



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

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CERTIFIED-RETURN RECEIPT REQUESTED

September 10, 2010

Chief Alex Hayes
Omaha Police Department
505 S. 15th Street
Omaha, Nebraska 68102

Director Jeffrey L. Newton
Douglas County Department of Corrections
710 S. 17th Street
Omaha, Nebraska 68102

Re: Compliance Review of the Omaha Police Department and the Douglas County Department of Corrections (08-OCR-0030) - **Final**

Dear Chief Hayes and Director Newton:

In my letter of November 15, 2007, I informed the Omaha Police Department (OPD), during the tenure of Chief Thomas H. Warren, Sr., that the OCR had selected it for a compliance review under Title VI of the Civil Rights Act of 1964 (Title VI) and the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act) and their implementing regulations. Subsequent to my initial letter to the OPD, the OCR learned that on January 25, 2005, the OPD entered into an Interlocal Agreement for City Jail Services (Interlocal Agreement) with the Douglas County Department of Corrections (DCDC). Because the DCDC not only provides detention services for the OPD but it also receives funding from the Office of Community Orienting Policing Services (COPS) and the OJP, I sent a subsequent letter, dated April 21, 2008, to the DCDC to provide notice that the OCR would conduct a compliance review of the DCDC Jail's language access services under Title VI and the Safe Streets Act.

In June of 2002, the U.S. Department of Justice published guidance for its financial aid recipients on taking reasonable steps to provide meaningful access to programs and activities for limited English proficient (LEP) persons in accordance with Title VI and the Safe Streets Act. 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) [hereafter DOJ Guidance]. An LEP person is an individual whose first language is other than English and who has a limited ability to read, write, speak, or understand English. Using the technical assistance standards in the DOJ Guidance, the OCR initiated this compliance review of the OPD and the DCDC to determine the extent to which the OPD and the DCDC are providing language services to their LEP populations.

On June 24-26, 2008, the OCR traveled to the City of Omaha to conduct an onsite visit with the OPD and the DCDC. The OCR would like to thank the OPD and the DCDC Jail staff, especially Sandra Peterson, Research and Planning Supervisor, OPD, and Mark Foxall, Deputy Director, DCDC Jail, for assisting the OCR's Senior Counsel George Mazza and Attorney ██████████ during their onsite visit.

Based on the OPD and DCDC jail's response to our Data Request and the information that the OCR gathered during our onsite visit, the OCR sent the OPD and DCDC a draft Compliance Review Report on October 27, 2009. On or about August 23, 2010, the OPD sent a letter to the OCR requesting revisions to U.S. Census Bureau data pertaining to English language ability within the OPD's service population referenced in the draft Compliance Review Report as well as other minor edits. In accordance with the OPD's requests, the OCR has revised Section I.A. on page three and Section II.B on page sixteen of this final Compliance Review Report.

Within the limited scope of our compliance review, the OCR concludes that the OPD and the DCDC appear to be taking steps to provide LEP persons with meaningful access to their services. The following final Compliance Review Report, however, contains recommendations based on the DOJ Guidance to improve services to LEP persons in compliance with Title VI and the Safe Streets Act.

Compliance Review Report

Part I of the Compliance Review Report assesses the OPD's obligation to provide services to its LEP population. Part II reviews the OPD's oral and written language assistance to LEP persons. Part III addresses the OPD's development of an effective plan on language assistance for LEP persons. Part IV assesses the DCDC's language assistance services to LEP inmates and visitors.

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 its programs and activities for LEP persons requires an analysis that balances four factors: (1) the number or proportion of LEP persons that are the likely beneficiaries of a recipient's services; (2) the frequency with which LEP persons come into contact with the recipient's programs or activities; (3) the nature and importance of the program, activity, or service provided; and (4) the resources available

to the recipient and the related costs. DOJ Guidance, 67 Fed. Reg. 41459-61. In considering the application of these four factors to the OPD, the OCR offers the following observations and recommendations.

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

The OPD has not provided any information on the number or proportion of LEP individuals within each of its police precincts. According to the OPD's Data Request response, the OPD divides its service area into the following four police precincts: (1) the Northwest Precinct, (2) the Southwest Precinct, (3) the Northeast Precinct, and (4) the Southeast Precinct. The OPD has a Central Police Headquarters (CPHQ) located in the Southeast Precinct in downtown Omaha. The OPD did provide maps of the precincts along with information on each precinct's racial and ethnic population.

Although not addressed by precinct, the OPD has conferred with the University of Nebraska (UNO) and provided the OCR with the U.S. Census Bureau 2006-2008 American Community Survey Estimates on the languages spoken less than "very well" within Douglas County (according to the OPD, the City of Omaha encompasses most of the population within Douglas County). The U.S. Census Bureau uses classifications based on the ability to speak English. The OCR interprets the ability to speak English less than "very well" as indicating LEP.

The OPD, in conjunction with the Center for Public Affairs Research, UNO, has provided the following Douglas County census estimates:

2006-2008 American Community Survey Estimates on Ability to Speak English For Ages 5+ (Douglas County)	
Languages Spoken less than "very well"	Estimate
Spanish or Spanish Creole	18,189
French (incl. Patois, Cajun)	786
French Creole	0
Italian	99
Portuguese or Portuguese Creole	0
German	437
Yiddish	16
Other West Germanic	12
Scandinavian	17
Greek	0
Russian	83
Polish	76

Serbo-Croatian	0
Languages Spoken less than "very well" (con't)	Estimate
Other Slavic Languages	158
Armenian	0
Persian	144
Gujarathi	38
Hindi	43
Urdu	20
Other Indic Languages	204
Other Indo-European Languages	64
Chinese	1435
Japanese	142
Korean	262
Mon-Khmer	49
Hmong	0
Thai	0
Laotian	0
Vietnamese	339
Other Asian Languages	326
Tagalog	51
Other Pacific Island Languages	52
Navajo	0
Other Native North American Languages	13
Hungarian	0
Arabic	513
Hebrew	0
African Languages	399

Source: Center for Public Affairs Research, University of Nebraska. *2006-2008 American Community Survey*. 14 May 2010. Languages Spoken At Home for Populations 5 Years and Over.

According to the ACS's 2006-2008 estimates, Douglas County had a total population, ages five years and over of 455,267. Of this population, 23,967 or 5.3 % spoke English less than "very well." Of the 5.3% of the population who spoke English less than "very well," 18,189 or 76% were Spanish-speaking persons and 1,435 or 6% were Chinese-speaking persons.

The OCR found the following City of Omaha 2000 U.S. Census data on the ability to speak English:

2000 U.S. Census Data on Ability to Speak English For Ages 5+ (Omaha)	
Languages	Totals
Spanish less than very well	13,203
Other Indo-European less than very well	2,164
Asian & Pacific Island less than very well	2,205
Other Languages less than very well	1,129
Total	18,701

Source: U.S. Census Bureau. Census 2000 Summary File 3. *Nativity by Language Spoken At Home by Ability to Speak English for the Population 5 Years and Over*. <http://factfinder.census.gov> (accessed August 30, 2010).

According to the 2000 U.S. Census Bureau, Omaha had a population age five years and over of 362,048. Of this population, 18,701 or 5.2% spoke English less than “very well.” Of the 5.2% of the population who spoke English less than “very well,” 13,203 or 70.6 % were Spanish-speaking persons; 2,164 or 11.6 % were other Indo-European speaking persons; 2,205 or 11.8 % were Asian and Pacific Islander-speaking persons; and 1,129 or 6 % were persons who spoke other languages.

The OPD has conferred with the Omaha Public Schools (OPS) to assess the City’s English as a Second Language students. According to the OPD, as of April 2010, thirteen (13%) percent of students within the OPS have English as their second language.

The OCR interviewed officers during the onsite visit, and they mentioned the existence of a large Spanish-speaking population in the Southeast and Northeast Precincts. Officers also mentioned a growing LEP population of Sudanese immigrants in the Northeast Precinct.

Recommendations

The OPD should collect specific information on the LEP service population for each of the four precincts. Actual language demographics are preferable to demographics on ethnicity because ethnicity has only a limited correlation with language and provides no reliable information regarding a population’s proficiency at speaking English.

The OPD should find a reliable source to obtain data about the composition of the LEP population within each precinct. Given that the OPD retained the services of the UNO in response to the OCR's Data Request, the OPD may consider using the UNO or another resource to identify the percentages of languages spoken "less than very well" in each precinct to assist the OPD in assessing the language needs of its LEP service population. The OPD should consider whether other local organizations might be a source for additional data regarding LEP groups. Knowing the percentages of LEP persons within each precinct, for instance gathering information about the growing Sudanese population in the Northeast Precinct, will allow the OPD to allocate resources where they are most needed, ensuring that the OPD provides adequate language assistance services.

B. Frequency of Contacts with LEP Persons

The OPD does not have procedures to track the frequency of its contacts with LEP individuals. The usage of telephonic interpretation services is, however, one method for collecting partial data on the frequency of encounters with the LEP population. The State of Nebraska contracts with the OPD to retain the services of a private vendor, AT&T Language Line (Language Line), to provide telephonic interpretation services. The Language Line bill for the eleven-month period of July 1, 2007, through June 1, 2008, was \$223.44. Out of thirty-two calls, the Language Line billed the OPD for twenty-seven Spanish interpretations, two for Vietnamese, one for Arabic, one for Mandarin, and one for Sudanese.¹

Based on the interviews that the OCR conducted with OPD officers, the OPD has more encounters with the LEP population than accounted for in the Language Line bill. Although the OPD's Language Line bill reflects using the services of a Sudanese interpreter once, several officers interviewed during the OCR's onsite visit mentioned an increased frequency of encounters with Sudanese LEP individuals. Moreover, although the OPD's Language Line bill reflects using Spanish-speaking interpreters twenty-seven times in an eleven-month period, officers in the Northeast and Southeast Precincts mentioned having daily contact with Spanish-speaking LEP individuals.

During the onsite visit, the OCR interviewed front-desk staff who mentioned that the OPD does not have procedures for recording daily encounters with LEP individuals and the language assistance services that the OPD provided.

Recommendations

The OPD should establish reliable systems for data collection and record-keeping of interactions with its LEP population. Although the OPD has an accounting of Language Line services, the OPD should, to the extent possible, record information on all LEP contacts including the language needed, the type of assistance provided by telephone or

¹ Although Language Line uses the term, Sudanese is not an official language of Sudan. According to the U.S. State Department, the native languages of Sudan are Arabic, Beja, Fur, Nuban, and Ingessana. U.S. Department of State, <http://www.state.gov/r/pa/ei/bgn/5424.htm#people> (last visited August 25, 2009).

in person, and who provided the interpretation services (i.e., bilingual staff, Language Line, or others). It may also be useful for future resource allocation considerations to record the approximate length of time an interpreter spent with the LEP client.

Some police departments have modified their incident forms, computer logging forms, and daily reporting procedures to gather information on contacts with LEP persons. For example, adding to forms a checkbox for "LEP Contact," accompanied by checkboxes for language assistance provided and the approximate duration of the language assistance service, might be a relatively minor addition to existing record-keeping procedures that might greatly facilitate periodic statistical reviews of the OPD's services to LEP persons.

On an annual basis, the OPD should tabulate from all sources the number of contacts it has had with LEP persons during the most recent twelve-month period. The data would provide a clearer picture of the OPD's LEP community and provide important information in assessing whether the OPD is providing adequate language assistance services.

C. Important Public Services to LEP Individuals

1. Emergency and Non-Emergency Calls

The OPD contracts with the Douglas County Communications Department (DCCD) Call Center, which processes all emergency and some non-emergency telephone calls made in Douglas County.²

In its Data Request Response, the DCCD Call Center provided the OCR with No or Limited English Instructions for Emergency Response, the DCCD Call Center's language assistance policy. The written procedures provide instructions to employees on accessing Language Line; their responsibilities when using Language Line; a definition of "interpretation;" and the requirement to complete the Comm_14 Internal Reporting Form, which records the date and time of when employees accessed Language Line. The DCCD Call Center's written procedures require staff to forward the Comm_14 Internal Reporting Form to supervisors via the chain of command.

According to the police operator whom the OCR interviewed, the Call Center receives each day an average of three to five LEP callers who need police services. The police operator stated that she most frequently encounters Spanish-speaking LEP callers. The DCCD Call Center staff did not provide an accounting of its use of Language Line. According to DCCD Call Center staff with whom the OCR spoke, the Call Center does not keep track of the use of Language Line because the State of Nebraska maintains the contract with the service provider. The DCCD Call Center staff also stated that the dispatchers complete the Comm_14 Internal Reporting Form electronically upon using

² Douglas County has eight municipalities, including Omaha. Omaha is the largest city in Douglas County. The DCCD, however, has responsibility for serving all the municipalities within Douglas County.

Language Line. The Call Center's computer system, however, could not generate a report showing the number of times Language Line provided language assistance services or the languages in which it provided interpretation. The DCCD Call Center has one Spanish-speaking bilingual operator.

During the OCR's onsite visit to the DCCD Call Center, the OCR first obtained the DCCD Call Center's standard operating procedures for answering all emergency and non-emergency calls (LEP and English-proficient) received by the Call Center. The DCCD Call Center has operators and dispatchers. Operators answer calls for police, fire, and medical services. Based upon the information provided by the caller and the caller's location,³ the operator logs general information regarding the call into the DCCD Call Center's computer system and forwards the call to the appropriate dispatcher. For police calls, the DCCD Call Center has one dispatcher per precinct. For example, if a person calls from the Southeast Precinct, the police operator forwards the call to the Southeast Precinct dispatcher. The dispatcher then notifies units within the precinct to respond.

Although the DCCD has written procedures for accessing Language Line, during the onsite visit, the OCR became aware that the written document does not reflect all procedures DCCD Call Center staff use in encounters with LEP callers. For instance, one police operator with whom the OCR spoke stated that when she receives a call from an LEP caller and cannot identify the language, she often uses the tone and level of excitement in the person's voice to assess whether the caller has an emergency. If she hears any excitement and cannot understand the language, she will automatically treat the call as an emergency. She then uses GPS to track the location of the caller, forwards the caller to the appropriate dispatcher based on the caller's location, and requests the dispatcher to send a patrol unit for a "well-being call."

The DCCD Call Center has no written procedures on responding to non-emergency calls from LEP individuals. The police operator with whom the OCR spoke stated that even if the LEP caller has a calm, non-excited tone, when she cannot identify the language spoken by the LEP caller, she has requested dispatch to send a patrol unit for a "well-being call." Notably, during the community meeting that the OCR held while onsite, one attendee discussed an alleged incident when OPD patrol units arrived at the home of an LEP caller who called 9-1-1 for a non-emergency matter. According to the community meeting attendee, only after the OPD officers arrived, did they allegedly discover that the call was not an emergency. According to the attendee, the DCCD Call Center has no interpreters to communicate with LEP callers on non-emergency calls, and the DCCD has no outreach programs to educate the LEP community on the difference between making emergency and non-emergency calls.

³ The DCCD Call Center is equipped with GPS (Global Positioning Service) software that tracks the location of all Local Area Network (LAN) lines and most cell phone calls (it cannot detect locations of unsubscribed callers).

2. Enforcement Stops

The OPD has a policy that governs enforcement stops involving LEP persons, Interpreters – For Hearing Impaired or Foreign-Speaking Persons (OPD LEP Policy). Section I.C. of the OPD LEP Policy states, “[i]ndividuals suspected of non-criminal violations (such as non-criminal traffic infractions) may be issued a citation without the use of an interpreter.”

Given the OPD’s LEP Policy stating that officers are not required to use an interpreter during traffic stops, most officers the OCR interviewed described using hand gestures, phrases remembered from past Survival Spanish courses, passengers, children, or bystanders to help communicate with LEP individuals during enforcement stops. One officer mentioned that on one occasion, when he was not able to communicate with an LEP individual during a traffic stop, he let the person go.

Section VI.A. of the OPD LEP Policy states, “[u]pon encountering an individual who speaks Spanish or is hearing impaired, the officer will present the OPD Form 211A.” Section VI.B of the OPD LEP Policy states, “[n]ext, the officer should present the OPD Form 211, Citizen Contact Brochure to the individual.” Section VI.C. of the OPD LEP Policy states, “[i]n those instances where the OPD Form 211 and 211A are not effective, an Officer may request the use of an interpreter through the Captain’s Aide or Duty Sergeant.”

The OPD Citizen Contact Brochure, Form 211, translated into Spanish, contains information as to whether the OPD has issued a traffic or criminal citation. The Requesting Cooperation Card, Form 211A, translated into Spanish, asks for the motorist’s cooperation in the stop and informs the motorist that OPD officers will leave the motorist, go to their police cruiser, and return with more information.

Not all officers are aware of the OPD policy requiring officers to carry the Spanish versions of both the OPD Citizen Contact Brochure and the Requesting Cooperation Card. For instance, an officer interviewed in the Southeast Precinct mentioned that he was not required to have any translated materials with him during patrol; he carries a guidebook containing Spanish words frequently encountered in the law enforcement context obtained from a past Survival Spanish course. A patrol officer interviewed in the Northeast Precinct noted that he was not required to have any translated materials, but he remembered the OPD requiring him in the past to have some translated materials in his patrol car. Some officers stated they were aware of the OPD policy requiring officers to carry the OPD Citizen Contact Brochure and Requesting Cooperation Card, but they still used family members, children, or bystanders as interpreters to assist in explaining enforcement stops.

3. Custodial Interrogation and Interviews

The OPD LEP Policy does not refer to the OPD's Rights Advisory Form, which the OPD has translated into Spanish. Each line of the form has a portion of the Miranda warning followed by the question, "Do you understand that?" Prior to interrogating Spanish-speaking LEP suspects in custody, OPD officers either read the translated form or hand it to the suspect. The OPD has not translated the Rights Advisory Form into any other language.

Section III of the OPD LEP policy, Interrogating and Interviewing, establishes the following procedures for conducting interviews:

- A. Officers who can communicate effectively by writing questions on a note pad and having received written responses in return, may proceed with an interrogation or interview.
- B. If written communication becomes ineffective, the officer must immediately discontinue the questioning and summon an interpreter.

To summon a sign language interpreter, the officer should contact the Front Desk at CPHQ [Central Police Headquarters]. If an interpreter is not available at CPHQ, the Front Desk should contact the Nebraska Commission for the Deaf and Hard of Hearing Sign Language Referral Service. This service is available for calls during regular business hours, which are 8:00 a.m. – 5:00 p.m., Monday thru Friday, except for holidays. To arrange for sign language interpreters during regular business hours, please call . . .

Notably, this section of the policy only addresses interrogating and interviewing the hearing-impaired. Section III of the OPD's LEP Policy does not address interrogations of LEP or "foreign-speaking" persons.

The OPD officers, however, do follow procedures found in the OPD informational order, Number 92-00, entitled Interpreters, dated March 8, 2000, stating that the "OPD has Spanish-speaking employees available on duty, and the Language Line is available for other non-English languages" when interrogating and interviewing LEP suspects. The OPD officers with whom the OCR spoke were aware that when interrogating and interviewing an LEP suspect, according to OPD Order 92-00, the OPD officers are to use OPD bilingual employees or Language Line as interpreters. Section III of the OPD LEP Policy does not cross-reference OPD Order 92-00 to address the availability of bilingual employees or Language Line as a resource for detectives during the interrogation of LEP suspects.

Section VI of the OPD LEP Policy has a separate section, Victim or Witness Interviewing, for interviewing LEP victims or witnesses. Section VI of the OPD LEP Policy states the following:

- A. If the investigation does not involve a serious offense, the officer may request an interpreter be dispatched to the victim or witness location by calling the Front Desk at CPHQ [Central Police Headquarters].
- B. If an interpreter is unavailable to respond, the officer should try and communicate to the victim or witness the need to come to the CPHQ to meet with an interpreter.

During the onsite visit, the OPD senior administrative staff informed the OCR that the OPD officers record victim or witness statements of LEP persons by tape or video and that the OPD has the recordings translated by a certified translator. The certified translator writes the statement in English for the detective's investigation file. Notably, Section VI of the OPD LEP Policy has no provisions that mention recording and transcribing as an alternative method for obtaining victim and witness statements from LEP individuals.

4. Arrests, Booking, and Persons in Custody

As discussed above in Section I.C.2. of this Compliance Review Report, Section VI of the OPD LEP Policy requires all officers to carry Spanish translations of the OPD Citizen Contact Brochure (Form 211) and the Requesting Cooperation Card (Form 211A) for use during arrest.

Not all OPD officers, however, appear to comply with Section VI of the OPD LEP Policy when interacting with LEP arrestees. For instance, an officer with whom the OCR spoke stated that if he cannot communicate with an LEP arrestee, regardless of whether the arrestee speaks Spanish or any other language, he might handcuff the person first and then take the LEP arrestee to the DCDC Jail or CPHQ where the officer obtains an interpreter from the OPD bilingual staff or Language Line. The officer explained that he would not first attempt to communicate with the arrestee using the OPD Citizen Contact Brochure or the Requesting Cooperation Card as situations often escalate too quickly to hand information to arrestees for review.

The OPD LEP Policy does not include a section on booking LEP individuals.⁴ Although the OPD LEP Policy does not include a section on booking LEP individuals, most officers with whom the OCR spoke said that when booking an LEP person, they would

⁴ As previously noted, according to the Interlocal Agreement, the OPD uses the DCDC jail facilities; however, OPD officers are still responsible for booking arrestees at the DCDC jail.

follow procedures for obtaining an interpreter consistent with the OPD Order 92-00.⁵ Several OPD officers stated that when booking LEP individuals, they have used a bilingual OPD officer or Language Line for language assistance. Moreover, the DCDC Jail staff with whom the OCR spoke mentioned observing OPD officers using bilingual officers or the telephone to contact Language Line for interpreters during booking. Part IV of this Compliance Review report discusses language services provided for LEP persons in the OPD's custody at the DCDC Jail. As a result of the Interlocal Agreement with the DCDC, the OPD does not maintain custody of arrestees.

5. Complaints

The OPD does not have a policy regarding processing complaints made by LEP members of the public. In the OPD Data Request Response, the OPD provides a copy of its general policy, Section III of the OPD Standard Operating Procedure Manual (Section III), setting forth the process for receiving and investigating complaints by members of the public. Section III, however, does not provide for how the OPD ensures that LEP individuals have access to the OPD's complaint process. The OPD distributes a brochure, Guidelines for Commending Employees and Filing Citizen Complaints⁶ (Complaint Brochure), which explains the complaint procedures found in Section III. The Complaint Brochure and the Complaint Form are available only in English and Spanish.

According to Section III, the OPD assigns each filed complaint to an investigator. The assigned investigator will schedule an interview with the complainant. After the OPD investigator has completed the investigation, according to Section III.G., the OPD notifies the complainant in writing of the outcome:

[t]he citizen [complainant] will be notified of the results of the investigation by a letter from the Chief of Police at the conclusion of the investigation. Should the case not be completed within the contractual timeframe, the investigator will advise the complainant of the status of the case.

Although the OPD has the Complaint Brochure and Complaint Forms available in Spanish, the OPD does not have express procedures for handling LEP complaints, such as providing guidance to investigators on obtaining interpretation for LEP complainants or translating documents that notify LEP complainants about the final disposition of their complaints.

⁵ The OPD Order 92-00, discussed above in Section I.C.3, states that the OPD has Spanish-speaking bilingual employees available to provide Spanish interpretation; Language Line provides interpretation for all other languages.

⁶ The OPD may want to consider renaming this document as even non-citizens have the right to receive equitable treatment from the OPD.

During the OCR's onsite meeting with members of the community, the OCR learned from representatives of the consulate of a foreign government of a complaint filed on behalf of an LEP individual in 2007 regarding an encounter with the OPD. The consular representative alleged that the OPD did not notify the LEP complainant about the final disposition of the complaint. As noted above, Section III.G. requires that OPD complainants receive notification of the results of the investigation through a letter from the Chief of Police.

The complaint alleged that the OPD used excessive force during an arrest and did not provide proper notice to the arrestee of his option to contact his country's consulate. The OPD arrested the LEP complainant for driving with a suspended license, resisting arrest, displaying an improper license, having no proof of insurance, and obstructing the police. The arresting officer stated that the complainant spoke "broken English" but "could understand English enough." Another officer at the scene stated that when he told the LEP complainant to stand still in English, so that the officer could handcuff him, the LEP complainant failed to comply. As a result, the officer ultimately delivered a palm strike to the back of the complainant's head that resulted in the LEP complainant suffering a bloody nose.

Through the assistance of the consulate (which eventually received notice of the arrest), the LEP complainant filed a complaint alleging excessive force against the officers involved in the incident. With regard to the excessive force charge, the investigation exonerated one officer and did not sustain the charge concerning the actions of the other officer. The OPD sustained, however, the charge of inappropriate use of handcuffs (for a suspended license) as to both officers. According to the copy of the complaint file that the OPD provided to the OCR, both officers, because of the complaint, received a Job Performance Interview with their supervisors. The investigative file also showed that both officers received notice from the OPD of the outcome of the investigation by letters dated April 2007.

The OCR reviewed all documentation that the OPD supplied pertaining to this complaint. There was no evidence that the Chief of Police sent a letter to the LEP complainant notifying him of the OPD's final disposition of the investigation as required by Section III.G. of the OPD's Operating Procedure Manual.

Recommendations

The OPD should establish a comprehensive, written plan on providing services to LEP persons in a variety of contexts, including emergency and non-emergency telephone calls, enforcement stops, interrogations, interviews, arrests, booking, and complaints.

In drafting a comprehensive plan, the OPD should provide methods for receiving non-emergency calls from LEP individuals. The OPD should collaborate with the DCCD Call Center to assess the Call Center's procedures for dispatching OPD officers for "well-being" calls when the DCCD Call Center staff is not able to establish the LEP caller's

language. Based on feedback received from the community, the OPD should conduct outreach to its LEP community, providing information on the telephone numbers to call for both emergency and non-emergency assistance. The OPD might also collaborate with the DCCD Call Center to maintain a record of the Call Center's usage of Language Line to assist the OPD in reviewing its frequency of contact with the LEP community.

The OPD should revise Interpreters – For the Hearing-Impaired or Foreign-Speaking Persons by establishing two separate policies: one for serving people who are hearing impaired and one for serving people who are LEP. While both populations may require interpreters, the applicable laws differ and the issues each population encounters also differ. Having two separate policies would prevent oversights such as Section III of the current OPD LEP Policy that omits the procedures for interrogating and interviewing LEP suspects.

The OPD's language assistance plan should address the silence in its current policy regarding its reported practice of interviewing LEP victims and witnesses while recording them by videotape or some other means. In rendering victim and witness statements into English, the OPD should use the services of a competent, authorized translator who has demonstrated skills in accurately converting statements in a foreign language into comparable written English.

The OPD should incorporate Order 92-00 on interpreters into its language assistance plan to advise all officers during stops, arrests, and booking of the language assistance resources that are available from qualified bilingual employees or Language Line. The plan should also advise officers to avoid relying on the interpretation services of bystanders or the friends and family of an LEP person, except in unforeseen, emergency situations while awaiting a qualified interpreter.

The plan should ensure that the OPD has procedures in place for receiving and administering complaints by LEP individuals and that the procedures are consistent with the OPD's Standard Operating Procedures Manual.

D. Available Resources

The OPD's fiscal year runs from January first to December thirty-first. According to the OPD Data Request Response, from September 9, 2007, to March 8, 2008, the OPD had 939 employees (758 sworn and 181 non-sworn). The OPD had a total operating budget of \$90,549,993 in FY 2007. The OPD provided the OCR with a list of seventeen Spanish-speaking bilingual officers who receive additional compensation. The OPD provides an additional bonus of three percent (3%) of the base pay to employees with foreign language skills.

In addition to bilingual employees, Language Line, through a contract with the State of Nebraska, serves as a resource for the OPD in communicating with LEP persons. As previously discussed in Section 1.B. of this Compliance Review Report, the OPD spent a

total of \$223.44 on Language Line calls for the eleven-month period of July 1, 2007, to June 1, 2008. The OPD has not provided line-item amounts in the OPD operational budget for language assistance services or for employee foreign language training.

Recommendations

The OPD should undertake a careful review of the OPD human and capital resources in assessing how well the OPD responds to the needs of the LEP population. One part of this review would include evaluating its recruitment methods to attract more bilingual employees. In light of the minimal amount it spends on Language Line in comparison to the total operational budget, the OPD should investigate the reason for the small expenditure. Are employees unaware of the Language Line as a resource? If so, do they need better training? Is the OPD discouraging the use of Language Line to save money? Has the OPD set a limit on the amount of money it has budgeted for Language Line services? Are LEP persons receiving adequate services through other means? The OPD should also consider whether it might be useful to provide Spanish instruction to officers and other employees in public-contact positions.

II. Providing Language Services

To provide public services to its LEP population, the OPD offers both oral and written language assistance.

A. Oral Language Services

According to the OPD's Data Request response, it provides oral language services through (1) the use of OPD bilingual officers, (2) Language Line, and (3) community volunteers.

The OPD Order 92-00 discussed above in Section I.C.3. provides for the assistance of OPD's bilingual officers for Spanish interpretation or Language Line for other interpretation. The OPD provided the OCR with a list of seventeen Spanish-speaking bilingual officers who are available as interpreters to all employees of the OPD. According to OPD Order 92-00, the OPD maintains the list at the front desk of each precinct and at the central police headquarters. Several officers stated that they had used OPD bilingual officers or Language Line as a resource for oral language assistance

In the OPD Data Request Response, the OPD states that it provides additional compensation to employees who are bilingual and pass a competency test. The OPD defines "bilingual" as an employee who speaks a language other than English, as determined by a linguistic competency test administered by the City of Omaha Personnel Department. Bilingual officers stated that a service provider outside the state administers the approximately forty-five minute test. The seventeen Spanish-speaking officers available to provide interpretation represent the OPD's current certified bilingual staff.

Certified bilingual officers informed the OCR that the OPD frequently requires their assistance, and they said that sometimes providing interpretation does interfere with their caseload. One officer with whom OCR spoke stated that he believed bilingual OPD officers often “burn out,” and he recommended that the OPD hire additional bilingual staff.

The OPD's Order 92-00 does not include community volunteers as an option to assist in providing oral language services. In the OPD Data Request Response, the OPD provided, however, a list of community volunteers who are available to assist in providing interpretation for the following language groups: Cantonese, Chinese, Flemish (Dutch), French, German, Lithuanian, Mandarin, Spanish, Sudanese, Taiwanese, and Vietnamese.

A few officers with whom the OCR spoke discussed having used community volunteers to assist in providing oral language services in encounters involving the growing Sudanese community.

During the OCR's onsite visit, several officers also noted that in the past, the OPD offered basic Spanish classes.

Recommendations

The OPD has recognized the need to communicate with Omaha's Spanish-speaking population and has taken steps to serve these communities by certifying and providing additional compensation for bilingual Spanish-speaking officers. The OPD, however, should consider more effective language assistance to all LEP individuals by hiring more bilingual staff. For instance, to provide more effective language assistance to the growing Sudanese population, the OPD should increase its efforts to recruit more officers who speak the appropriate languages. Hiring additional bilingual officers might also assist in avoiding the “burn-out” and case management problems currently experienced by some OPD bilingual staff.

The OPD should consider providing basic Spanish again. To assist the OPD, the OCR has included in this Report a CD-ROM, *Espanol for Law Enforcement*, which is an interactive training tool that covers basic Spanish phrases and sentences relative to law enforcement. The OPD may find the CD-ROM useful in supplementing an existing training program. The OPD may duplicate the CD-ROM; alternatively, the OPD may request additional copies from the DOJ by contacting the National Institute of Justice at 1-800-851-3420 or by visiting the following website: <http://www.ojp.usdoj.gov/nij/pubsum/201801.htm>.

B. Written Language Services

With the significant growth of Omaha's Spanish-speaking population, the OPD, as a matter of policy, translates most of its documents into Spanish. The OPD has provided

the OCR with sixty-eight items translated into Spanish. These items range in subject matter from the Rights Advisory Forms, discussed in Section I.C.3. of this Compliance Review Report, to Raising Streetwise Kids: A Parent's Guide (tips for parents on preventing youth from having encounters with the police).

The OPD did not explain its standard for deciding which documents to translate.

During the onsite visit, the OCR noted that a majority of these translated materials, however, were located at one precinct, Southeast. The OPD has not translated documents into any other language other than Spanish. Given the U.S. Census Bureau's ACS estimates of Chinese-speaking persons who speak English less than "very well" referenced in Section 1.A. of this Compliance Review Report, the OPD has stated that in conjunction with UNO, it is working towards translating important materials into the most common written Chinese languages.

The OPD states that it ensures the accuracy of its translations by using certified translators. During the onsite exit interview with senior administrative staff, the OPD informed the OCR, however, that its competency examination for staff tests only the proficiency of interpreters; the OPD does not have current testing to assess the competency of its staff translators.

Recommendations

Although the OPD already has numerous documents translated into Spanish, the OPD, may need to take further action to ensure compliance with Title VI and the Safe Streets Act. The OCR encourages recipients to satisfy the "safe harbor" provision of the DOJ Guidance when determining which documents to translate. See DOJ Guidance, 67 Fed.Reg. at 41,464. The safe harbor provision states that recipients should translate "vital documents" for the LEP groups that comprise five percent or 1,000, whichever is less, of the eligible service population. Id. Whether a document is "vital" depends on the "importance of the program, information, encounter, or service involved, and consequence to the LEP person if the information in question is not provided accurately or in a timely manner." Id. at 41,463. 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, the OPD should perform an inventory of all its written materials, identify the documents it considers "vital," and, to the extent it has not already done so, translate these documents into Spanish or other languages that meet the safe harbor threshold.

Given the mobility of communities, it is important that the OPD consider having translated materials available at all OPD precincts. The CPHQ and each precinct should always have a well-stocked kiosk or other display rack with relevant translated materials.

To ensure the language competency of translators, the OPD should collaborate with its current vendor providing language competency testing (or with another vendor) to administer a test for evaluating the skills of staff who translate for the OPD.

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

According to the DOJ Guidance, an effective plan for providing language assistance to LEP persons has five elements: (1) identifying LEP individuals who need language assistance, (2) providing information on effective language assistance measures, (3) training staff, (4) providing notice to LEP persons, and (5) monitoring and updating the plan.

Recommendations

The OCR commends the OPD for the actions it has already taken to provide language assistance to LEP persons, such as the OPD LEP Policy and Order 92-00 on interpreters. The OPD, however, should develop a single, comprehensive, written language assistance plan on providing services to LEP persons that incorporates the five elements noted above and address the concerns raised in this Compliance Review Report. In doing so, the OPD may wish to consult the DOJ Guidance, along with the following documents: (1) Planning Tool for Creating a Language Assistance Policy and Plan in a Law Enforcement Agency, (2) Limited English Proficiency Resource Document: Tips and Tools from the Field, and (3) a sample written language assistance plan. These documents are available online at <http://www.lep.gov>. The OCR also suggests that the OPD name one person on staff to be responsible for coordinating services to LEP persons. This individual's first task might be to review this Compliance Review Report and the OCR's recommendations to develop a formal language assistance plan that will become familiar to every OPD employee.

IV. Assessing Detention Services Provided by DCDC

The DCDC operates one correctional facility, which is located in the City of Omaha. As noted previously, the DCDC Jail receives and holds OPD arrestees. An Agreement between the DCDC and the OPD, dated January 25, 2005, establishes the terms of this arrangement. Individuals detained at the DCDC Jail are either awaiting trial or serving sentences of less than 365 days. Inmates, on average, stay nineteen days at the DCDC Jail.

The DCDC tracks neither the number of LEP inmates nor the foreign languages that they speak. On January 1, 2008, the DCDC had 818 inmates booked at the DCDC Jail. During the OCR's onsite visit, the DCDC staff estimated the LEP inmate population as three to five percent of the inmates booked.

In its Data Request Response, the DCDC provided the OCR with Policy No. 3.5.104, Limited English Proficiency and Sign Language Interpreters, dated December 23, 2007 (DCDC LEP Policy). The DCDC LEP Policy provides that LEP inmates have the right (1) to qualified interpretation; (2) not to rely on family, friends, or other inmates as interpreters; and (3) to file a grievance about the language access services provided to them. The DCDC LEP Policy provides that the DCDC will obtain language assistance by telephone each time an LEP inmate needs to communicate with staff regarding (1) admissions information, (2) medical issues, and (3) classification issues. The DCDC LEP Policy also provides procedures on the use of Language Line, the DCDC's telephonic language assistance service provider.

The DCDC LEP Policy does not have procedures for encounters with LEP visitors. The DCDC has translated a document entitled Visitors Rules and Regulations into Spanish. The DCDC staff members explained that they have often given this document to Spanish-speaking LEP visitors. The DCDC employees in the visitor's lobby informed the OCR that they have used Language Line to communicate with other LEP visitors whose primary language is not Spanish.

All DCDC staff whom the OCR interviewed, including intake processing, medical, and detention officers, noted the use of Language Line to provide oral language assistance in communicating with LEP inmates. The Language Line bill for April 2008 was \$2,246.94 for 122 calls. The DCDC staff discussed the DCDC's policy against using inmates or an inmate's family as interpreters. Detention officers mentioned that in emergencies, they have used bilingual staff to communicate with LEP inmates.

When the OPD officer books LEP inmates, the officer notes on the arrestee booking form that they are LEP. During orientation, the DCDC distributes a Spanish version of its Inmate Handbook to every Spanish-speaking, LEP inmate. The DCDC also plays an English and Spanish orientation video for inmates to watch during intake processing.

The DCDC explained during the onsite visit that it uses Language Line to provide interpretation assistance during orientation for other LEP inmates.

Besides the Inmate Handbook, the DCDC has translated the following forms into Spanish: visitor rules, inmate request, personal property release, notification of emergency, and inmate address forwarding. The DCDC medical staff has Spanish brochures concerning pregnancy, teeth brushing, hepatitis, and sexually transmitted diseases. The DCDC uses a vendor, Trusted Translation Service, Inc., to provide translations.

The DCDC has recently initiated an effort to increase signage in Spanish. During the OCR's onsite tour, the OCR observed signs for booking, classification, court holding, and pre-trial services in Spanish and English. The OCR observed a sign by the telephone in the inmate waiting area with information in Spanish on contacting the Mexican Consulate.

In response to OCR's Data Request, the DCDC informs the OCR that it is currently under contract to have more signs translated in Spanish. The signs include the following: "first floor housing," "law library," "place all personal property except identification in lockers before entering lobby," "items left overnight will be discarded," "enter," "exit" (in the weather vestibule), "lobby hours M-F, 8:00 am – 9:00 pm," "ATM," "elevator," and "restrooms."

The DCDC LEP Policy addresses the right of LEP inmates to file a grievance related to language access services. The DCDC does not have the Inmate Grievance Forms translated in other languages. According to the DCDC's Data Request Response, as of January 1, 2007, it had no complaints or grievances filed by LEP inmates regarding language access services.

The DCDC has a website, available at www.dccorr.com, containing information and links only in English.

Recommendations

The OCR commends the DCDC for the actions it has already taken to improve its services to LEP persons detained in the DCDC, such as having a written language assistance policy and translating certain vital documents for LEP individuals.

The DCDC should build upon this foundation to provide more effective language assistance to LEP inmates and visitors. It should identify the LEP populations that are detained in the DCDC facility; establish procedures for encounters with LEP visitors, including non-Spanish speaking LEP persons; establish procedures using bilingual staff as a resource for interpretation; create a list of qualified, bilingual staff members who are available to serve as interpreters; and translate all vital documents, including, but not limited to, the Inmate Grievance Forms, in the most frequently encountered foreign languages. For helpful tips on developing an effective language assistance plan, the

DCDC should review the Planning Tool for Creating a Language Assistance Policy and Plan in a Department of Corrections, found at www.lep.gov/LEP_Corrections_Planning_Tools.htm.

In the event that the DCDC chooses to use its bilingual staff to serve as interpreters, the DCDC should implement an objective testing process for assessing employee language skills. The skill of communicating with another person in a foreign language differs from the skill of interpreting, which requires listening to speech and orally conveying the same meaning in another language. Therefore, relying on employees' self-identification of bilingual competency does not provide the best method of assessing the ability to interpret. An objective testing process does not need to involve a formal certification process. For example, the DCDC could test employees' interpretation skills through oral review panels comprised of bilingual correctional officers, language instructors from local colleges or universities, and community group members who are competent to interpret. To increase the number of bilingual employees who are available to provide interpretation services, the DCDC should take active steps to recruit bilingual individuals. It may also wish to consider providing additional compensation to employees who demonstrate proficiency in a foreign language.

The DCDC should also continue its plans to make various documents and signs available not only in Spanish but also in other languages it identifies as frequently encountered. The OCR encourages the DCDC to satisfy the "safe harbor" provision in the DOJ Guidance when determining what documents to translate. See Part II.B. above for an explanation of the safe harbor provision. In accordance with the DOJ Guidance, the DCDC should also carefully evaluate all of its written materials to ensure that the DCDC has translated all "vital" documents into the languages that meet the safe harbor threshold. The DCDC should develop a strategy for distributing its translated materials to inmates and the public, as appropriate, including through its website.

V. Conclusion

This letter serves as notice that the OCR has made a preliminary determination that the OPD and the DCDC Jail appear to be taking steps to provide meaningful access to their programs and activities to LEP persons. The OPD and the DCDC Jail should take, however, additional steps to ensure full compliance with Title VI and the Safe Streets Act.

Upon request, the OCR is available to provide technical assistance to the OPD and the DCDC Jail in implementing the recommendations of this Report and formulating a written language assistance plan. Immediately, upon receipt of this letter, we ask the OPD and the DCDC Jail staff to have a responsible agency official contact Attorney [REDACTED] at [REDACTED] to develop a timeline and goals for developing a written language assistance plan.

Thank you for your cooperation and the assistance of your staff throughout the compliance review process. If you have any questions, please contact [REDACTED].

Sincerely,

Michael L. Alston
Director

Enclosure (Omaha Police Department only)

cc: Mark Conrey, Communications Supervisor (w/out enclosures)