

NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY LIMITED ENGLISH PROFICIENCY (LEP) PLAN AND PROCEDURES

I. INTRODUCTION AND BACKGROUND

A. Policy Statement

The Nebraska Department of Environment and Energy (Department) is committed to principles of equal access to all its programs, services, and activities, regardless of race, color, religion, sex, national origin, age, or disability.

The Department is committed to taking reasonable steps to provide timely and meaningful access for LEP persons who come into contact with the Department's programs, services, and activities.

B. Purpose of the Limited English Proficiency (LEP) Plan

The purpose of this LEP Plan is to:

- enhance awareness of the need and methods to ensure that LEP persons have meaningful access to Department programs and services;
- ensure implementation of language access; and
- comply with the requirements of Title VI of the Civil Rights Act of 1964.

Under federal law, recipients of federal financial assistance, such as the Department, are required to comply with applicable Title VI provisions prohibiting discrimination. The United States Environmental Protection Agency (EPA) interprets its Title VI regulations to require all recipients of EPA funding, including the Department, to provide meaningful access to LEP individuals.

C. Public dissemination of Title VI information

The Department will inform LEP persons of the availability of free language access services by providing written notice conspicuously on its website. The Department will post these notices prominently and ensure they are readily visible to the public. Relevant, public-facing Department materials will describe the requirements of federal non-discrimination laws, including Title VI and the availability of language assistance and federal nondiscrimination complaint procedures. Public notices and advertisements will state that the Department administers equal opportunity programs and that federal law prohibits discrimination.

II. AUTHORITY AND GUIDANCE

Section 601 of Title VI of the Civil Rights Act of 1964 provides that no person "on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The United States Supreme Court in *Lau v. Nicholls*, 414 U.S. 56 (1974) held that one type of national origin discrimination is discrimination based on a person's inability to speak, read, write, or understand English.



Title VI and its implementing regulations prohibit recipients of federal financial assistance from discriminating based on national origin or based on a failure to take reasonable steps to provide meaningful access to recipients' programs, services, and activities to individuals who are LEP. This protection requires that LEP persons are provided an equal opportunity to benefit from or have access to services.

III. DEFINITIONS¹

Bilingual Staff Member- An agency staff member who has demonstrated proficiency in both English and at least one other language. A bilingual staff member may speak or write directly to an LEP individual in a language other than English.

Effective Communication- Communication sufficient to provide the LEP individual with substantially the same level of access to services and information received by individuals who are not LEP. For example, an instructional document or public notice provided in English should, to offer effective communication, be translated into other applicable languages so that LEP individuals have access to the information therein.

Interpretation- The act of listening to a communication in one language (source language) and orally converting it to another language (target language) while retaining the same meaning. **Interpreter-** An individual who conveys meaning orally from one language (the source language) into another (the target language).

Limited English Proficient (LEP) Individuals- Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. LEP individuals may be competent in English for certain types of communication (e.g., speaking or understanding), but still be LEP for other types of communication (e.g., reading or writing).

Meaningful Access- Language assistance that results in accurate, timely, and effective communication to the LEP individual. For LEP individuals, meaningful access denotes reasonable efforts to provide language assistance services to ensure that LEP individuals have substantially equal access to Department services, programs, and activities.

Primary Language- An individual's primary language is the language in which an individual most effectively communicates.

Program, Service, or Activity- The terms program, service, or activity mean all the operations of the Department.

Translation- The replacement of written text from one language (source language) into an equivalent written text in another language (target language).

Translator- An individual who conveys written text from one language (source language) into the equivalent in written text in another language (target language).

Vital Document- Paper or electronic material that is critical for access to the Agency's programs, activities, and services, or contains information about procedures or processes required by law.

¹See EPA Order, Compliance with Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency, Approval Date July 28, 2011; Administrative Update February 10, 2017.

Classification of a document as “vital” depends upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP individual if the information in question is not provided accurately or in a timely manner.

IV. RECOGNITION OF LEP DEMAND

Department staff should consider prior interactions with LEP individuals, available demographic information, coordination with other agencies, and public outreach to anticipate a demand for language assistance. Sources of demographic information include but are not limited to the U.S. Census Bureau American Community Survey (ACS) and Decennial Census, the EPA EJ Screen Tool, and the Nebraska Language and Limited English Proficiency Report Card, published by the Nebraska Department of Health and Human Services.

The Department must take reasonable steps to ensure that vital documents are translated or interpreted for affected LEP individuals. The Department must ensure such translation or interpretation is performed by a qualified contractor or, if available, a bilingual staff member.

All Department staff shall be made aware of this LEP Plan, its purpose, and the need to comply with its terms. Each program shall be responsible for documenting requests for language assistance it receives on the Department’s LEP Services Tracking Form in Appendix A.

Inquiries about the LEP Plan may be directed to the Department’s Non-Discrimination Coordinator.

V. DETERMINING NEED FOR LANGUAGE ASSISTANCE

In determining what language assistance is necessary for a given program, service, or activity, the Department shall consider:

1. The number or proportion of LEP individuals involved with or impacted by the program, service, or activity;
2. The frequency with which LEP individuals encounter the program, service, or activity;
3. The nature and importance of the program, service, or activity to LEP individuals;
4. The resources available to the Department and the capacity to provide language assistance;
5. Whether proposed or desired language assistance satisfies the EPA “safe harbor” standard whereby written translations of vital documents for LEP language groups constituting five percent of the population of individuals eligible to be served or likely to be affected or 1,000 individuals, whichever is less, are provided.

According to the U.S. Census Bureau, 2017-2021 American Community 5-Year Estimates, retrieved May 21, 2024, 58,158 Spanish speaking individuals in Nebraska speak English less than very well, which is by far the largest language group of LEP individuals within the State.²

²United States Census Bureau Data Table B16001 Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over found at:

VI. LANGUAGE ASSISTANCE

The Department will provide language assistance for LEP persons through translation of vital documents, as well as through verbal interpretation in-person or by telephone.

The Department will take reasonable steps to provide language services to provide meaningful access to the services or benefits of the program, service, or activity. However, in some situations it may be reasonable to ask the LEP person to return at a specified date and time to allow the Department to arrange for interpreter or translator services.

Interpreter and translator services are available to program staff by contacting the Department Non-Discrimination Coordinator:

Kara Valentine, Deputy Director
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, NE 68509-8922

phone: 402-471-2186

NDEE.CivilRights@nebraska.gov

A. Outreach

When developing public outreach and engagement plans and strategies, the Department will consider how best to engage LEP persons and communities. When planning a public meeting or public-facing communication, team members will consider: (A) the nature of the information being communicated and how it is presented for broad understanding, (B) the community or communities affected by the pending Department decision or action, (C) date(s), place(s), and time(s) for facilitating public access, and (D) whether special access considerations must be made for access or service for a given community, audience, or participant.

B. Providing notice of free language assistance services to LEP persons

The Department will provide information about free language assistance services by:

- posting on its website nondiscrimination laws, and the availability of free language assistance services;
- stating in vital outreach materials that language services are available;
- working with community-based organizations to inform LEP persons of language assistance availability; and
- posting signs in intake areas and other entry points stating that language services are available. The Department will place the signage in locations with

<https://data.census.gov/table/ACSDT5Y2015.B16001?t=Language%20Spoken%20at%20Home&g=040XX00US31&tid=ACSDT5Y2015.B16001>

deliberation, paying particular attention to areas with high volumes of LEP persons seeking access to the Department's services.

C. Interpretation

LEP persons are not obligated to provide their own interpreter. In some program areas and projects, it may be important for legal or safety reasons to provide a Department-provided qualified interpreter rather than use a LEP person's interpreter (e.g., a family member or friend).

The Department will ensure that it uses qualified interpreters, meaning they are able to interpret effectively, accurately, and impartially for individuals with limited English skills. The interpreter must be able to interpret both receptively and expressively, using any necessary specialized vocabulary. The Department will consider hiring bilingual staff.

A qualified interpreter is:

- proficient in and have the ability to communicate accurately in both English and in the other language, as well as employ the appropriate mode of interpreting (e.g. consecutive, simultaneous, summarization, or sight translation);
- be able to relay successfully in the applicable language any specialized terms or concepts particular to the program; service, or activity;
- understand and follow confidentiality and impartiality policies to the same extent as a Department employee for whom they are interpreting or to the extent that the position requires; and
- understand and adhere to their role as interpreter without deviating into a role as counselor, legal advisor, or other inappropriate role.

D. Translation of written documents developed by Department programs, services, or activities

The Department will arrange for translation of Department-created vital documents to ensure meaningful access by LEP persons. The Department will translate new vital documents into the languages identified as appropriate by the Department LEP Plan at the same time or shortly after publication of the document in English. The Department team members leading programs, services, or activities that develop or disseminate new vital documents must contact the Department's Non-Discrimination coordinator to arrange for timely translation.

The Department will translate existing vital documents on an ongoing basis prioritized based on the LEP population percentage, the importance of the document(s), and the importance of the program, service, or activity. The Department staff leading each program, service, or activity will identify existing vital documents and contact the Department Non-Discrimination coordinator to arrange timely translations.

E. Vital Documents

Whether or not a document (or the information it solicits) is "vital" may depend on the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.

Classification of documents as vital shall be done at the Program level within the Department. Vital documents may be either specific communications between an individual and the Department or documents intended for general consumption.

Programs should consider whether denial or delay of access to information could have serious or even life-threatening implications for affected LEP individuals when determining when to classify a document as vital. The fact that a communication is compulsory (e.g., a lead-based paint warning required by law) should be considered as strong evidence in favor of classification as vital.

Applicable law does not require translation of each piece of outreach material into every language. However, programs should regularly assess eligible or affected service populations to determine whether a document is vital and whether language assistance should be provided.

Vital documents may include, but are not limited to: fact sheets, "FAQ" documents, press releases, environmental reports, final agency decisions impacting any LEP person, emergency and disaster communications, consent and complaint forms, notices of rights, warnings or communications related to environmental hazards, and information about language assistance.

To aid programs in making vital document determinations, please see vital documents flow chart in Appendix C. Please direct questions of applicability to the Department's Non-Discrimination Coordinator at NDEE.CivilRights@nebraska.gov.

Upon request from an LEP person for a translated vital document into a language that has not already been prepared, Department staff will contact the Department's Non-Discrimination Coordinator to arrange translation of the document if it can be reasonably accomplished on a timely basis. If translation cannot be reasonably accomplished on a timely basis (by a designated date of need), the Non-Discrimination coordinator or program staff will take reasonable steps to provide sight translation or other meaningful communication of the document as appropriate.

VII. HOW THE DEPARTMENT ASSISTS LEP PERSONS

A. Interaction with LEP persons in the field, or walk-ins at the office

The Department will take reasonable steps to provide language assistance as needed for in-person contact with LEP persons. The Department will use the following steps to identify and communicate effectively with LEP persons:

1. The Department employee will attempt to communicate in English first to determine if the individual can understand English sufficiently to be fully understood.
2. If the individual cannot understand or effectively communicate in English, the Department employee will attempt to determine the language he or she is

speaking. If the Department employee recognizes the language the LEP person is speaking, but does not speak that language, skip to Step 4.

3. If the Department employee cannot recognize the language the individual is speaking, show him/her the "I Speak" card (Appendix D) so the LEP person can point to their language. "I Speak" information should be maintained on individual employee work phones as a screenshot.
4. The Department employee will use the Google Translate app on their work cell phone, other IT approved app or contact the Language Line Services (Appendix B) for over-the-phone interpretation services. A screenshot of the Language Line Services information should be maintained on the employee's work cell phone.
5. The Department employee will make every effort to give the LEP person the same level of service as an English-speaking customer.

B. Phone calls from LEP persons

The Department will take steps to respond in a timely and effective manner to LEP persons who call seeking information or assistance. The Department will use the following steps when assisting phone-in LEP persons:

1. The Department employee will attempt to communicate in English first to determine if the LEP person can understand English sufficiently to be fully understood.
2. If the LEP person cannot understand or effectively communicate in English, the Department employee will use the Google Translate app, other IT approved app, or call Language Line Services (Appendix B).
3. The Department employee will make every effort to give the LEP person the same level of service as an English-speaking customer.

C. Advance requests for in-person interpretation

The Department is committed to using qualified interpreters upon advance request for in-person appointments and public meetings. In general, the Department requests that LEP persons give five (5) business days advance notice of a request for interpretation, but no fewer than 48 hours notice. However, if such advance notice is not received, Department employees will attempt to arrange interpretation through the Department's Non-Discrimination Coordinator. If an in-person qualified interpreter is not available, Department employees will take reasonable steps to arrange other accommodating communication services.

D. Written translation services

When an LEP person requests translation of a vital document into a language in which translation has not already been provided, Department staff will:

- If the LEP person is in-person, attempt to determine the LEP person's Primary Language, using the "I Speak" card (Appendix D), if needed;

- Contact the Department's Non-Discrimination Coordinator to arrange timely translation of the document into the requested language;
- If the document cannot be translated into the requested language in a timely manner, the Department's Non-Discrimination coordinator or program staff will take reasonable steps to provide sight translation or other meaningful communication of the document as appropriate.

When a Department program sends a written vital document to a particular LEP person, program staff will use the following steps:

- Draft the document in English.
- Identify the primary language of the LEP person.
- Request the Department's Non-Discrimination coordinator to arrange timely translation of the document into the requested language.
- Send the document in both English and as translated to the LEP person.

VIII. CONCLUSION

Providing meaningful access to LEP persons to the Department's programs, services, and activities is an important effort that will help the Department achieve its mission to protect and improve human health, the environment, and energy resources.



Thaddeus D. Fineran, Interim Director



Date

Appendix A: LEP Services Tracking Form

Appendix B: Language Line Services

Appendix C: Vital Documents Example and Flow Chart

Appendix D: "I Speak" Card

Appendix E: NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY LIMITED ENGLISH PROFICIENCY (LEP) PLAN AND PROCEDURES (SPANISH)