



Hawaii's Language Access Law: Parallels with Federal Law

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FOUNDATIONAL CONCEPT- What is LEP under Hawaii Law?

"A Limited English Proficient [LEP] individual" is defined under Hawaii Law as:

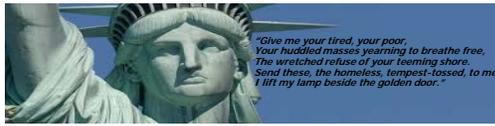
"an individual who, on account of national origin, does not speak English as the person's primary language and self identifies as having a limited ability to read, write, speak or understand the English language."

HRS sec. 321C-2

Why Language Access ?

The Promise of 'America'.

- Historically, diversity has defined American society. Our country has expressly opened its arms to immigrants – the "huddled masses". But just how welcoming are we?



- After several generations, most individuals living in the United States now speak, read, write and understand English. But there are many who are limited English proficient (LEP).
(Remember, English is not the 'native' language of America.)

Our Audience's Profile

- Who here speaks English as a second language?
- Who here has a parent who is LEP?
- Who here has/had a grandparent who is LEP?
- Who here works for a government agency?
- Who here works for a non-profit that receives government funding?
- Who does not work for a government or government-funded agency?
- Who here speaks "legalese"? (A lawyer?)

(A cross-section of Hawaii's population)

Hawaii's LEP Profile

- Out of Hawaii's total population of 1,361,628; more than **24%** or 329,827 speak a language other than English at home.
- Out of those who speak a language other than English at home, 151,187 or **46% are LEP.**
- Out of the total LEP population, 125,602 or 83% live on Oahu.
- Out of the total LEP population, 80% are Asian language speakers while more than 13% are Native Hawaiian and Pacific Island language speakers.

Background: Hawaii's Language Access Law

Hawaii's Language Access Law was passed in 2006 under **Act 290.**



Governor Ige signed a bill to improve language access for immigrants with limited English proficiency and presented ceremonial copies to immigrant service providers and advocates.

Background: Hawaii's Language Access Law

The purpose of Act 290 was to:

“affirmatively address, on account of national origin, the language access needs of limited English proficient persons [LEP].”

Background: Hawaii's Language Access Law

Under Act 290:

- “Each state agency and all covered entities **shall** take reasonable steps to ensure meaningful access to services, programs, and activities by [LEP] persons[.]”
- “Each state agency and **covered entity*** shall establish a **plan for language access**.”
- The **Office of Language Access** was established.
- The **Language Access Advisory Council** was established.

*A “covered entity” (revised) is defined as “a person organization receiving state financial assistance, including grants, purchase-of-service contracts, or any other arrangements by which the State provides or otherwise makes available assistance in the form of funds to the person or organization for the purpose of rendering services to the public. (Some exemptions.)”

Background: Hawaii's Language Access Law

Act 290 added a new part to Chapter 371 of the Hawaii Revised Statutes (HRS).



The HRS are laws of the State of Hawaii that are of a “**general and permanent nature**.”

~~The real deal.

Background: Hawaii's Language Access Law

A drafting/statutory/organizational anomaly?

Chapter 371 is within Title 21 of HRS; and both regard Hawaii's Department of Labor & Industrial Relations.

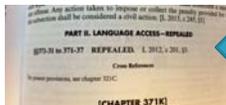
However, the state's language access law applied to **all** state agencies and state-funded agencies.

Act 290 placed the Office of Language Access and the Language Access Advisory Council within the Dept. of Labor “**for administrative purposes only**”, which explains why it is in this part of HRS.

Background: Hawaii's Language Access Law

2009-2012 - BUDGET CRISIS POLITICAL AND PRIORITY SHIFTS

Look at Chapter 371 Part II in the latest edition of HRS, and you'll see that . . .



HAWAII'S LANGUAGE ACCESS LAW was **REPEALED** IN 2012!

Background: Hawaii's Language Access



SAVED BY THE DEPARTMENT OF HEALTH



ACT 201 Session Laws Hawaii 2012 - Purpose Statement:

“to improve access to government services and programs for [LEP] individuals by **transferring** the Office of Language Access, along with **all the functions and duties** of the office, from the department of labor and industrial relations to the department of health.”

The Office of Language Access and the Language Access Advisory Council are now within the Department of Health “**for administrative purposes only**.”

Background: Hawaii's Language Access

Act 201 Signing on July 3, 2012



Background: Hawaii's Language Access Law

Hawaii's Language Access Law is now:

HRS Chapter 321C

Within Title 19 relating to Health - for administrative purposes.

Please correct your citations in your pamphlets, rules, policy memos, contracts, etc. because if you are referring to **chapter 371**, you are citing to a **REPEALED . . . DEAD . . . law**.



Hawaii's Language Access Law - Parallels with Federal Law

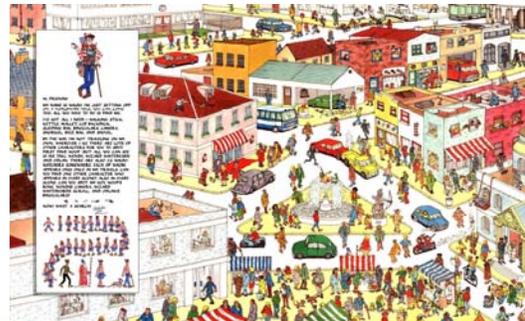
During this workshop, let's play . . .

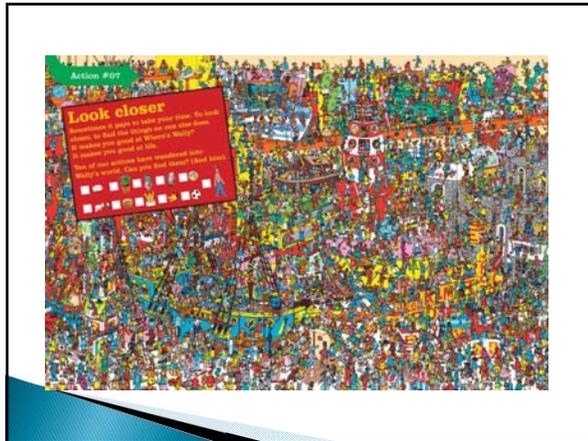
Where's "HRS Chapter 321C"?



in Federal Language Access Law

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Hawaii's Language Access Law – Parallels with Federal Law

During this workshop, look for the following **language access** principles, concepts & tools which are also in Hawaii's language access law.

Hawaii's Language Access Law – Parallels with Federal Law

Why?

Because **HRS 321C-1** explains that the intent of the legislature in passing Hawaii's Language Access Law is that it **"be guided by Executive Order 13166 and succeeding provisions of federal law, regulation, or guidance."**

So if you are complying with federal law, you are also most likely complying with our state language access law.

Hawaii's Language Access Law – Parallels with Federal Law

WALDO = MEANINGFUL LANGUAGE ACCESS

(our star)

HRS sec. 321C-3 provides:
 "Each state agency and all covered entities **shall** take reasonable steps to ensure **meaningful access** to services, programs, and activities by limited English proficient persons[.]" in the form of oral interpretation or written translations.

Hawaii's Language Access Law – Parallels with Federal Law

WENDA = LANGUAGE ACCESS PLAN

HRS sec. 321C-4(a) provides:
 "Each state agency and covered entity **shall** establish a **plan for language access.**"
 Each state agency is required to file its plan with the Office of Language Access every two years.

- Does your office have a language access plan?
- Have you filed it with OLA?
- Is it updated every 2 years?

Hawaii's Language Access Law – Parallels with Federal Law

WIZARD WHITEBEARD = FOUR FACTOR ANALYSIS

HRS sec. 321C-3(a) provides:
 Meaningful language access is to be "determined by a **totality of circumstances**, including the following factors:"

Hawaii's Language Access Law – Parallels with Federal Law



WIZARD WHITEBEARD = FOUR FACTOR ANALYSIS – (cont.)

HRS sec. 321C-3(a) :

- (1) The **number or proportion** of limited English proficient persons served or encountered in the eligible service population;
- (2) The **frequency** with which limited English proficient persons come in contact with the services, programs, or activities;
- (3) The **nature and importance** of the services, programs, or activities; and
- (4) The **resources** available to the State or covered entity and the costs.

Hawaii's Language Access Law – Parallels with Federal Law



WOOF = EXECUTIVE ORDER 13166

HRS sec. 321C-1 provides: language access services are to **"be guided by Executive Order 13166 and succeeding provisions of federal law, regulation, or guidance."**

Pay attention today: What does Executive Order 13166 say?

Hawaii's Language Access Law – Parallels with Federal Law

ODLAW = SIMILAR "ACCESS" REQUIREMENTS IN LAW & POLICY

BUT NOT STEMMING FROM "NATIONAL ORIGIN"



Hawaii's Language Access Law – Parallels with Federal Law

Find the BONUS ITEMS

Scroll, Key, Bone, Camera, Binoculars



Hawaii's Language Access Law – Parallels with Federal Law

WALDO'S KEY = Prohibition against National Origin Discrimination

HRS sec. 321C-1 provides: "The purpose of this chapter is to affirmatively address, on account of **national origin**, the language access needs of limited English proficient persons."

The "KEY" idea behind meaningful language access.



Hawaii's Language Access Law – Parallels with Federal Law

WOOF'S BONE = TITLE VI of the CIVIL RIGHTS ACT OF 1964

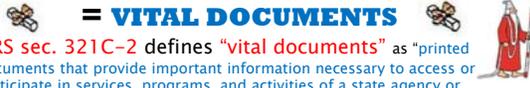


HRS sec. 321C-1 references Executive Order 13166, as guiding law; which, as you will learn, is premised upon Title VI of the Civil Rights Act of 1964.

Woof (aka Executive Order 13166) 'feeds' off Title VI – its bone.

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WIZARD WHITEBEARD'S SCROLL



= **VITAL DOCUMENTS**

HRS sec. 321C-2 defines "vital documents" as "printed documents that provide important information necessary to access or participate in services, programs, and activities of a state agency or covered entity, including but not limited to applications, outreach materials, and written notices of rights, denials, losses, or decreases in benefits or services."

HRS sec. 321C-3(c) requires that each state agency and covered entity "shall provide written translations of vital documents" to LEP persons who seek access to their services - in accordance with certain statutory formulas and the four-factor analysis.

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**WENDA'S CAMERA =
DATA & EVALUATION**



OLA requires agencies to report to it the number and nature of its LEP encounters, and the types of language services it provides. This process of collecting **DATA & EVALUATION** helps the agency in developing an adequate and appropriate **language access plan** and to engage in a 'informed' 4-factor analysis.

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ODLAW'S BINOCULARS =



**Other
"ACCESS"
legislation**

Many similarities in application and enforcement, though stemming from a different protected category.

Enjoy the workshop.
Happy Hunting

-OLA

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