



FAST FACTS: Use of Interpreters for LEP and DHH Persons in Administrative & Alternative Dispute Resolution (ADR) Forums

POLICY

To secure the rights of limited English proficient (LEP) and Deaf/Hard of Hearing (DHH) persons.

PRINCIPAL GOVERNING AUTHORITY

Title VI of the Civil Rights Act of 1964 (Title VI)

U.S. Department of Justice Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (June 2002) (DOJ Guidance)

Supreme Court of Georgia Rule on Use of Interpreters for Non-English Speaking and Hearing Impaired Persons (Rule)

WHO IS COVERED?

TITLE VI/DOJ GUIDANCE: Any program or activity receiving federal financial assistance, including police and sheriff's departments, departments of corrections, jails, and detention facilities, including those recipients that house detainees of the Immigration and Naturalization Service, courts, certain non-profit agencies with law enforcement, public safety, and victim assistance missions; a department, agency, special purpose district, or other instrumentality of a state or of a local government; other entity of such state or local government that distributes such assistance and each such department or agency (and each other state or local government entity) to which the assistance is extended, in the case of assistance to a state or local government. Other entities with public safety and emergency service missions. Subrecipients likewise are covered when federal funds are passed through from one recipient to a subrecipient. Coverage extends to a recipient's entire program or activity, i.e., to all parts of a recipient's operations. This is true even if only one part of the recipient receives federal funds. (See, 42 U.S.C. § 2000d-4a)

RULE: All court proceedings in Georgia including Grand Jury proceedings. (Rule, §I (D)). All court-managed functions, including information counters, intake or filing offices, cashiers, records rooms, sheriff's offices, probation and parole offices, alternative dispute resolution programs, *pro se* clinics, criminal diversion programs, anger management classes, detention facilities, and other similar offices, operations and programs. (Rule, Appendix A, §II)(Emphasis Added)

WHO DETERMINES IF AN INTERPRETER IS NEEDED?

TITLE VI/DOJ GUIDANCE: Federally funded recipient. Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances a four-factor analysis. (DOJ Guidance, 67 F.R. 117 (June 2002))

RULE: The decision maker determines, after examination of a party or witness that (1) the party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel; or (2) the witness cannot speak English so as to be understood directly by counsel, the decision maker, and/or the jury. (Appendix A, §II (A)) **NOTE:** The decision maker is not required to first examine a party or witness before making a decision. The decision maker may determine an interpreter is needed based solely on the verbal and/or written request of the LEP or DHH litigant or witness or his or her attorney.

WHO PAYS?

TITLE VI/DOJ GUIDANCE: The federally funded recipient. **NOTE:** In hearings before the Georgia Office of State Administrative Hearings (OSAH), the federally funded state agency (e.g., Department of Human Services, Department of Community Health, etc.) is responsible for paying for the interpreter, not OSAH.

RULE: The expenses of providing an interpreter in any legal proceeding will be borne by the local court or appropriate governing body. (Rule, Appendix A, §VII)

DOES IT MATTER IF IT IS A CRIMINAL, CIVIL OR ADMINISTRATIVE CASE?

TITLE VI/DOJ GUIDANCE: No. As used in the DOJ Guidance, the term “court” or “courts” includes administrative adjudicatory systems or administrative hearings administered or conducted by a recipient and are not limited to criminal or civil cases.

RULE: No. The right to a qualified sign language or foreign language interpreter is applicable in all state-level legal proceedings in Georgia – criminal and civil. As noted above, the right to a qualified interpreter also extends to court-managed functions including alternative dispute resolution forums such as mediation or arbitration. *See*, O.C.G.A. § 24-6-652 *et seq.* *See also*, Rule, Appendix A §§ II-IV. **Note:** In civil cases advance notice of the use of/need for an interpreter should be provided to all parties and to the decision maker. To promote judicial efficiency, it is encouraged that advanced notice be provided in all other types of cases as well including civil and administrative.

BENCHMARK CASES AND OTHER PERTINENT LEGAL AUTHORITY

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d

Lau v. Nichols, 444 U.S. 563 (1974)

Executive Order 13166, 65 FR 50121, (August 2000)

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 F.R. 41,455 (June 2002) (DOJ Guidance)

Liese v. Indian River Cnty. Hosp. Dist., 701 F.3d 334, 336 (11th Cir. 2012)

Ling v. State, 288 Ga. 299; 702 S.E.2d 881 (2010)

Ramos v. Terry, 279 Ga. 889, 622 S.E.2d 339 (2005)

Supreme Court of Georgia Rule on Use of Interpreters for Non-English Speaking and Hearing Impaired Persons (Rule)

O.C.G.A. §§ 24-6-652 through 658; O.C.G.A. § 15-6-77(e)(4)

HELPFUL LINKS

Supreme Court of Georgia Rule on Use of Interpreters for Non-English Speaking and Hearing Impaired Persons
http://w2.georgiacourts.gov/coi/files/Rule%20on%20Interpreters%20-%20FINAL_JULY.pdf

Supreme Court of Georgia Commission on Interpreters Instructions for Use of Non-Licensed Interpreters
[http://w2.georgiacourts.org/coi/files/model%20form\(1\).doc](http://w2.georgiacourts.org/coi/files/model%20form(1).doc)

GA Judicial Council/Administrative Office of the Courts Committee on Access and Fairness (GA Language Access Policy)
<http://www.georgiacourts.org/index.php/aoc/directors-office/committee-on-access-and-fairness-in-the-courts/95>

Department of Justice Guidance (June 2002)
<http://www.justice.gov/crt/about/cor/lep/DOJFinLEPFRJun182002.php>

Department of Justice Guidance (August 2011)
http://www.lep.gov/resources/081511_Language_Access_CAO_TA_Guidance.pdf

Justice Melton in Q+A on Language As a Barrier to Access, Daily Report (February 19, 2014)
<http://www.glsp.org/wp-content/uploads/2014/02/PDF-Justice-Melton-in-DR1.pdf>

Is it Reversible Error: Due Process and Access to Justice for LEP and DHH Individuals, Georgia Court Journal (March 2015)
<http://w2.georgiacourts.gov/journal/index.php/component/content/article/59-march-2015/322-is-it-reversible-error>