



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

February 24, 2016

VIA CERTIFIED MAIL

Anthony J. Annucci
Acting Commissioner
New York State Department of Corrections
and Community Supervision
Building 2
1220 Washington Avenue
Albany, New York 12226-2050

Re: A.A. v. New York State Dep't of Corr. and Cmty. Supervision (11-OCR-0249
and 13-OCR-0170)

Dear Mr. Annucci:

In February 2012, the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice notified the New York State Department of Corrections and Community Supervision (DOCCS or Department) that the OCR received a complaint from a limited English proficient (LEP) inmate alleging that the DOCCS did not provide appropriate oral language assistance to LEP inmates at its Five Points Correctional Facility (Five Points). In response to the OCR's data request, the DOCCS provided information about its compliance with its language access obligations under Title VI of the Civil Rights Act of 1964 (Title VI), the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), and their implementing regulations.

On September 17, 2012, the OCR issued a letter of findings to the DOCCS, which concluded that the DOCCS was not fully in compliance with the requirements of Title VI and the Safe Streets Act.¹ To address these findings, the OCR encouraged the DOCCS to implement fifteen recommendations so that the DOCCS could improve its ability to (1) assess the number and proportion of LEP individuals in its service population, (2) assess the frequency of its contacts with LEP inmates, (3) provide appropriate oral language assistance to LEP inmates when it imposes disciplinary action, provides healthcare services, and handles offender grievances, and (4) assess language assistance resources and costs. After the OCR issued its investigative findings, the DOCCS proactively implemented numerous corrective action items in response to the OCR's recommendations, which we summarize below.² Given the DOCCS' implementation of these remedial measures, the OCR is administratively closing this matter.

¹ New York State Dep't of Corr. and Cmty. Supervision, No. 11-OCR-0249, Office for Civ. Rts. Ltr. of Findings (U.S. Dep't of Justice Sept. 17, 2012), <http://ojp.gov/about/ocr/pdfs/NY-11-OCR-0249.pdf>.

² Also after the OCR issued its letter of findings, the Complainant alleged that the DOCCS failed to provide appropriate language assistance services to him at another facility. As the OCR explains in the following section of

I. Implementation of Letter of Findings' Recommendations

A. Assessing the Number and Proportion of LEP Persons in Service Population

In its letter of findings, the OCR recommended that the DOCCS improve its ability to identify LEP persons at Five Points and their primary languages.³ In response to this recommendation, the Department updated its inmate tracking database to include additional language fields and added the primary language of each LEP inmate into that database. The DOCCS also implemented a system at each facility to place an inmate's primary language on his or her identification card. Finally, the DOCCS distributed "I Speak" language identification cards to personnel throughout its corrections and community supervision operations, which helps identify the primary language of LEP visitors and others who are not under the DOCCS' custody or control. Because of these changes, personnel throughout the Department, including those working at Five Points, can more easily identify LEP persons and their primary languages.

B. Assessing the Frequency of DOCCS' Contacts with LEP Inmates

In its letter of findings, the OCR recommended that the DOCCS strengthen its systems for collecting information about its contacts with LEP inmates at Five Points.⁴ The DOCCS responded to this recommendation by making several improvements to its language access system. As part of its written language access policy, which the OCR discusses in more detail in the next subsection and which applies to the entire Department, the DOCCS created a Facility Language Access Review Committee (FLARC) at each facility. Among their responsibilities, FLARCs submit monthly reports to the DOCCS' Coordinator of Cultural and Language Access Services and Language Access Coordinator that summarize each facility's provision of interpretation and translation assistance to LEP persons, including inmates.⁵ FLARCs also provide monthly reports to the Deputy Superintendent for Program Services, who in turn submits them to the Coordinator of Cultural and Language Access Services and Language Access Coordinator, on the context in which each facility provides language assistance to LEP inmates. These reports identify how frequently the facility provides language assistance to LEP inmates in connection with different types of services (e.g., disciplinary hearings, the grievance process, medical and mental health services, and community supervision). They also provide information about an inmate's primary language, whether the inmate required interpretation or translation assistance, and how personnel provided that assistance.⁶ The DOCCS also created a Central Office Language Access Review Committee that, among other things, reviews information on how often the Department interacts with LEP persons.⁷

its closure letter, the Department made several changes to its language access system that improved its ability to provide language assistance services to LEP inmates at all of its facilities. As a result, the OCR administratively closes the Complainant's second complaint as well.

³ Letter of Findings, *supra* note 1, at 5-6.

⁴ *Id.* at 7.

⁵ DOCCS, Directive No. 4490, Cultural and Language Access Services 9, Form 4490C (Jan. 15, 2016), <http://www.doccs.ny.gov/Directives/4490.pdf>.

⁶ *Id.* at 9, Form 4490D.

⁷ *Id.* at 10-11.

C. Providing Appropriate Oral Language Assistance Services to LEP Persons

In its letter of findings, the OCR recommended that the DOCCS improve its ability to provide oral language assistance to LEP persons at Five Points when it imposes disciplinary action, provides healthcare services, and handles offender grievances.⁸ As with the OCR's other recommendations, the Department took a multi-prong approach in addressing our concerns. Most significantly, it adopted a DOCCS-wide language access policy that emphasizes the importance of providing free oral language assistance to LEP inmates in various contexts, including the ones at issue in the instant matter.⁹ It also issued revised policies that augment the language access policy and describe in detail how it ensures that LEP persons have meaningful access to the disciplinary process,¹⁰ healthcare services,¹¹ and the grievance system.¹² To ensure that personnel understand their responsibilities under these policies, the DOCCS provides training on language access issues to new employees, as well as to incumbent civilian and uniform staff through annual in-service training.¹³ As part of its language access policy, the Department also developed a system to receive and resolve complaints about any alleged failure to provide appropriate language assistance services to LEP individuals.¹⁴ Each year, the DOCCS will evaluate whether, based on its interactions with LEP individuals, it should revise its language access plan, language access policy, and related policies and procedures.¹⁵

D. Assessing Language Assistance Resources and Costs

In its letter of findings, the OCR recommended that the DOCCS evaluate whether Five Points has adequate resources to provide language assistance to LEP inmates.¹⁶ To address this recommendation, the Department tasked its Central Office Language Access Review Committee with the responsibility of reviewing the extent to which personnel throughout the Department, including at Five Points, utilize internal and external language assistance resources, such as qualified interpreter staff and vendors that provide interpretation and translation services.¹⁷ As part of this analysis, the committee considers vendor costs for providing these services. In assessing the DOCCS' language assistance resources and costs, the committee can consult

⁸ Letter of Findings, *supra* note 1, at 10-11, 12-15.

⁹ Directive No. 4490, *supra* note 5, at 1, 3, 5-7. The language access plan also has extensive protocols for providing translation services to LEP persons and for ensuring that DOCCS personnel follow those procedures. *Id.* at 8-9, 10-11.

¹⁰ DOCCS, Directive No. 4932, Standards Behavior & Allowances (Jan. 20, 2016).

¹¹ DOCCS Div. of Health Servs., Policy No. 1.01, Inmate Orientation to Health Care Services (Nov. 12, 2015); DOCCS Div. of Health Servs., Policy No. 7.07, Informed Consent for On-Site Correctional Facility Procedures (Nov. 5, 2015).

¹² DOCCS, Directive No. 4040, Inmate Grievance Program (Jan. 20, 2016); *see also* DOCCS, Directive No. 4470, General Library Services (Jan. 20, 2016); DOCCS, Directive No. 4483, Law Libraries, Inmate Legal Assistance and Notary Public Services (Jan. 20, 2016), <http://www.doccs.ny.gov/Directives/4483.pdf>.

¹³ DOCCS, Language Access Plan for LEP Individuals 10 (Apr. 1, 2015), <http://www.dhr.ny.gov/sites/default/files/pdf/lep/DOCCS%202014%20LAP.pdf>.

¹⁴ Directive No. 4490, *supra* note 5, at 10, Form 4490B.

¹⁵ *Id.* at 11.

¹⁶ Letter of Findings, *supra* note 1, at 16.

¹⁷ Directive No. 4490, *supra* note 5, at 10-11.

reports, which the Department created after the OCR issued its letter of findings, on how often the DOCCS provides oral language assistance services and the costs of providing oral and written language assistance services. The DOCCS' most recent report, for 2014-2015, shows that it provided oral language assistance services to LEP persons 18,449 times, broken down as follows: bilingual staff assisted LEP persons 15,919 times; bilingual volunteers assisted LEP persons 1,513 times; telephonic interpreter vendors assisted LEP persons 771 times; and in-person interpreter vendors assisted LEP persons 246 times. The report also shows that, for 2014-2015, the Department paid the following amounts to vendors for language assistance services: \$16,062.27 for in-person oral language assistance services, \$10,668.48 for telephonic interpretation services, and \$82,649.87 for translation and other written language assistance services. Over time, the committee can use these reports to monitor and refine the extent to which the DOCCS utilizes internal and external language assistance resources to communicate with LEP persons.

II. Conclusion

The DOCCS has made significant progress in enhancing its ability to interact effectively with LEP persons. Given the Respondent's implementation of various language access measures, the OCR is administratively closing this matter. Please note that the OCR's closure of this matter does not impact the DOCCS' requirement to comply with Title VI and the Safe Streets Act, provided that it remains subject to these laws. Moreover, the OCR's closure of this matter is limited to the specific facts of the matter, and does not preclude the DOJ from taking additional appropriate action to evaluate the DOCCS' compliance with Title VI and the Safe Streets Act.

I would like to thank the DOCCS for its cooperation throughout the course of the OCR's investigation and the professional courtesies that Respondent personnel, especially Nancy Heywood, Linda Hollmen, and Richard Montes, extended to Attorney Advisor Christopher Zubowicz. If you have further questions about this matter, please contact Mr. Zubowicz at 202.305.9012 or christopher.zubowicz@usdoj.gov. He remains available to provide the DOCCS with additional assistance as it continues to take steps to ensure that LEP persons have meaningful access to its services and benefits.

Sincerely,

/s/ Michael L. Alston

Michael L. Alston

cc: Nancy Heywood, Deputy Counsel
New York State Department of Corrections and Community Supervision
VIA E-MAIL

Complainant
VIA FIRST-CLASS MAIL