telephonic interpretation vendor expressly included in the Center's language assistance policy. See Admissions and Release: Language Interpreter Services for Non-English Speaking Persons, AR-180 (rev. Dec. 31, 2008); see also *infra* Part I.C.1.a.

Cambodian	1
Hindu	1

2008

Languages	Encounters
Arabic	0
Hmong	10
Korean	0
Laotian	6
Oromo	0
Somali	2
Spanish	95
Russian	4
Vietnamese	0
Cambodian	1
Hindu	0

The invoices for 2007 and 2008 show that the most frequently requested languages for interpretation were Spanish and Hmong.

2. Employee Interviews

During the onsite visit, the OCR staff interviewed employees of both the Center and Probation. When asked to identify the most frequently encountered languages in serving beneficiaries, employees from both agencies consistently said that the most often encountered languages were Spanish, Somali, and Hmong. This informal assessment is consistent with other data that the Department provided to the OCR regarding the need for language assistance services at the CHS¹⁰ and at State Court hearings.¹¹

3. The MAIN Database

According to the Department, in November of 2008, it implemented the Management of Adolescent Information (MAIN) database system, which serves both the Center and Probation. In describing MAIN, the Department stated, “It is a powerful web-based computer system that is networked and provides the ability to gather and share real-time

¹⁰ The Department reported that from January of 2007 until the May of 2009, its vendors provided language services 42 times at the CHS: 28 times in Spanish, 7 times in Somali, and 7 times in Hmong.

¹¹ The Department reported that in State Court hearings involving Department employees, the three most frequently requested languages for interpretation were Spanish (1891 times), Somali (519 times), and Hmong (470 times).

data with courts and other criminal justice partners.” Department staff can use MAIN to collect information pertaining to a juvenile’s English proficiency; this is information that the Department obtains during intake and can then input into MAIN’s case management system.

According to the Department, MAIN has the capacity to tabulate the number of face-to-face encounters that the Department has with LEP juveniles on a periodic basis. It also has the capacity to collect data on contacts with the LEP families of juveniles.

At the time of the onsite visit, based on the lack of data collected, the Department was unable to provide the OCR with information from MAIN on the LEP demographics of the juveniles and families it served.

4. Other Sources of Information

Although the Department did not provide invoices for the vendor Language Line Services, it is noteworthy that when one calls the number that this provider has designated for Hennepin County governmental agencies, the automatic voice prompt that answers the telephone directs the caller to choose among the following five languages: Spanish, Somali, Russian, Hmong, and Vietnamese. Similarly, the language assistance policy that the Department provided for Probation¹² instructs employees to call the Hennepin Office of Multi-Cultural Services (OMS) to access telephonic interpretation lines in Spanish, Somali, and Hmong. In the Hennepin County Limited English Proficiency Plan, the County has ranked from largest to smallest the language groups requesting interpreter services.¹³ According to this ranking, Spanish, Somali, and Hmong are the three largest LEP groups in Hennepin County. All three of these resources corroborate the information that the OCR gathered informally from interviews with Department employees: the Department’s most frequently encountered LEP language groups are Spanish, Somali, and Hmong.

Recommendation

The Department should periodically review the invoices of its vendors that provide language services to identify the most frequently served LEP language groups and the needs of its LEP clientele.

Although the OCR commends the Department in establishing a database that can track and retrieve information on LEP juveniles and families, the Department was unable, at least at the time of the site visit, to use MAIN to provide relevant data on the frequency of its contacts with LEP beneficiaries. The Department should establish protocols to enter data into MAIN on the LEP demographics of both juveniles and families. The

¹² Data Privacy and Communication: Interpreter and Translator Services, G4-010 (Jan. 2008).

¹³ Hennepin County Limited English Proficiency Plan 20 (July 17, 2006) [hereinafter County LEP Plan].

Department should also periodically tabulate this data to obtain a more accurate picture of the LEP characteristics of its service population.

The Department should also establish systems to gather data on the provision of language services that might not be captured by either vendor invoices or MAIN (e.g., encounters between bilingual staff and beneficiaries). At least annually, the Department should compile data from all sources to determine the frequency of contacts with its LEP service population, to identify the primary languages of LEP beneficiaries, to monitor the growth trends of language groups in the County, and to assess the adequacy of the language services it provides.

C. Important Public Services to LEP Juveniles and Their Families

1. The Center

a. Intake and Processing

Law enforcement officers who pick up Hennepin County youth on certain charges deliver them to the Center for processing.^{14 15} For the Center to accept a juvenile brought by a law enforcement agency, the admissions officer requires the police or probation officer accompanying the juvenile to execute an Authority to Hold form.¹⁶ The Authority to Hold form, which gathers data on the youth and youth's alleged offense, does not include any standard questions on the youth's LEP status or the LEP status of the youth's family. The only way for the Center to learn of the youth's LEP status would be if the officer conveyed this information verbally or the officer noted this information in the catch-all, remarks-and-comments box on the form.

According to the Department's Data Request Response, in assessing whether to hold or release the youth, the Center's intake staff completes a Risk Assessment Instrument (RAI) to determine the degree of risk the juvenile poses to the community.

In addition to a number of written policies that govern admission and release, the Center has a separate policy pertaining to the provision of language services to LEP persons.¹⁷ The Center's language assistance policy states, "Any resident or parent/legal guardian at the time of admit who does not speak English shall be provided a certified interpreter for language support. This interpreter shall be available during the intake and orientation process and as otherwise deemed necessary by the on-duty or module Corrections Supervisor." The policy instructs staff to call Language Line Services, an interpretation

¹⁴ If juveniles are involved in minor offenses, such as truancy, curfew violation, or vandalism, law enforcement officers bring the juveniles to the Juvenile Supervision Center (JSC). As the JSC does not receive DOJ funding, it is not subject to this Compliance Review.

¹⁵ In 2007, the Center admitted 3,957 juveniles; in 2008, it admitted 3,354 juveniles.

¹⁶ Admissions and Release: Authority to Hold Form, AR-106 (rev. June 1, 2005).

¹⁷ AR-180.

vendor, which will then provide language services over the telephone. The policy instructs the officer on duty to record the date, time, and name of the resource contacted.

From interviews with staff, the OCR learned that employees were aware of the Center's language assistance policy, and they used Language Line Services, when needed, to communicate with LEP juveniles and their families during the admissions process. Significantly, the procedure for obtaining an interpreter in the Center's policy is limited to contacting Language Line Services. The policy is silent as to how staff might contact in-person interpreters, bilingual colleagues, or certified interpreters from the County. During interviews with Center staff, the OCR learned, however, that staff members did rely on interpreters other than Language Line Services, not only in gathering information from LEP juveniles during intake, including responding to medical needs, but also in contacting and communicating with LEP families. In responding to the OCR's Data Request, the Department confirmed this practice: "If there is staff on-duty that speaks the language of the juvenile, they would assist with the booking process, with the exception of legal or medical related portions of the intake process."

b. Contacting Families

According to its policy, the Center is responsible for notifying a juvenile's family about the juvenile's detention at the facility; staff members are to telephone every two hours until the family receives notice or until the time of the juvenile's detention hearing.¹⁸ If the family does not have a telephone, the Center enlists the assistance of the police department to send law enforcement officers to the family's residence to provide notice of the juvenile's detention.

From interviews with the Center's staff, the OCR learned that notification of LEP families of a juvenile's detention can at times be problematic. LEP families that have limited incomes may not have telephones; and many, especially families with undocumented immigration status, might interpret law enforcement officers coming to their door as a threat. Consequently, prompted by a desire to protect their families, some juveniles in detention, whether being LEP themselves or having LEP families, will often deliberately give the Center's staff incorrect contact information for their families.

c. Grievances

In responding to the OCR Data Request, the Department stated that both juveniles and parents have access to a grievance process, but the Department did not provide the OCR with a copy of the juvenile grievance process and the only grievance process for parents that the Department did provide was in connection to the housing of juveniles at the CHS. During the OCR's onsite visit, Department administrators said that there is no Department-wide grievance process for filing complaints related to language access.

¹⁸ Admissions and Release: Parental /Custodial Adult Notification, AR-127 (Rev. Aug. 9, 2006).

The Department noted that it has never received a complaint from the Center's clients involving LEP juveniles or their families.

d. Community Outreach

The Department stated in answering the OCR Data Request that community outreach services did not apply to the Center. Nonetheless, the OCR learned that the Center had one full-time staff member who did outreach to families from various cultural backgrounds (e.g., Hmong, Somali, and Laotian), providing information about the Center and the Hennepin County juvenile justice system. This staff member regularly attended Saturday and Sunday visitation at the Center to provide families with resources such as an invitation to participate in cultural support groups and information on crime prevention.

e. Other Services

Other than providing LEP juveniles with interpretation from Language Line Services when dealing with medical needs,¹⁹ the Department stated in response to the OCR's Data Request that it had no procedures tailored to the needs of LEP individuals when it came to (i) handling grievances from juveniles, families, or members of the public; (ii) providing public safety information; (iii) offering emergency assistance; (iv) responding to emergency and non-emergency telephone calls; (v) conducting meetings at which juveniles and their families are present; and (vi) serving individuals requesting assistance or information who walk into the Center.

f. Referral to Alternative Programming

Based on the RAI, the Center may refer low-risk juvenile offenders who do not pose a risk to public safety to community-based rehabilitation programs through the Juvenile Detention Alternatives Initiative (JDAI). The alternatives to detention may include a faith-based organization's evening reporting program or other programs that encourage community work and vocational training. In communicating with LEP juveniles in referring them to JDAI, Center staff said they would rely on Language Line Services.

2. Probation

a. Intake and Processing

¹⁹ See the Center's policy, Admissions and Release: Referrals Needing Medical Attention, AR-103 (rev. June 1, 2005) on securing medical care for juveniles, but this policy does not contain any specific instructions on obtaining a qualified interpreter for juveniles needing medical services.

In its Data Request Response, the Department stated that the intake process for Probation,^{20 21} which is distinct from the Center's intake process, was set forth on pages five through seven in the document, *Blueprint of the Juvenile Justice System Hennepin County, Minnesota* (Sept. 20, 2007). The limitation of this document is that it is a complex, multi-page flow chart, lacking any narrative and any reference to Probation on the cited pages.

b. Initial Court Appearance

Within thirty-six hours of arrest, juveniles must have a detention hearing.²² Through interviews with Probation staff, the OCR learned that Probation employees interview juveniles prior to their first court appearance and prepare a recommendation to the State Court and County Attorney. Probation staff said that when an LEP juvenile is in custody awaiting a court appearance, there was simply no time to call for an interpreter before the morning hearing; rather, the staff would either try, if possible, to enlist the services of the court's interpreter just prior to the hearing or delay the hearing to the afternoon in the hope of finding an interpreter in the interim. Consequently, Probation staff members are often at a disadvantage in preparing recommendations for the initial court appearance of an LEP juvenile. The staff stated that on many occasions the crowded court docket prevented the court interpreter from being available; so any interactions with a detained LEP youth, which would otherwise occur before the hearing, take place on the record in court.

c. Post-hearing Assessment Order

After the court orders a disposition of an offense involving a juvenile that may require Probation's supervision, the Probation staff said that they would often rely on the court interpreters to administer assessment tools and assist Probation staff in making follow-up arrangements for services. For example, one staff member noted that the standard post-hearing assessment tool that Probation uses is available only in English, and court interpreters are not always available to assist LEP juveniles complete the instrument.

d. Grievances

²⁰ Probation has a policy on providing language services to LEP beneficiaries. *See* G4-010. This policy refers to the County LEP Plan, which the Department included in its response to the Data Request. For a discussion of the Department's language access services in the context of the broader language access plan for the County, see section III below.

²¹ The year-end population of juveniles under the supervision of Probation in 2007 was 3,800; in 2008, it was 3,427.

²² The Center has the responsibility of scheduling detention hearings for juveniles. The juveniles scheduled may be either those detained at the Center or released pending the detention hearing. The Center's scheduling policy states that at least thirty-six hours after arrest by local law enforcement officers, the juvenile will have a detention hearing. *Admissions and Release: Scheduling Detention Hearings and/or Arraignment Hearings*, AR-130 (rev. Aug. 9, 2006); *see also* Minn. Stat. § 260B.178 (2010).

In response to the OCR's Data Request, the Department stated that members of the public could file a complaint against Probation through their attorneys or other personal representatives; Probation's direct-service staff, managers, and supervisors; the Department's administration; the OMS; the County's administration; the County Board of Commissioners; the Minneapolis Department of Civil Rights; and the State of Minnesota Department of Human Rights. The Department, however, did not explain the process an LEP beneficiary or prospective beneficiary would follow in registering, especially with County agencies, a complaint of national origin discrimination against Probation alleging failure to provide language access services.

The Department noted that it has never received a complaint from Probation clients involving LEP juveniles or their families.

e. Community Outreach

The Department provided the OCR with a one-and-a-half page document titled Juvenile Probation Outreach to Community Resources. The listed community-based groups included an African service provider, a Somali community association, Somali youth and educational organizations, a charter school serving students from Spanish-speaking backgrounds, a Latino cultural group, and a counseling center serving Latino families. Although Probation may have established some ties with these groups, it did not elaborate on its vision or goals for its community-outreach work.

f. Referral to Alternative Programming

The Juvenile Petty Offender program, operated by Probation, is available to juveniles who commit minor offenses. Probation refers juvenile offenders participating in this program to local organizations to provide community service. According to the Department, this initiative, which requires little or no active supervision from Probation, is consistent with the principle that more harm than good may come to low-risk youth placed in the juvenile justice system. The Probation staff said that they would rely on Language Line Services in communicating with LEP juveniles and families who participate in the Juvenile Petty Offender program.

According to information the OCR obtained from Probation during the onsite visit, Probation implemented a new program, Alternative Sanctions and Incentives, to reduce the number of youth admitted and detained pending court action. This program targets only juveniles in violation of probation. The program allows supervising probation officers to administer penalties and prizes that serve to hold youth accountable. For instance, if a youth offender fails to maintain contact with a probation officer, the officer may impose the sanction of requiring the juvenile offender to check in more frequently. Alternatively, probation officers may reward juvenile probationers for positive behavior by paying fees to participate in sporting activities or providing gift certificates at neighborhood retailers. Probation officers may submit a progress report requesting

dismissal of probation when juveniles complete this program with no documented violations and no outstanding offenses. As the program was relatively new at the time of the OCR's onsite visit, the Probation staff did not have any information on the particular language-service needs of LEP participants.

Recommendation

The Department should develop for the Center and Probation, and perhaps for other components beyond the scope of this Compliance Review, a comprehensive, written language assistance plan, consistent with the DOJ Guidance, that focuses on providing services to LEP juveniles and their families in a variety of contexts, which may include conducting intake and processing, providing medical services to LEP juveniles, contacting families, preparing for detention hearings, processing post-hearing orders, conducting outreach to LEP communities, handling complaints, and arranging alternatives to detention or probation.²³

In drafting a comprehensive policy, especially for the Center and Probation, the Department should consider establishing procedures for accessing language services in all the areas discussed throughout this Compliance Review Report. The Department's language assistance plan should state that its purpose is to take reasonable steps to provide meaningful access to its services for all LEP juveniles and their family members. The plan should include provisions such as the role of the Department's LEP Contact,²⁴ protocols the staff should follow in obtaining interpreters within the Department's juvenile components, maintenance of a list of all certified bilingual employees available in each of the Department's juvenile components, procedures for updating the listing of all certified bilingual employees available in each Department's juvenile component, protocols on assisting LEP individuals in filing grievances related to the delivery of services, procedures for identifying and obtaining the translation of important documents in the most frequently encountered languages; and guidance on outreach to LEP juveniles and their families.

More specifically, in drafting the language assistance policy, the Department may want to amend the Authority to Hold form so that it captures information on the LEP status not only of the juvenile being detained at the Center but also the LEP status of the juvenile's family. The form may also assist the Department in entering similar data into MAIN.

In revised the language assistance policy, the Department should clarify that all employees have a responsibility to provide language assistance services to LEP beneficiaries, eliminating any confusion that this responsibility rests only with the admissions staff at the Center.

²³ For information on the elements of a language assistance plan, see section III below.

²⁴ This term refers to an undefined position in the County LEP Plan.

Addressing the problem that the Center has with contacting some LEP families that may have undocumented immigration status raises a thorny issue that requires the Department to evaluate competing responsibilities under federal law—to the LEP families who are beneficiaries of a federally assisted program and to federal immigration enforcement authorities that may have jurisdiction. Outreach efforts to the community that explain the role of the Center in notifying LEP families of detained juveniles may be the only way to improve the notification process, decreasing the suspicion of undocumented families, especially when dispatched police officers are the means for giving notice.

The Department's language assistance plan should also address the services that the Center admitted that it does not provide to LEP individuals, including disseminating public safety information, providing emergency assistance, responding to telephone calls from families members other members of the public seeking information on a detained juvenile, conducting meetings at which juveniles and families are present, and responding to walk-ins and visitors.

For Probation, the Department's language assistance plan, should address the need to have available for Probation staff qualified interpreters to assist them in interviewing juveniles prior to the detention hearing. Probation staff should not have to rely on court interpreters, either prior to the hearing or in administering assessment tools afterward.

The Department's plan might also prompt Probation to clarify its approach to community outreach, expressly stating the goals of cultivating relationships with organizations that serve LEP communities.

The grievance process for the Center and Probation can be more accessible to LEP persons by making it possible to file a grievance online, by publishing complaint forms in the most common language groups in the County, by training staff to assist LEP individuals in filling complaints, and by instructing LEP communities of the availability of the complaint process. The absence of any complaints against the Center or Probation from LEP persons may be commendable, but it may also suggest that the complaint process is inaccessible.

The Department should provide training specifically for management on the implementation of its language assistance plan, focusing on such matters as procuring telephones with access to interpretation services, identifying bilingual staff to obtain County certification, and developing creative outreach efforts to build trust with LEP communities.

The Department should also, of course, provide training to staff members on its language assistance plan. As part of the training program, the Department may find helpful the enclosed training DVD, *Breaking Down the Language Barrier: Translating Limited English Proficiency into Practice*. Other agencies have found this DVD useful in training employees on how to provide services effectively to LEP individuals.

D. Resources Available

In determining the capacity of the Department to provide language services, it is important to make an assessment of both financial and other resources that allow the Department to serve LEP beneficiaries.

The Department's fiscal year coincides with the calendar year. According to the Department's Data Request Response, the total operating budget for the Center was \$10,966,618 in FY 2007 and \$10,891,601 in FY 2008. The total operating budget for Probation was \$13,472,066 in FY 2007 and \$14,028,144 in FY 2008.

In FY 2007, the Center and Probation spent together \$6,150 on language assistance services for LEP juveniles and their families. In FY 2008, the Center and Probation spent together \$3,984 on language assistance services for LEP juveniles and their families.

For FY 2009, the Department reported that it budgeted \$70,000 to cover language assistance services for both its adult and juvenile operations.

Hennepin County distinguishes between employees designated as interpreters and bilingual employees. Interpreters are employees whose work is providing language assistance service. These employees are in the interpreter job class and have the job title of interpreter. They must receive certification of their language proficiency as a condition of employment. Bilingual employees may be in any job class; they use their foreign language skills while performing their regularly assigned duties.

The County further distinguishes between bilingual employees who are certified to provide language assistance and those who are not. To receive a certification of linguistic competency, bilingual employees who use their foreign language skills more than five times per pay period must pass an assessment administered by the County's Human Resources Department. The County does not require certification of bilingual employees who use their skills less than five times per pay period. Bilingual employees who use their foreign language skills on a regular basis may receive up to \$45.00 in additional compensation per biweekly pay period.

In the Data Request Response, the Department stated that it had no employees in the interpreter job class. The Department noted that it did have four bilingual employees who have passed the linguistic competency assessment in Spanish, but contrary to information that OCR obtained later, the Department stated that none of these employees had received certification from the County.

According to staff members whom the OCR interviewed, the Center has 113 full-time employees and Probation has 126 full-time employees. Although the Center has some

bilingual employees, none has obtained a language competency certification from the County, whereas two bilingual employees at Probation did receive County certification.

As noted previously, the Center and Probation have access to contract interpreters through the County,²⁵ and Probation's language access policy refers to interpretation services available through the County's OMS.²⁶

Recommendation

The Department should undertake a careful review of the Department's human and capital resources in assessing the Department's response to the needs of LEP juveniles and LEP families. Government agencies have employed a variety of techniques to assist them in evaluating whether they are wisely allocating their scarce resources in serving the needs of LEP communities. One method is convening focus groups of LEP beneficiaries to listen to their experiences in receiving language assistance services. Another method is to mail to and then collect from LEP beneficiaries surveys, in English and other languages, that evaluate language access programs. Depending on the response of the community, the Department may want to evaluate whether it has adequate staffing to serve the language access needs of particular language groups.

One part of the resources-allocation review may include determining the value of contracted language assistance vendors and the contributions of bilingual staff.

Given that so few of its staff members are certified bilingual employees, the Department should carefully examine whether the limited additional compensation offered to certified employees is a sufficient incentive to encourage certification.

Some government agencies that lack sufficient interpreters for underserved language groups have also developed employment strategies to remedy the deficiencies. One strategy is to add language skills as a requirement in recruiting for certain positions. Another strategy is to hire interpreters whose full-time responsibility is to provide language services for their coworkers.

II. Providing Language Services

To provide services to LEP juveniles and families, the Department offers both oral and written language assistance.

A. Oral Language Services

The Center's language assistance policy, as it is written, implies that it applies only to admissions, and although it states that staff should retain the services of a certified

²⁵ See *supra* note 9; see also County LEP Plan 38 (Attachment G).

²⁶ G4-010.

interpreter in serving LEP beneficiaries, the policy only provides instructions on how to call Language Line Services, a private telephonic interpretation vendor.²⁷ Center staff administrators clarified this policy verbally, stating that all employees who need language assistance services, not just those in admissions, should, as a first option, seek the assistance of certified bilingual staff. If certified bilingual staff is not available, employees should then call Language Line Services to obtain an interpreter over the telephone. This process for accessing interpreters is consistent with the County's broader language assistance plan, which instructs County employees to seek the interpretation of certified bilingual colleagues before contacting language services contractors.²⁸

Probation has a similar policy, stating that employees who need language assistance services should first try to use the services of certified bilingual employees within Probation.²⁹ Only after failing to secure the services of certified bilingual staff should an employee contact contracted vendors. The policy also states that Probation employees may also contact three telephonic interpretation lines operated by OMS, one for each of the following languages: Spanish, Somali, and Hmong. During an onsite interview, one Probation employee reported to the OCR that the OMS interpretation service was no longer operational.

Hennepin County has clearly established procedures for certifying bilingual employees. The testing clerk must obtain the permission of the employee's supervisor before administering the test to the employee. The testing policy notes that for most departments, only bilingual employees seeking compensation require testing.³⁰ The hour-long examination consists of two parts: thirty minutes for the written test and thirty minutes for the oral test. Because written Oromo, Lao, Hmong, Khmer, and Cambodian are not widely used, employees seeking certification in these languages do not have to take the written test. The written portion of the test consists of translating an English text into the language being tested. The oral portion of the test is having a conversation in the tested language with an evaluator about a photograph that the evaluator supplies. The County scores the oral and written parts of the test separately; and to earn certification, an employee must pass both parts. The scoring is pass or fail. According to the document on the testing that the Department inserted into its Data Request Response, "[p]ass indicates an expert or strong ability to speak or write the language. Fail indicates a beginner's ability or less"

As noted previously, the Center and Probation may also secure the assistance of contract interpreters available through the County.

²⁷ AR-180.

²⁸ County LEP Plan 21.

²⁹ G4-010.

³⁰ The testing policy appears to be inconsistent with the County LEP Plan, which states that County employees should use only certified employees for interpretation services.

The County's language assistance plan contemplates providing periodic training to interpreters, including training on ethical standards; however, given the few certified bilingual employees in the Department, the Center and Probation did not provide any information to the OCR on whether any bilingual employees serving as interpreters ever participated in any County-sponsored professional development programs for interpreters.

The Department, in responding to OCR's Data Request, stated that when LEP parents or guardians of a detained juvenile come to the Center to pick up their child, on occasion an English-speaking family member will accompany them to serve as an interpreter.

The Department also noted that on a case-by-case basis, Probation employees may rely on the friends or family members of a juvenile under supervision to serve as interpreters. The Department stated that the factors that Probation staff should consider in deciding to use family and friends of an LEP juvenile as interpreters include the following:

The urgency of the needed information versus the amount of time it would take to obtain a formal interpreter, whether the person being considered to provide the interpreting is deemed credible, whether there are any data practices issues and whether there may be any safety issues that would be compromised [in] using an informal interpreter.

Probation's language assistance policy states, consistent with the County's language assistance plan, that at no time should staff use family members or friends as interpreters if they are under the age of eighteen.³¹ Probation's policy does allow staff to use family and friends as interpreters when a client expressly requests their use or in an emergency. The County LEP Plan also contains a provision that allows LEP beneficiaries to waive the right to an interpreter from the County when they insist on relying on a personal interpreter who accompanies them.

The County LEP Plan states that LEP persons have the right to access language assistance services free of charge, but neither of the language access policies for the Center or Probation restates this important principle.

Recommendation

As discussed above,³² the Department should develop a comprehensive language assistance plan, consistent with the DOJ Guidance, to serve LEP juveniles and their families. The plan should not suggest that LEP beneficiaries can waive their right under Title VI to language access services as a consequence of insisting on the reliance of a personal interpreter. The Department may still have an obligation under Title VI to rely on a qualified interpreter to ensure the accuracy of communication with the LEP

³¹ G4-010 at 1.

³² See *supra* Part I.C (Recommendation).

beneficiary, which one might characterize as a reasonable step that the Department should take to provide meaningful access to its services.

B. Written Language Services

As noted previously, Hennepin County has a significant number of persons whose primary languages are Spanish, Somali, and Hmong. In the Data Request Response, the Center and Probation provided copies of the following documents translated into Spanish: Conditions of Probation Letter, Release of Information, Victim Statement, and Notice of Privacy Rights. The Center staff with whom the OCR spoke stated that the medical units also have Medical Consent forms translated into Spanish.

The Center staff has a working group that has identified the following documents that require translation into Spanish, Somali, and Hmong: the medical screening form, the nursing assessment form, the tuberculosis shot explanation, the rule book, the orientation test, the grievance form (including the explanation of the process), signs (i.e., residents' rights, how to request a nurse, public restrooms), and the parental visitation information sheet.

In the Data Request Response, the Department stated that neither the Center nor Probation has procedures for determining which documents to make available in translation.

The County LEP Plan states that the County intends to identify and then translate critical documents into both Spanish and Somali.³³ From the Department's Data Request Response, however, it does not appear that the County has undertaken this task, at least insofar as the Center or Probation is concerned.

Both the Center and Probation staffs stated that they have occasionally used software from Microsoft Word to translate documents for LEP juveniles or families.

The Center has not posted in public places signs or notices in the most frequently encountered languages to inform LEP juveniles and their families of the availability of language assistance services free of charge. According to the Department's Data Request Response, the Center has a committee formed to review this issue and to identify the public signs that need translation.

The Department provided little information on the process for obtaining the translation of documents and the methods to ensure their accuracy. In the Data Request Response, the Department stated that a certified County translator produced the Spanish documents that the Center provided to the OCR, but the Department did not comment on the source of the translations produced for Probation. The language assistance policy for Probation

³³ County LEP Plan 24.

states only that “[f]or document translation Juvenile Probation staff will contact their LEP contact to facilitate this service.” When the OCR pressed Probation while on site to identify the agency’s LEP contact, the OCR found that the person Probation administrators identified as the LEP contact was unaware of being designated for this role.

The Department’s website does not contain any information in translation.

Recommendation

In undertaking the important work of identifying critical documents for translation and then ensuring that they are translated accurately, both the Center and Probation may need to take further action to ensure compliance with Title VI and related statutes. The OCR encourages recipients to satisfy the “safe harbor” provision of the DOJ Guidance when determining which documents to translate.³⁴ The safe harbor provision states that recipients should translate “vital documents” for LEP groups that comprise five percent or 1,000, whichever is less, of the eligible service population.³⁵ Whether a document is “vital” depends on the “importance of the program, the service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.”³⁶ Examples of documents that may be “vital” are documents relating to protected rights, the provision of consent, and correspondence with complainants. In accordance with the DOJ Guidance, both the Center and Probation should perform an inventory of all their written materials, identify the documents each considers “vital,” and, to the extent they have not already done so, translate these documents into Spanish, Somali, or other languages that meet the safe harbor threshold.

The OCR cautions both the Center and Probation against using any computer word processing software as a reliable resource for translating vital documents.

The Department should review its website and consider posting translated vital documents online.

III. Developing an Effective Plan on Language Assistance for LEP Persons

According to the DOJ Guidance, as it applies to the Department, an effective plan for providing language assistance services to LEP beneficiaries has five elements: (1) identifying LEP juveniles and families who require language assistance in accessing the Department’s services and benefits, (2) providing effective language assistance services to them, (3) training staff on the Department’s language assistance policy, (4) providing notice to LEP juveniles and their families regarding the language assistance services the

³⁴ See DOJ Guidance, 67 Fed.Reg. at 41,464.

³⁵ *Id.*

³⁶ *Id.* at 41,463.

Department has available, and (5) monitoring and updating the plan in response to the needs of the Department's LEP service population.

In the Data Request Response, the Department attached and then often referred to the County LEP Plan, suggesting that the OCR should understand the language assistance policies of both the Center and Probation in the context of this broader plan that the County developed. Without commenting on the adequacy of the County's plan as it applies to the County as a whole, the OCR notes that the County's plan states in many places that each County component is responsible for developing methods for providing language assistance services. The County's plan acknowledges that as "each department has the best information on the individual LEP populations accessing or in need of its services, a universal plan to coordinate interpreter services cannot be established."³⁷

Recommendation

The Department cannot rely on the County LEP Plan as being sufficient for serving the needs of the LEP beneficiaries of the Center or Probation. The County's plan is neither complete nor specific enough to address the concerns of LEP juveniles and their families who seek meaningful access to the services that the Center and Probation provide. As noted previously, the OCR strongly recommends that the Department develop a language access plan for these juvenile justice components that is consistent with the DOJ guidance, incorporating into the plan the five elements that the DOJ Guidance has identified as essential.

The Department should designate a senior staff person as being responsible for developing the language access plan. This staff person may also be responsible for identifying bilingual employees and having them certified, maintaining a list of certified bilingual employees and language assistance contractors, taking inventories of vital documents and securing their translation into the appropriate languages, creating a repository for translated forms and other materials, gathering feedback on the appropriateness of language access services from LEP beneficiaries, compiling data and producing annual reports on the LEP composition of beneficiaries, evaluating the allocation of resources in providing language access services, and working with the County and other County departments to coordinate language access services—perhaps serving in the capacity of what the County LEP Plan calls the Limited English Proficiency Coordinator.³⁸

Conclusion

This letter serves as notice that the OCR has made a preliminary finding that the Department's juvenile justice components, the Center and Probation, are not fully compliant with their obligation to take reasonable steps to provide meaningful access to

³⁷ County LEP Plan 23.

³⁸ See, e.g., *id.* at 21.

Thomas R. Merkel, Director
Hennepin County Department
August 31, 2011
Page 21 of 21

services for LEP individuals. The OCR strongly recommends that the Department assess the implementation of its language assistance policies. The Department should implement the recommendations of this Compliance Review Report to ensure full compliance with Title VI, the Safe Streets Act, and the JJDP.

Upon request, the OCR is available to provide technical assistance to the Department in implementing the recommendations of this Report, formulating a comprehensive written language assistance plan that includes the operations of both the Center and Probation, and developing staff training on language access assistance. Immediately, upon receipt of this letter, we ask that the Department have a responsible agency official contact [REDACTED], Attorney Advisor, at ([REDACTED] or [REDACTED] to develop a timeline and goals for developing the recommendations in this Compliance Review Report.

Thank you for your cooperation and the assistance of your staff throughout the compliance review process.

Sincerely,

Michael Alston
Director

Enclosure

cc: Richard P. Johnson, County Administrator (w/enclosure)