



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Certified Mail: Return Receipt Requested

September 21, 2015

David A. Provencher, Chief of Police
City of New Bedford Police Department
871 Rockdale Avenue
New Bedford, MA 02740-2705

Re: New Bedford Police Department Compliance Review (13-OCR-0092)

Dear Chief Provencher:

I am writing to report the findings of the Compliance Review for language services at the New Bedford Police Department (NBPD or department) conducted by the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice. The OCR would like to thank your staff, especially Captain Paul Oliveira for assisting OCR Attorney Debra Murphy during her onsite visit.

In my letter of January 23, 2013, I informed you that the OCR has selected the NBPD 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 NBPD's provision of services to people who are limited in their English proficiency (LEP) as a result of their national origin. An LEP person is a person whose primary language is not English and who has a limited ability to read, write, speak, or understand English.

In June of 2002, the U.S. Department of Justice 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* U.S. Department of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (2002) (hereinafter DOJ Guidance). Using the technical assistance standards in the DOJ Guidance, the OCR initiated this compliance review to determine the extent to which the NBPD is providing language services to its LEP population.

After a thorough evaluation of the NBPD's services and activities, including the NBPD's responses to our Data Request and the information gathered during the onsite visit, which included interviews with department officials, command staff, sworn officers, and representatives from LEP communities, we issue this report in accordance with 28 C.F.R. §§ 42.107(d)(2) and .206(e). In regard to the limited scope of our review, the OCR concludes that the NBPD is taking some steps to provide LEP persons with meaningful access to police services. However, the NBPD should build on these steps and take further action to ensure that it is meeting its obligations under Title VI and the Safe Streets Act. The following Compliance Review Report contains recommendations based on the DOJ Guidance that the NBPD may find helpful in developing policies to improve its services to LEP persons.

Compliance Review Report

This Compliance Review Report (Report) closely tracks the structure of the DOJ Guidance by assessing the NBPD's obligation to provide LEP services and then reviewing the elements that the NBPD could include in an effective plan for offering language assistance to LEP persons.

I. 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 served or encountered in the eligible service population; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program; and (4) the resources available to the recipient and the related costs. 67 Fed. Reg. 41,459-61. In considering the application of these four factors to the NBPD, the OCR offers the following observations and recommendations.

A. The Number or Proportion of LEP Persons Served or Encountered in the Service Population

Based on recent data from the U.S. Census Bureau, in 2012 the City of New Bedford had an estimated population of 88,532 residents age five and older; of this group, approximately 33,022 (37.3%) speak a language other than English at home, and approximately 14,696 (16.6%) speak English "less than very well." *Selected Characteristics of the Native and Foreign Born Populations, New Bedford, Massachusetts, 2008-2012 American Community Survey 5-Year Estimates*, U.S. Census Bureau at <http://factfinder.census.gov>. Of those individuals age five and older who speak a language other than English at home, the language proficiency can be summarized as follows: (1) 11,155 speak Spanish, and 4,953 of those Spanish-speakers speak English "less than very well;" (2) 20,982 speak an Indo-European language, 9,085 of whom speak English "less than very well;" (3) 708 speak an Asian or Pacific Islander language, 371 of whom speak English "less than very well;" and (4) 177 individuals speak another language, 54 of whom speak English "less than very well." *Id.*

The NBPD divides its jurisdiction into three districts: the North End, the West End, and the South End. The NBPD does not maintain specific data about the number of non-English speakers served in each district. However, in the NBPD's response to the OCR's Data Request (Data Response), the NBPD provided information taken from the New Bedford Election Commission indicating the percentage of non-English speakers in each district. This information indicates that in the North End approximately 3% of residents speak Portuguese and 3% speak Spanish; in the West End approximately 1% of residents speak Spanish and 1% speak Cape Verdean; and in the South End approximately 2% of residents speak Portuguese, 4% speak Spanish, and 1% speak Cape Verdean.

Recommendation

The NBPD should analyze additional sources of information, including the latest data from the U.S. Census Bureau, to determine more accurately the language assistance needs of its service population. Many police departments have found helpful the data collected by local school districts regarding languages spoken by enrolled students in a given area. These data provide information about the foreign language groups in a particular area and their relative size, and would be particularly useful in assessing the language needs of juveniles. Additionally, the NBPD could consult community organizations, religious groups, social service providers, legal aid entities and local government to identify populations who would benefit from specific language assistance services. The NBPD should periodically review LEP population shifts to determine whether it needs to revise certain aspects of its language assistance plan, which is discussed in more detail in Section III of the Report.

B. The Frequency with which LEP Persons Come into Contact with the NBPD

As explained more fully below, the NBPD has several bilingual staff who provide interpretation services in a variety of encounters. However, the NBPD has no system in place for documenting the language assistance being provided by its own employees. The NBPD also utilizes a private vendor that provides telephonic interpretation services but does not analyze information from this service to determine what languages are requested or what type of encounters require interpretation.

Recommendation

The NBPD should develop a reliable system for gathering information about contacts with its LEP population, which would allow it to assess more accurately the language needs of New Bedford's residents. It should, at a minimum, document the language services provided by bilingual staff and officers, regularly analyze the use of the telephonic interpreter service, and document all interactions with the public where an LEP individual may have required language assistance but the NBPD was unable to provide it. There are multiple ways that the NBPD can document these interactions. For example, the NBPD could include a section noting language needs on the call-taker screen and in other reports. The NBPD can choose how it would like to collect and track this information, but it should include information about the language spoken by the LEP person, the type of interaction (i.e., emergency call, field encounter, arrest, interview, or customer service), and the NBPD's response. The NBPD should then tabulate all of the data on an annual basis to determine the evolving language needs of its LEP service population.

C. The Nature and Importance of the NBPD's Programs and Activities

The NBPD does not have a written language assistance plan that comprehensively addresses the provision of language services to LEP individuals. Given this lack of general policy guidance, the following summary explains how the NBPD meets the needs of LEP individuals in a variety of circumstances.

1. Emergency Calls

The NBPD Communications Division responds to all 911 calls, including calls for police, fire,¹ medical, and animal control assistance. The Communications Division is staffed predominantly by call-takers,

¹ Calls for fire assistance are transferred to the New Bedford Fire Department.

who speak to the caller, and dispatchers, who dispatch the appropriate service provider based on the information provided by the call-taker. The call-taker receives the call, assesses the caller's needs, and documents relevant information in the Computer Aided Dispatch system (CAD). If the call-taker requires language assistance in order to speak to the caller, the call-taker can connect to telephonic interpreter using a one-button system. The CAD system that the NBPD uses does not have a prompt or query specifically related to language needs, but the call-taker would document the language needs of the caller in the notes section of the CAD screen. The CAD screen that is completed by the call-taker is visible to the dispatchers, as well as officers in the field.

If the caller requires on-site assistance, the call-taker alerts the dispatcher. The dispatcher does not speak with the caller, but rather responds based solely on the information that the call-taker entered into the call record. The dispatcher can dispatch a police officer, animal control officer or emergency medical technician, depending upon the need. If the call-taker has recorded the language needs in the notes field, then the dispatcher can relay that information to the officer being sent to the scene; if the call-taker did not note the language need in the narrative field, then the dispatcher has no independent way of assessing language needs.

If an LEP caller requires emergency on-site assistance, the dispatcher sends the first available officer, irrespective of the officer's language ability. If a monolingual officer is dispatched to respond to an LEP caller, that officer would take initial action while waiting for a bilingual officer to arrive. In a non-emergency situation involving an LEP person, the dispatcher tries to locate a bilingual officer first, but may send a mono-lingual officer if a bilingual officer is not readily available. When the OCR inquired how a dispatcher knows the language ability of various officers, the NBPD staff said that dispatchers "just know" which on-duty officers are bilingual. If needed, the dispatcher could reference a list of bilingual officers stored on the NBPD's system-wide computer hard drive.

2. Field Encounters, Walk-Ins, and Other Non-Emergency Assistance

In almost all situations, the NBPD's first option for providing language assistance for an LEP individual is to use a bilingual officer or staff member to interpret. This procedure is followed when an LEP individual requests non-emergency assistance at a police station or by telephone, or when an officer encounters an LEP individual in the field.

As noted above, NBPD dispatches the first available patrol officer in emergency situations, even when the need for language assistance is noted by the call-taker. When language assistance is required, however, the NBPD makes an effort to get a bilingual officer to the scene as soon as possible. If a bilingual officer is not dispatched to a call or is not the first officer on the scene during a field encounter, a patrol officer can put out a call for assistance from a bilingual staff member over the radio. The NBPD reported that a bilingual officer typically volunteers to assist the requesting officer. Additionally, NBPD staff members said that, if necessary, the telephonic interpreter service can be accessed from the field either directly by a patrol officer or through the Communications Division.

The NBPD reported in its Data Response that it only uses family members, friends, or bystanders to interpret during exigent circumstances where immediate action is necessary, such as a medical emergency. The officers with whom the OCR spoke, however, indicated that they may use family members, including children, friends or bystanders to interpret in non-emergency situations, but identified several situations where they would not use or a friend, family member, or bystander; those situations included encounters involving serious crimes or crimes of a sensitive nature, such as domestic violence.

As mentioned in Section I.A. of this report, the NBPD divides its jurisdiction into three precincts, the North End, the South End, and West End, and a citizen may walk-in to request assistance in any precinct station. Additionally, a citizen may walk-in to the NBPD headquarters, where they can receive general assistance, or access the Central Records Bureau, the Firearms Division, or Animal Control. If an LEP individual calls or walks into any police station for assistance, the NBPD similarly tries to locate a bilingual officer or staff member to interpret, uses the telephonic interpreter service, or relies on a friend or family member of the LEP individual. While there are no NBPD staff members whose primary job responsibilities include providing language services, some of the NBPD staff members tasked with responding to walk-ins or non-emergency citizen requests are multilingual. For example, the front desk clerk at the South Station speaks Spanish, a clerk in the Central Records Bureau speaks Portuguese, and the majority of the staff members in the Animal Control Office are bilingual or multilingual. OCR noted "I Speak" posters and instructions for accessing the telephonic interpreter service posted in the South End Station; no such signage was noted in the North End or Downtown stations.

3. Interviews and Interrogations

In conducting interviews and interrogations of LEP individuals, the NBPD will either use bilingual officers or detectives to interpret or may staff a bilingual officer or detective to the case directly. The NBPD staff members whom the OCR interviewed stated that if a bilingual officer is used to interpret during an interview, the bilingual officer might pose questions to the witness, rather than function solely as an interpreter. If an interview must be conducted in a language for which there are no proficient NBPD staff members to act as interpreters, the NBPD will use the telephonic interpreter service.

For interviews of a suspect, victim,² or witness conducted at a NBPD station, the interview rooms have signage in English and Spanish indicating that the interview will be recorded. After the interview is complete, the detective listens to the recording of the interview to prepare a detailed report. The video or audio recording is then given to the District Attorney, who has the recording transcribed and maintains it in evidence.

Department detectives conduct most interviews and interrogations. The NBPD employs fourteen detectives, five of whom are multilingual. There are two additional bilingual detectives and one bilingual advocate assigned to the Family Services Division, which handles any crimes involving juveniles, as either a perpetrator or victim; domestic violence; sexual assaults; elder abuse; or missing persons. If an LEP juvenile is interviewed, the NBPD uses one of the bilingual Family Services Division staff members to interpret.

In addition to NBPD bilingual staff, the department occasionally uses interpreters from other organizations. For example, the NBPD will use interpreters from the Massachusetts State Police, particularly when the crime being investigated is a homicide, or from the New Bedford District Court when an interview takes place at the courthouse. The NBPD reports that officers may also use bystanders as interpreters during interviews, including family members or medical staff, to interpret basic information, although they are discouraged from using bystanders to interpret substantive investigative information.

4. Arrests and Detention

² During the onsite portion of this compliance review, NBPD staff told OCR that they partner with the Bristol County Child Advocacy Center (CAC) when investigating child abuse. Interviews of child-victims are often conducted at the CAC, and the CAC arranges language services in those situations.

When an LEP suspect is taken into custody, the NBPD follows a procedure similar to that described above, which involves using a bilingual officer for interpretation. The NBPD has Miranda statements translated into Spanish and Portuguese, that a Spanish-speaking or Portuguese-speaking suspect may read and sign. After a suspect is taken into custody, the suspect is transported to the NBPD's headquarters station for booking. The NBPD does not run the regional detention center, the Bristol County House of Correction.

When the NBPD arrests a juvenile, he or she is transported to either the North End Station or the South End Station, where the juvenile is booked in an open area of the police station. Once at the station, the NBPD attempts to contact the parent or guardian of the juvenile. If the parent or guardian is LEP, the NBPD will have a bilingual officer contact the individual or the arresting officer may contact the parent and use the telephonic interpreter service. This initial contact is simply a verbal notification and may be made by a bilingual officer in another station. Once a juvenile arrest is processed, the parent or guardian must sign a form agreeing to bring the juvenile to his or her court hearing. This form is only available in English. A bilingual officer may translate this form for the LEP individual or a friend or family member of the parent or guardian may translate the form. The juvenile offender may also translate this form, but the NBPD stated this option is only used as a last resort.

The arresting officer also contacts Juvenile Probation during the booking procedure and follows the Probation Officer's direction to either release the child to his or her parent or guardian or to transport the child to the Alternative Lockup Facility, Old Colony YMCA Youth Division in Brockton, Massachusetts. If the juvenile is transported to another facility, there is no form or other routine way of alerting the facility that the juvenile or his or her parent or guardian is LEP.

5. Complaints

The NBPD's Division of Professional Standards (DPS) handles complaints from members of the public pursuant to the procedures established in General Order 3-03 and Rule and Regulation 516. The NBPD accepts complaints in the form of letters, telephone calls, or in-person reports at a police station. Individuals may file complaints anonymously. The NBPD provides a complaint form that is only available in English. It is the NBPD's policy to assist any individual who cannot reduce his or her complaint to writing by assigning an officer to interview the complainant and write out the complainant's concerns on his or her behalf. According to the NBPD staff interviewed by the OCR, this procedure would be used, with a bilingual officer, to assist an LEP complainant. While the NBPD website contains information about the process for filing a complaint, it does not contain the complaint forms. The complaint forms are available at all NBPD stations, the New Bedford City Hall, and the New Bedford Human Relations Commission. The forms are also given out by NBPD officers at community meetings.

The Chief of Police, or his designee, reviews all complaints and, depending on the nature of the complaint, will send the complaint either to the DPS or the appropriate Division Commander for investigation. According to interviews, complaints that involve access to language services would likely be handled by a Division Commander. The NBPD reports that it did not receive any complaint that involved language access from January 1, 2011, through March 21, 2013.

6. School Resource Officers

The NBPB employs ten School Resource Officers (SROs) who are stationed in public schools throughout the county. Only one of these officers is bilingual, and he speaks Cape Verdean and Creole. The SROs are generally responsible for the safety of students and staff and have some educational duties, including running the Gang Resistance Education and Training (GREAT) initiative and occasional classroom legal instruction. When an SRO makes an arrest at a school he or she will contact the student's parent. If the parent is LEP, the SRO will contact a bilingual officer who will then notify the parent or, in an emergency, the SRO may use school staff to interpret. As part of their duties, SROs may conduct home visits, often with clergy members, to students identified as "at-risk." If SROs visit an LEP student, parent, or guardian at home, the SROs typically rely on the accompanying clergy member or a bilingual officer to interpret.

7. Community Outreach

The NBPB holds occasional citywide community meetings and several monthly neighborhood meetings. There is a community policing officer in each precinct whose role is to act as a liaison between the NBPB and the community. Both the community policing officer and the Captain of each precinct attend all community meetings. Leaders of the LEP communities frequently act as interpreters during these meetings.

The NBPB highlighted that its Gang Reduction Team worked closely with an immigration center in order to reach out to LEP communities. Additionally, the NBPB reported that it has conducted outreach directly to several community organizations that serve LEP communities, including the Latino Coalition, the Mayan Workers Organization, Maya K'iche USA, and the Puerto Rican and Latin American Art and Culture Committee.

During the OCR's onsite review, it met with several community groups to discuss the NBPB's relationship with LEP members of the public. Community representatives raised concerns about denial or significant delays to language access for LEP persons when a bilingual officer was unavailable. Community representatives also voiced concerns that there are not enough bilingual SROs.

Some community advocates indicated that many LEP individuals are wary of reporting crimes to the NBPB because of their immigration status. According to these representatives, this concern that was heightened after an Immigration Customs Enforcement (ICE) raid of a local fish processing in which the NBPB assisted the ICE by conducting traffic control.

Despite voicing the above concerns, community representatives also praised overall improvements in the NBPB's language access services, particularly in support of victims of domestic violence and in the Family Services Divisions. The community advocates also acknowledged that the NBPB consistently holds community outreach meetings, which they viewed as beneficial to the LEP community.

Recommendation

The NBPB should establish a comprehensive, written plan on providing services to LEP persons in various contexts, including emergency calls, field encounters, walk-ins, interviews, interrogations, arrests, detention, complaint processing, and school settings. In these protocols, the NBPB should advise employees to obtain language assistance from qualified bilingual employees, the telephonic interpreter service, or other identified sources, and emphasize that employees should use family

members, friends, or bystanders to interpret only in unforeseen, emergency situations, while awaiting a qualified interpreter.

Once the NBPD has established and formalized its written plan, it should immediately train all employees on the proper procedure for providing language assistance in the situations listed above, and develop a system for training new employees on an ongoing basis. The NBPD should regularly incorporate the NBPD's protocols on providing language assistance into officer and employee training, such as roll-calls and other professional development. As part of its training program, the NBPD may wish to show the enclosed training DVD *Breaking Down the Language Barrier: Translating Limited English Proficiency into Practice*. Other law enforcement agencies have found this DVD particularly helpful in training employees on how to provide services effectively to LEP populations.

The NBPD also should create a mechanism for gathering community feedback on its provision of services to LEP individuals. For example, the NBPD may want to develop a written survey of community groups serving LEP populations, or to convene a focus group of LEP individuals. The NBPD may also consider holding separate meetings with each LEP community, perhaps in collaboration with community, business, and religious leaders representing LEP populations, so that the NBPD can hear the LEP communities' unique needs regarding outreach.

D. The Resources Available to the NBPD

The NBPD's fiscal year is from July 1 through June 30. According to the NBPD's data response, its operational budget was \$21,495,131.00 in fiscal year 2011 and \$21,655,981.00 in fiscal year 2012, and it spent nothing on language assistance in either year. The OCR notes that, although the NBPD stated in its Data Response that none of its budgeted operational expenses were spent on language services, the NBPD appears to be under-reporting its language expenditures given its salaried employees with interpretation responsibilities. The NBPD provides no additional compensation or benefits to employees who provide interpretation services.

Recommendation

The NBPD should undertake a review of its human and capital resources in assessing how well it is responding to the needs of LEP populations. One part of this review should include gathering feedback from the local LEP populations about how the NBPD can provide more effective language assistance services. As mentioned in Section I.C.7., the NBPD has developed relationships with several community organizations that represent the interests of LEP populations, and the NBPD could use those contacts to identify additional community resources that are available to provide cost-effective and reliable language assistance and to determine what additional steps it can take to meet the needs of LEP individuals.

To increase the number of bilingual employees who are available to provide language assistance, the NBPD should increase its efforts to recruit bilingual officers and civilian employees, particularly those who speak languages that the NBPD determines to make up the greatest number or proportion of LEP individuals in the service population. Toward this end, the NBPD should consider providing incentive pay or bonuses for all NBPD employees who interpret or translate and pay for officers to attend foreign language classes in the most frequently-encountered languages.

II. Providing Language Services

According to the DOJ Guidance, once a recipient of federal financial assistance assesses (1) the number or proportion of LEP persons served or encountered in the eligible service population; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program; and (4) the resources available to the recipient and the related costs, it should decide how best to provide language assistance services. To provide the foregoing public services to LEP populations, the NBPD offers both oral and written language assistance.

A. Oral Interpretation Services

The DOJ Guidance describes oral interpretation is the “act of listening to something in one language (source language) and orally translating it into another language (target language).” DOJ Guidance, 67 Fed. Reg. at 41,461. The NBPD command staff, patrol officers and civilian employees with whom the OCR spoke identified three primary ways in which the NBPD provides oral language assistance to LEP individuals: (1) through bilingual officers and civilian employees; (2) through a telephonic interpreter service; and (3) through the use of family, friends, witnesses or bystanders.

As discussed in Section I.C. of this Compliance Review Report, the NBPD can use the telephonic interpreter service to respond to 911 calls from LEP persons, and may also use this service during face-to-face encounters in the field or in a station. The NBPD reports that it did not use the telephonic interpreter service from January of 2011 through March of 2013 and the NBPD does not offer any formal training related to the use of the telephonic interpreter service. Staff members were notified by interdepartmental email when the telephonic interpreter service account was opened in November of 2010. During the onsite portion of the compliance review, however, OCR interviewed NBPD sworn and civilian staff in several divisions, and found wide variation in staff understanding of and comfort with accessing the telephonic interpreter service.

The primary way that the NBPD provides interpretation services is through the use of bilingual employees. The NBPD identified seventy-one employees who speak a language other than English; of these 38 are classified as “good” and 36 are classified as “fluent” in their non-English language proficiency. The NBPD did not provide a definition of “good” or “fluent.” Additionally, the information that the NBPD provided lists only bilingual or multilingual officers and does not appear to account for civilian employees.

Based on the Data Response, several NBPD officers are proficient in more than one language; there are 46 officers who speak Portuguese, 20 who speak Spanish; five who speak Creole; four who speak Cape Verdean, and four who speak French. The NBPD maintains a roster listing the officers who purport to have specific language abilities, which is saved to the NBPD system-wide computer hard drive. Through interviews with the NBPD staff, however, it appears that these bilingual officers are not widely advertised within the department as available for interpretation; personnel “just know” who is bilingual. Additionally, NBPD lacks standard operating procedures for requesting, dispatching, and recording the use of a bilingual officer or staff member; those with language skills seem to be called upon through informal means.

The NBPD encourages individuals to self-identify as bilingual or multilingual on their employment application. If an applicant identifies as Spanish- or Portuguese-speaking, a portion of his or her employment interview will be conducted in the identified language. There is no other formal testing of an individual’s language ability, including no system for verifying or testing the language proficiency of those employees who claim to speak a non-English language other than Spanish or Portuguese.

The NBPB states that it actively tries to hire new bilingual or multilingual officers by requesting a list of bilingual candidates from the Civil Service Certification List in order to hire such officers. The NBPB also indicates that it frequently gives applicants with language skills priority for dispatcher and call-taker positions within the department. The NBPB states that it does not, however, consider language skills in making promotion decisions, nor does it provide additional compensation or benefits to employees for providing interpretation services.

Regarding the use of family members, friends, witnesses and bystanders to interpret for LEP individuals, most NBPB staff that the OCR interviewed indicated that this option was not ideal. However, they acknowledged that in some situations they rely upon non-NBPB employees to interpret.

Recommendation

To maximize the benefits of the telephonic interpreter service, the NBPB should ensure that all officers and civilian employees are aware of and trained in using it, as it appears that the NBPB is currently not using the service. The NBPB should institute more comprehensive training in the use of the telephonic interpreter service and ensure that directions for its use are widely distributed and posted in all work stations of employees who have contact with the public.

To ensure the accuracy of interpretation services provided by bilingual employees, the NBPB should implement an objective testing process for assessing the language skills of all of its self-identified bilingual employees. These tests should go beyond testing an employee'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 or multilingual employee 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 for law enforcement agencies to ensure that the bilingual employees providing language assistance are competent in the specific skill of interpretation. An objective testing process does not need to involve a formal certification process. For example, the NBPB could test employees' interpretation skills through oral review panels comprised of officers, language professors from local colleges or universities, and community group members who are competent to interpret. Additionally, all employees who function as interpreters should understand that they are to remain completely neutral when providing language assistance. For example, when interpreting during an interview, the interpreter never interjects his or her own questions or comments into a conversation between the English-speaking NBPB employee and the LEP individual.

After ensuring that employees are qualified to provide interpretation assistance, the NBPB should make sure that a list of qualified interpreters is maintained, updated frequently, and shared widely within the department. The roster of qualified interpreters should include the contact information for each employee and should note whether each employee has the ability to interpret, to translate, or both. The NBPB should ensure that all employees are trained in the proper procedure for requesting the assistance of a bilingual employee from the roster.

B. Written Translation Services

According to the DOJ Guidance, "[t]ranslation is the replacement of a written text in one language (source language) into an equivalent text in another language (target language)." DOJ Guidance, 67 Fed. Reg. at 41,463.

In its response to the OCR's data request, the NBPB indicated that it had Spanish- and Portuguese-language translations of 1) Miranda warnings; 2) a waiver of rights form; and 3) an overview of the local abuse laws. According to the NBPB, its Web site, and all documents posted to its Web site, can be translated into any language using the Google Translate service. The NBPB's Web site has a link that directs users to the Google Translate service to translate its online content into Spanish or Portuguese. The NBPB does not check the accuracy of the documents translated by Google Translate.

The department posts the victim's bill of rights in English, Spanish, and Portuguese in its Headquarters station. Overall, the OCR noted that there was a general lack of signage related to language access at the various precincts, such as "I Speak" posters or cards indicating that an NBPB employee speaks a non-English language.

Recommendation

In regard to written materials, while the NBPB has translated some documents into Spanish and Portuguese, the NBPB should take additional steps 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 41,464. This provision states that, to satisfy the safe harbor, 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 the 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; written notices of rights; denial, loss, or decrease of benefits; notices of disciplinary actions; written tests for a license, skill, or job for which knowing English is not required; applications to participate in a program or activity; and applications to receive a benefit or service. *Id.*

In accordance with the DOJ Guidance, the NBPB should perform an inventory of all of its written materials, identify the documents it considers "vital," and translate these documents into the languages that meet the safe harbor threshold. Based on the 2010 Census data, it appears that NBPB's Spanish-speaking LEP population meets the 1,000 person safe harbor threshold. Although the data are less clear for other language groups, their presence may also meet the safe harbor threshold. The NBPB should periodically evaluate whether it should translate vital documents, such as materials relating to a citizen's rights or the provision of consent, into additional languages.

If the NBPB utilizes self-identified bilingual employees to translate documents, it should test those employees' written translation skills, which involves rendering written communication in one language into the writing of another language. It also should implement quality control measures to ensure the accuracy of translated materials and to make sure that all of the information is being conveyed to LEP persons. The accuracy of translated materials could be ensured by having a second, independent translator, such as an officer, a professor from a local university, or a community member who has demonstrated competency in translation, to verify the work of the primary translator. The NBPB 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. The DOJ strongly discourages the use of machine or automatic translations, even if a disclaimer is added. If an agency decides to use software-assisted translation, it is important to have the translation reviewed by a qualified language professional before distributing it to ensure that the translation correctly communicates the message. *See* U.S. Dep't of Justice, Common Language Access

Questions, Technical Assistance, and Guidance for Federally Conducted and Federally Assisted Programs (2011), *available at* http://www.lep.gov/resources/081511_Language_Access_CAQ_TA_Guidance.pdf.

Once the NBPD translates the vital documents and ensures their accuracy, it should then develop a strategy for distributing the materials to relevant LEP communities. The NBPD should also post signs in the primary languages of its largest LEP populations in the public areas of its police stations and other places of public contact stating that, on request, free language assistance services are available. The NBPD should make sure that important information regarding NBPD services that is available on its Web site in English is also available in Spanish and Portuguese.

III. Developing an Effective Language Assistance Plan

According to the 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 on effective language assistance measures, (3) training staff, (4) providing notice to LEP persons, and (5) monitoring and updating the plan.

Recommendation

The NBPD should establish a comprehensive, written language assistance plan on providing services to LEP persons that incorporates the five elements referenced above and addresses the concerns raised in this Compliance Review Report. In doing so, the NBPD 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 Document: Tips and Tools from the Field, and (3) a sample written language assistance plan. These documents are available at <http://www.lep.gov> and should assist the NBPD in preparing a language assistance plan or a general order on services to LEP persons. Because the NBPD has named one person on staff to be responsible for coordinating services to LEP persons, this individual should review the Report and the OCR's recommendations to develop a formal language assistance plan that will become familiar to every NBPD employee.

IV. Conclusion

This letter serves as notice that OCR has made a determination that the NBPD appears to be taking some steps to provide meaningful access to its programs and activities to LEP persons. However, the NBPD should build on these steps to ensure substantial compliance with Title VI and the Safe Streets Act. On request, the OCR is available to provide technical assistance to the NBPD in implementing its recommendations and formulating a written language assistance plan. Immediately upon receipt of this letter, we ask that a responsible NBPD official contact Attorney-Advisor Rachel Glickman to develop a timeline and goals for developing a written language plan for your agency.

The OCR's closure of this Compliance Review does not impact the NBPD's requirement to comply with Title VI and the Safe Streets Act. The closure of this Compliance Review is limited to the specific facts of this matter and does not preclude the DOJ from taking additional appropriate action to evaluate the NBPD's compliance with Title VI and the Safe Streets Act.

Thank you for your cooperation and the assistance of your staff throughout the compliance review process. If you have any questions, please contact Ms. Glickman at Rachel.Glickman@usdoj.gov or 202.616.1776.

Sincerely,

X

Michael L. Alston
Director

Enclosures