



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

CERTIFIED-RETURN RECEIPT REQUESTED

September 16, 2011

Karl R. Hade, Executive Secretary
Office of the Executive Secretary
Supreme Court of Virginia
100 North Ninth Street
Richmond, VA 23219

Robert Bermingham, Director
Nineteenth District Court Service Unit – Fairfax CSU
4110 Chain Bridge Road
Fairfax, VA 22030

Re: Compliance Review Report for the Supreme Court of Virginia and the Fairfax County Juvenile and Domestic Relations District Court (Docket No. 09-OCR-0191) and the Fairfax County Court Services Unit (Docket No. 10-OCR-0001)

Dear Secretary Hade and Director Bermingham:

I am writing to report the findings of the compliance review of language services within the juvenile justice system in Fairfax County, Virginia, conducted by the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ). The OCR would like to thank your respective staffs, especially Foreign Language Services Coordinator Charlene Lamb, former Clerk of Court Jennifer Flanagan, and Director of Administrative Services Kim McCarthy, for assisting OCR attorneys Shelley Langguth and Tamara Baxter during their November 13, November 23, and December 8, 2009, onsite visits.

In my letters to your respective agencies, dated June 11 and 29, 2009, I explained that the OCR had selected your agencies for a compliance review under Title VI of the Civil Rights Act of 1964 (Title VI) and the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act) and their implementing regulations. As I noted at that time, the OCR limited the scope of the compliance review to the provision of juvenile justice services¹ to juveniles and families² who

¹ As the OCR explained during our onsite visits, our compliance review is focused on your agencies' operations, programs, activities, and services that relate to the juvenile justice system up to, but not including, the adjudication stage.

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 2

are limited English proficient (LEP). An LEP person is an individual whose primary language is not English and who has a limited ability to read, write, speak, or understand English. Title VI, the Safe Streets Act, and their implementing regulations require that recipients of federal financial assistance ensure meaningful access for LEP individuals.³ In June of 2002, the DOJ published guidance for its financial aid recipients on taking reasonable steps to provide meaningful access to programs and activities for LEP persons in accordance with Title VI and the Safe Streets Act. *See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41455 (2002) (DOJ Guidance). Using the technical assistance standards in the DOJ Guidance, the OCR initiated this compliance review to determine the extent to which the Office of the Executive Secretary (OES) of Supreme Court of Virginia, the Fairfax County Juvenile and Domestic Relations District Court (JDRDC), and the Fairfax County Court Services Unit (CSU) provide language services to LEP juveniles and LEP families of juveniles involved with the pre-adjudication juvenile justice system in Fairfax County.

After a thorough evaluation of the services provided by your respective agencies, including your responses to the OCR's data requests and the information the OCR gathered during its onsite visits, which included interviews with agency representatives, the OCR sent the OES and the CSU a draft Compliance Review Report on December 8, 2010, in accordance with 28 C.F.R. §§ 42.107(d)(2) and .206(e).⁴ In a January 21, 2011, telephone conversation, Director Bermingham told Ms. Langguth that the CSU does not have any factual corrections to the draft Compliance Review Report. The OES submitted a written response dated May 20, 2011, in which it provided several factual corrections to the draft Compliance Review Report along with information on the numerous actions that the OES has taken relating to the provision of language assistance services since the time of the OCR's onsite visit. It appears that the OES took many of these actions following the issuance of our December 8, 2010, draft Compliance Review Report. The OCR has made the necessary factual corrections to the draft Compliance Review Report to correctly reflect the manner in which the OES and the JDRDC were providing language assistance services at the time of the OCR's onsite review. Any actions that the OES has taken since the time of our onsite visit, along with the OES' salient clarifications or concerns regarding recommendations or statements, are discussed in footnotes to this Compliance Review Report.

² Throughout this Compliance Review Report, the terms "family" and "families" include parents and/or legal guardians.

³ In addition, while the OCR does not conduct this review under the Juvenile Justice Act of 2002, we note that the requirements under that Act to identify and mitigate disproportionate minority contact are also implicated by the language access for national origin minority LEP juveniles and families of juveniles having contact with the system.

⁴ As part of the OCR's evaluation of your agencies, we sent a letter to a number of community organizations serving LEP populations in Fairfax County to solicit their perceptions of the services that you provide to LEP juveniles and LEP families of juveniles. We did not receive a response from any of the organizations.

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 3

In regard to the limited scope of our review, we conclude that the OES, the JDRDC, and the CSU are not fully in compliance with the requirements of Title VI and the Safe Streets Act, although each agency is taking steps to provide LEP persons with meaningful access to its juvenile justice services. Your respective agencies should build on these steps and take further action consistent with the recommendations contained herein to ensure that you are meeting your obligations under Title VI and the Safe Streets Act. The following Compliance Review Report contains observations about the language assistance provided to LEP juveniles and LEP families of juveniles having contact with the juvenile justice system in Fairfax County, along with recommendations based on the DOJ Guidance that the OES, the JDRDC, and the CSU may find helpful in developing policies and procedures to improve your services to LEP individuals.

Compliance Review Report

This Compliance Review Report begins by providing an overview of the roles and responsibilities of the OES, the JDRDC, and the CSU in connection with the juvenile justice system in Fairfax County. The Compliance Review Report then closely tracks the DOJ Guidance: first assessing each agency's obligation to provide LEP services and then reviewing the elements that each agency should include in a more effective plan for offering language assistance to LEP persons.

- I. Overview of the OES, the JDRDC, and the CSU
 - A. OES

The Virginia judicial system is unified in its structure and administration. Va. Code Ann. § 16.1-69.30 (2011). The OES is a component of the Supreme Court of Virginia, and provides administrative support for all of the courts and magistrate offices within the Commonwealth of Virginia. This administrative support includes training and education of all judicial employees, budget and payroll services, human resources, planning, and information technology. The OES' Department of Judicial Services (DJS) serves as the liaison between the judicial system's administrative offices and the Virginia courts, and contains the Foreign Language Services Division (FLSD). The mission of the FLSD is to assist LEP individuals in overcoming language limitations so that they may have full access to the judicial system. To further this mission, the FLSD administers a foreign language certification program for individuals who wish to serve as interpreters in the Virginia courts and establishes standards for the provision of language services throughout the courts. The FLSD has also published guidelines that outline the best policies and practices for assisting LEP individuals in the Virginia courts, entitled *Serving Non-English Speakers in the Virginia Court System: Guidelines for Policy and Best Practice* (OES Guidelines). See Parts II.C.1 and III of this Compliance Review Report for a detailed discussion of the OES' foreign language certification program and the OES Guidelines.

Pursuant to Virginia law, courts shall appoint an interpreter in criminal proceedings for an accused who is non-English speaking, unless the person obtains an interpreter of his or her own choosing who the court approves as being competent. Va. Code Ann. § 19.2-164 (2011). In a criminal case where the non-English speaking person is a victim or a witness, the court shall appoint an interpreter unless the court finds that the person does not need the services of an interpreter. *Id.* The statute holds that the costs of the interpreter shall be paid by the state, but that at its discretion a court may assess the cost of an interpreter as part of the court costs if the non-English speaking person fails to appear in court. *Id.* As for civil matters, Virginia law states that the court *may* appoint an interpreter for a non-English speaking person who is a party or witness, unless the person obtains a qualified interpreter of his or her own choosing, and that a court in its discretion may assess the cost of the interpreter against either party in the case (emphasis added). Va. Code Ann. § 8.01-384.1:1 (2011). During the OCR's onsite visit, the OES staff said that in practice courts do provide interpreters in both criminal and civil proceedings, and that the OES is not aware of a court assessing the cost of an interpreter against an LEP individual or of an LEP juvenile or LEP family member of a juvenile obtaining a qualified interpreter of his or her own choosing.⁵

B. JDRDC

Each of the Commonwealth's 32 judicial districts contains a juvenile and domestic relations district court. The Fairfax County JDRDC has jurisdiction over juvenile matters, offenses committed by adults against juveniles, and certain family matters in Fairfax County, the City of Fairfax, and the towns of Herndon, Vienna, and Clifton. In Virginia, a juvenile is defined as a person less than 18 years of age. Va. Code Ann. § 16.1-228 (2011). The juvenile matters that the JDRDC exercises jurisdiction over include delinquency matters, which are criminal complaints filed against a juvenile, and status offenses, which are acts prohibited by law which would not be a crime if committed by an adult, such as possession of alcohol or curfew violations.

C. CSU

Pursuant to Virginia law, probation, parole and related court services for juveniles under the jurisdiction of a juvenile and domestic relations district court are provided by a court services unit operated by either the Virginia Department of Juvenile Justice or by a local county or city agency. Va. Code Ann. § 16.1-235 (2011). In Fairfax County, probation and other court services are provided by the county-operated CSU. The pre-adjudication services provided by the CSU include intake services, supervised release services, probation supervision, and the operation of

⁵ In the OES' December 8, 2010, Response to the draft Compliance Review Report (Response to the Draft Report), the OES noted that it specifically recommends to courts that they do not assess the cost of an interpreter against an LEP individual, although Virginia law does allow for this in civil proceedings.

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 5

diversion programs. The CSU also operates the Juvenile Detention Center, the Less Secure Shelter, and several post-adjudication facilities.

II. Assessing the Obligation to Provide LEP Services

According to the DOJ Guidance, a recipient's obligation to take reasonable steps to ensure meaningful access to its programs and activities for LEP persons requires an assessment that balances four factors: (1) the number or proportion of LEP persons that are the likely beneficiaries of a recipient's services; (2) the frequency with which LEP persons come into contact with the recipient's programs or activities; (3) the nature and importance of the program, activity, or service provided; and (4) the resources available to the recipient and the related costs. 67 Fed. Reg. at 41459-61. In considering the application of these four factors to the OES, the JDRDC, and the CSU, the OCR offers the following observations and recommendations.

A. The Number or Proportion of LEP Individuals in the Service Population

As noted above, the JDRDC has jurisdiction over juvenile matters occurring in Fairfax County, the City of Fairfax, and the towns of Herndon, Vienna, and Clifton. The OCR understands that the towns of Herndon, Vienna, and Clifton are located within Fairfax County, and that the City of Fairfax is independent from Fairfax County. Based on recent data from the U.S Census Bureau, in 2008, Fairfax County had an estimated population of 944,811 residents age five and older; of this group, 615,171 spoke English only, and 329,640 (35%) spoke a language other than English. U.S. Census Bureau, American FactFinder, 2008 American Community Survey, Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over, Fairfax County, Virginia <http://factfinder.census.gov>. Of those individuals age five and older who spoke a language other than English, 115,889 (12%) spoke Spanish, and almost half of this number (55,825) spoke English less than "very well," which the OCR considers LEP. *Id.* Other Fairfax County populations with more than 1,000 individuals age five and older speaking a language at home other than English include the following: Korean (32,113, with 19,886 speaking English less than "very well"); Vietnamese (26,007, with 14,675 speaking English less than "very well"); Chinese (19,912, with 7,704 speaking English less than "very well"); African languages (16,865, with 7,203 speaking English less than "very well"); Arabic (16,249, with 4,334 speaking English less than "very well"); Persian (14,473, with 5,308 speaking English less than "very well"); Urdu (11,869, with 3,221 speaking English less than "very well"); Tagalog (9,049, with 2,749 speaking English less than "very well"); and Hindi (8,490, with 1,195 speaking English less than "very well"). *Id.*

In regard to the population of the City of Fairfax, data from the U.S. Census Bureau indicates that from 2006 to 2008, the City of Fairfax had an average population of 21,931 residents age five and older; of this group, 14,415 spoke English only, and 7,516 (34%) spoke a language other

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 6

than English.⁶ U.S. Census Bureau, American FactFinder, 2006-2008 American Community Survey, Age by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over, Fairfax city, Virginia <http://factfinder.census.gov>. This data further indicates that 2,777 (13%) residents age five and older spoke Spanish, with 1,611 speaking English less than "very well;" 1,709 spoke other Indo-European languages, with 296 speaking English less than "very well;" 2,537 spoke Asian and Pacific Island languages, with 1,184 speaking English less than "very well;" and 493 spoke other languages, with 38 speaking English less than "very well." *Id.*

In its response to the OCR's data request, the OES directed the OCR to data collected by the Virginia Department of Education (VDOE) on LEP students in Fairfax County. This data, found at <http://www.doe.virginia.gov>, demonstrates that as of September 2008, 17,023 Spanish-speaking LEP students were enrolled in Fairfax County Public Schools; 2,789 Korean-speaking LEP students were enrolled; 1,982 Vietnamese-speaking LEP students were enrolled; 1,866 Arabic-speaking LEP students were enrolled; and 1,510 Urdu-speaking LEP students were enrolled.⁷

Recommendations for the OES⁸ and the CSU

The available data indicates that the most prevalent foreign language spoken by juveniles and families of juveniles under the jurisdiction of the Fairfax County juvenile justice system is Spanish, and that Asian languages such Korean and Vietnamese are also prevalent along with languages such as Arabic, Urdu, and Farsi. The OES and the CSU should review the latest data from the U.S. Census Bureau to determine more accurately the language assistance needs of the population under the jurisdiction of the JDRDC and to identify any population shifts.⁹ It is important to note that the service population includes not only juveniles, but the LEP population in general, since it is often the families of juveniles who are LEP. Recent data from the U.S.

⁶ Since the City of Fairfax is an independent city, the OCR is assuming that the U.S. Census Bureau data for the County of Fairfax does not include data from the City of Fairfax.

⁷ According to information contained on the VDOE's website, the VDOE defines an LEP student according to Public Law 107-110, the No Child Left Behind Act of 2001, which includes students whose native language is other than English and who come from an environment where a language other than English is dominant, and whose difficulties speaking, reading, writing or understanding English may deny the student the ability to achieve or participate fully in society.

⁸ As the OES administers the foreign language certification program and establishes standards for the provision of language assistance throughout the Virginia courts, including the JDRDC, the majority of the OCR's recommendations in this Compliance Review Report relating to the provision of language assistance services at the JDRDC are directed to the OES.

⁹ In the OES' Response to the Draft Report, the OES said that OES staff have recently obtained training from the U.S. Census Bureau on the latest available population data in order to better determine language assistance needs.

Census Bureau can assist in numerous ways, including determining the need to place a particular number of certified or contract interpreters at the JDRDC, the need to hire bilingual staff, and the need to translate documents into foreign languages. The OES and the CSU may also find helpful the data collected by the VDOE and by local school districts on the languages spoken by enrolled students in Fairfax County and the City of Fairfax. This data provides additional information on the foreign language groups in a particular area and their relative size.

B. Frequency of Contacts with LEP Persons

1. OES and JDRDC Data Collection

The OES has created a "remarks" data field within the OES' Case Management System (CMS) where court personnel can note when an interpreter is scheduled for an upcoming court proceeding; most of the Virginia courts, including the JDRDC, use CMS.¹⁰ According to OES and JDRDC staff, when the JDRDC clerk's office discovers that a juvenile or a family member of a juvenile is LEP, either through a CSU intake officer, a judge, or through other means, and schedules an interpreter, a member of the clerk's office notes this in CMS. However, the clerk's office does not specify who the interpreter is for (*e.g.*, juvenile, family member, or witness). Otherwise, the JDRDC does not track the national origin or language proficiency of juveniles or their family members encountered by the JDRDC.

The JDRDC mainly relies on Spanish-speaking OES staff interpreters and in-person contract interpreters speaking a variety of foreign languages to communicate with LEP juveniles and LEP families of juveniles. When a staff interpreter provides interpretation during a particular service event (*e.g.*, attorney advisement hearing, or detention hearing), the staff interpreter enters that information in the OES' database known as InterpTracker, noting the court where the interpretation occurred. At the time of the OCR's onsite visit with the OES, InterpTracker did not indicate the number of LEP individuals to whom the staff interpreter provided language assistance during each service event or to whom language assistance was provided (*e.g.*, juvenile, family member, or witness); the OES subsequently informed the OCR that as of December 1, 2009, InterpTracker indicates the number of LEP individuals served and specifically the number of LEP juveniles served. When a contract interpreter provides interpretation in a Virginia court, the contract interpreter completes a district court form DC-44, List of Allowances-Interpreter, which indicates the court where the contract interpreter provided language assistance and the language involved but does not specify the number of LEP individuals or to whom language assistance was provided. The JDRDC may also communicate with LEP individuals through a telephonic contract interpreter; the OCR understands that the telephonic interpreters used by the JDRDC provide monthly invoices to the OES, listing each occurrence of telephonic

¹⁰ In the OES' Response to the Draft Report, it said that CMS is being upgraded to a web-based system, which the OES is currently rolling out to circuit courts and juvenile and domestic relations district courts.

interpretation and specifying the court and the language involved.¹¹ Based on the data contained in InterpTracker and the data maintained by the OES regarding payments made to in-person and telephonic contract interpreters, the OES estimates that interpretation was provided to an LEP individual at the JDRDC during 13,019 service events from January 1, 2007 to June 30, 2009. Of these 13,019 service events, 10,806 (83%) involved interpretation in Spanish, 411 involved interpretation in Korean, 304 involved interpretation in Arabic, and the remaining events involved a variety of foreign languages.

2. CSU Data Collection

The CSU uses the electronic Juvenile Tracking System (JTS) to collect and manage data regarding the juveniles to whom it provides services. The JTS is operated by the Virginia Department of Juvenile Justice (DJJ) and the DJJ determines the nature and type of information to be collected. The CSU currently collects data on the ethnic origin of juveniles served by the CSU; during the onsite visit, CSU staff explained that intake and probation officers ask the juvenile where he or she was born. Intake and probation staff told the OCR that they note in the narrative section of JTS if a juvenile or a family member of a juvenile is LEP.

The CSU primarily communicates with Spanish-speaking LEP juveniles and LEP families of juveniles by using volunteer interpreters participating in the Volunteer Interpreter Program (VIP). The VIP interpreters complete a VIP service card to document when language assistance is provided, which notes the language involved, the type of language assistance (*e.g.*, in-person interpretation, telephone interpretation, or written translation), where language assistance was provided, and the type of hearing involved, but does not indicate whether language assistance was provided to a LEP juvenile or a LEP family member of a juvenile. Based on this information, the CSU estimates that from July 2006 to June 2009, VIP interpreters provided language assistance on 8,167 occasions, of which 246 instances involved written translation of documents. This language assistance was provided in a wide variety of contexts to include services occurring in the post-adjudication stage and services not related to juvenile delinquency.

The CSU also uses the contract interpreters CTS Language Link and International Language Services (ILS) to provide in-person and telephonic interpretation. Based on monthly invoices submitted by these vendors, the CSU estimates that from January 2007 to June 2009, it relied upon contractors to provide face-to-face interpretation on 807 occasions; this data does not specify whether interpretation was provided to an LEP juvenile or an LEP family member of a juvenile or the type of service involved. Of these 807 occasions, 451 involved interpretation in Spanish, 125 involved interpretation in Vietnamese, 96 involved interpretation in Korean, and the remaining occasions involved a variety of languages. The CSU also estimates that contract

¹¹ Prior to September 1, 2009, the OES relied upon Language Services Associates to provide telephonic interpretation to the Virginia courts; since September 1, the OES and all Virginia courts have been using CTS Language Link.

interpreters provided telephonic interpretation on 2,626 occasions during this time period, of which 2,296 instances involved telephonic interpretation in Spanish.

Recommendations for the OES

The OCR recommends that the OES modify CMS to track the primary language spoken by a juvenile and the juvenile's family and whether an interpreter is needed for either the juvenile or the juvenile's family.¹² While OES and JDRDC staff said that the JDRDC notes in the remarks section of CMS when an interpreter is scheduled, the OCR recommends that CMS include specific fields to ensure that the language spoken and the need for language assistance for either a juvenile or the juvenile's family is captured. To the extent feasible, the OCR also recommends that the OES further modify InterpTracker to specify to whom language services were provided (e.g., juvenile, family member, or witness),¹³ and that it also modify the DC-44 form so that contract interpreters may indicate to whom language services were provided.¹⁴ The OES should also continue to receive and review monthly reports from CTS Language Link to evaluate the volume of telephonic interpretation provided to the JDRDC and the languages involved. The OES should then tabulate all of the data pertaining to the JDRDC on an annual basis to determine the evolving language needs of the LEP service population in Fairfax County.

Recommendations for the CSU

While the OCR understands that the DJJ operates the JTS and determines what type of information is collected, CSU staff explained to the OCR that the DJJ considers the CSU's recommendations regarding the JTS. The CSU should recommend to DJJ that it expand the JTS to note the primary language spoken by a juvenile and the juvenile's family and whether an interpreter is needed. While the intake and probation staff with whom the OCR spoke indicated that they input this information in the narrative section of the JTS, the OCR recommends that the JTS include specific fields to ensure that this information is captured. The CSU should also modify the VIP service card that VIP interpreters complete to specify whether language assistance was provided to an LEP juvenile, an LEP family member of a juvenile, or to a witness.

¹² See note 10 of this Compliance Review Report. Following the issuance of this Compliance Review Report, the OCR will work with the OES to implement this recommendation in relation to its new web-based system.

¹³ According to the OES' Response to the Draft Report, the OES modified InterpTracker on December 29, 2010, to collect this data.

¹⁴ In the OES' Response to the Draft Report, the OES expressed concern regarding the reliability of this data, as often an interpreter does not know how many individuals he or she is interpreting for in a particular instance, and may not be aware of the role of a particular party to a case. The OES further said that inputting the information from an expanded DC-44 form into the Fiscal Department's database would require extensive modification of the database. While the OES did modify InterpTracker, it said that it is not practical to implement the recommendation in regard to the DC-44 form. The OCR will work with the OES to determine what is appropriate and feasible in regard to this recommendation.

In regard to telephonic interpretation, the CSU should continue to receive and review monthly invoices from CTS Language Link and ILS. The CSU should then tabulate all of this data on an annual basis to determine the evolving language needs of LEP juveniles and LEP families of juveniles.

C. Important Public Services to LEP Individuals

1. OES' Interpreter Certification Program

As referenced in Part I of this Compliance Review Report, the FLSD of the OES administers a foreign language certification program for individuals who wish to serve as interpreters in the Virginia courts. The certification process was developed by the Judicial Council of Virginia, a judicial policy-making entity that is responsible for reviewing the Virginia judicial system and its policies and practices. The certification process is voluntary for individuals wishing to serve as interpreters in the Virginia courts; while the OES strongly encourages all courts to use certified interpreters, there is no statutory requirement that courts only use certified interpreters during court proceedings. The OES administers certification exams twice a year throughout the Commonwealth. Historically, the OES has only offered the certification exams in Spanish, but beginning in 2009 the certification program expanded to also offer certification in Vietnamese and Korean. Since 2009, two individuals have taken the certification exam in Korean and one individual sat for the exam in Vietnamese; however, none of these individuals passed the exam.¹⁵

The first step of the certification process is a mandatory two-day orientation training from the OES, where the OES trains candidates on the role of the interpreter and the different modes of interpreting and provides them with a glossary of court-related terms. After completing the orientation, candidates may then sit for the exam; the first section of the certification exam involves a two-part written test. Part one of the written test covers general English language vocabulary, court-related terms, and ethics and professional conduct, and part two of the written test requires a candidate to translate ten sentences from English into the foreign language. The OES uses an automated test scanner to score part one of the written test, and relies upon a federally-certified interpreter from another state to score part two of the test. If the candidate receives a minimum of 80% on part one and receives a "pass" on part two, the candidate is eligible to register for the oral exam. In the oral portion of the certification exam, candidates must demonstrate proficiency in simultaneous and consecutive interpretation in the relevant foreign language (*e.g.*, Spanish, Vietnamese, or Korean), and in sight translation of documents. The oral exam is conducted and assessed by individuals who have obtained certification from the State Court Interpreter Certification Consortium (hereinafter Consortium), and candidates must

¹⁵ In the OES' Response to the Draft Report, the OES said that in 2010, the OES further expanded the certification program to offer an exam in Arabic. At the time of the OES' Response to the Draft Report, four candidates for certification in Arabic passed the written portion of the exam, and while three of these individuals then took the oral exam, none of them passed.

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 11

receive at least 70% on each part of the oral exam in order to pass. Successful candidates must review and agree to adhere to the Code of Professional Responsibility for Foreign Language Interpreters Serving Virginia Courts, and upon agreement are added to the OES' list of certified interpreters. The certification is for interpretation only and does not include translation.

In lieu of obtaining certification from the OES, individuals may present federal certification or certification from another state participating in the Consortium in order to be included on the OES' list of certified interpreters. Individuals who have not obtained certification from the OES or another jurisdiction may serve as non-certified contract interpreters in the Virginia courts. Such individuals may choose to participate in the two-day orientation training offered by the OES, although participation is not required.

The OES hires some certified interpreters as OES staff interpreters, but the majority of certified interpreters serve as contract interpreters. At the time of the OCR's onsite visit, the OES employed 14 certified Spanish-speaking staff interpreters and relied upon 125 certified Spanish-speaking contract interpreters, for a total of 139 certified Spanish-speaking interpreters. Additionally, the OES utilized a Vietnamese-speaking interpreter who received certification from Washington State to provide telephonic interpretation in the Virginia courts.¹⁶ The OES assigns staff interpreters to particular Virginia courts, depending on the level of need; at the time of the OCR's onsite visit, three staff interpreters were assigned to the JDRDC.

To increase the number of individuals who pass the certification exam, the OES recently hired a professional trainer to work with unsuccessful certification candidates to increase their interpretation skills prior to re-taking the exam. The first training class occurred in November 2010.¹⁷

2. CSU's Volunteer Interpreter Program

The CSU primarily relies upon volunteer interpreters participating in the CSU's VIP to communicate with LEP juveniles and LEP families of juveniles receiving intake and probation services from the CSU. The CSU recruits volunteer interpreters by advertising on its website and in local newspapers such as *The Washington Post* and *The Beacon*, and volunteers come from a wide variety of backgrounds including retired federal employees, business owners, and court clerks. Applicants must undergo a background check, provide references, and attend orientation training by the CSU. During orientation, volunteer interpreters tour the courthouse and receive

¹⁶ In the OES' Response to the Draft Report, the OES said that its list of certified interpreters now includes an Arabic-speaking interpreter and a Korean-speaking interpreter who each received certification from another state; both of these individuals reside in Virginia.

¹⁷ According to the OES' Response to the Draft Report, the OES recently offered a skills-building training for interpreters in May 2011.

an overview of the court system and the rules of interpretation, receive a copy of the VIP Training Manual and the Code of Professional Responsibility for Foreign Language Interpreters Serving Virginia Courts, and have several opportunities to shadow a seasoned interpreter as well as be shadowed by the VIP Coordinator. Volunteer interpreters are not required to have their language skills assessed or certified to participate in the VIP, although some volunteers have independently undergone language skills assessment by Language Learning Enterprises, Inc. (LLE), which "qualifies" the individual to serve as an interpreter and a translator. At the time of the OCR's onsite visit, the VIP had 35 volunteer interpreters, 13 of whom had been assessed and deemed qualified by the LLE. The majority of volunteer interpreters have completed a year-long Fundamentals of Interpretation course taught by Fairfax County Adult and Community Education, where they studied the different types of interpretation, the codes of ethics, and court terminology, and completed 25 hours of volunteer interpreting.

All of the 35 volunteer interpreters speak Spanish, and three of the volunteers also speak Italian, two also speak Portuguese, and one also speaks French. The volunteer interpreters provide both in-person and telephonic interpretation, and translate CSU documents into Spanish upon request.

3. Juvenile Intake

Pursuant to Virginia law, the CSU's Juvenile Intake Unit is responsible for reviewing complaints alleging that a juvenile is delinquent and determining the most appropriate action to take. Va. Code Ann. § 16.1-260 (2011). Complaints may be filed by any member of the public to include a law enforcement officer, a family member of a juvenile, or a school official, and the complainant may file a complaint by making an appointment to meet with one of the Juvenile Intake Unit's intake officers or by walking into one of the Juvenile Intake Unit's offices. The complainant may or may not bring the juvenile to Juvenile Intake. For juveniles brought to Juvenile Intake, Juvenile Intake Unit staff estimate that 80% of such juveniles are brought by law enforcement officers, who represent a variety of agencies including the Fairfax County Sheriff's Office, the Fairfax County Police Department, the Vienna Police Department, the Herndon Police Department, and the Virginia State Police. The Juvenile Intake Unit staff with whom the OCR spoke explained that if a juvenile is suspected of committing a minor offense, such as trespassing, the law enforcement officer will release the juvenile to a parent or guardian and will not bring the juvenile to Juvenile Intake. The CSU has a Central Intake office at the juvenile courthouse that is open between 7:00 a.m. and 12:00 a.m. and also offers intake services at satellite probation offices located in North County (Reston), South County (Alexandria) and East County (Fairfax) that are open from 8:00 a.m. to 4:30 p.m. After midnight, complainants can meet with an intake officer at the Fairfax County Juvenile Detention Center.

When a law enforcement officer transports a juvenile to Juvenile Intake, an intake officer immediately attempts to contact the juvenile's family. Intake officers use a VIP interpreter to call Spanish-speaking family members during regular business hours, or use the telephonic interpreter

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 13

CTS Language Link to contact family members after-hours or in languages other than Spanish. While the CSU does not have a written policy indicating how many times an intake officer will attempt to reach a family member, the CSU states in its response to the OCR's data request that it is a general policy to exhaust all resources prior to deciding to detain a juvenile. In cases where an intake officer has decided to release a juvenile prior to adjudication and the intake officer has experienced difficulty in contacting a family member, a law enforcement officer may go to the family's home to try to locate a responsible family member.

When filing a complaint, a complainant must complete an Intake Information Sheet; this form is available in English, Spanish, Korean, and Vietnamese and requests information about the complainant and the juvenile who is the subject of the complaint along with the nature of the complaint. The Intake Information Sheet does not specifically ask whether the complainant or the juvenile needs an interpreter. All of the Juvenile Intake offices have a sign on the wall where an LEP complainant or an LEP juvenile can point to the language spoken. Intake officers use a VIP interpreter to communicate with Spanish-speaking complainants or juveniles, or use the telephonic interpreter CTS Language Link to communicate after-hours or in languages other than Spanish. According to the Juvenile Intake Unit staff with whom the OCR spoke, intake officers note in the narrative section of JTS if a juvenile or a family member of a juvenile is LEP. The Juvenile Intake Unit staff estimated that intake officers encounter an LEP juvenile approximately once a month and encounter an LEP family member of a juvenile at least once a day, and that Spanish is the most frequently-encountered language, followed by Vietnamese and Korean.

A CSU intake officer will screen the complaint for probable cause and determine whether to file a petition, deny the complaint, or divert the complaint for informal processing, along with whether to detain the juvenile pending a detention hearing. The intake officer uses the CSU-created Intake Assessment Instrument (IAI) to determine the appropriate action to take. In completing the IAI, the intake officer notes the type of offense allegedly committed and asks the complainant questions regarding the victim of the crime, whether the juvenile has admitted guilt, whether the juvenile is willing to cooperate with a diversion program, and whether the juvenile has had prior involvement in the juvenile justice system. Depending on this information, the intake officer will decide to divert the case, file a delinquency petition, or interview the juvenile and the juvenile's family to obtain more information. If the intake officer decides to conduct an interview and the juvenile and the juvenile's family are not present, the intake officer will send an appointment letter to the juvenile's family instructing them to report to Juvenile Intake on a specific date. During the OCR's onsite visit, CSU staff said that if a juvenile or a family member of a juvenile is LEP, the CSU sends the appointment letter in the appropriate language, using a VIP interpreter to translate the letter into Spanish and CTS Language Link to translate the letter into other foreign languages. The Juvenile Intake Unit staff with whom the OCR spoke also reported calling juveniles and family members of juveniles to schedule appointments, using VIP interpreters, bilingual staff, and English-speaking family members to communicate with LEP juveniles or LEP family members.

During an interview, the intake officer asks the juvenile and the juvenile's family questions regarding the offense, the juvenile's background and school history, and any prior interventions. According to the CSU staff with whom the OCR spoke, if a juvenile or a juvenile's family is LEP, the intake officer will use a VIP interpreter, a bilingual CSU employee, or an in-person contract interpreter from CTS Language Link to communicate. The IAI contains a field where the intake officer notes whether an interpreter was used during an interview, although the field does not indicate for whom the interpreter was used or the language spoken.

If the IAI indicates that a petition should be filed and the intake officer is considering detaining the juvenile pending a detention hearing, the intake officer will complete a Detention Assessment Instrument (DAI). The DAI directs the intake officer to analyze the nature of the offense, the number of charges, prior adjudications of guilt, pending petitions, supervision status, history of failure to appear, and history of escape/runaways. Based on this analysis, the intake officer decides to detain the juvenile in the secure Juvenile Detention Center, use an alternative to secure detention such as the non-secure Less Secure Shelter Home or the CSU's Supervised Release Services program, or release the juvenile to his/her parent or guardian. Any deviation from the DAI requires supervisory approval. If the intake officer was not initially able to reach a family member upon the juvenile's arrival, the intake officer will continue to attempt to contact a family member through the morning of the detention hearing; following the hearing, the assigned probation officer and the guardian ad litem will continue to pursue contact. Attempts to contact a family member are made over the telephone or through letters, using VIP interpreters or CTS Language Link to provide oral interpretation or written translation to communicate with LEP family members.

If the intake officer decides to file a petition, the intake officer forwards the petition to the clerk's office at the JDRDC, along with a Pre-Court Information Form on which the intake officer will note whether an interpreter is needed for the parent, juvenile, complainant, or victim and the relevant language. The JDRDC sends the juvenile's family a notice instructing the juvenile and the juvenile's family to appear in court; depending on the circumstances, the first court hearing is either a detention hearing or an attorney advisement hearing.

4. Detention Hearing

If the CSU intake officer decides to detain a juvenile at the JDC, the JDRDC must hold a detention hearing on the next court date to determine whether continued detention is appropriate. Va. Code Ann. § 16.1-250 (2011). An assigned CSU probation officer reviews the juvenile's record and gathers information from the juvenile, the juvenile's family, and the school system and presents this information along with a detention recommendation to the judge at the detention hearing. According to Virginia law, a juvenile may be detained in a secure facility if there is probable cause to believe that the juvenile committed the act alleged, and one of the following conditions is present: (1) the juvenile committed an act that is a felony or Class 1

misdemeanor or violated the terms of probation or parole when the underlying charge was a felony or Class 1 misdemeanor, and there is clear and convincing evidence that the release of the juvenile would present a clear and substantial threat to the juvenile or to others, or the juvenile has threatened to flee from the court's jurisdiction or has a history of failing to appear at a court hearing during the past twelve months; (2) the juvenile has absconded from a detention home or facility; (3) the juvenile is a fugitive from outside the Commonwealth; or (4) the juvenile has failed to appear in court after being served with a summons. Va. Code Ann. § 16.1-248.1 (2011). Alternatively, a judge may decide to place a juvenile in non-secure shelter care if the juvenile is eligible for placement in a secure facility; the juvenile has failed to adhere to the terms of conditional release; the juvenile's parent, guardian, or any other person able to provide supervision cannot be reached or assume custody in a reasonable time; the juvenile does not consent to return home; or the juvenile's parent or guardian refuses to permit the juvenile to return home. *Id.* The judge may also decide to release the juvenile to the juvenile's family or may place the juvenile under the CSU's Supervised Release Services program. *See* Part II.C.6 of this Compliance Review Report for a discussion of the Supervised Release Services program.

The JDRDC is responsible for providing language assistance services for an LEP juvenile or an LEP family member of a juvenile during a detention hearing; the clerk's office at the JDRDC is responsible for coordinating all necessary language assistance. As discussed above, the CSU intake officer will forward the delinquency petition to the JDRDC along with a Pre-Court Information Form on which the intake officer will note whether an interpreter is needed for the parent, juvenile, complainant, or victim and the relevant language. During the OCR's onsite visit, JDRDC staff explained that a juvenile's attorney may also notify the JDRDC that a juvenile or a juvenile's family member is LEP by completing a Request for Interpreter form, and that the JDRDC generally has advance notice before the detention hearing that a juvenile or a juvenile's family member is LEP.

If a detention hearing involves an LEP juvenile or an LEP family member of a juvenile, the clerk's office will ensure that a staff or contract interpreter is present in the courtroom to provide interpretation; the JDRDC relies on certified staff or contract interpreters to provide interpretation in Spanish, and non-certified contractor interpreters who have been deemed qualified by the JDRDC to provide interpretation in other languages. *See* Part III.A.1 of this Compliance Review Report for a discussion of qualified contract interpreters who speak languages other than Spanish. Three Spanish-speaking certified staff interpreters are stationed at the JDRDC each day, two of whom cover the two criminal courtrooms and the third staff interpreter covers the civil courtrooms. If additional Spanish-speaking certified interpreters are necessary on a particular day, one of the OES staff interpreters stationed at the JDRDC will contact the nearby Fairfax County General District Court to request that the General District Court send over one or more additional Spanish-speaking interpreters. For languages other than Spanish, the JDRDC clerk's office contacts a relevant contract interpreter prior to the detention hearing and arranges for the contract interpreter to provide interpretation. During the OCR's

onsite visit, the OCR observed a detention hearing involving a Spanish-speaking LEP family member of a juvenile, where a staff interpreter provided interpretation in the courtroom.

The staff or contract interpreter may also provide interpretation immediately prior to the detention hearing when a CSU probation officer speaks with the juvenile and the juvenile's family. During the OCR's onsite visit, JDRDC staff told the OCR that occasionally the JDRDC will not have advance notice prior to a detention hearing that a juvenile or a family member of the juvenile is LEP, but that the JDRDC is usually able to quickly find an available staff or contract interpreter to provide language assistance. If the JDRDC is unable to quickly locate a staff or contract interpreter, the JDRDC will use a telephonic interpreter to provide language assistance.¹⁸ The JDRDC staff said that the JDRDC maintains "I speak" cards at the front counter to assist the JDRDC in identifying an unknown foreign language spoken by a juvenile or a juvenile's family member.

As of the time of the OCR's onsite visit, any court form or order that is provided to a juvenile or a juvenile's family during a detention hearing or any other court proceeding is provided only in English.^{19, 20} During the OCR's onsite visit, JDRDC staff told the OCR that the Chief Justice of the Supreme Court of Virginia has instructed the Virginia courts that all court documents may only be available in English.²¹ The JDRDC and OES staff explained that the in-person staff or

¹⁸ In the OES' Response to the Draft Report, the OES said that Spanish-speaking staff or contract interpreters are available to provide unexpected coverage for any Spanish-speaking LEP individuals, and that if the JDRDC used a telephonic interpreter it was likely for a language other than Spanish.

¹⁹ During the OCR's onsite visit of the CSU, the CSU provided the OCR with a Spanish version of the OES form DC-333, Financial Statement – Eligibility Determination for Indigent Defense Services, which the JDRDC and other Virginia courts provide to juveniles' families during hearings. The form notes at the top in both English and in Spanish that "[t]he Spanish language version of this form is provided for informational purposes only. The court will only accept the English language version, completed in English." Subsequent to the onsite visit, OES staff explained that between 2000 and 2002 the OES hired a private contractor to translate several forms into Spanish, but that the forms were for informational purposes only and individuals were required to complete the English version of the forms, and to do so in English. The OES said that courts are no longer providing the translated informational forms to the public.

²⁰ In the OES' Response to the Draft Report, the OES said that it has recommended the creation of instructional templates in Spanish to accompany frequently used district court forms. In a July 13, 2011, e-mail to Ms. Langguth, the OES said that this recommendation has been approved and that staff interpreters have begun to draft the templates.

²¹ In the OES' Response to the Draft Report, the OES stated that the Chief Justice who made this statement recently passed away, and that the statement may not reflect the current situation. The OES noted that it believes that the former Chief Justice's primary concern was that courts themselves not be required to conduct their business in a foreign language.

contract interpreters or a telephonic interpreter provides sight translations of court documents for LEP juveniles and LEP families.²²

5. Pre-Adjudication Probation Supervision

If a CSU intake officer or a judge decides to detain a juvenile in the Less Secure Shelter Home or the Juvenile Detention Center pending adjudication, a CSU intake officer completes a pre-disposition referral form referring the juvenile's case to the assigned probation officer from the appropriate CSU probation office; during the OCR's onsite visit, staff from the CSU's Probation Services Unit said that the intake officer will note in the comments section of this referral form if the juvenile or a family member of the juvenile is LEP. The Probation Services Unit has four probation service offices in Center County, North County, South County, and East County; during the OCR's onsite visit, Probation Services Unit staff explained that each office serves approximately seven high schools. The assigned probation officer visits the juvenile during the period of detention and gathers basic background information regarding the juvenile's social history, and speaks with the juvenile's family either over the telephone or in person. In collecting information on the juvenile, the probation officer may have the juvenile's family member complete a Consent to Exchange Information/Release of Information consent form, which allows the CSU to obtain confidential information regarding the juvenile from various agencies; this consent form is available in both English and Spanish.

If the juvenile or a family member is LEP and speaks Spanish, the probation officer will communicate using a VIP interpreter if available; for languages other than Spanish or if a VIP interpreter is not available, the probation officer will use CTS Language Link to provide in-person or telephonic interpretation. The Probation Services Unit staff told the OCR that a probation officer telephones family members to schedule these interviews, using VIP interpreters, CTS Language Link, or bilingual CSU employees to set up appointments with LEP family members. If a probation officer cannot reach a family member by telephone the probation officer sends a letter, which a VIP interpreter or CTS Language Link will translate into a foreign language as necessary.

6. Supervised Release Services

As discussed above, a CSU intake officer or a judge may decide to release a juvenile pending adjudication under the conditions of the CSU's Supervised Release Services (SRS) program. The SRS program is an alternative to detaining a juvenile at the Juvenile Detention Center or the Less Secure Shelter Home, and involves releasing the juvenile to the juvenile's family subject to certain conditions and highly-structured monitoring and supervision services. During the OCR's onsite visit, SRS program staff told the OCR that this is the most common disposition arising

²² In the OES' Response to the Draft Report, the OES clarified that JDRDC personnel may also submit a request to have a Spanish-speaking staff or contract interpreter translate a document into Spanish.

from a detention hearing. Once an intake officer or a judge places a juvenile under SRS, the intake officer completes and forwards the pre-disposition referral form to the assigned CSU probation officer, noting on the referral form if the juvenile or a family member of the juvenile is LEP.

The juvenile and the juvenile's family must sign and agree to abide by the Rules of Supervised Release, which is available in English and Spanish. The Rules of Supervised Release list the specific conditions of the juvenile's release, which may include adhering to an established curfew, attending school, residing at the juvenile's residence, meeting with a probation officer as directed, and submitting to alcohol and drug testing. During the OCR's onsite visit, SRS program staff stated that probation officers use VIP interpreters or the telephonic interpreter CTS Language Link to explain the Rules of Supervised Release to LEP juveniles or family members. The Rules of Supervised Release explicitly state that if a juvenile violates any of the conditions of release, the JDRDC may order placement in the Juvenile Detention Center, the Less Secure Shelter Home, or the Adult Detention Center.

To ensure that juveniles placed on SRS are abiding by the relevant conditions, a SRS probation officer visits a juvenile four times per week at the juvenile's home, place of employment, or school, and also contacts the juvenile's family at least weekly. The SRS program staff said that if a juvenile or a family member is LEP, the probation officer uses a VIP interpreter or CTS Language Link to provide telephonic interpretation or may rely on a bilingual employee at the juvenile's school to provide interpretation. However, generally speaking, probation officers do not bring interpreters with them into the field. For meetings with a juvenile or a juvenile's family involving more detailed discussions, the probation officer has the juvenile and the juvenile's family come to the relevant probation office and attempts to locate a VIP interpreter or bilingual CSU employee to provide language assistance. The SRS program staff further said that probation officers may rely on friends or family members of a LEP juvenile or family member to provide interpretation for cursory information, such as obtaining a phone number or requesting that the juvenile or the juvenile's family contact the probation officer.

7. Attorney Advisement Hearing

If the CSU has filed a delinquency petition with the JDRDC, the juvenile and the juvenile's family must attend an attorney advisement hearing at the JDRDC. At the attorney advisement hearing, the juvenile and the juvenile's family watch a videotape which was produced by Fairfax County. In this videotape, which is available in both English and Spanish, a judge with the JDRDC advises the juvenile that the purpose of the hearing is to explain the charges that are filed against the juvenile, to determine whether the juvenile will be represented by a lawyer or needs the JDRDC to appoint a lawyer, and to set a date for an adjudicatory hearing. The judge in the videotape provides information about certain rights afforded to a juvenile in delinquency proceedings, such as the right to an attorney, the right to remain silent, and the right to present

evidence. Following the review of this videotape, the juvenile appears before a clerk to indicate whether the juvenile needs the court to appoint a lawyer, and the clerk provides the juvenile with information about the charges that are pending against the juvenile and sets a date for an adjudicatory hearing. The clerk also provides the juvenile and the juvenile's family with a written copy of the juvenile's rights.

According to the OES' Response to the Draft Report, the JDRDC holds attorney advisement hearings on Tuesday, Thursday, and Friday. For hearings held on a Tuesday or Thursday, a Spanish-speaking volunteer clerk at the JDRDC performs the advisement directly in Spanish. If the volunteer clerk is not available and for hearings held on a Friday, staff or contract interpreters provide interpretation.

8. Diversion Programs

As discussed in Part II.C.3 of this Compliance Review Report, a CSU intake officer may determine that a juvenile is eligible to be diverted from formal court proceedings. Under Virginia law, a juvenile alleged to be delinquent is eligible for informal diversion if the juvenile is not alleged to have committed a violent juvenile felony, or has not previously been proceeded against informally or adjudicated delinquent for a felony. Va. Code Ann. § 16.1-260(B) (2011). According to the CSU's response to the OCR's data request, to be eligible for diversion, a juvenile must be a first-time offender, must be charged with a minor offense such as a class one misdemeanor or a non-violent felony, must admit involvement in the offense, and must not have caused any property damages or loss in excess of \$500.00. The CSU operates two diversion programs, a 90-Day Monitored Diversion program and a Diversion Hearing program.

Under the 90-Day Monitored Diversion program, a CSU diversion counselor develops a case plan for the juvenile that sets forth the sanction for the juvenile's offense along with services and support that will be provided to the juvenile and the juvenile's family, and the juvenile and the juvenile's family must sign the case plan and agree to abide by it. The CSU provided the OCR with a copy of this Intake Diversion Case Plan form; this document is currently only available in English, although the CSU staff informed the OCR that the CSU intends to translate this document into Spanish in the future. While participating in the 90-Day Monitored Diversion program, the juvenile receives weekly supervision visits from the diversion counselor at the juvenile's home, school, or work, and the diversion counselor also contacts the juvenile's family at least once every 30 days. If the juvenile or a juvenile's family member is LEP, the diversion counselor uses a VIP interpreter or an in-person or telephonic interpreter from CTS Language Link or ILS to communicate. If the juvenile successfully completes the case plan within 90 days, the case is closed with no further action; if the juvenile is unable to complete the plan within 90 days, the CSU will file a delinquency petition with the JDRDC.

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 20

Under the Diversion Hearing program, the juvenile, the juvenile's family, and the complainant participate in an informal hearing in front of a CSU intake officer who is serving as the hearing officer. When a CSU intake officer makes the decision to divert the juvenile to Diversion Hearing program, the intake officer sends the juvenile's family a notice of the upcoming diversion hearing along with an attached document that contains the following paragraph in English, Amharic, Arabic, Chinese, Farsi, Korean, Spanish, Urdu, and Vietnamese:

Your child has been charged with a crime; therefore you and your child are required to attend a hearing. If you need an interpreter for this hearing you must call (703) 246-2495²³ immediately to request an interpreter. A telephone interpreter who speaks your language will be available when you call and will help you make the request. Please do not hesitate to contact us.

At the diversion hearing, the hearing officer obtains information from the juvenile and the juvenile's family regarding the juvenile's behavior at home and in the community, and issues sanctions for the juvenile's offense along with any applicable services for the juvenile or the juvenile's family. The juvenile and the juvenile's family must sign an Intake Diversion Case Plan. If the juvenile or the juvenile's family is LEP, the CSU will use a VIP interpreter to provide language assistance in Spanish and an in-person contract interpreter from CTS Language Link or ILS to provide language assistance in other languages during the diversion hearing. The juvenile has 90 days to comply with any sanctions, otherwise, the CSU files a delinquency petition with the JDRDC.

During the OCR's onsite visit, CSU staff said that services ordered for the juvenile and the juvenile's family under these diversion programs may include mental health counseling, substance abuse treatment, or family anger management classes. The CSU provides services directly through two CSU programs: a family counseling program, where a family counselor meets with the juvenile and the juvenile's family on a weekly or bi-weekly basis for 90 days; and a program entitled Your Family System, which is a four-part seminar for juveniles and their families designed to resolve issues that have contributed to court involvement. If a juvenile or a juvenile's family member participating in the family counseling program is LEP, the family counselor will obtain language assistance services from a VIP interpreter or from CTS Language Link or ILS. If a LEP juvenile or LEP family member of a juvenile is participating in the Your Family System program, CSU staff told the OCR that the CSU does not provide an interpreter, but that the LEP individual will bring his or her own interpreter, usually another family member.

The majority of services provided under the CSU's diversion programs are provided by external contractors. The CSU staff with whom the OCR spoke stated that the contracts that the CSU has with external service providers require that the services be provided in a foreign language if

²³ This is the number for the CSU's Central Intake Office.

necessary. The CSU further said that many agencies have bilingual staff members to provide services to LEP individuals. The CSU provided the OCR with a list of agencies and individuals who provide counseling and related services to Hispanic families, which the CSU distributes to juveniles and their families. However, one CSU employee with whom the OCR spoke said that it is a struggle to find services immediately available in foreign languages.

9. Complaints

a. OES and JDRDC

At the time of the OCR's onsite visit of the OES, the OES and the JDRDC did not have any written procedures in place governing the receipt of complaints about services provided by OES staff or by staff from the Virginia courts such as the JDRDC. They also did not have any complaint forms for complainants to complete. In its response to the OCR's data request, the OES said that complaints against OES staff are directed to department directors or to the Executive Secretary of the OES. Subsequent to the OCR's onsite visit, the OES developed and posted on its website an "Interpreter Complaint Form" that individuals can complete and submit to the OES if they have a complaint about a staff or contract interpreter's performance in a Virginia court. This posted complaint form is in English.²⁴ The OES told the OCR that it is not aware of any complaints since January 1, 2007, alleging that a juvenile or a juvenile's family under the jurisdiction of the JDRDC had difficulty communicating with an OES staff member or could not understand the information that the OES was conveying. According to OES staff, the OES has never received a complaint from an LEP individual, but would utilize CTS Language Link to communicate with an LEP individual raising a complaint against an OES staff member or against an interpreter.²⁵

Complaints alleging judicial misconduct by a state court judge are submitted to and investigated by the Judicial Inquiry and Review Commission (JIRC), which is independent of the Supreme Court of Virginia. The JIRC has a complaint form on its website for complainants to complete, which is posted in English only.

As for complaints against JDRDC staff, the OES said in its data response that complaints are directed to the Clerk of Court. The OES provided the OCR with documentation showing that printed publications of the Supreme Court of Virginia contain a notice stating that individuals

²⁴ In the OES' Response to the Draft Report, the OES said that it recently translated the Interpreter Complaint Form into Spanish and includes the translated form in the Appendices of the OES Guidelines.

²⁵ According to the OES' Response to the Draft Report, the OES recently received a complaint from an LEP individual alleging that an interpreter provided ineffective assistance at a court other than the JDRDC. The OES used CTS Language Link to communicate with the complainant, and found that the interpreter was provided by the complainant's attorney and was not a staff or contract interpreter.

with disabilities who believe they have been discriminated against may file a grievance through local court system officials; other than this notice, the OES or the JDRDC do not have any documentation explaining to individuals how to file a complaint against JDRDC staff, and the JDRDC has not developed any complaint forms for individuals to complete.²⁶ During the OCR's onsite visit, JDRDC staff explained that if an individual wishes to complain of misconduct by a JDRDC staff member, the Clerk of Court will direct the individual to submit the complaint in writing. As of the time of the OCR's onsite visit, the JDRDC staff said that the JDRDC has not received any complaints alleging that a juvenile or a juvenile's family member had difficulty communicating with the JDRDC due to a language barrier, and had never received a complaint from an LEP juvenile or an LEP family member of a juvenile. The JDRDC staff told the OCR that if the JDRDC did receive a complaint from an LEP individual, the JDRDC would use a staff interpreter to communicate with Spanish-speaking complainants and a contract interpreter to communicate with complainants speaking other foreign languages.

b. CSU

The CSU's complaint procedures are set forth in an August 1, 2009, Memorandum from the former CSU Director James Dedes to CSU staff, which is available in English and in Spanish. According to this Memorandum, when a member of the public makes a complaint regarding the CSU's services, CSU staff should try to resolve the complaint at the "line level" whenever possible (*e.g.*, administrative assistant, or probation officer). If the complaint cannot be resolved in this manner, CSU staff should offer the complainant the opportunity to discuss the matter with a supervisor or to file a formal written complaint with the Director of the CSU. The CSU has a Public Complaint Form in English and in Spanish that complainants may complete. According to the Memorandum, if a complainant needs language assistance, CSU staff should use a VIP interpreter or contact CTS Language Link. The CSU displays both the Memorandum and the Public Complaint Form at the reception desk of every CSU facility. During the OCR's onsite visit, CSU staff with whom the OCR spoke said that the CSU has never received a complaint alleging that an LEP juvenile or an LEP family member of a juvenile had difficulty communicating with the CSU or understanding the information that the CSU was conveying, and has never received a complaint from an LEP complainant.

²⁶ In the OES' Response to the Draft Report, the OES stated that the OES recently developed a general court personnel complaint form and translated it into Spanish, and includes the English and Spanish versions in the Appendices of the OES Guidelines. The OES said that while complaints against court personnel are ultimately addressed at the local level and the OES has no supervisory authority over clerks, the OES will encourage courts to use the complaint form.

10. Community Outreach

a. OES and JDRDC

Neither the OES nor the JDRDC have engaged in any specific outreach to LEP juveniles or family members in Fairfax County.²⁷ During the OCR's onsite visit of the OES, OES staff said that in the fall of 2009 employees of the FLSD of the OES participated in the statewide Grant to Encourage Arrest Policies and Enforcement of Protection Orders Conference, where the FLSD spoke about the impact of cultural issues on domestic violence to an audience of law enforcement officers, prosecutors, judges, victim advocates, and other professionals.

b. CSU

During the OCR's onsite visit of the CSU, the CSU staff with whom the OCR spoke said that the CSU has not conducted any specific outreach to community organizations serving LEP juveniles or family members in Fairfax County. The CSU, however, does operate a Parents Information/Support Group every Tuesday at the JDRDC and every 2nd and 4th Thursday at the CSU's South County office; the CSU staff told the OCR that if the CSU is aware that a family member needs an interpreter, the CSU will ensure that a VIP interpreter or a contract interpreter is present. The CSU staff also stated that at the request of Bailey's Elementary School and Chantilly High School, CSU staff have attended meetings between school personnel and LEP family members where the CSU staff brought along a VIP interpreter to facilitate communication.

Recommendations for the OES

For recommendations relating to the services discussed in Part II.C, *see* Part III of this Compliance Review Report.

Recommendations for the CSU

For recommendations relating to the services discussed in Part II.C, *see* Part III of this Compliance Review Report.

²⁷ In the OES' July 13, 2011, e-mail to the OCR, the OES said that staff interpreters were attending a public meeting that day of the OES-organized Judicial Boundary Realignment Study Committee, and that the Committee will also be prepared to utilize telephonic interpreters as necessary.

D. Available Resources

1. OES and JDRDC

The OES' fiscal year is July 1 to June 30. The OES' Department of Fiscal Services develops and administers the budget for all courts within the Virginia judicial system, including the JDRDC. According to the OES' response to the OCR's data request, the OES' total operational budget for the Virginia judicial system was \$326,073,165.00 in fiscal year 2007, \$360,058,174.00 in fiscal year 2008, and \$370,959,151.00 in fiscal year 2009. Of these amounts, the OES budgeted \$4,215,175.00 for language assistance expenses throughout the Virginia judicial system in fiscal year 2007, \$4,750,665.00 in fiscal year 2008, and \$4,733,512.00 in fiscal year 2009. In regard to the JDRDC, the OES spent a total of \$455,266.00 on staff and contract interpreters at the JDRDC in fiscal year 2007, \$520,759.00 in fiscal year 2008, and \$546,354.00 in fiscal year 2009.

2. CSU

The CSU's fiscal year is also July 1 to June 30. According to the CSU's response to the OCR's data request, the CSU's total budget was \$20,300,176.00 in fiscal year 2007, \$21,279,447.00 in fiscal year 2008, and \$21,799,359.00 in fiscal year 2009. The CSU said that it spent \$50,612.00 in language assistance services to LEP juveniles and families in fiscal year 2007, \$65,973.00 in fiscal year 2008, and \$44,653.00 to date in fiscal year 2009; during the OCR's onsite visit, CSU staff said that these figures represent funding paid to the contract interpreters CTS Language Link and ILS and do not include additional compensation paid to bilingual CSU employees. *See* Part III.A.3 of this Compliance Review Report for a discussion of the additional compensation that the CSU provides to bilingual employees.

Recommendations for the OES

The OES should undertake a review of its human and capital resources to assess how well it is responding to the needs of the LEP populations in Fairfax County. One part of this review should include gathering feedback from the local LEP service population in Fairfax County, along with local organizations and associations representing LEP juveniles and families of juveniles, on how the OES can provide more effective language assistance services at the JDRDC. For example, the OES may wish to develop a written survey of community groups serving LEP juveniles and LEP families of juveniles in Fairfax County, or to convene a focus group of LEP juveniles and LEP families of juveniles.²⁸ In analyzing any feedback, the OES should be sure to assess whether it has a sufficient number of staff and contract interpreters

²⁸ In the OES' Response to the Draft Report, the OES said that it has posted on the OES' website a survey for local agencies and community organizations designed to assess how the OES can provide more effective language services.

stationed at the JDRDC. The OES should also work with local community organizations to determine what additional steps the OES can take to attract more individuals who may serve as certified or qualified interpreters at the JDRDC.²⁹ Based on the large number of Fairfax County residents who speak who speak Korean and Vietnamese, the OES should take action to recruit individuals who speak these languages in particular.

Recommendations for the CSU

The CSU should also conduct a thorough review of its human and capital resources in assessing how well it is responding to the needs of the LEP juveniles and LEP families of juveniles in Fairfax County. The OCR recommends that the CSU gather feedback from the local LEP service population in Fairfax County, along with local organizations and associations representing LEP juveniles and families of juveniles, on how the CSU can provide more effective language assistance services to LEP juveniles and LEP families of juveniles. In doing so, the CSU may wish to develop a written survey of community groups serving LEP juveniles and LEP families of juveniles in Fairfax County, or to convene a focus group of LEP juveniles and LEP families of juveniles. The CSU should also work with community organizations to determine what additional steps the CSU can take to recruit volunteer interpreters for its VIP and to recruit bilingual employees who are qualified to provide interpretation and translation, particularly individuals who speak prevalent languages such as Korean, Vietnamese, Chinese, Arabic, and African languages. The CSU may also rely upon these community organizations to identify all of the community resources that are available to provide cost-effective and reliable language assistance services, in appropriate circumstances, to LEP juveniles and families in Fairfax County.

III. General Language Services

To provide the foregoing services to LEP juveniles and LEP families of juveniles, the OES and the JDRDC and the CSU offer both oral and written language assistance.

A. Oral Language Services

1. OES and JDRDC

As discussed in Part II.C of this Compliance Review Report, as of the time of the OCR's onsite visit, the JDRDC communicates with LEP juveniles and LEP families of juveniles during court proceedings through the following means: (1) certified staff and contract interpreters who speak Spanish; (2) non-certified contract interpreters who speak languages other than Spanish; and (3) telephonic contract interpreters. The JDRDC staff with whom the OCR spoke reported that Spanish is the most frequently-encountered foreign language spoken by a juvenile or a juvenile's

²⁹ According to the OES' Response to the Draft Report, the survey referenced in note 28 solicits this information.

family, and that the JDRDC has also encountered Vietnamese, Korean, Urdu, Punjabi, and Farsi.

The OES Guidelines referenced previously in Part I.A. of this Compliance Review Report set forth the best policies and practices for Virginia courts to follow in providing services to LEP individuals, and are located on the OES' internet site which is publicly available. During the OCR's onsite visit, JDRDC staff told the OCR that the JDRDC adheres to the policies outlined in the OES Guidelines. The OES Guidelines contain sections addressing the following topics: court interpreting terminology; the OES certification program; how to assess the need for an interpreter and how to use an interpreter during court proceedings; how to locate an interpreter; the code of professional responsibility for interpreters; telephone interpreting; document translation; payment of court interpreters; and methods of interpretation for the deaf and hard of hearing³⁰. The OES Guidelines reference Va. Stat. Ann. §§ 19.2-164 (2011) and 8.01-384.1:1 (2011), which address the provision of interpreters in criminal and civil cases. *See* Part I.A. of this Compliance Review Report for a discussion of these statutes. The OES Guidelines state that interpreter services are necessary for LEP individuals to protect their rights to the fair and efficient administration of justice and to ensure that judges can understand their testimony. According to the OES Guidelines, when a party does not request an interpreter but appears to have a limited ability to communicate in English, the court should conduct a brief *voir dire* or questioning of the individual to determine the extent of the individual's ability to comprehend English. Upon conducting the *voir dire*, if there is any doubt about the ability of the person to speak or understand English, the OES recommends that an interpreter be provided.

The OES Guidelines state that for LEP individuals who speak Spanish, the Judicial Council of Virginia encourages the use of individuals who are certified to interpret; the Guidelines contain an overview of the court's certification program, as discussed in Part II.C.1 of this Compliance Review Report. The OES Guidelines instruct the courts to consult the OES' Certified Foreign Language Interpreter List, which is available through the OES and on its intranet website. At the time of the OCR's onsite visit, there were 14 Spanish-speaking certified staff interpreters and 125 Spanish-speaking certified contract interpreters on this list;³¹ three of the staff interpreters are stationed at the JDRDC, with two of the staff interpreters covering the two criminal courtrooms and the third staff interpreter covering the civil courtroom. While the three staff interpreter positions were filled at the time of the OCR's onsite visit, on September 13, 2010, the OES informed the OCR that one of these positions is currently vacant, but advertised.³² During the OCR's onsite visit, the OCR spoke with two OES staff interpreters stationed at the JDRDC, and they explained that one of the staff interpreters is responsible for ensuring that there are a

³⁰ In the OES' Response to the Draft Report, the OES indicated that has removed the section on interpretation for the deaf and hard of hearing from the OES Guidelines.

³¹ *See* note 16.

³² In the OES' Response to the Draft Report, the OES said that the vacancy will be filled on May 31, 2011 with a certified Spanish-speaking interpreter.

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 27

sufficient number of Spanish-speaking interpreters at the JDRDC and at the nearby Fairfax County General District Court on each particular day. The staff interpreters also stated that the JDRDC only uses certified staff or contract interpreters to provide language assistance in Spanish.

When the JDRDC clerk's office receives an advance request for a Spanish interpreter for a juvenile or a juvenile's family member from a CSU intake officer, a juvenile's attorney, or another party, the clerk's office forwards the request to the staff interpreter in charge of coordinating Spanish-language interpretation at the JDRDC and the General District Court. The staff interpreters said that each afternoon they also review the court docket for the following day to identify juveniles or juveniles' families who have Spanish surnames and may need an interpreter. According to the staff interpreters, based on this information, the staff interpreter serving as the coordinator will determine if additional Spanish-speaking interpreters are necessary for the following day, and will arrange for additional Spanish-speaking contract interpreters from the OES' list of certified interpreters to be present at the JDRDC.

Subsequent to the OCR's onsite visit of the JDRDC, the OCR spoke with a contract interpreter who has provided interpretation at the JDRDC. This contract interpreter told the OCR that a staff interpreter stationed at a court in Harrisonburg, Virginia is now coordinating Spanish-language interpretation at the Northern Virginia courts, including the JDRDC and the General District Court. The contract interpreter expressed concern to the OCR that this coordinator is often not scheduling a sufficient number of Spanish-speaking interpreters at the JDRDC, resulting in staff interpreters at the JDRDC running from courtroom to courtroom in an attempt to provide coverage.³³

For languages other than Spanish, the OES Guidelines state that each court should maintain a list of interpreters whose skills have been meaningfully screened and assessed by the court. When assessing an interpreter's skills, the OES Guidelines recommend that courts consider criteria such as whether the individual is a member of an interpreter organization requiring peer sponsorship and monitoring or testing, whether the individual serves an interpreter for an official organization, and whether the individual is able to effectively communicate in English. The OES Guidelines also provide a list of questions that a court may ask a potential interpreter regarding issues such as the individual's knowledge of the foreign language, interpreting and translating skills and experience, knowledge of the modes of interpreting, and any conflicts of interest.

³³ In the OES' Response to the Draft Report, the OES explained that beginning in May 2010, the OES began using a centralized scheduling system in the highest-volume courts. Under this system, staff interpreters responsible for coordinating interpreter coverage in a courtroom relay any contract interpreter needs to the OES' Foreign Language Services Coordinator, and the Foreign Language Services Coordinator contacts appropriate contract interpreters to cover the court's needs. The OES stated that the goal of the program is to reduce some of the administrative responsibilities of staff interpreters and enable them to spend more time providing interpretation. According to the OES, the staff interpreter in Harrisonburg, Virginia has assisted in the implementation of this system, but his support is currently restricted to once every other month.

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 28

During the OCR's onsite visit, JDRDC staff said that the JDRDC clerk's office has a list of different agencies and individuals who serve as contract interpreters for languages other than Spanish. The JDRDC staff explained that if an individual or company is interested in serving as a contract interpreter for the JDRDC, the Fairfax County Circuit Court, or the Fairfax County General District Court, the individual or company submits a resume to the Fairfax County Circuit Court and the court follows up on any references; if the court deems the individual or company to be qualified, the individual or company is added to the list maintained by the JDRDC. Subsequent to the OCR's onsite visit, the OES said the list maintained by the JDRDC includes two companies, Court Interpreting Services and Kool Languages, which provide interpretation in numerous languages, along with an individual contractor who provides interpretation in Farsi and an individual contractor who provides interpretation in Hindi, Punjabi, and Urdu. When the JDRDC clerk's office receives a request for an interpreter in a language other than Spanish, a member of the clerk's office schedules an interpreter from this list to be present at the court proceeding.

During the OCR's onsite visit of the OES, OES staff said that the OES has begun to compile a master list of interpreters who speak languages other than English and have been deemed qualified by a Virginia court. In the OES' response to the OCR's data request, the OES said that consistent with the preference place on certified interpreters, the OES compensates certified contractors more than non-certified contractors, at a rate of \$60.00 per hour for certified contractors versus \$40.00 per hour for non-certified contractors.

A JDRDC judge with whom the OCR spoke stated that there is usually an interpreter present in the courtroom when needed, and if one is not present and the LEP juvenile or family speaks Spanish, the judge's staff will page an interpreter to that courtroom. The judge told the OCR that she has been satisfied with the language assistance provided by staff and contract interpreters. As discussed in Part II.C.4 of this Compliance Review Report, as of the time of the OCR's onsite visit, all documents and orders issued by the JDRDC are in English only and must be completed in English; the judge told the OCR that she explains the content of a document during a court proceeding, and if an individual is LEP, a staff or contract interpreter will then interpret her explanation. The staff interpreters with whom the OCR spoke confirmed this, and indicated that staff and contract interpreters also provide sight translations of documents for LEP individuals outside of the courtroom.

In regard to the use of telephonic interpreters, the OES Guidelines state that such interpreters may be used in the following situations: in an emergency situation, when no on-site interpreter is available; for short (30 minutes or less), non-emergency matters, where no on-site interpreter is available; or to communicate with LEP individuals at the front window. Prior to September 1, 2009, the OES had a contract with the contractor Language Service Associates to provide interpretation in Virginia courts; as of September 1, 2009, the OES has a contract with CTS Language Link. The JDRDC staff told the OCR that judges may contact CTS Language Link

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 29

directly following instructions that are posted in every courtroom, and that judges at the JDRDC use a telephonic interpreter approximately once a week for a short hearing or if there is a rare language involved and an in-person interpreter can not be located. The judge with whom the OCR spoke also reported using a telephonic interpreter approximately once a week for short proceedings.

The OES Guidelines state that judges, magistrates, or court staff should not serve as interpreters during court proceedings, and that it is “discouraged” to use friends or family members of an LEP individual in court proceedings. In the OES’ response to the OCR’s data request, the OES said that the JDRDC does not use friends, family members, or other informal interpreters to provide language assistance, and during the OCR’s onsite visits the OES and JDRDC staff confirmed this. The JDRDC told the OCR that if an LEP juvenile or LEP family member calls the JDRDC for information the JDRDC may use a Spanish-speaking secretary to communicate with the LEP individual; otherwise, the JDRDC uses CTS Language Link or a volunteer interpreter from the CSU’s VIP to communicate with LEP callers.

As for training of JDRDC employees on the policies and procedures for providing language assistance, the OES conducts regular presentations for judges, clerks, and magistrates throughout the Virginia judicial system on the use of interpreters and the OES Guidelines. During the OCR’s onsite visit, the OES staff explained that this training is provided through conferences and regional trainings several times a year, and that the OES also has a pre-bench training for all new judges every year where the FLSD staff trains judges on the how to obtain language assistance for LEP individuals. The OES provided the OCR with copies of the slides used during several presentations, which address issues such as how to obtain a staff or contract interpreter, how to use an interpreter, and how to determine whether an interpreter is qualified. The OES also stated that in the fall of 2009 the OES held several training sessions for court clerks throughout Virginia providing an overview of the Title VI regulations, including how to access CTS Language Link. The OES also partners with the Community College Workforce Alliance to offer free regional Command Spanish courses for staff from the JDRDC and other courts, where interested employees can take a brief course to learn basic Spanish skills along with information on Spanish-speaking cultures. Additionally, OES staff told the OCR that the OES provides ongoing training to both staff and contract interpreters on how to provide effective language assistance services, and that the OES reimburses staff interpreters up to \$600.00 per year for continuing education classes on interpretation.

2. CSU

When providing intake and probation services in Fairfax County, the CSU communicates with LEP juveniles and LEP families of juveniles through the following means: (1) volunteer interpreters from the CSU's VIP; (2) telephonic and in-person interpreters from CTS Language Link or ILS; (3) bilingual CSU employees; and (4) family and friends of an LEP juvenile or LEP

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 30

family member of a juvenile. The CSU staff with whom the OCR spoke reported that the LEP juveniles or LEP families of juveniles whom the CSU encounters primarily speak Spanish, followed by Vietnamese and Korean.

The CSU provided the OCR with a copy of Fairfax County's Procedural Memorandum No. 02-08 (effective April 30, 2004), which is Fairfax County's Language Access Policy. This Memorandum establishes the position of a county Language Access Coordinator, who is responsible for providing guidance, information and resources to county agencies serving LEP customers. However, during the OCR's onsite visit, the CSU staff said that the county eliminated this position due to budgetary cuts. The Memorandum states that each agency is responsible for identifying appropriate resources for communicating with LEP customers and for creating and disseminating agency protocols related to language assistance services.

The CSU has created a document entitled "JDRDC Interpreter Request Guidelines" (Interpreter Guidelines), which the CSU distributes to employees during new employee orientation and is accessible on the CSU's intranet site. The Interpreter Guidelines state that if an employee has an immediate need (within 24 hours) for a Spanish-speaking in-person or telephonic interpreter, the employee should call the VIP office. If the request for a Spanish-speaking interpreter is not urgent, the employee should email a Volunteer Interpreter Advance Request Form to the VIP office; this form is available on the CSU's intranet site. If the VIP cannot assist, the employee should call CTS Language Link to request an in-person or telephonic interpreter or may fax a request form to CTS Language Link. The Interpreter Guidelines state that if an employee needs an in-person interpreter and the VIP or CTS Language Link are unable to assist, the employee should call or fax a request to ILS. Additionally, whenever an employee uses CTS Language Link or ILS the employee should complete the Receipt of Interpreter Services located on the CSU's intranet site and send the form to the Director of Administrative Services. The Interpreter Guidelines also include a section on obtaining Sign Language Interpretation.

At the time of the OCR's onsite visit, the CSU's VIP had 35 volunteer interpreters, all of whom speak Spanish. Three of the volunteer interpreters also speak Italian, two also speak Portuguese, and one also speaks French. *See* Part II.C.2 of this Compliance Review Report for a detailed discussion of the CSU's VIP. During the OCR's onsite visit, none of the CSU employees with whom the OCR spoke reported using a VIP interpreter for a language other than Spanish. Employees from the intake and probation offices told the OCR that they rely on VIP interpreters in a variety of situations, such as to telephone family members when a juvenile is brought to intake, to communicate with juveniles and juveniles' families during the intake process, to telephone families to set up appointments, to communicate with juveniles and families during pre-adjudication interviews with probation officers and employees of the SRS program, and to communicate with juveniles and families during diversion hearings.

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 31

As for the contract interpreters CTS Language Link and ILS, CSU staff told the OCR that they rely on these contractors for languages other than Spanish or if a VIP interpreter is not available; it appears that CSU employees primarily rely upon CTS Language Link, and only one intake or probation staff member with whom the OCR spoke mentioned contacting ILS. The CSU staff explained that employees can contact these vendors directly to request interpretation services over the phone or in person. The CSU staff reported using CTS Language Link to provide telephonic interpretation in numerous situations, including to call a juvenile's family when a juvenile is brought to intake and to communicate with juveniles and family members during the intake process; to telephone family members to set up appointments; and to communicate with juveniles who are released on SRS. The CSU staff said that intake or probation officers request that CTS Language Link provided face-to-face interpretation during more detailed interactions with juveniles or juveniles' families, such as when an intake officer interviews a juvenile and a juvenile's family and during a diversion hearing. The CSU staff also reported using CTS Language Link to translate documents into a foreign language, such as letters to families setting up appointments.

In regard to bilingual CSU employees, during the OCR's interviews with intake and probation staff, staff reported using bilingual employees to contact juveniles and families to set up appointments, to provide interpretation during meetings between SRS staff and juveniles and their families, and to provide interpretation during intake interviews of juveniles and their families. The CSU provided a list of 31 bilingual employees who speak a variety of languages including Spanish, Italian, Greek, Vietnamese, Mandarin, Cambodian, French, Akan, Tiwi, Ga, French, Creole, Thai, Afrikanas, Somali, Chinese, Burmese, Korean, Krio, and Arabic. Nine of these employees are listed as authorized to serve as an interpreter; these nine employees all speak Spanish and represent six probation officers, one intake officer, the VIP Coordinator, and an administrative assistant in the Administrative Services Unit. During the OCR's onsite visit, CSU staff said that these nine employees have taken and passed oral and written language proficiency tests administered LLE, and that CSU employees would only rely on employees who have not been authorized to interpret in emergency situations. The CSU staff explained that the CSU developed the list of bilingual employees for the purposes of responding to the OCR's data request but does not otherwise maintain a list of bilingual employees, and that employees generally know who the bilingual employees are. The intake and probation staff with whom the OCR spoke did not specify whether the bilingual employees whom they have used to provide interpretation have been authorized to interpret.

The CSU provided the OCR with Fairfax County memorandum No. 52, Foreign Language Skills Compensation, which authorizes county agencies to provide a foreign language stipend of \$1,300.00 per year for bilingual employees who meet general proficiency skill requirements and use their foreign language skills as part of their job for at least 35% of the time. The CSU submitted documentation demonstrating that the CSU provides this additional foreign language stipend to eight of the nine Spanish-speaking employees who have been deemed proficient by

LLE.³⁴ The CSU staff said that the job announcements for probation officer positions state that foreign language skills is a preferred qualification.

In its response to the OCR's data request, the CSU said that CSU employees use family members or friends of a LEP juvenile or LEP family member to provide interpretation on rare occasions and primarily for initial contacts with LEP individuals to set up appointments. The CSU provided some examples of when this may occur, such as when a probation officer does not discover that a juvenile's family member is LEP until the probation officer contacts the family member to set up an appointment; a probation officer is on a home visit and learns that a family member does not speak English, and a formal CSU interpreter is not available; or there is an emergency that requires immediate attention. During the OCR's onsite visit, CSU management told the OCR that during new employee orientation, the CSU explicitly discourages employees from using friends, family members, or other third parties to provide language assistance. The CSU staff with whom the OCR spoke reported using family members or friends of LEP individuals to provide interpretation to set up appointments and get cursory information such as a phone number.

As for training CSU employees on how to communicate with LEP juveniles or LEP families of juveniles, the CSU said in its data response that it addresses these issues during new employee orientation, where the CSU informs employees of the VIP, provides employees with the Interpreter Guidelines, and explains the procedures for contacting a contract interpreter. The CSU stated that updates to the Interpreter Guidelines and other materials related to language assistance are provided to employees via email, the CSU's intranet, and the JDRDC's bi-weekly newsletter. The CSU provided the OCR with a copy of an article posted in the JDRDC's newsletter, *JDRDC Full Court Press*, where the CSU discusses its account with CTS Language Link and explains how to contact CTS Language Link and the VIP.

B. Written Language Services

1. OES and JDRDC

As of the time of the OCR's onsite visit, all of the JDRDC's documents or forms utilized in connection with pre-adjudication proceedings are in English only.³⁵ The JDRDC and OES staff explained to the OCR that the OES staff interpreters, contract interpreters, or a telephonic

³⁴ The CSU staff explained that the ninth employee also works for another county agency, and that the other agency pays the employee the foreign language stipend.

³⁵ See note 20.

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 33

interpreter provide a sight translation of a document for a LEP juvenile or LEP family member of a juvenile.³⁶

The JDRDC does not have any signage in languages other than English to communicate with LEP juveniles or LEP families of juveniles. The OES' website, www.courts.state.va.us, and the JDRDC's website, www.fairfaxcounty.gov/courts/jdr, are entirely in English.

2. CSU

In its response to the OCR's data request, the CSU said that it translates documents into languages other than English based on demand, and that since many of the CSU's clients are Spanish-speaking the CSU has translated various documents into Spanish. The CSU provided the OCR with copies of the following documents used prior to adjudication that have been translated into Spanish: an Intake Information Sheet, which is also available in Korean and Vietnamese; the Rules of Supervised Release; the Public Complaint Form and the Memorandum discussing the CSU's complaint procedures; brochures on juvenile intake offices and probation offices; a list of agencies and individuals who serve Hispanic families; the Consent to Exchange Information/Release of Information form; a SRS Customer Satisfaction Survey; an Intake Officer Customer Satisfaction Survey; and a Probation Customer Satisfaction Survey. The CSU also provided the OCR with examples of letters used to schedule appointments with families of juveniles that have been translated in Spanish, along with a document that contains information in English, Amharic, Arabic, Chinese, Farsi, Korean, Spanish, Urdu, and Vietnamese explaining that a family member should contact the CSU if the individual needs an interpreter; the CSU encloses this document with the written notice of an upcoming diversion hearing.

The CSU uses VIP interpreters or CTS Language Link to translate documents into foreign languages, including letters to family members that can be translated on an as-needed basis. The CSU uses a VIP interpreter not involved in the initial translation to review and verify the accuracy of documents that have been translated into Spanish. The CSU staff distribute the translated documents to LEP juveniles or LEP families of juveniles as needed, and several forms, such as the CSU informational brochures and the Public Complaint Form, are available at CSU facilities.

As for signage used to communicate with juveniles and juveniles' families in connection with delinquency proceedings, the CSU has the following posters in Spanish located in the juvenile intake lobby area: a We Speak Your Language poster, where an LEP individual can point to the language that the individual speaks; child supervision guidelines; a poster regarding the program SoberRide; and a poster regarding dialing 2-1-1 to find appropriate services. The CSU also has posters in Spanish on gang prevention located in the SRS unit and in the Family Counseling Unit; and a sign in Spanish located by the customer service desk of the Records Room requesting

³⁶ See note 22.

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 34

that clients do not ask legal advice from court personnel or interpreters. The CSU's website, www.fairfaxcounty.gov/courts/jdr/jdrServices, is entirely in English.

Recommendations for the OES

The OES is currently taking steps to provide services to LEP juveniles and LEP families of juveniles under the jurisdiction of the JDRDC, such as administering a foreign language certification exam in Spanish, Vietnamese, and Korean, publishing the OES Guidelines, and providing training for JDRDC personnel on the provision of language assistance. However, the OES should build on these steps to provide more effective language assistance to LEP juveniles and LEP families of juveniles and to ensure that the OES is meeting its obligations under Title VI and the Safe Streets Act.

As an initial matter, while the scope of the OCR's compliance review is the provision of language assistance services to juveniles and juveniles' families under the jurisdiction of the JDRDC, the OCR strongly recommends that the OES implement our recommendations throughout the Virginia judicial system. During the course of this compliance review, the OCR has become aware of several LEP individuals expressing the following concerns to the DOJ regarding inadequate language assistance services in other Virginia courts.³⁷ One Spanish-speaking LEP individual told the DOJ that when the individual appeared at the Hanover General District Court in February 2010 for a hearing, the court told the individual that an interpreter was not available and that the individual would have to return in a few months when an interpreter would be present.³⁸ The individual also alleged that the court provided the individual with an information sheet that was in English and did not provide any translation or interpretation of this document. The DOJ also learned of another recent instance where the clerk's office of the Alexandria Circuit Court allegedly told an LEP individual's attorney that the court only provides interpreters during criminal proceedings and does *not* provide interpreters during civil proceedings.^{39, 40} While the

³⁷ The OCR did not seek to verify the veracity of these allegations.

³⁸ In the OES' Response to the Draft Report, the OES said that the OES confirmed with the clerk's office at the Hanover General District Court that telephone interpreters may be a useful option in some cases when an interpreter is not physically present.

³⁹ According to the OES' Response to the Draft Report, the OES confirmed with the clerk at the Alexandria Circuit Court that the OES reimburses interpreters for language assistance services in both criminal and civil cases, and the clerk then reiterated this with his staff.

⁴⁰ While the OCR is mindful of the OES' concerns expressed in its Response to the Draft Report that these allegations are unverified, it is important to bring these anecdotal reports to the attention of the OES as they reflect several community members' perceptions of the provision of language assistance in the Virginia courts and their concerns that courts are not providing effective assistance. The OCR appreciates the OES taking prompt action to follow up with the courts involved in these alleged incidents to clarify the OES' policy on the provision of language assistance services.

OES told the OCR during our review that interpreters are always provided in both criminal and civil proceedings throughout the Virginia courts, if these recent allegations are true it does not appear that this is always the case. The OCR would like to remind the OES that it has an obligation under Title VI and the Safe Streets Act to ensure that LEP individuals are always provided with effective language assistance services throughout the Virginia judicial system, regardless of the type of proceeding.

In regard to language assistance services provided at the JDRDC, the OES Guidelines provide very helpful information regarding the types of language assistance services that are available to communicate with LEP individuals and how court employees can access these services. However, the OES should modify some sections of the OES Guidelines to ensure that the information contained therein is consistent with the DOJ Guidance and with the legal requirements under Title VI and the Safe Streets Act. As an initial matter, the OES Guidelines should clearly explain that all court personnel have an obligation under Title VI to ensure that LEP parties, witnesses, or parents or guardians of juveniles have meaningful access to court services in *all* court proceedings and programs, whether criminal or civil. Additionally, the OES should stress that language assistance services must be free of charge to the LEP individual.⁴¹ While the OCR understands that Virginia statutes § 19.2-164 and § 8.01-384.1:1 contain language that provide courts with discretion in deciding whether to provide an interpreter during civil proceedings and allow courts to charge an LEP individual for the cost of an interpreter under certain circumstances, the OES should understand and inform courts that the federal requirement to provide free language assistance to LEP individuals applies notwithstanding conflicting state or local laws.⁴² *See Language Access Guidance Letter to State Courts from Assistant Attorney General Thomas E. Perez* (August 17, 2010) at www.lep.gov.⁴³

Currently, the OES Guidelines state that a minor child or other relative or friend of an LEP individual may be used as an interpreter, but that "it is not a best practice and is discouraged." The OES should strengthen this language to state that courts should generally *not* use friends, family members, or other third-parties to interpret, and that such individuals should only be used

⁴¹ In the OES' Response to the Draft Report, it stated that it modified the OES Guidelines accordingly.

⁴² During the course of our review, the OCR learned that the Virginia General Assembly passed House Bill No. 1338, which would amend Va. Code Ann. § 19.2-164 to further allow a court to assess the cost of an interpreter against an LEP defendant in any criminal case in which the LEP individual is found guilty. In the OES' Response to the Draft Report, the OES said that the bill is no longer active as the Senate Courts of Justice Committee passed by the bill indefinitely on March 8, 2010. As discussed above, a state law such as House Bill No. 1338 does not alter the OES' obligations under federal law.

⁴³ In the OES' Response to the Draft Report, it indicated that it has included a copy of Assistant Attorney General Perez's letter in the Appendices of the OES Guidelines.

in unforeseen, emergency circumstances while awaiting a certified or qualified interpreter.⁴⁴ As the OES notes in the OES Guidelines, use of such individuals to provide interpretation raises issues of confidentiality, privacy, and reliability. For a discussion of additional subject matters that the OCR recommends that the OES add to its OES Guidelines, *see* Part IV of this Compliance Review Report.

Once the OES has revised the OES Guidelines consistent with the recommendations contained in this Compliance Review Report, the OES should immediately train JDRDC judges and clerks on the revised OES Guidelines to ensure that all employees are aware of the proper procedures for providing language assistance services. Following this initial training, the OES should continue to have periodic training sessions for JDRDC personnel focused specifically on providing language assistance services to LEP individuals. As part of its training program, the OES may wish to show the enclosed training DVD *Breaking Down the Language Barrier: Translating Limited English Proficiency into Practice*. Other agencies have found this DVD helpful in training employees on how to provide services effectively to LEP populations.

While the OES has recently expanded its certification program to offer certification in the languages of Korean and Vietnamese, which are two frequently-spoken languages in Fairfax County, as of this date only two Korean-speaking individuals and one Vietnamese-speaking individual have taken the certification exam, and none of these individuals passed the exam. The OES should conduct outreach to the Korean and Vietnamese communities to recruit bilingual individuals who are interested in serving as certified interpreters in the Virginia courts, perhaps by advertising its certification program in Korean and Vietnamese language newspapers or by meeting with community representatives.⁴⁵ The OES may also wish to further expand its certification program to include other prevalent languages in Fairfax County such as Chinese and Arabic.⁴⁶ Additionally, the OES should continue to develop a master list of all interpreters who have been deemed qualified to provide interpretation in languages other than English, specifying where each interpreter is located, and should immediately disseminate this list to the JDRDC.⁴⁷

In regard to written materials, currently none of the documents provided by the JDRDC to juveniles or juveniles' families are available in languages other than English. Please be aware

⁴⁴ According to the OES' Response to the Draft Report, the OES has modified the OES Guidelines to include this recommended language.

⁴⁵ In the OES' Response to the Draft Report, the OES said that prior to the most recent certification exam the OES promoted certification opportunities for Arabic-, Korean-, Vietnamese-, and Spanish-speaking individuals by posting notices at tertiary educational institutions.

⁴⁶ As discussed in note 15, the OES recently expanded its certification program to include Arabic.

⁴⁷ In the OES' Response to the Draft Report, it indicated that it has provided this information to the JDRDC.

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 37

that in order to provide juveniles and their families with meaningful access to important court services under Title VI and the Safe Streets Act, vital written materials should be translated into the language of each frequently encountered LEP group. Whether a document is “vital” depends on the “importance of the program, information, encounter, or service involved, and consequence to the LEP person if the information in question is not provided accurately or in a timely manner.” *See* DOJ Guidance, 67 Fed. Reg. at 41463.

Based on the information that the OCR gathered during our review, we understand that the written documents provided to juveniles and their families participating in pre-adjudication proceedings at the JDRDC include the delinquency petition and a summons to appear in court, the Financial Statement – Eligibility Determination for Indigent Defense Services form, and court orders specific to a juvenile's case. Currently, the JDRDC relies upon staff or contract interpreters to provide sight translations of documents that are disseminated during court proceedings to LEP juveniles and LEP families of juveniles. While the DOJ Guidance recognizes this practice as an appropriate means of providing language assistance when recipient agencies interact with less-frequently encountered language groups, it also makes clear that translation of documents should be the practice for often-encountered language groups. The OES should perform a written inventory of all of its written materials disseminated to juveniles and juveniles' families at the JDRDC, identify the documents that it considers "vital," and then work toward translating the vital documents into languages frequently encountered by the JDRDC. Based on the 2008 Census data, it appears that languages frequently encountered by the JDRDC include Spanish, Vietnamese, Korean, Chinese, and Arabic. The OES may wish to expand its certification program to include certification in translation, or it may rely on CTS Language Link or another contractor to provide the necessary translation of documents. As the OES works toward translating its vital court documents, it should continue to use qualified staff and contract interpreters to provide sight translations of court documents and to assist juveniles and juveniles' families in completing any necessary forms.

As for the delinquency petition and initial summons, the OCR understands that the JDRDC mails these documents to a juvenile's family, and therefore a staff or contract interpreter is not present to provide a sight translation of these important documents. Accordingly, the OCR recommends that until the OES translates these documents, the JDRDC should include a notice with these documents explaining in frequently-encountered languages that the juvenile's family should contact the clerk's office at the JDRDC to request a telephonic sight translation of these documents.

Once the OES translates the vital documents, it should develop a strategy for distributing translated materials to juveniles and juveniles' families under the jurisdiction of the JDRDC. The OES should also ensure that signage is posted at the JDRDC in the primary languages of the largest LEP populations stating that on request, free language services are available.⁴⁸

⁴⁸ In the OES' Response to the Draft Report, the OES said that it does not possess the authority to ensure that local

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 38

Additionally, the OES should ensure that important information regarding JDRDC services to juveniles and juveniles' families that is available in English on the OES' and the JDRDC's websites is also available in prevalent foreign languages such as Spanish, Korean, and Vietnamese.⁴⁹

While the OES has recently developed a complaint form that individuals can submit to the OES if they have a complaint regarding an interpreter's performance in a court such as the JDRDC, and complaints against JDRDC judges are handled by the JIRC, the OES does not have any written procedures or forms governing how juveniles and juveniles' families being served by the JDRDC can complain about the services provided by JDRDC clerks and other personnel. The OCR recommends that the OES develop written complaint procedures addressing receiving, investigating, and resolving complaints against court clerks and other JDRDC personnel, specifying how language assistance will be provided to LEP complainants. Additionally, the OCR recommends that the OES develop a written complaint form for complaints against JDRDC personnel, which will provide better documentation of the allegations and enhance the collection of information from complainants about their concerns. The OES should ensure that complaint procedures and complaint forms are translated into relevant foreign languages and are made available to juveniles and their families.⁵⁰

Regarding community outreach, the OES should take steps to educate the LEP communities in Fairfax County about available language resources and should develop a mechanism for

courts post particular signage and that funding for signage is provided by the localities. The OES indicated that OES staff has translated into Spanish the verbiage of the DOJ-recommended sign, along with verbiage appearing on commonly occurring signs, and that the translations are included in the Appendices of the OES Guidelines. The OCR will follow up with the JDRDC to ensure that it is posting signage in frequently encountered languages, including Spanish, stating that free language services are available.

⁴⁹ In the OES' Response to the Draft Report, the OES said that it is beginning to evaluate web-based translation tools.

⁵⁰ As discussed in note 26, in the OES' Response to the Draft Report, the OES clarified that complaints against court personnel are ultimately addressed at the local level. However, the OES said that it has developed a general court personnel complaint form and includes English- and Spanish-language versions of the complaint form in the OES Guidelines, and that the OES will encourage courts to use this form. The OCR will follow up with the JDRDC to ensure that it is utilizing the complaint form developed by the OES or a similar complaint form to document complaints against JDRDC personnel, and that the JDRDC is utilizing available language resources to communicate with LEP complainants.

Based upon the information that has been provided, if an LEP individual wishes to complain that the JDRDC failed to provide the individual with language assistance services (as opposed to complaining about the performance of an interpreter), it is not clear whether the complaint would fall under the jurisdiction of the OES or the JDRDC. The OCR is presuming that the OES would be involved in reviewing such a complaint. If this is correct, the OCR recommends that the OES develop a complaint form to capture such a complaint, or modify its existing Interpreter Complaint Form.

gathering community feedback on its provision of services to LEP juveniles and LEP families of juveniles under the jurisdiction of the JDRDC. For example, the OES may want to develop a written survey of community groups serving LEP populations in Fairfax County, or to convene a focus group of LEP individuals.⁵¹ The OES may also consider holding separate meetings with each LEP community, perhaps in collaboration with community, business, and religious leaders representing the LEP population, so that the OES can hear the LEP community's unique needs regarding outreach.

Recommendations for the CSU

The CSU is currently taking action to communicate with LEP juveniles and LEP families of juveniles, such as operating the VIP, utilizing in-person and telephonic contract interpreters, and developing and training employees on the Interpreter Guidelines. However, the CSU should take further action to ensure meaningful access to juveniles and juveniles' families in compliance with Title VI and the Safe Streets Act. As an initial matter, the CSU should expand on its Interpreter Guidelines and develop a comprehensive, written plan on providing services to LEP juveniles and LEP families of juveniles in a variety of contexts, including intake services, interviews and field visits by probation officers, diversion hearings, and diversion programs. In the expanded Interpreter Guidelines, CSU should advise employees to obtain language assistance services from VIP interpreters, the contract interpreters CTS Language Link and ILS, and qualified bilingual employees who have undergone proficiency testing by LLE. The Interpreter Guidelines should explicitly state that employees should use family members, friends, or bystanders to interpret only in unforeseen, emergency circumstances while awaiting a qualified interpreter or to obtain general contact information. *See Part IV of the Compliance Review Report for further discussion of the elements that should be contained in a comprehensive written language assistance plan.*

Once the CSU has expanded the Interpreter Guidelines into a comprehensive written language assistance plan, it should immediately train all employees on the revised Interpreter Guidelines to ensure that all employees are aware of the proper procedures for providing language assistance services. Following this initial training, the CSU should establish annual training sessions focused specifically on providing language assistance services to LEP juveniles and LEP families of juveniles. As part of its training program, the CSU may wish to show the enclosed training DVD *Breaking Down the Language Barrier: Translating Limited English Proficiency into Practice*. Other agencies have found this DVD particularly helpful in training employees on how to provide services effectively to LEP populations.

Of the 35 VIP interpreters currently serving the CSU, only 13 have undergone proficiency testing by LLE and have been deemed qualified to serve as an interpreter and a translator. To ensure the

⁵¹ As discussed in footnote 28, the OES recently posted a survey on its website to gather feedback from local agencies and community organizations on the OES' provision of language assistance services.

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 40

accuracy of interpretation and translation services provided by VIP interpreters, the CSU should require all VIP interpreters to have their interpretation and translation skills assessed by LLE or through another objective testing process. Any assessments should go beyond testing an individual's skill of communicating in a foreign language and should assess the particular skill of interpreting, which requires listening to something in one language and orally conveying its meaning into another language. A bilingual individual may have the skills to converse with another person in a foreign language but may not have the skills to provide competent interpretation in that language, and therefore it is essential that agencies ensure that the bilingual individuals providing language assistance are competent in the specific skill of interpretation. *See*, DOJ Guidance, 67 Fed. Reg. at 41461. Similarly, the CSU should ensure that a VIP interpreter's written translation skills are assessed.

Currently, the CSU utilizes the 35 VIP interpreters and nine qualified bilingual employees to communicate with Spanish-speaking LEP juveniles and LEP families of juveniles. Based on recent data from the U.S. Census Bureau and information that the OCR obtained from CSU staff, it appears that the CSU also serves a significant number of juveniles and families who speak Korean and Vietnamese along with Chinese, Arabic, and African languages. Accordingly, the CSU should conduct outreach to these LEP communities to recruit bilingual individuals who are interesting in serving as volunteer interpreters for the CSU or becoming a CSU employee. The CSU may wish to advertise its VIP and vacant CSU positions in newspapers that serve these LEP communities and by meeting with representatives of these communities. The CSU should also compile a list of bilingual employees who have passed the proficiency test administered by the LLE and are authorized to provide language assistance services for the CSU, including the contact information for each employee and indicating whether the employee has the ability to interpret or translate. The CSU should update this list as needed and disseminate the list to CSU employees.

For juveniles who the CSU diverts from formal court proceedings, the majority of services ordered by the CSU are provided by external service providers. The CSU's contracts with these external agencies contain a requirement that the agencies provide services in a foreign language if necessary; however, one CSU employee told the OCR that it is a struggle to find services available in foreign languages. The CSU should conduct research to locate additional agencies who are qualified to provide services in prevalent foreign languages, such as Spanish, Korean, and Vietnamese, and should monitor all service providers to ensure that services are being made available to LEP juveniles or LEP families of juveniles through qualified bilingual staff or via qualified contract interpreters. The CSU should also ensure that a VIP interpreter, a qualified bilingual employee, or a contract interpreter is present to communicate with LEP juveniles or LEP families of juveniles participating in the Your Family System program, instead of relying on LEP individuals to bring their own interpreters.

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 41

In regard to written materials, while the CSU has translated numerous important documents into Spanish and has also translated the Intake Information Sheet into Korean and Vietnamese, the CSU should take further action to ensure compliance with Title VI. The DOJ encourages recipients to satisfy the “safe harbor” provision in the DOJ Guidance when determining what documents to translate. *See* DOJ Guidance, 67 Fed. Reg. at 41464. This provision states that recipients should translate “vital documents” for LEP groups that comprise five percent or 1,000, whichever is less, of the eligible service population. *Id.* Whether a document is “vital” depends on the “importance of the program, information, encounter, or service involved, and consequence to the LEP person if the information in question is not provided accurately or in a timely manner.” *Id.* at 41463. Examples of documents that may be “vital” are consent and complaint forms; intake forms; notices of rights; notices of upcoming hearings; notices of denial, loss, or decrease of benefits; notices of disciplinary actions; applications to participate in a program or activity; and applications to receive a benefit or service. *Id.*

In accordance with the DOJ Guidance, the CSU should perform an inventory of all of its written materials, identify the documents it considers “vital,” and then translate these documents into the languages that meet the safe harbor threshold. Based on the 2008 Census data, it appears that several LEP populations in Fairfax County meet the 1,000 person safe harbor threshold, including the Spanish-, Vietnamese-, Korean-, Chinese-, and Arabic-speaking LEP populations. The CSU should take steps to translate all of its vital documents into the languages that meet this threshold. To ensure the accuracy of translated materials, the CSU should continue to have a second, independent translator verify the work of the primary translator, such as a VIP interpreter or a qualified bilingual employee who has demonstrated proficiency in translation. The CSU may also wish to use “back translation,” where the primary translator can translate the document, and a second, independent translator could translate it back into English to ensure that the appropriate meaning has been conveyed. Once the CSU translates the vital documents and ensures their accuracy, it should then develop a strategy for distributing the materials to the relevant LEP communities. The CSU should also post a sign(s) in the primary languages of its largest LEP populations in the lobbies of its facilities and other places of public contact stating that on request, free language services are available. The CSU should make sure that important information regarding CSU services available in English on its website is also available in prevalent foreign languages such as Spanish, Korean, and Vietnamese.

Regarding community outreach, the CSU should take action to educate the LEP communities in Fairfax County about its services and the language resources that are available. The CSU should also develop a mechanism for gathering community feedback on its provision of services to LEP juveniles and LEP families of juveniles. For example, the CSU may want to develop a written survey of community groups serving LEP populations in Fairfax County, or to convene a focus group of LEP individuals. The CSU may also consider holding separate meetings with each LEP community, perhaps in collaboration with community, business, and religious leaders

representing the LEP population, so that the CSU can hear the LEP community's unique needs regarding outreach.

IV. Developing an Effective Plan on Language Assistance for LEP Persons

According to DOJ Guidance, an effective plan for providing language assistance to LEP persons has five elements: (1) identifying LEP individuals who need language assistance; (2) providing information to employees and LEP individuals on the ways in which language assistance will be provided; (3) training employees on effective and available methods of communicating with LEP individuals; (4) providing notice to LEP individuals of available free language assistance services; and (5) monitoring and updating the plan.

Recommendation for OES

The OES should modify its current OES Guidelines in accordance with the recommendations contained in Part III of this Compliance Review Report. The OES should also expand the OES Guidelines to address topics such as how the OES will train court personnel on the available language assistance services, how courts should notify LEP individuals that language assistance services will be provided by the courts at no cost to LEP individuals, and how the OES intends to monitor and update the OES Guidelines to ensure that its language assistance services continue to be effective. In doing so, the OES may wish to consult the DOJ Guidance, along with "Chapter 5: Tips and Tools Specific to Courts" from DOJ, *Executive Order 13166, Limited English Proficiency Resource Document: Tips and Tools from the Field* (2004). These documents are available online at <http://www.lep.gov>, and should assist the OES in ensuring that its OES Guidelines are fully compliant with Title VI and the Safe Streets Act.

Recommendation for CSU

The CSU should expand on its current Interpreter Guidelines and develop a comprehensive, written language assistance plan that incorporates the five elements referenced above and addressed the concerns raised in Part III of this Compliance Review Report. The CSU should be sure to explain the types of language assistance that CSU employees should rely upon to communicate with LEP juveniles and LEP family members in each particular pre-adjudication service or activity, such as intake services, pre-adjudication probation supervision, the SRS program, diversion programs, and the processing of complaints. In doing so, the CSU should specify the preferred method of communicating with LEP individuals, such as a VIP interpreter, a qualified bilingual employee, an in-person contract interpreter, or a telephonic contract interpreter. To revise its Interpreter Guidelines, the CSU may wish to consult the DOJ Guidance, along with the following documents: (1) Planning Tool for Creating a Language Assistance Policy and Plan in a Law Enforcement Agency; (2) Limited English Proficiency Resource

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 43

Document: Tips and Tools from the Field; and (3) some sample written language assistance plans. These documents are available online at <http://www.lep.gov>, and should assist the CSU in preparing a language assistance plan on services to LEP juveniles and LEP families of juveniles.⁵² The OCR also recommends that the CSU name one person on staff to be responsible for coordinating services to LEP persons. This person's first task might be to review this report and the OCR's recommendations to develop a comprehensive language assistance plan that will become familiar to every employee at the CSU.

Conclusion

This letter serves as notice that OCR has made a preliminary determination that the OES, the JDRDC, and the CSU appear to be taking steps to provide meaningful access to its programs and activities to LEP juveniles and LEP families of juveniles. However, the OES, the JDRDC, and the CSU must build on these steps to become fully compliance with Title VI and the Safe Streets Act. On request, the OCR is available to provide technical assistance to the OES, the JDRDC, and the CSU in implementing its recommendations and formulating a comprehensive written language assistance plan. **Immediately upon receipt of this letter, we ask that a responsible official from the OES and the CSU contact Attorney Advisor Shelley Langguth to develop a timeline and goals for implementing our recommendations and developing or revising a written language assistance plan for your agency.** If the OES or the CSU feel that a particular recommendation is not feasible, please explain why and propose any alternatives for implementing the recommendation.

Thank you for your cooperation and the assistance of your staff throughout the compliance review process. If you have any questions, please contact Ms. Langguth at (202) 305-2353.

Yours very truly,

/s/
Michael L. Alston
Director

Enclosure

⁵² The CSU's current Interpreter Guidelines include information relating to sign language interpretation. Please note that the term "LEP" relates to spoken language and does not include individuals who are deaf or hard of hearing; rather, such individuals are covered by laws prohibiting discrimination on the basis of a disability. The OCR recommends that the CSU omit reference to sign language interpretation when expanding its Interpreter Guidelines and address sign language interpretation in a separate document.

Karl R. Hade, Executive Secretary
Robert Bermingham, Director
September 16, 2011
Page 44

cc: Charlene Lamb
Foreign Language Services Coordinator
Office of the Executive Secretary, Supreme Court of Virginia
100 North Ninth Street
Richmond, VA 23219

Thomas P. Mann, Chief Judge
Fairfax County Juvenile and Domestic Relations District Court
4110 Chain Bridge Road
Fairfax, VA 22030

Kim McCarthy
Director, Administrative Services
Fairfax County Court Services Unit
4110 Chain Bridge Road
Fairfax, VA 22030