

Bay Consortium Workforce Development Board

Policy Number: 19-03

Effective Date: February 6, 2019

Title: WIOA LIMITED ENGLISH PROFICIENCY POLICY

PURPOSE

The following information provides guidance and establishes procedures for ensuring access to services for individuals with Limited English Proficiency (LEP). This policy addresses entities that receive funding under Title I of WIOA, subrecipients of such funding (including service providers), and programs and activities that are part of the VA Career Works Center/America Job Center (AJC) system.

REFERENCES

Workforce Innovation & Opportunity Act Section 188,
Title 29 Code of Federal Regulations (CFR), Part 38

BACKGROUND

The nondiscrimination and equal opportunity provisions found in Section 188 of WIOA and 29 CFR Part 38 prohibit discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medication conditions, transgender status, and gender identity), national origin (including LEP), age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title I program or activity.

POLICY

This policy seeks to establish procedures regarding the prohibition against national origin discrimination as it affects persons with LEP and also to outline how the AJC delivery system will serve these special populations.

Definitions

- *Babel Notice* – a short notice included in a document or electronic medium (e.g. web site, “app,” email) in multiple languages informing the reader that the communication contains vital information, and explaining how to access language services to have the contents of the communication provided in other languages (29 CFR Section 38.4[i]).

- *Employment-related training* – training that allows or enables an individual to obtain skills, abilities and/or knowledge that are designed to lead to employment (29 CFR Section 38.4[t]).
- *LEP individual* – an individual whose primary language for communication is not English and who has a limited ability to read, speak, write, and/or understand English. An LEP individual may be competent in English for certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing) (29 CFR Section 38.4[hh]).
- *Meaningful Access* – Language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed, or inferior as compared to programs or activities provided to English proficient individuals.
- *Primary language* – An individual’s primary language is the language in which an individual most effectively communicates, as identified by the individual.

Reasonable Steps to Ensure Meaningful Access for LEP Individuals

WIOA Title I service providers are required to take reasonable steps to ensure that LEP individuals have meaningful access to their programs and activities. Reasonable steps may include, but are not limited to, the following:

- Conducting an assessment of an LEP individual to determine their language assistance needs;
- Providing oral interpretation or written translation of both hard-copy and electronic materials, in the appropriate non-English languages, to LEP individuals; and
- Conducting outreach to LEP communities to improve service delivery in needed languages. (29 CFR Section 38.9[b][1])

Reasonable steps for providing meaningful access to training programs may include, but are not limited to the following:

- Written training materials in appropriate non-English languages by written translation, or by oral interpretation, or summarization; and
- Oral training content in appropriate non-English languages through in-person or telephone translation. (29 CFR Section 38.9[b][2][i][ii])

Furthermore, service providers should ensure that every program delivery method, whether it be in person, electronic, or by phone, conveys in the appropriate language how an LEP individual may effectively learn about, participate in, and/or access any aid, benefit, service, or training available to them. It should also be noted that as new methods for the delivery of information or assistance are developed, service providers are required to take reasonable steps to ensure that LEP individuals remain able to learn

about, participate in, and/or access any aid, benefit, service, or training available to them (29 CFR Section 38.9[c]).

Language Assistance Services

Language assistance generally comes in two forms:

- oral interpretation; or
- written translation.

Service providers must ensure that above all, these services are free of charge and provided in a timely manner. An LEP individual must be given adequate notice about the existence of interpretation and translation services and that they are available free of charge. Language assistance will be considered timely when it is provided at a place and time that ensures equal access and avoids the delay or denial of any aid, benefit, service, or training (29 CFR Section 38.9[d] and [e]).

Interpreter Services

WIOA Title I service providers shall not require an LEP individual to provide their own interpreter. Furthermore, service providers shall not rely on an LEP individual's minor child or adult family or friend to interpret or facilitate communication, except for the following circumstances:

- In emergency situations while awaiting a qualified interpreter.
- When the information conveyed is of minimal importance to the services to be provided.
- When an LEP individual specifically requests that an accompanying adult provide language assistance and they agree to provide assistance to the individual.

If a service provider permits an accompanying adult to serve as an interpreter for an LEP individual, it must make and retain a record of the LEP individual's decision to use their own interpreter. Finally, where precise, complete, and accurate interpretations or translation of information and/or testimony are critical for adjudicatory or legal reasons, service providers can still provide their own, independent interpreter, even if an LEP individual wants to use their own interpreter as well. This also applies in cases where the competency of the interpreter requested by the LEP individual is not established (29 CFR Section 38.9[f]).

Vital Information

WIOA Title I service providers must translate vital information in written materials into necessary languages. These translations must in turn be readily available upon request in hard copy or electronically. Written training materials offered or used within employment related training programs (see definitions section) are excluded from these translation requirements. However, in all cases, service providers must take reasonable steps to ensure meaningful access for LEP individuals. For languages not spoken by a significant portion of the population eligible to be served or likely to be encountered, service providers must take reasonable steps to meet the particularized language needs of LEP individuals who seek to learn about, participate in, and/or access the aid, benefit, service or training that is available to them. Vital information may be conveyed orally if not translated.

WIOA Title I services providers must also be sure to include a Babel Notice, indicating that language assistance is available in all communications of vital information. This includes letters or decisions in hardcopy or electronic formats (29 CFR Section 38.9[g]).

AJC System Delivery of Services to Limited English Proficient Individuals

The following describes how the AJC delivery system will serve these special populations including individuals with limited English-speaking ability:

- During the initial orientation and intake process, all participants will be asked to self-identify special needs and/or requirements to determine eligibility and priority of service.
- An intake assessment is used to assess the language and or accessibility needs, and reasonable steps to ensure meaningful access by limited English proficient participants to services.
- Service providers also administer the assessments which helps to identify basic skills deficiencies. The results are reviewed and used to assure appropriate services are coordinated and provided to participants.
- AJC partners will work with participants to assess customers in need of remedial educational services, including services designed to improve literacy and numeracy. Staff assigned will help develop a service strategy, to set career goals and objectives which culminate into gainful and sustainable employment using a comprehensive assessment known as the Individual Employment Plan (IEP).
- The IEP development process will evaluate the participant's employment barriers, while taking into account the participant's family situation, work history, education, occupational skills, financial resources and needs, supportive service needs, interests and aptitudes.
- Individuals that are eligible for training are required to complete a series of assessments. The testing results, enable the AJC counselors to assist students to successfully transition to postsecondary education, training or employment.
- Referral to partners that offer educational programs in primary language requested.