LANGUAGE ACCESS ADVISORY COUNCIL

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 Punchbowl Street
Honolulu, Hawaii 96813

Wednesday, October 8, 2008
9:00 a.m. – 10:30 a.m.
DLIR Conference Room 320

AGENDA

1. Call to Order
2. Welcome & Introductions
3. Approval of Minutes of September 24, 2008 Meeting
4. Executive Director’s Report
   • Operations
   • Compliance Assistance and Monitoring
   • Outreach and Education
   • 2008 Federal Interagency Conference on LEP
   • Language Access Month activities
5. LAAC Membership Update
7. Compliance Issues: DHHS settlement, Oakland lawsuit, OLA complaints
8. Announcements
9. Adjournment

If you require special assistance or auxiliary aids and/or services to participate in this meeting (e.g., sign interpreter; interpreter for language other than English; or wheelchair accessibility), please contact the Office of Language Access (OLA) at 586-8730 or email your request to dlir.ola@hawaii.gov at least 4 business days before the meeting. Prompt requests submitted help to ensure the availability of qualified individuals and appropriate accommodations.
Language Access Advisory Council

State of Hawaii
Department of Labor & Industrial Relations
830 Punchbowl Street
Honolulu, Hawaii 96813

Wednesday, October 08, 2008
DLIR Conference Room 320

MINUTES

The meeting was called to order at 9:25 A.M. by Chairperson Dominic Inocelda.

1. Welcome and Introductions
   - Francine Wai, Executive Director of the Disability & Communication Access Board (DCAB) was introduced.

2. Attendance

Present:
- Dominic Inocelda
- Gerald Ohta
- Lito Asuncion
- Alohali Boido
- Canisius Filibert
- Dr. Tin Myaing Thein
- Dr. Suzanne Zeng
- Serafin "Jun" Colmenares
- Livia Wang for Bill Hoshijo
- Francine Wai

Language Access Advisory Council, Chairperson
Language Access Advisory Council, Vice-Chair
Language Access Advisory Council Member
Language Access Advisory Council Member
Language Access Advisory Council Member
Language Access Advisory Council Member
Language Access Advisory Council Member
Executive Director, Office of Language Access, Ex-officio
Executive Director, Civil Rights Commission, Ex-officio
Executive Director, Disability & Communication Access Board, Ex-officio

Excused:
- Sr.Earnest Chung
- Mary Santa Maria
- Namaka Rawlins

Language Access Advisory Council Member
Language Access Advisory Council Member (new)
Language Access Advisory Council Member

Others Present:
- Frances Lum
- Jeremy Low
- Ulani Pauole de Sa
- Gail McGarvey

Department of the Attorney General
Research Analyst, Office of Language Access
Senior Legal Analyst, Office of Language Access
Clerk/Typist, Office of Language Access

3. Approval of minutes of September 24, 2008 meeting
   - Motion to approve minutes with no revisions made by Alohali Boido. Seconded by Gerald Ohta.
   - Minutes approved unanimously.
- OLA complaints; no formal complaints, individuals have come to the office to ask for interpreters. Request for learning English are being referred to Department of Education (DOE) Community School for Adults. Someone heard that in order to register for a class, a valid passport is required. Council is questioning if this would be a civil rights issue, it will be put on the agenda for next meeting. Canisius Filibert volunteered to follow-up on this with DOE; Gerald Ohta will also help follow-up.

8. Announcements
- Dr. Suzanne Zeng announced that money is available for scholarships in the state job training programs; applicants must meet requirements of the Workforce Investment Act (WIA). They need to be laid off or low income to qualify.
- Francine Wai invited council members to come to a public hearing for testimony on proposed amendments for community access and sign language administrative rules, on Thursday, October 23, 2008 at 9:00 A.M. at DCAB, 919 Ala Moana Boulevard, in conference room 103. Included in the proposed amendments are changes to the fee schedules for interpreters and adding new national credentials. Their website address: www.state.hi.us/health/dcab/home/
- Gerald Ohta extended an invitation to anyone wanting to see the Migration Policy Institute (MPI) webinar on October 16, 2008 starting at 9:00 A.M. Hawaii time, to join him in his office.
- Gerald Ohta also announced that starting on Monday, October 13, 2008, his building, Kinau Hale, will be on a four day work week, Mondays thru Thursdays, 7:15 A.M. to 6:00 P.M. closed Fridays.
- The next Language Access Advisory Council meeting will be, on Wednesday, November 12, 2008, 9:00 A.M. to 10:30 A.M.

9. Adjournment
- Meeting was adjourned at 10:30 A.M.
LANGUAGE ACCESS ADVISORY COUNCIL

STATE OF HAWAII
DEPARTMENT OF LABOR & INDUSTRIAL RELATIONS
830 Punchbowl Street
Honolulu, Hawaii 96813

Wednesday, September 24, 2008
DLIR Conference Room 320

MINUTES

The meeting was called to order at 10:20 A.M.

1. Welcome and Introductions

2. Attendance:

Present:
- Serafin “Jun” Colmenares
- Dominic Inocelda
- Dr. Suzanne Zeng
- Lito Asuncion
- Alohalani Boido
- Gerald Ohta
- Sr. Earnest Chung
- Canisius Filibert

Executive Director, Office of Language Access, Ex-officio Language Access Advisory Council, Chairperson
Language Access Advisory Council Member
Language Access Advisory Council Member
Language Access Advisory Council Member
Language Access Advisory Council Member
Language Access Advisory Council Member
Language Access Advisory Council Member

Excused:
- Nāmaka Rawlins
- Dr. Tin Myaing Thein
- Kristine Pagano
- Bill Hoshijo

Language Access Advisory Council Member
Language Access Advisory Council Member
Language Access Advisory Council Member
Executive Director, Civil Rights Commission, Ex-officio

Others Present:
- Frances Lum
- Kendall Zukeran
- Jeremy Low
- Uilani Pauole de Sa
- Livia Wang for Bill Hoshijo
- Fred Magdalena, Ph.D.
- Jennifer Brooks
- Bertrand Kobayashi for Dr. Myaing
- Gail McGarvey

Department of the Attorney General
Research Analyst, Office of Language Access
Research Analyst, Office of Language Access
Senior Legal Analyst, Office of Language Access
Hawaii Civil Rights Commission
University of Hawaii
Office of Information Practices
Pacific Gateway Center
Clerk/Typist, Office of Language Access
- Given time constraints, a multi-stage sampling of respondents will be done instead of including everybody on the list.
- Findings of the report will be submitted to the OLA Language Access Advisory Council by 12/15/08. Participation in the survey is voluntary.
- Identification of individuals will not be revealed in the reports. However, Fred will know who submitted and who did not turn in surveys.
- Alohalani Boido recommended including an “Indigenous Languages of America” item in #3.
- Professor Zeng recommended an “I Don’t Know” line in #2.

7. **Announcements**
- Executive Director Colmenares briefly updated the members regarding the “Community Fair” on September 26, 2008 at the State Capitol Pavilion.
- Future meetings of the council will be held every second Wednesday of the month. Next meeting will be on Wednesday, October 8, 2008, DLIR Conference Room #320.

8. **Adjournment**
- Since a council member had to leave resulting in a lack of a quorum, the meeting adjourned at 10:57 a.m.
Language Access Advisory Council Meeting
October 8, 2008

Report of the Executive Director

Operations:

- Feasibility study: survey questionnaire finalized and fielded.
- Submitted budgetary impact statements based on a 10%, 15%, and 20% reductions.

Compliance Assistance and Monitoring:

- Started pre-monitoring visits to state agencies.
- Staff giving training on reporting tool to DLIR staff on October 7 and 9, 2008.
- Continue to work with agencies on the following issues: identification and translation of vital documents, and identification of public contact positions.

Outreach and Education:

- Fall issue of OLA Quarterly newsletter being prepared.
- Language Access Month activities held (see below).

2008 Federal Interagency Conference on LEP

- Held meetings with the following agencies: Office of Human Rights/DC Language Access Program, the Asian Pacific American Legal Resource Center/Language Access Coalition, and the Migration Policy Institute, all in Washington D.C.; and with the NYC Office of Emergency Management/Cross Cultural Outreach Program, the NYC DOE Translation and Interpretation Unit, the NYC Human Resources Administration/Office of Refugee and Immigrant Affairs, the NYC Mayor’s Office of Immigrant Affairs and Office of Operations, and the Vera Institute of Justice/Translating Justice Project, all in New York City.

Language Access Month Activities:

- Governor’s proclamation issued and posted on Governor’s website; press release issued.
- Language access messages on state and county pay stubs came out.
- Article on language access published in ethnic newspaper (Fil-Am Courier).
- Radio spots in 14 languages (Know Your Rights) aired over KNDI, KREA and KZOO.
- Olelo airing of Language Access Conference proceedings rescheduled due to closed captioning requirement.
- UH Language Access Forum held on September 15, 2008.
- Community Fair held on September 26, 2008 at the Capitol Rotunda.
FOR IMMEDIATE RELEASE
Monday, September 15, 2008

Contact:
Luz Buitrago, (510) 524-6268, lbuitrago@earthlink.net
Michelle Natividad Rodriguez, (415) 431-7430, x311, mrodriguez@publicadvocates.org

Equal Access Advocates Sue City of Oakland for Failing Non-English Speaking Residents

Four community groups—Family Bridges, Inc., Organization of Chinese Americans-East Bay Chapter, The Spanish Speaking Unity Council, and California ACORN—today filed a lawsuit against the City of Oakland for failing to fulfill its obligations under the “Equal Access to Services Ordinance,” a groundbreaking language access ordinance passed in 2001. Public Advocates Inc. and civil rights attorney Luz Buitrago represent the groups.

The ordinance, based on basic civil rights laws, requires translation of key documents and sufficient bilingual staff available in public contact positions for languages reaching a 10,000 threshold, currently including Spanish and Chinese. Bilingual staff are required to be hired only as position vacancies occur. In addition, the City Administrator, departments and agencies must develop and submit annual compliance plans that collect critical data and provide an assessment of the data in 16 key areas.

The lawsuit focuses on the City’s failure to comply with these mandatory obligations. The City has provided only three incomplete plans and has failed to provide four plans during the last seven years.

“I am disappointed that seven years after Ignacio de La Fuente and I sponsored this historic ordinance, we are compelled to participate in this lawsuit,” said former City Council member Danny Wan, now President of the local chapter of the Organization of Chinese Americans. “The idea is important, but simple: Oakland residents should not be denied basic and potentially life-saving city services just because they are still learning to speak English and cannot yet communicate their needs in English.”

– MORE –
Hawaii Ensures Limited English Proficient Persons Have Equal Access to Human Services

HHS’ Office for Civil Rights and Hawaii Department of Human Services Sign
Title VI Voluntary Agreement

The U.S. Department of Health and Human Services’ (HHS) Office for Civil Rights (OCR) and the Hawaii Department of Human Services (DHS) have signed a voluntary agreement to improve language assistance services for limited English proficient (LEP) persons in Hawaii.

Hawaii DHS administers a $1.7 billion annual budget to coordinate and provide specific benefits and services throughout the state, such as Temporary Assistance for Needy Families, child care, child and adult protective services, vocational rehabilitation services for people with disabilities and Medicaid health insurance.

Hawaii DHS receives federal funds from HHS and is required by Title VI of the Civil Rights Act of 1964 and implementing regulations to, among other things, take reasonable steps to provide meaningful access to its programs by LEP persons who are eligible to receive Hawaii DHS services and benefits. Hawaii DHS has four divisions with 88 local offices located on five islands that employ more than 2,300 permanent staff members.

“This agreement is a model for states in meeting their Title VI obligations to eliminate unlawful discrimination and provide equal access to HHS-funded entities,” said OCR Director Winston Wilkinson. “To combat ongoing discrimination based on race, color or national origin, the HHS Office for Civil Rights will continue its enforcement efforts, along with promoting voluntary compliance and technical assistance, to ensure states comply with Title VI.”

This agreement will help improve access for LEP persons to Hawaii DHS services. By enhancing its ability to provide human services to eligible LEP persons, Hawaii also improves its ability, consistent with HHS objectives, to prepare for emergencies and respond to disasters.

Hawaii Gov. Linda Lingle said the voluntary agreement is in keeping with her administration’s commitment to improving services for people with limited English proficiency. In 2006, Gov. Lingle signed Act 290, which requires the state and state-funded programs to develop plans for providing interpretation services and translated documents. The law also established the Office of Language Access within the state Department of Labor and Industrial Relations.
Office for Civil Rights

Civil Rights on the Basis of Race, Color, or National Origin

Hawaii Department of Human Services Resolution Agreement

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Part 80. Title VI prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance. The implementing regulations prohibit both intentional discrimination and policies and practices that appear neutral but have a discriminatory effect. Policies that have an adverse effect on the ability of national origin minorities to meaningfully access services may also constitute a violation of Title VI.

C. Purpose of Agreement

1. HDHS agrees to the terms stipulated in this Agreement and affirms its assurance of compliance with all provisions of Title VI and its implementing regulations. The promises, obligations or other terms and conditions set forth in this Agreement constitute the exchange of valuable consideration between HDHS and OCR.

2. This Agreement shall not be construed as an admission or as evidence that HDHS has not complied with Title VI or its implementing regulations with respect to any particular complaint or investigation.

3. For purposes of this Agreement, "Title VI" shall refer only to those provisions of Title VI that relate to language assistance services provided to persons with limited English proficiency.

II. Definitions

For the purpose of this Agreement, the terms listed below shall have the following meaning:

A. **Applicant** means any person who inquires about or submits an application for public assistance benefits under any HDHS program or service.

B. **Bilingual/Multilingual Staff Volunteer** means a HDHS staff member who has demonstrated proficiency in both spoken English and at least one other language, and who can interpret accurately, impartially, and effectively to and from such language and English using any specialized terminology necessary for effective communication, but whose main job responsibilities are other than interpretation. A HDHS staff member who only has a rudimentary familiarity with a language other than English shall not be considered a Bilingual/Multilingual Staff Volunteer under this agreement.

C. **Frequently-Encountered Language** means any language spoken by a significant number or percentage of the population eligible to be served or likely to be directly affected by HDHS’ programs and services.

D. **Interpreter** means a person who has demonstrated proficiency in both spoken English and at least one other language; and who can interpret accurately, impartially, and effectively to and from such language and English using any specialized terminology necessary for effective communication; and who understands interpreter ethics and client confidentiality needs. A person who has rudimentary familiarity with a language other than English shall not be considered an Interpreter under this agreement.

E. **Language Assistance** means all oral and written language services needed to assist LEP individuals to communicate effectively with HDHS staff and sub-recipients, and to provide LEP individuals with meaningful access to, and an equal opportunity to participate fully in the services, activities, programs, or other benefits administered by HDHS.
continues to receive Federal financial assistance.

C. **HDHS’s Continuing Obligation.** Nothing in this Agreement is intended to relieve HDHS of its obligation to comply with other applicable non-discrimination statutes and their implementing regulations.

D. **Effect on Other Compliance Matters.** The terms of this Agreement do not apply to any other issues, investigations, reviews, or complaints of discrimination that are unrelated to the subject matter of this Agreement and that may be pending before OCR or any other Federal Agency. Any compliance matters arising from reviews or investigations of specific complaints will be addressed and resolved separately from this Agreement. OCR may review complaints against HDHS that are received on or after the Effective Date of this Agreement that concern the laws, regulations, issues and subject matter covered by this Agreement. Nothing in this Agreement shall be construed to limit or restrict OCR’s statutory and regulatory authority to conduct complaint investigations and compliance reviews.

E. **Prohibition Against Retaliation and Intimidation.** HDHS shall not retaliate, intimidate, threaten, coerce, or discriminate against any person who has filed a complaint, assisted, or participated in any manner in the investigation of matters addressed in this Agreement.

F. **OCR’s Review of HDHS’s Compliance with Agreement.** OCR may, at any time, review HDHS’s compliance with this Agreement. As part of such review, OCR may require HDHS to provide written reports, permit inspection of offices, interview staff members, and allow OCR to examine and copy documents. HDHS agrees to retain records required by OCR to assess its compliance with the Agreement, as described in Section IV.T., and to submit the requested reports to OCR as specified above.

G. **Failure to Comply with the Terms of Agreement.** If at any time OCR determines that HDHS has failed to comply with any provision of this Agreement, OCR shall notify HDHS in writing. On notice to HDHS, OCR may shorten the time frame outlined below, if it determines that a delay would result in injury to a complainant or to other affected persons.

   1. The notice shall include a statement of the basis for OCR’s determination and will allow HDHS thirty (30) working days from receipt of the notice to either:
      
      a. Explain in writing the reasons for its actions and describe the remedial actions that have been or will be taken to achieve compliance with this Agreement; or
      
      b. Provide information that may cause OCR to review or change its determination.

   2. If HDHS does not respond to the notice or, if upon review of HDHS’ response, OCR finds that HDHS has not substantially complied with the terms of this Agreement, OCR may, upon notice to HDHS, initiate any applicable proceedings under Federal law. Specifically, OCR may:

      a. Re-open the investigation of the compliance review;
      
      b. Issue a Letter of Findings documenting the area of non-compliance;
      
      c. Initiate administrative enforcement proceedings to suspend or terminate Federal financial assistance;
      
      d. Refer the matter to the U.S. Department of Justice with a recommendation that appropriate proceedings be brought for enforcement; or
      
      e. Initiate any other applicable proceedings under Federal law.

H. **Non-Waiver Provision.** Failure by OCR to enforce this entire Agreement or any provision thereof with
a. The frequently encountered languages in HDHS' programs.

b. An estimate of the number of LEP individuals likely to be directly affected by HDHS' programs and their languages by reviewing various sources including but not limited to:
   i. Census data;
   ii. Utilization data from LEP individuals' files;
   iii. School system data;
   iv. Data from state and local governments;
   v. Data from community agencies and organizations; and
   vi. Information from refugee/immigrant agencies.

c. The points of contact within HDHS's programs and HDHS's contracted programs where language assistance is likely to be needed.

d. The locations and availability of language assistance resources, and arrangements that must be made to access these resources in a timely manner. This shall include the number of bilingual/multilingual staff volunteers, staff interpreters, contracted interpreters and community volunteer interpreters required at each HDHS office, and the resources needed to translate documents, as required.

e. Existing vital documents and a process for determining which later-created documents are vital documents.

2. Determining the Language Needs of Each LEP Individual. Within six (6) months of the Effective Date of this Agreement, HDHS shall develop and implement a system for determining the primary language of each LEP individual at the first point of contact.

a. In-person Communication. Upon a staff member's initial encounter with an LEP individual for whom the staff member cannot personally provide language assistance, the staff member will determine the individual's primary language utilizing one of the following:

   i. Multi-language identification cards or "I speak" cards;
   ii. Poster-size language list; or
   iii. If the LEP person does not read or recognize any of the languages included in one of the methods described above, HDHS shall use a telephone interpreting service to identify the individual's primary language.

Upon identification of the LEP individual's primary language, the HDHS staff member will refer the individual to a pre-printed statement in the individual's primary language that reads, "Please wait while I obtain an interpreter."

b. Telephone Communication. When a staff person places or receives a telephone call and cannot determine the language spoken by the person on the line, a telephone interpreter services provider will be contacted to make an assessment of the language spoken by the other party and to assist the other party as necessary.

c. Documentation. The primary language of each LEP individual shall be documented in the individual's record to alert staff that language assistance services must be provided.
G. Translation of Written Documents.

1. Within six (6) months after the Effective Date of this Agreement, HDHS shall identify existing vital documents and shall establish a process for determining which later-created documents are "vital" to the meaningful access of the LEP populations served.

2. Within one (1) year of the Effective Date of this Agreement, HDHS shall translate existing vital documents into any language spoken by five percent (5%) of the total population eligible to be served or likely to be directly affected or encountered by HDHS' programs, or one thousand (1000) persons in that population, whichever is less; later-created vital documents shall be translated into the same languages within a reasonable time of being created, but not to exceed one (1) year.

3. If there are fewer than fifty (50) persons in a language group that reaches the five percent (5%) trigger, HDHS may, in lieu of translating the vital documents, elect to provide written notice in the primary language of the LEP language group of the right to receive competent oral translation of the vital documents, free of cost to the LEP individual.

4. HDHS shall develop a process for ensuring that documents submitted by an LEP individual in the LEP individual's primary language are translated without undue delay.

H. Timely Competent Language Assistance. HDHS shall ensure that each LEP individual receives competent oral and written language assistance services necessary to ensure meaningful access to HDHS programs, pursuant to Section IV.A. of this Agreement and Title VI.

HDHS may offer to schedule appointments for LEP individuals at specified times in order to minimize waiting times and to ensure the availability of appropriate qualified language interpreters, provided that the use of an appointment facilitates the provision of language assistance and does not impede or delay the individual's access to benefits and/or services provided by HDHS.

I. Language Assistance Resources. Based on the language needs assessment conducted pursuant to Section IV.C. of this Agreement, HDHS shall annually determine what resources and arrangements are needed to provide sufficient language assistance services in a timely manner for oral and written communication. HDHS shall hire appropriate staff or utilize outside agencies as required to provide necessary services.

J. Telephone Communication. HDHS shall provide uniform procedures for timely and effective telephone communication between staff members and LEP individuals.

K. Language Assistance Standards. HDHS shall ensure that HDHS staff interpreters, bilingual/multilingual staff volunteers, and community program volunteers providing language assistance services, including interpretation and translation, are capable of competently performing their duties. Competency of bilingual/multilingual staff volunteers and community program volunteers may be established by a variety of means including self-attestation of the volunteer after having reviewed the interpreter competency standards. Whether self-attestation or another means is used to establish competency, HDHS shall take reasonable steps to ensure that the individual providing the interpretation is capable of facilitating effective communication between LEP persons and HDHS in accordance with Section II. E. of this Agreement. Standards for interpreter competency shall include...
N. **Administrative Responsibilities.** HDHS shall identify appropriate administrative personnel at each level of the organization (i.e. division, branches, unit, etc.) who will coordinate language assistance services for their respective levels. The identified personnel shall have responsibility for directing compliance with Title VI and implementation of this Agreement at their respective levels, including but not limited to:

1. Distributing to the appropriate HDHS staff members the policies and procedures regarding language assistance, the guide referred to in Section IV.B. of this Agreement, and the list of available language assistance services in Section IV.F. of this Agreement;
2. Consulting with the Civil Rights Compliance Office on the development and implementation of staff training pursuant to Section IV. O. of this Agreement;
3. Collecting internal data pursuant to Section IV.T., of this Agreement; and
4. Performing other duties as identified in policies and procedures submitted pursuant to Section IV.B. of this Agreement.

O. **Training.** Within six (6) months of the Effective Date of this Agreement, HDHS will develop and implement mandatory staff training for all supervisors and for staff members who have regular contact with applicants and participants on the HDHS policies and procedures for communicating with and serving LEP individuals. Thereafter, training on these policies and procedures shall be conducted annually and at orientation for new employees, or at least within three (3) months of employment. Training may be conducted online and be self-paced with acknowledgement of understanding by the trainees.

P. **Complaint Procedures.** Within thirty (30) days of the Effective Date of this Agreement, HDHS will develop and implement uniform procedures for receiving and responding to complaints and concerns from LEP individuals who need language assistance services. The complaints will be forwarded to the Civil Rights Compliance Office for review and disposition.

Q. **Notice of Non-Discrimination Policy.** Within thirty (30) days of the Effective Date of this Agreement, HDHS shall develop and post, in each area in which applicants and participants wait for service at each office, a notice of its non-discrimination policy.

R. **HDHS Sub-recipients.** HDHS shall ensure that all applicable sub-recipients are informed of the LEP requirements of Title VI and this Agreement. HDHS shall provide information and oversee the applicable sub-recipients as necessary to monitor compliance with these requirements.

S. **Monitoring.** To ensure effective language assistance and access to services, HDHS shall develop and implement a program to monitor the provision of language assistance services to LEP individuals and compliance with this Agreement. As part of the monitoring program, HDHS may:

1. Review LEP individuals' case records to assess whether primary languages are properly recorded in all case records and whether such persons are provided adequate language assistance services;
2. Review complaints filed by LEP individuals to determine adequacy of language assistance services;
3. Assess HDHS staff and sub-recipient's knowledge about HDHS's language assistance policies and procedures;
4. Review the accuracy of the list containing the availability of bilingual staff, interpreters, and other resources;
FOR IMMEDIATE RELEASE
Monday, September 15, 2008

Contact:
Luz Buitrago, (510) 524-6268, lbuitrago@earthlink.net
Michelle Natividad Rodriguez, (415) 431-7430, x311, mrodriguez@publicadvocates.org

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