



STATE OF HAWAII
DEPARTMENT OF EDUCATION

P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

November 26, 2021

Via email to: aphirak.bamrungruan@doh.hawaii.gov

Mr. Apherak (AP) Bamrungruan
Executive Director, Office of Language Access
State of Hawaii Department of Health
1177 Alakea Street, Room B-100
Honolulu, Hawaii 96801-3378

Re: Ensuring Language Access during COVID-19 Emergency

Dear Mr. Bamrungruan:

This letter is written in response to the November 1, 2021 memorandum from the Office of the Governor. It is the highest priority of the Hawaii State Department of Education (Department) to ensure the health and safety of our students, teachers, staff, and community members. We understand that to prevent the spread of COVID-19, language assistance shall be provided free of charge, in a timely manner, by appropriate and competent individuals to the limited English proficient (LEP) individuals that we serve in our communities.

The Civil Rights Compliance Branch (CRCB) has reviewed and updated the Department's Language Access Plan (LAP). The LAP details the protocol for providing language services to the communities we serve. In addition, the CRCB has Complex Area Equity Specialists who are available to assist the offices and schools within their complex to ensure language assistance is provided to LEP individuals. There are also Bilingual School Home Assistants who provide interpretation and translation services, and engage with LEP families within their complex area.

The Department also has a COVID-19 Information and Updates webpage¹, which provides updates to the public on confirmed COVID-19 cases in the Department, as well as the following:

¹ <https://www.hawaiipublicschools.org/ConnectWithUs/MediaRoom/PressReleases/Pages/COVID-19-Information-Updates.aspx>

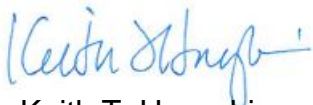
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- Hawaii State Department of Health guidance;
- Hawaii State Department of Education health and safety guidance;
- Information from the Governor, State, and Counties; and
- COVID-19 testing information.

The Department has also developed a list of resources to support Department staff, English Learners, and their families².

Should you have any questions, please feel free to contact Title VI Specialist Aaron Oandasan, Civil Rights Compliance Branch, Office of Talent Management at (808) 586-3322 or by email at aaron.oandasan@k12.hi.us.

Sincerely,



Keith T. Hayashi
Interim Superintendent

KTH:bs
Attachment

² <https://docs.google.com/document/d/1sLmpd4JXIEsSZTS3q82RsGw5hz-kRnpTkNFLx-O5VBo/edit>

I. INTRODUCTION

Hawai`i is one of the most culturally diverse states and has one of the highest proportions of non-English speakers in the nation. According to the U.S. Census Bureau, 2019 American Community Survey (ACS) 1-year estimates, the total population in the state of Hawai`i was 1,415,872. An estimated 27.8%, or 370,509 of Hawai`i residents, speak a language other than English at home.¹ Of those, 157,785, or 42.6%, indicated that they speak English “less than very well.”

For the 2019-2020 school year, Hawaii State Department of Education (Department) home language data showed that 85% of Department students spoke English at home. Department home language data has identified over 70 languages being spoken at home. Specifically, four percent of students spoke Ilokano, two percent of students spoke Chuukese or Tagalog, and one percent of students spoke Marshallese, Spanish, Japanese, Mandarin, Vietnamese, or Cantonese. The following are some of the languages that were representative for less than one percent of students: Samoan, Korean, Hawaiian, Cebuano/Visayan, Tongan, or Pohnpeian.

II. LEGAL BASIS FOR LANGUAGE ACCESS

Title VI of the Civil Rights Act of 1964 and its regulations (Title VI) provide that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participating in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” Different treatment based upon a person’s inability to speak, read, write, or understand English may be national origin discrimination under Title VI. Title VI may be violated if:

- students are excluded from effective participation in school because of their inability to speak and understand the language of instruction;
- national-origin minority students are mis-assigned to classes for the mentally retarded because of their lack of English skills;
- programs for students whose English is less than proficient are not designed to teach them English as soon as possible, or if these programs operate as a dead-end track; or
- parents whose English is limited do not receive school notices and other information in a language they can understand.

On August 11, 2000, President William J. Clinton signed into law Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*

¹ U.S. Census Bureau, 2019 American Community Survey 1-Year Estimates, *available at* <https://data.census.gov/cedsci/profile?q=0400000US15>

(EO 13166), requiring all agencies receiving federal funds to address the needs of persons who, due to their status as having limited English proficiency (LEP), cannot fully and equally participate in the agency's programs and activities.² Whereas, Title VI creates obligations for recipients of federal funds to provide meaningful access for persons with LEP to federally conducted programs, EO 13166 creates obligations for federal agencies to do the same.³

On July 10, 2006, the Hawai'i State Legislature enacted Hawai'i's Language Access Law, now HRS Ch. 321C, to further reduce language barriers that can preclude individuals who have LEP from meaningful access to services, programs, and activities offered by the State of Hawai'i or by state-funded programs. Hawai'i's Language Access Law specifically requires each state agency or covered entity (entities that receive state funds) to establish a language access plan (LAP).⁴ State agencies receiving federal financial assistance, including the Department, were required to file an initial LAP by July 1, 2007, and an updated LAP every two years thereafter.

III. LIMITED ENGLISH PROFICIENT POPULATIONS SERVED BY THE DEPARTMENT

A. Students

Part of the LEP population served by the Department are students with limited English language proficiency. These students require English language development (ELD) support and targeted instruction. The Department provides these students with supplementary instructional and acculturation activities. The statewide English Language Learner (ELL) Program ensures students with LEP (1) have access to educational opportunities by providing services that assist these students with the attainment of English language proficiency, (2) develop high levels of academic attainment in English, and (3) meet the same challenging State academic content and student achievement standards all students are expected to meet. Services to ELL Program students generally consist of English as a Second Language (ESL) type instruction and acculturation activities.

The ELL Program supports the Department's mission to provide standards-based education through supplementary instructional and acculturation activities. Services provided through the ELL Program implement the requirements of Title

² Students who have LEP may also be referred to as English language learners, or ELL, or English learners, or EL, throughout the LAP.

³ See, e.g., U.S. Dep't of Justice, Memorandum to Heads of Federal Agencies, General Counsels and Civil Rights Heads re: Federal Government's Renewed Commitment to Language Access Obligations under Executive Order 13166 (Feb. 17, 2011), *available at* http://www.justice.gov/crt/about/cor/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf.

⁴ HRS § 321C-4.

VI and the Equal Educational Opportunities Act (EEOA) of 1974. With regard to students with limited English proficiency, Title VI and its regulations require that students are able to participate in, or benefit from, regular or special education instructional programs. Services to ELL Program students and Immigrant Children and Youth also implement the requirements of Title III. Title III requires ELL Program students attain English proficiency, and meet the same challenging academic standards all students are expected to meet.

B. Parents

Another LEP population served by the Department is the LEP parents or legal guardians of students, who may or not be ELL Program students, and members of the public. The Department strives to ensure parents or legal guardians understand the availability and type of programs and services available to students in a language that the parents or legal guardians understand, whether their child is an ELL Program student or otherwise.

The Department uses the four-factor analysis that was set forth in guidance from the Department of Justice to ensure meaningful access to LEP students and parents:

- 1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the Department;
- 2) The frequency with which LEP individuals come in contact with the Department;
- 3) The nature and importance of the program, activity, or service or service provided by the Department; and
- 4) The resources available to the Department.

IV. PROTOCOL FOR PROVIDING LANGUAGE SERVICES

A. ELL Program

The Department provides language services to LEP students through the ELL Program. The ELL Program strives to:

- 1) Provide meaningful access to educational opportunities and academic content by providing services that assist students with developing English language proficiency.
- 2) Support ELL students in attaining the same State academic content and student achievement standards expected for all students.
- 3) Ensure ELL students graduate with the language, knowledge, and skills to pursue post-secondary education and careers.
- 4) Develop an understanding of and appreciation for diverse cultures.

5) Engage parents and families in the education of their children.

Schools should strive to take the following steps to meet these goals:

Step 1: Educational Approach.

Schools must select a sound educational approach for providing English language development and meaningful participation to content. In Hawai'i, the World-Class Instruction and Design Assessment ELD Standards are required to be used in conjunction with state content standards and Common Core State Standards.

Step 2: Identification.

Schools are responsible for identifying all students potentially needing ELL services based upon the student's enrollment form and the eCSSS. If any one of the languages indicated (first, home or most used languages) is not English, a student is a potential ELL student.

Step 3: Assessment.

Schools are responsible for assessing each identified potential ELL student for English proficiency, using the state approved initial English language proficiency assessment, the *WIDA Screener* in grades 1-12, and the *WIDA ACCESS for ELLs Placement Test (W-APT)* for students in Kindergarten.

Step 4: Placement into ELL Program Services & Parent Notification.

Schools are responsible for providing its ELL students with a program of services consistent with its chosen educational approach. Parents must be notified of ELL program services within 30 calendar days from the start of the school year, or within 14 days, if students arrive after the start of the school year.

Step 5: Staffing and Resources.

Schools are obligated to provide the necessary resources and qualified staffing to implement the educational approach selected, and must include personnel that are both highly qualified in content, AND knowledgeable in English language development for second language learners.

Step 6: Transition from ELL Services.

Schools are responsible for implementing state criteria for exiting an ELL student from the ELL Program into regular programs without ELL support based upon the annual English language proficiency (ELP) assessment, the *ACCESS for ELLs 2.0*. Students who function at the *Bridging* ELP level with an overall ELP score of 5.0 meet the exit criteria.

Step 7: Monitoring.

Schools will ensure that students transitioning from the ELL program will participate meaningfully in the education program. Students are monitored for two full academic school years after meeting the ELL exit criteria.

Step 8: Program Evaluation.

Schools will develop evaluation procedures to periodically evaluate and revise their ELL Program. To fulfill the previously mentioned Title VI and other requirements, schools may need to revise programs even if State, Complex, or School accountability measures related to ESSA do not require such change, e.g., if it is found that ELL Program students' needs are not being met.

If any parent, legal guardian or member of the public has any questions about the ELL Program, more information and the Department's contacts can be found on the Department's Website⁵

B. Parents, Legal Guardians and Members of the Public

Parents may be LEP even if their children are not identified as ELL. Schools must communicate information to LEP parents and legal guardians in a language they can understand about any program, service, or activity that is called to the attention of parents or legal guardians who are not proficient in English. This can be done through interpretive services or translation and includes, but is not limited to, information related to:

- Registration and enrollment in school and school programs
- Department specific information related to COVID-19
- ELL program

⁵ Department's ELL Website:

<https://www.hawaiipublicschools.org/ConnectWithUs/Organization/Offices/StudentSupportServices/StudentServicesBranch/Pages/EL.aspx>

- Report cards
- Student discipline policies and procedures
- Special education and related services, and meetings to discuss special education
- Parent-teacher conferences
- Grievance procedures and notices of nondiscrimination
- Parent handbooks
- Gifted and talented programs
- Requests for parent permission for student participation in school activities

The Department issues notice to students, parents and others that it does not discriminate on the basis of race, sex, age, color, national origin, religion, or disability in its programs and activities and provides equal access to designated youth groups. In addition, schools provide the following statement and its translations in their front offices, on their websites, in a location where advising/counseling is provided by counselors, in their course registration materials for all diploma-track students, as well as any CTE-specific promotional materials:

“If you have difficulty understanding English, you have the right to receive language assistance at no cost to you. Please contact your school’s principal for more information.”

Schools must respond to a parent’s request for language assistance and remember that parents can be limited English proficient even if their child is proficient in English.

Schools must develop and implement a process for determining whether parents or legal guardians are limited English proficient and what their language needs are. The process should identify all LEP parents, including parents or legal guardians of children who are proficient in English and parents and legal guardians whose primary language is not a common language. Such efforts may include home language surveys, interaction between parents and staff, and taking into account that LEP students also may have LEP parents. Generally, schools should take a parent at his or her word that he or she needs language assistance. Schools should not administer tests to determine a parent’s language proficiency.

All four domains of language proficiency—speaking, reading, writing, and comprehending—are significant to understanding the need for services and assistance and what types of services and/or assistance may be appropriate. Whether a parent is considered LEP may vary with the topic, service, benefit or encounter at issue. That is, LEP status may be context-specific. For example, a parent may have sufficient English language skills to communicate basic

information, but not have sufficient skills to communicate the detailed specific information that may be needed in a particular context, such as a disciplinary hearing or an individualized education program (IEP).

Schools must provide interpretation or translation from appropriate and competent individuals and may not rely on or ask students, siblings, friends, or untrained school staff to translate or interpret for parents.⁶ A list of resources for interpretation and translation services can be found on the Department's Intranet Portal.⁷ Language assistance must be free and provided by appropriate and competent staff or through appropriate and competent outside resources. It is not sufficient for the staff merely to be bilingual. In addition, Hawai'i's Office of Language Access (OLA) has videos on its website illustrating how interpreters should be used.⁸

Written translations of vital documents identified by the Department are translated into the following 15 languages:

- Hawaiian
- Cebuano⁹
- Chinese (Cantonese)
- Chinese (Mandarin)
- Chuukese
- Ilokano
- Japanese
- Korean
- Marshallese
- Samoan
- Spanish
- Tagalog
- Thai¹⁰
- Tongan
- Vietnamese

For questions relating to language access for parents and/or legal guardians of students, students, Department staff, or members of the public, contact Civil

⁶ Translation or interpretation that is required under Office of Civil Rights statutes may not be paid for with Title III funds (from the OCR May 25, 1970 Memorandum). The Office of Civil Rights statutes predate Title III. Title I translation or interpretation also cannot be paid with Title III funds due to Supplement, Not Supplant [Sec.3115 (g)].

⁷ Interpreter and Translator vendor list: <https://hidoe.sharepoint.com/sites/offices-civilrights>

⁸ <http://health.hawaii.gov/ola/for-agencies/>

⁹ The Department's last LAP plan was in November 2017. Since then, Cebuano has been added as a language required for written translations of vital documents.

¹⁰ Thai has recently been added as a language required for written translations of vital documents, as a result of guidance provided by OLA in November 2021.

Rights Compliance Branch (CRCB) Title VI Specialist Aaron Oandasan via phone at (808) 586-3322 or email at aaron.oandasan@k12.hi.us. You may also contact the applicable CRCB Equity Specialist for their Complex Area.¹¹

V. DESIGNATION OF THE DEPARTMENT LANGUAGE ACCESS COORDINATOR

The CRCB is the designated Language Access Coordinator for the Department and is responsible for overseeing implementation and evaluation of the LAP. CRCB will also be responsible for revising the LAP, as necessary; responding to inquiries/comments/complaints regarding the LAP and its implementation; and training Department staff on the LAP. Any curriculum-related questions relating to ELL or other instructional programs should be directed to the Office of Student Support Services (OSSS).

VI. MONITORING AND UPDATING THE PLAN

To ensure continual improvement in the area of providing educational opportunities for ELL students, in a manner that is culturally and linguistically appropriate, the Department's Language Access Coordinators will monitor provisions of language access services for persons with LEP and update the LAP every two years.

¹¹ A list of CRCB Equity Specialists can be found here:
<https://www.hawaiipublicschools.org/ConnectWithUs/Organization/Offices/Pages/CRCO.aspx>