



**U.S. Department of Justice**

Office of Justice Programs

*Office for Civil Rights*

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*Washington, D.C. 20531*

**CERTIFIED-RETURN RECEIPT REQUESTED**

October 17, 2011

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Re: Compliance Review of the Admin. Office of the Cts. (10-OCR-0509), the Office of Prob. Admin. (10-OCR-0510), the Douglas County Juv. Ct. (10-OCR-0511), the Douglas County Juv. Assessment Ctr. (10-OCR-0512), and the Douglas County Attorney's Office (10-OCR-0513)

Dear Administrator Walker, Administrator Brokofsky, Administrator Curtis, and Director Culp:

I am writing to report the findings of the compliance review of language services within the juvenile justice system in Douglas County, Nebraska, 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 for assisting OCR attorneys Shelley Langguth and Christopher Zubowicz during their October 19 – 22, 2010, onsite visits.

In my letters to your respective agencies, dated July 29, 2010, 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

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compliance review to the provision of juvenile justice services<sup>1</sup> to juveniles and families<sup>2</sup> who, as a result of national origin, 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.<sup>3</sup> 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. 41,455 (June 18, 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 Administrative Office of the Courts/Office of the State Court Administrator<sup>4</sup> (AOC), Administrative Office of the Courts & Probation, Supreme Court of Nebraska; the Office of Probation Administration (OPA), Administrative Office of the Courts & Probation, Supreme Court of Nebraska; the Douglas County Juvenile Court (DCJC); and the Douglas County Juvenile Assessment Center (JAC) provide language services to LEP juveniles and LEP families of juveniles involved with the pre-adjudication juvenile justice system in Douglas 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 in connection with its onsite visits, which included interviews with agency representatives and discussions with representatives of community organizations, the OCR sent the AOC, the OPA, the DCJC, and the JAC a draft Compliance Review Report on June 9, 2011, in accordance with 28 C.F.R. 42.107(d)(2) and .206(e). On July 27, 2011, the AOC sent the OCR a written response on behalf

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<sup>1</sup> 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.

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

<sup>3</sup> 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.

<sup>4</sup> The OCR understands that this office is referred to as either the Office of the State Court Administrator or the Administrative Office of the Courts. Throughout this Compliance Review Report, the OCR will refer to the office as the Administrative Office of the Courts or the AOC.

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of the AOC, the OPA, the DCJC, and the JAC. In this response, the AOC provided several factual corrections to the draft Compliance Review Report along with clarification regarding some information discussed in the draft Compliance Review Report. The AOC also provided some information regarding actions that the AOC, the OPA, the DCJC, or the JAC has taken relating to the provision of language assistance services since the time of the OCR's onsite review. The OCR has made the necessary factual corrections to the draft Compliance Review Report to correctly reflect the manner in which the AOC, the OPA, the DCJC, and the JAC were providing language assistance services at the time of the OCR's onsite review. The OCR addresses relevant clarifying information and information on actions that the AOC, the OPA, the DCJC, or the JAC has taken since the time of our onsite visit in footnotes to this Compliance Review Report.

In regard to the limited scope of our review, we conclude that the AOC, the OPA, the DCJC, and the JAC 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 (Report) contains observations about the language assistance provided to LEP juveniles and LEP families of juveniles having contact with the juvenile justice system in Douglas County, along with recommendations based on the DOJ Guidance that the AOC, the OPA, the DCJC, and the JAC may find helpful in developing policies and procedures to improve your services to LEP individuals.

## **Compliance Review Report**

This Report begins by providing an overview of the roles and responsibilities of the AOC, the OPA, the DCJC, and the JAC in connection with the juvenile justice system in Douglas County. The 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 AOC, the OPA, the DCJC, and the JAC**

#### **A. AOC**

The Nebraska judicial system is unified in its administration. The AOC is a component of the Administrative Office of the Courts & Probation, Nebraska Supreme Court, and provides leadership, direction, and administrative support to the trial and appellate courts throughout the

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State of Nebraska, including the juvenile courts. Within the AOC is the Office of Trial Court Services, which provides technical assistance and support to the courts on areas such as case management and workflow, court facility planning, review of policies and procedures, and coordination of interpreter services in courts and probation offices. In connection with the coordination of interpreter services, the Trial Court Services Director operates the Supreme Court of Nebraska's Court Interpreter Training and Certification Program (Interpreter Certification Program), which involves certifying interpreters, maintaining a registry of interpreters, and implementing the Nebraska Supreme Court Rules pertaining to interpreters, codified at Nebraska Court Rules §§ 6-701 – 6-708. *See* Section II(C)(4)(a) of this Report for a detailed discussion of the Interpreter Certification Program.

#### B. OPA

The OPA is also a component of the Administrative Office of the Courts & Probation, Supreme Court of Nebraska, and provides pre- and post-adjudication probation services to juveniles throughout the State of Nebraska. The OPA is divided into twelve probation districts throughout the state, and OPA District 4J is responsible for providing probation services to juveniles subject to the jurisdiction of the DCJC. The pre-adjudication probation services provided by OPA District 4J involve juvenile intake services to determine the appropriate placement of juveniles pending adjudication.

#### C. DCJC

The DCJC is one of the state's three separate juvenile courts located in Douglas, Lancaster, and Sarpy counties; in the remaining counties, juvenile matters are heard in the county courts. The DCJC has jurisdiction over matters in Douglas County involving neglected, dependent, and delinquent juveniles, as well as domestic relations cases where the care, support, and custody of juveniles are at issue. In Nebraska, a juvenile is defined as a person under the age of eighteen. Neb. Rev. Stat. § 43-245(7) (2011). During the OCR's onsite visits of the AOC and the DCJC, AOC and DCJC staff explained that DCJC judges and court reporters are considered employees of the Supreme Court of Nebraska, and all other DCJC personnel are county employees.

Pursuant to Nebraska law, the DCJC has exclusive jurisdiction over any juvenile who is under the age of sixteen and is accused of committing a misdemeanor. Neb. Rev. Stat. § 43-247 (2011). The DCJC has concurrent jurisdiction with the Douglas County District Court and the Douglas County Court over any juvenile who is sixteen or seventeen years old and is accused of committing a misdemeanor, and has concurrent jurisdiction with the Douglas County District Court over any juvenile who is accused of committing a felony. *Id.* The OCR understands that a juvenile delinquency case that involves a juvenile who is sixteen or seventeen years old or a

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juvenile who is accused of committing a felony may originate with the Douglas County District Court or Douglas County Court and subsequently be transferred to the DCJC.<sup>5</sup>

#### D. JAC

The JAC is a county agency that provides comprehensive assessment and case management services on juvenile delinquency cases that may be eligible for diversion. If the Douglas County Attorney's Office (DCAO) believes that a juvenile cited or arrested for committing a delinquent act may be eligible to be diverted from formal court proceedings, the DCAO will refer the juvenile's file to the JAC for assessment. The JAC assesses the juvenile using standardized, objective instruments to identify the risk of re-offense along with the juvenile's needs, strengths, and weaknesses. If the JAC determines that the juvenile is eligible for diversion, the JAC recommends a diversion plan to the DCAO for final approval, and works with the juvenile to implement and monitor the diversion plan.<sup>6</sup>

#### 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 AOC, the OPA, the DCJC, and the JAC, the OCR offers the following observations and recommendations.

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<sup>5</sup> The OCR's review is limited to the juvenile delinquency proceedings that occur at the DCJC, including those proceedings that originate in the Douglas County Court or the Douglas County District Court and are subsequently transferred to the DCJC.

<sup>6</sup> At the initiation of the OCR's review of the juvenile justice components and services of Douglas County, the OCR sent the DCAO a data request to obtain information on the services that the DCAO provides to juveniles and juveniles' families. Based on the information provided by the DCAO, the OCR understands that the DCAO does not have any direct interaction with juveniles and their families when determining whether a juvenile is eligible for diversion or whether the DCAO will file a delinquency petition with the DCJC. Accordingly, the DCAO's involvement in the juvenile justice system is outside the scope of the OCR's review focusing on the provision of services to juveniles and their families who are LEP, and the OCR is not addressing this Report to the DCAO.

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

As noted above, the DCJC has jurisdiction over juvenile matters occurring in Douglas County. In their responses to the OCR's data requests, the OPA, the DCJC, and the JAC provided some data from the U.S. Census Bureau on the ethnicity of Douglas County residents, and the OPA provided Census data on the language proficiency of Douglas County residents in 2000. Based on the OCR's review of the most recent available data from the U.S. Census Bureau, in 2009, Douglas County had an estimated population of 467,973 residents age five and older; of this group, 408,309 spoke English only, and 59,664 (13%) spoke a language other than English. U.S. Census Bureau, American FactFinder, 2009 American Community Survey, Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over, Douglas County, Nebraska <http://factfinder.census.gov>. Of those individuals age five and older who spoke a language other than English, 39,851 (9%) spoke Spanish, and almost half of this number (21,768) spoke English less than "very well," which the OCR considers LEP. *Id.* The data further indicates that 8,167 residents spoke other Indo-European languages, with 2,912 speaking English less than "very well;" 7,599 spoke Asian and Pacific Island languages, with 3,600 speaking English less than "very well;" and 4,047 spoke other languages, with 1,529 speaking English less than "very well." *Id.*

Additional data from the U.S. Census Bureau provide information on some specific foreign languages other than Spanish that are spoken by Douglas County residents age five and older, although these data do not indicate the number of LEP individuals who speak each language. According to the available data, in 2009, 1,717 individuals spoke French, 1,372 individuals spoke Chinese, 905 individuals spoke German, 673 individuals spoke Vietnamese, 415 individuals spoke Tagalog, and 231 individuals spoke Korean. U.S. Census Bureau, American FactFinder, 2009 American Community Survey, Language Spoken at Home for the Population 5 Years and Over, Douglas County, Nebraska, <http://factfinder.census.gov>.

**Recommendations for the AOC, the DCJC, the OPA, and the JAC**

In order to determine what language assistance services each agency should provide, it is necessary that the AOC, the DCJC, the OPA, and the JAC have procedures in place to periodically review and tabulate available data on the LEP residents of Douglas County. The available data from the U.S. Census Bureau indicate that the most prevalent foreign language spoken by juveniles and families of juveniles under the jurisdiction of the Douglas County juvenile justice system is Spanish. During the OCR's onsite visits, the OCR learned that the DCJC, the OPA, and the JAC also frequently encounter juveniles and families of juveniles who speak foreign languages such as Arabic, Somali, and Nuer. The AOC, the DCJC, the OPA, and the JAC should review the 2010 data from the U.S. Census Bureau once available to determine

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more accurately the language assistance needs of the population under the jurisdiction of the Douglas County juvenile justice system and to identify the most common foreign languages spoken by LEP individuals. 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. Census Bureau can assist in numerous ways, including determining the need to assign a particular number of certified contract interpreters to the DCJC and the OPA District 4J, the need to hire bilingual staff, and the need to translate documents into foreign languages. The AOC, the DCJC, the OPA, and the JAC may also find helpful the data collected by local school districts on the languages spoken by enrolled students in Douglas County. These data provide additional information on the foreign language groups in a particular area and their relative size.

## B. Frequency of Contacts with LEP Persons

### 1. AOC and DCJC Data Collection

At the time of the OCR's onsite visit, the DCJC tracked information regarding juvenile delinquency cases in its electronic case management system, the Criminal Justice Information System (CJIS). During the OCR's onsite visit of the DCJC, DCJC staff stated that when the DCJC clerk's office discovers that a juvenile or a family member of a juvenile is LEP, either through a probation intake officer, a judge, or the juvenile or the juvenile's family, a clerk notes this in the remarks section of the CJIS. The DCJC provided the OCR with printouts of the information entered into the CJIS for two recent juvenile delinquency cases, where the clerk noted that one juvenile's mother required a Krahn-speaking interpreter and the other juvenile's mother needed a Spanish-speaking interpreter. Otherwise, the DCJC does not track the language proficiency of juveniles or their family members encountered by the DCJC.

The DCJC staff told the OCR that the DCJC will migrate its database to a statewide database operated by the AOC, called JUSTICE, by the summer of 2011.<sup>7</sup> Subsequent to the OCR's onsite visits, the AOC indicated that once the DCJC schedules an interpreter for an upcoming hearing, the DCJC will be able to enter into the JUSTICE database the identifying number of the assigned interpreter for each party (including a family member of a juvenile) who requires an interpreter. According to the AOC, this information will capture the language need of the LEP party.

The DCJC relies on contract interpreters speaking a variety of foreign languages to communicate with LEP juveniles and LEP families of juveniles. As will be discussed in Section II(C)(4) of this Report, one Spanish-speaking contract interpreter is specifically assigned to the courts within

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<sup>7</sup> In the AOC's July 27, 2011, Response to the draft Compliance Review Report (Response to the Draft Report), the AOC said that this migration is now expected to occur in the fall of 2011.

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Douglas County, including the DCJC. The contract interpreter assigned to the Douglas County courts provides quarterly reports to the AOC, listing the number of Douglas County Court, Douglas County District Court, and DCJC cases in which she provided interpretation. These quarterly reports do not specify the number of LEP individuals to whom the contract interpreter provided language assistance or to whom language assistance was provided (*e.g.*, juvenile, family member, or witness). When all other contract interpreters provide interpretation at the DCJC, the interpreters submit a request for payment to the AOC, which indicates the court where the contract interpreter provided language assistance, the language involved, and the number of people for whom interpretation was provided, but does not specify to whom language assistance was provided.

Based on the quarterly reports and requests for payment submitted by the contract interpreters, the AOC reported in its response to the OCR's data request that LEP individuals received language assistance services at the DCJC on 1,278 occasions during 2009.<sup>8</sup> Of these 1,278 occasions, 1,137 (89%) involved interpretation in Spanish, 119 involved interpretation in Nuer, 8 involved in interpretation in Arabic, 4 involved interpretation in Bosnian, 4 involved interpretation in Russian, 2 involved interpretation in French, 1 involved interpretation in Mandarin, 1 involved interpretation in Somali, and for 2 instances the language was unspecified. For the period of January 1 to July 31, 2010, contract interpreters provided interpretation at the DCJC on 1,313 occasions, with 1,214 (92%) involving interpretation in Spanish, 49 involving interpretation in Nuer, 35 involving interpretation in Arabic, 10 involving interpretation in French, 4 involving interpretation in Somali, and 1 involving interpretation in Sudanese.

The AOC also has a contract with the telephonic interpreter Language Line to provide interpretation in certain instances for LEP individuals served by the Nebraska courts. However, the AOC staff told the OCR that urban areas such as Douglas County rarely utilize Language Line due to the general availability of in-person interpreters, and that the DCJC did not use Language Line in 2009 or 2010.

## 2. OPA Data Collection

The OPA currently collects data on the ethnic origin of juveniles served by the OPA; during the OCR's onsite visit, OPA District 4J staff explained that probation officers will input a juvenile's ethnicity into the electronic case management system utilized by the OPA, the Nebraska Probation Application for Community Safety. The OPA District 4J staff and intake probation officers with whom the OCR spoke said that if a probation officer discovers during an intake

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<sup>8</sup> These occasions involve both pre- and post-adjudication delinquency proceedings, as well as non-delinquency proceedings.



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interview that a juvenile or a family member of a juvenile is LEP, the probation officer will note this in the comment section on a written Intake Summary Form.

OPA District 4J staff told the OCR that the OPA District 4J does not track the number of LEP juveniles or LEP family members of juveniles that it provides services to. As will be discussed in Section II(C)(3) of this Report, while the OPA District 4J has the ability to use the AOC's contract interpreters or Language Line to communicate with LEP juveniles and LEP families of juveniles during pre-adjudication detention assessments, at the time of the OCR's onsite visit, the OPA District 4J was not doing so.

### 3. JAC Data Collection

When a juvenile and his or her family member have an initial appointment with the JAC, the juvenile's family member completes an intake form. This intake form requests information on the juvenile's ethnicity, and asks the family member to indicate whether the juvenile and/or the parent has interpretation needs, and, if so, for what language and whether the family has their own interpreter. During the OCR's onsite visit, JAC staff told the OCR that beginning in January 2010, the JAC began to input all of the information from the intake form into an electronic case management system.

The JAC primarily communicates with LEP juveniles and LEP family members of juveniles by using Spanish-speaking JAC employees and by relying upon contract interpreters from the non-profit organization Caring People Sudan; interpreters from Caring People Sudan provide language assistance services in a variety of African dialects. The JAC staff told the OCR that Caring People Sudan submits monthly invoices to the JAC listing each instance of interpretation and indicating the language involved and time spent interpreting. The monthly invoices submitted by Caring People Sudan do not indicate whether language assistance was provided to an LEP juvenile or an LEP family member of a juvenile.

In its data response, based on information collected from the intake form and from the invoices submitted by Caring People Sudan, the JAC estimated that from January 1, 2008 to September 13, 2010, the JAC provided interpretation to 23 juveniles and 352 family members of juveniles. All of the 23 LEP juveniles spoke Spanish, and 330 of the LEP family members spoke Spanish, 17 family members spoke Nuer, 2 family members spoke Somali, 2 family members spoke Dinka, and 1 family member spoke Arabic. The OCR understands that the JAC may have provided language assistance services to these LEP juveniles and LEP family members on more than one occasion.

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### **General Recommendation for the AOC, the DCJC, the OPA, and the JAC**

In order to accurately assess the needs of Douglas County's LEP population, including which parties most frequently require language assistance services (*e.g.*, juvenile, family member, or witness), the AOC, the DCJC, the OPA, and the JAC should refine their collection of data from juveniles, families of juveniles, and interpreters to specifically identify the individual needing language assistance services, the primary language spoken by the individual, and how the agency provided language services.

### **Recommendations for the AOC and the DCJC**

Once the DCJC begins using JUSTICE, it will be able to indicate in an electronic database the particular contract interpreter assigned to interpret for a juvenile or a family member of a juvenile.<sup>9</sup> However, the OCR understands that the DCJC and the AOC will need to identify the language spoken by the assigned interpreter to clearly track the language spoken by the LEP party. The OCR recommends expanding the field in JUSTICE to allow the DCJC to explicitly indicate the language spoken by the assigned interpreter and the LEP party. The OCR also recommends that the AOC modify the request for payment form that contract interpreters submit to the AOC to specify to whom language assistance services were provided (*e.g.*, juvenile, family member, or witness). The AOC should also require that the contract interpreter assigned to the Douglas County courts include this information in the quarterly reports that she submits to the AOC.<sup>10</sup> The AOC should then tabulate all of the data pertaining to the DCJC on an annual basis to determine the evolving language needs of the LEP service population in Douglas County.

### **Recommendations for the OPA**

While the OPA currently collects data on the ethnic origin of juveniles served by the OPA, it does not currently collect information on the language spoken by juveniles or their family members. The OCR recommends that the OPA expand the Nebraska Probation Application for Community Safety to note the primary language spoken by a juvenile and the juvenile's family and whether an interpreter is needed for either party. While the OPA District 4J staff with whom the OCR spoke indicated that they include this information in the comment section of the written Intake Summary Form, the OCR recommends that the OPA include specific fields within its

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<sup>9</sup> In the AOC's Response to the Draft Report, the AOC said that DCJC court reporters currently record the assigned interpreter on a gold sheet that lists the parties to the case and the language needs of each party. This sheet was not discussed during the OCR's onsite visits to the AOC and the DCJC.

<sup>10</sup> According to the AOC's Response to the Draft Report, the AOC has directed contract interpreters assigned to specific courts to provide additional information regarding the individuals served beginning with the next quarterly report.

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electronic case management system to ensure that this information is captured. As will be discussed in Section III of this Report, the OCR recommends that the OPA District 4J begin to utilize available contract interpreters and Language Line to communicate with LEP juveniles and LEP family members during detention assessments. Once the OPA District 4J begins to utilize these available resources, the OPA should require that the contractors and Language Line submit periodic reports to the OPA documenting each instance of interpretation and noting the language involved and to whom language services were provided. The OPA should then tabulate all of these data on an annual basis to determine the evolving language needs of LEP juveniles and LEP families of juveniles in Douglas County.

### **Recommendations for the JAC**

The JAC currently tracks the ethnicity of juveniles served by the JAC along with any interpreter needs of a juvenile and the juvenile's family, and obtains monthly reports from Caring People Sudan documenting the provision of language assistance services. However, the JAC does not currently track when Spanish-speaking JAC employees, such as the Spanish-speaking juvenile justice specialists, communicate with Spanish-speaking juveniles or family members. The JAC should require its Spanish-speaking employees to track each instance when the Spanish-speaking employee communicates directly with or provides interpretation for Spanish-speaking juveniles or family members and to submit periodic reports to the JAC listing each instance and noting to whom language assistance was provided. The JAC should also require Caring People Sudan to include additional information in its monthly invoices to specify whether language assistance was provided to the juvenile and/or the juvenile's family member. The JAC should then tabulate all of these data on an annual basis to determine the language needs of the juveniles and their family members receiving services from the JAC.

#### C. Important Public Services Provided to LEP Individuals

##### 1. Initial Contact with Law Enforcement

According to information that the OCR obtained from the DCAO, juveniles may be arrested in Douglas County and referred to the DCAO by several law enforcement agencies, including the Omaha Police Department (OPD), the Douglas County Sheriff's Office, the Ralston Police Department, the Valley Police Department, the Nebraska State Patrol, and the Boys Town Police Department<sup>11</sup>. The OCR sent a data request to the OPD and conducted a brief onsite visit of the

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<sup>11</sup> According to the Boys Town's website at <http://boystown.org>, Boys Town is a non-profit organization that provides treatment to children and families for behavioral, emotional, and physical problems.

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OPD to gather information on the OPD's procedures and practices related to juveniles arrested or cited for a criminal offense.<sup>12</sup>

According to the section of the OPD's Standard Operating Procedures Manual (SOP Manual) entitled "Juvenile – Lineups/Interrogations," when dealing with juvenile offenders, the OPD pursues the least restrictive course of action necessary to protect both the public and the juvenile. The OPD has several options available once arresting a juvenile for a criminal offense, depending on the age of the juvenile and the nature of the offense. Pursuant to the section of the SOP Manual entitled "Juvenile Arrests – Arrests for Misdemeanor Offenses (Age 16 to 17)," whenever possible, when an OPD officer arrests a juvenile who is sixteen or seventeen years old for a misdemeanor offense, the officer shall issue the juvenile a criminal citation and release the juvenile. The SOP Manual lists certain exceptions that require an officer to physically arrest and book a juvenile, including if the juvenile is arrested for carrying a concealed weapon, the juvenile is arrested for a violent crime, release of the juvenile would pose a risk of harm to others, or the officer has reasonable grounds to believe the juvenile will not respond to the citation. During the OCR's onsite visit of the OPD, the OPD command staff with whom the OCR spoke said that the OPD cites and releases juveniles for offenses such as shoplifting, petty theft, or minor assault. The OPD command staff provided the OCR with a copy of the criminal citation that the juvenile must sign, whereby the juvenile promises to appear at the DCJC on the date listed on the citation. The criminal citation is a state form and is only available in English. The command staff told the OCR that officers attempt to notify a juvenile's family of the criminal citation by calling a family member, but that officers are not always able to reach a family member.

If the OPD arrests a juvenile for a misdemeanor and the juvenile is under the age sixteen, pursuant to the section of the SOP Manual entitled "Juvenile Arrests – Street Release," the arresting officer shall complete a Street Release Report and then release the juvenile. According to the SOP Manual, if the juvenile is fifteen years old, the officer will release the juvenile to a family member whenever possible, but if the family member cannot take responsibility for the juvenile, the juvenile can be released on his or her own with the family member's authorization. If the juvenile is fourteen years old or younger, the officer must release the juvenile to a family

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<sup>12</sup> The instant Report, as applied to the OPD, limits its focus to the provision of language services to juveniles and their families. The OCR currently maintains an open compliance review of the OPD, initiated in 2007, regarding the OPD's provision of services to the general LEP population within the service jurisdiction of the OPD. In connection with that review, the OCR issued a compliance review report on the OPD in which the OCR provided recommendations on how the OPD could improve its services to LEP individuals. The OCR is currently assisting the OPD in implementing the recommendations contained in that compliance review report, including the development of a comprehensive written language assistance plan. The OCR is not making any recommendations to the OPD in the instant Report regarding how the OPD may improve its services to LEP juveniles and LEP families of juveniles; rather, the OCR will relay those recommendations to the OPD in the context of concluding our prior compliance review of the OPD.

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member. The OPD command staff told the OCR that the arresting officer calls the juvenile's family member to notify the family member of the juvenile's arrest and to request that the family member sign the Street Release Report. According to the command staff, officers are almost always able to contact a parent or guardian or another adult family member, and if an officer is unable to reach a responsible family member, the officer would contact Child Protective Services for assistance. The command staff provided the OCR with a copy of the Street Release Report that the juvenile's family member must sign and explained that this is an internal form and that officers do not provide a copy to the juvenile or the juvenile's family member. According to the SOP Manual, officers advise the juvenile and the juvenile's family member that the DCJC will contact the family if the DCAO decides to refer the matter to the DCJC. The Street Release Report is currently only available in English, although OPD command staff told the OCR that the OPD is in the process of creating a Spanish version of this form.

During the OCR's onsite visit, OPD command staff explained that if the OPD arrests a juvenile for a felony offense, the arresting officer must physically arrest the juvenile and then book the juvenile at the Douglas County Youth Center (Youth Center). Pursuant to the section of the SOP Manual entitled "Juvenile Arrests – Authorization to Detain," it is the policy of the OPD to request pre-adjudication detention of all juveniles arrested for a serious or violent crime. In accordance with Nebraska Revised Statute § 43-250 (2011)<sup>13</sup>, the SOP Manual instructs officers to contact an intake probation officer from the OPA to request that the probation officer interview the juvenile to determine whether the juvenile should be detained in the Youth Center. (See Section II(C)(3) of this Report for a discussion of the OPA's pre-adjudication detention determination.) The OPD command staff with whom the OCR spoke said that the arresting officer attempts to contact the juvenile's family by telephone prior to transporting the juvenile to the Youth Center.

The OPD command staff told the OCR that if a juvenile or a family member of a juvenile is LEP, the officer will generally note this in the narrative section of the incident report. The command staff said that if a juvenile is LEP and speaks Spanish, the arresting officer will contact a Spanish-speaking OPD officer to provide interpretation. According to information that the OCR gathered during our prior compliance review of the OPD, the OPD employs several Spanish-speaking officers who have passed a language proficiency examination administered by the City of Omaha Personnel Department and who serve as interpreters for the OPD. The command staff said that if a juvenile is LEP and speaks a language other than Spanish, an officer will use Language Line to communicate, or may attempt to locate an in-person interpreter from an external organization such as the Federal Bureau of Investigation, Lutheran Family Services, Child Protective Services, or the University of Nebraska. If a family member of the juvenile is LEP and speaks Spanish, the command staff said that the arresting officer will typically locate a

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<sup>13</sup> This statute authorizes OPA probation officers to determine the need for pre-adjudication detention in a youth detention facility.

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Spanish-speaking officer to travel to the home of the family member to explain the situation. If a juvenile's parent or guardian is LEP and speaks a language other than Spanish, the officer will rely upon an English-speaking family member who is present in the home or an English-speaking neighbor to provide interpretation, or the officer can contact his or her supervisor to request authorization to access Language Line. According to the command staff, officers should not rely upon the juvenile to provide interpretation.

During the OCR's discussions with community organizations serving LEP populations, one community representative expressed concern that officers do not obtain an interpreter to communicate with LEP juveniles and LEP family members of juveniles at the time of a juvenile's arrest. The community representative said that as a result, LEP juveniles and LEP family members often do not understand what a juvenile is being arrested for.

In the OPD's response to the OCR's data request, the OPD stated that after the OPD arrests a juvenile, it refers the arrest report to the DCAO and the City of Omaha Prosecutor's Office. The DCAO then determines how to proceed with the juvenile's case, which may involve a pre-adjudication diversion program (*see* Section II(C)(2) of this Report) or formal court proceedings at the DCJC (*see* Section II(C)(4) of this Report).

## 2. Diversion Program

As noted above, upon reviewing a juvenile's arrest report, the DCAO may determine that the juvenile is a possible candidate to be diverted from formal court proceedings. Pursuant to Nebraska law, when determining whether a juvenile may be eligible for a pre-adjudication diversion program, the DCAO may take into consideration the juvenile's age, the nature of the offense, the number and nature of any previous offenses, the threat posed by the juvenile to others, or the recommendations of the referring agency, victim, and advocates for the juvenile. Neb. Rev. Stat. § 43-260.04 (2011). Participation by the juvenile is voluntary, and successful completion of the diversion program results in dismissal of the criminal charges. *Id.*

If the DCAO determines that a juvenile may be eligible for diversion, the DCAO will refer the juvenile's file to the JAC for assessment. The JAC then conducts an individualized assessment of the juvenile's needs and risk factors, and if the JAC believes that the juvenile is an appropriate candidate for diversion, it recommends a tailored diversion plan to the DCAO for approval. During the OCR's onsite visit, JAC staff said that approximately eighty-five percent of the cases referred to the JAC involve misdemeanor offenses, such as shoplifting, possession of marijuana, and criminal mischief, and that major felony offenses such as murder and serious property crimes are not eligible for diversion.

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Once a case is referred to the JAC, it is assigned to one of the JAC's six juvenile services specialists. According to the JAC staff, all juveniles with a Spanish surname are assigned to a Spanish-speaking juvenile services specialist; at the time of the OCR's onsite visit, one full-time and one part-time juvenile services specialist spoke Spanish. The assigned juvenile services specialist sends a letter to the juvenile's family notifying the family that the juvenile may be eligible for diversion and scheduling an appointment for the juvenile and the juvenile's family to come to the JAC for an interview and assessment. This letter is available in English and in Spanish, and the JAC staff said that the juvenile services specialists send the Spanish version to families with Spanish surnames or families who are otherwise known to be Spanish-speaking.

The JAC staff further told the OCR that the JAC's receptionist, who speaks Spanish, contacts the juvenile's family the day before the scheduled appointment to remind the family of the appointment. If the juvenile and the juvenile's family fail to appear for the scheduled appointment, the juvenile services specialist sends a follow-up letter, available in English and in Spanish, instructing the family to contact the specialist within seven days to re-schedule the appointment. If the juvenile and the juvenile's family fail to contact the juvenile services specialist within the seven-day timeframe, the specialist calls the family. The JAC staff estimated that approximately fifteen percent of families do not respond to the appointment letters or phone calls, and that the JAC will then return the file to the DCAO to file a delinquency petition with the DCJC.

At the appointment, the juvenile services specialist explains the assessment process to the juvenile and the juvenile's family and that participation in the diversion program is voluntary, and requests that a family member complete an intake form, which is available in English and in Spanish. The English-language version of the intake form contains a field where the family member can indicate whether a parent and/or the juvenile has interpretation needs, whether the family has brought along an interpreter, and the language spoken by the parent or the juvenile. The juvenile and the juvenile's family member must sign a form indicating that they understand the assessment process, along with a form indicating that they will comply with the terms of any diversion program approved by the DCAO. The juvenile's family member must also sign a form granting permission for the release of records and a form granting permission for the release of school information. All of the above-referenced forms are either available in English and in Spanish, or present the information in both English and Spanish. The juvenile services specialist then completes a Youth Level of Service screening survey, which involves gathering information from the juvenile and the juvenile's family on the juvenile's prior and current offenses, family circumstances, education and employment, peer relations, substance abuse, recreation activities, personality and behavior, and attitudes. Based on this information, the specialist rates the juvenile's risk level as low, moderate, high, or very high. The juvenile services specialist also conducts separate interviews of the juvenile and the juvenile's family, and has the juvenile

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complete the computerized Diagnostic Predictive Scales survey, which is a mental health screening instrument; the juvenile can complete the Diagnostic Predictive Scales in either English or Spanish.

The juvenile services specialist evaluates all of the information that has been collected and explains to the juvenile and the juvenile's family whether the specialist will be recommending diversion for the juvenile and, if so, what types of services the specialist will be recommending. In the JAC's response to the OCR's data request, the JAC indicated that services may include, but are not limited to, anger management classes, apology letters, substance abuse treatment, community service, counseling, decision making classes, essay assignments, gang intervention, detention facility tours, mentoring, fire starter programming, parenting classes, psychological evaluations, tutoring, teen court, victim empathy classes, or wrap-around services. The OCR understands that with the exception of coordinating the drafting of apology letters or essays and community service hours, all programs and services are conducted by external service providers.

Following the assessment, the juvenile services specialist develops an individualized diversion plan for the juvenile, if applicable, and sends the plan to the DCAO for review and approval. Upon approval, the juvenile services specialist sends a letter to the juvenile's family describing the required elements of the diversion plan; if the DCAO determines that the juvenile is not eligible for diversion, the specialist sends the family a letter explaining this. During the OCR's onsite visit, JAC staff said that it typically takes an average of three months for a juvenile to complete a diversion plan. The juvenile services specialists monitor a juvenile's participation in diversion activities by contacting the service providers and the juvenile's family and by reviewing school and law enforcement records. If the juvenile successfully completes a diversion plan, the juvenile services specialist sends the juvenile's family a letter stating that the juvenile has satisfied the conditions of diversion and that the DCAO will take no further action regarding the original charges; if the juvenile fails to complete the diversion plan, the specialist sends the family a letter stating that the JAC has returned the matter to the DCAO for further review. All of the above-referenced letters are available in English and in Spanish.

According to the JAC personnel with whom the OCR spoke, the JAC typically discovers that a juvenile or a family member of a juvenile is LEP prior to the assessment interview. In addition to analyzing a juvenile's surname, the JAC may discover a juvenile's or a family member's LEP status by reviewing information that the arresting law enforcement officer entered into the Douglas County Information Management System, which the JAC and the DCAO can access. In the Information Management System, there is a field where the officer can note if the juvenile or a family member of the juvenile needs interpretation in a specific language. The JAC's receptionist may also discover that a juvenile or a juvenile's family is LEP when she makes the reminder telephone call to the family, or a family member of the juvenile may telephone the JAC



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prior to the initial appointment. One juvenile services specialist with whom the OCR spoke said that the DCAO may place a note in the juvenile's case file if the DCAO is aware that a juvenile or a family member of the juvenile is LEP.

If the juvenile or a family member of the juvenile is LEP and speaks Spanish, a Spanish-speaking juvenile services specialist sends the Spanish version of all letters to the juvenile's family, and communicates directly with the juvenile and the juvenile's family in Spanish during any telephone calls and during the assessment. The JAC staff told the OCR that there have been times when the bilingual juvenile services specialist was not available, such as when she was out of the office on maternity leave, and the JAC relied upon the Spanish-speaking receptionist to provide interpretation for Spanish-speaking juveniles and family members. For certain African languages, the JAC has a contract with the non-profit organization Caring People Sudan to provide interpretation for juveniles and their family members. According to this contract, employees of Caring People Sudan can provide interpretation in Arabic, Nuer, Dinka, Somali, and Amharic, and are available to make telephone calls to juveniles and their families and to provide in-person interpretation during assessment interviews. The JAC staff told the OCR that the juvenile services specialist will have an employee from Caring People Sudan contact the juvenile's family to explain the information contained in any letters sent to the family, and that an employee from the organization will provide in-person interpretation services during the assessment interview. The contract between the JAC and Caring People Sudan also states that Caring People Sudan will translate brochures and forms into the above-referenced languages. However, the JAC staff told the OCR that Caring People Sudan has not translated any forms, and while the staff said that Caring People Sudan has translated brochures for the JAC, the JAC did not provide the OCR with any such brochures and the OCR did not observe any during its onsite visit.<sup>14</sup>

According to the JAC personnel with whom the OCR spoke, the JAC does not frequently encounter LEP juveniles or LEP family members who speak a foreign language other than Spanish or an African language. During several occasions when the JAC has encountered other languages, JAC employees said that juveniles and their families brought their own interpreter, such as a Korean-speaking interpreter from a university and a Sudanese-speaking interpreter from the non-profit organization Lutheran Family Services. Also, one juvenile services specialist reported relying upon a juvenile to interpret for a Vietnamese-speaking family member, and another specialist reported using a juvenile to interpret for a Korean-speaking family member. However, a third specialist told the OCR that the specialist would not rely upon a juvenile to

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<sup>14</sup> In the AOC's Response to the Draft Report, the AOC clarified that in 2004, the JAC had several forms translated into Nuer, such as the initial appointment letter, the intake form, the youth consent form, the agreement form, and release forms. However, JAC staff did not find them useful and the JAC discontinued using the translated forms, instead relying upon interpreters to assist individuals in completing necessary forms.

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interpret for a family member. During the OCR's onsite visit, the JAC staff told the OCR that the JAC now instructs specialists to not use juveniles to interpret for LEP family members. The JAC staff discussed a recent situation where the JAC had to re-schedule an appointment with a family member who spoke Dinka because the family member requested to use the juvenile as an interpreter and the JAC would not allow this, and an interpreter from Caring People Sudan was not available.

In regard to the external service providers, the JAC personnel with whom the OCR spoke said that juvenile services specialists are aware of which providers have bilingual staff or utilize interpreters to communicate with LEP juveniles and LEP family members, and that the specialists will refer LEP juveniles or juveniles with LEP family members to those providers. In the JAC's response to the OCR's data request, the JAC provided some examples of how service providers communicate with LEP juveniles and LEP family members, such as by utilizing bilingual staff, volunteer interpreters, and bilingual school employees.

### 3. Juvenile Intake/Pre-Adjudication Detention Assessment

As discussed in Section II(C)(1) of this Report, if the OPD arrests a juvenile for a serious or violent crime, including a felony, the OPD will contact the OPA to request pre-adjudication detention of the juvenile at the Youth Center. During the OCR's onsite visit of the OPA District 4J, OPA District 4J staff said that there are eight law enforcement agencies, including the OPD, who may arrest a juvenile within Douglas County and contact the OPA to request pre-adjudication detention. The OPA District 4J has two intake probation officers who are responsible for assessing juveniles and determining whether pre-adjudication detention is appropriate; one intake probation officer works from 8:00 a.m. until 4:30 p.m. on Monday through Friday and is stationed at the DCJC, and the other intake probation officer works from 4:30 p.m. until midnight on Monday through Thursday and is stationed at the Youth Center. The intake probation officers rotate being on-call after midnight and on Friday evenings.

Based on the information that the OCR gathered from OPA District 4J personnel, along with information contained in the OPA's policy entitled "Juvenile Intake and Structured Decision-Making," the OCR understands that the intake/detention assessment process is as follows. Once contacted by a law enforcement officer, the intake probation officer meets with the officer and the juvenile at the Youth Center to speak with the officer regarding the circumstances of the arrest and to conduct a detention interview of the juvenile. The intake probation officer also interviews the juvenile's family, either over the telephone or in person. OPA District 4J staff told the OCR that intake probation officers interview families over the telephone more frequently than in-person, and that probation officers are almost always able to reach a family member. The intake probation officer then completes the Nebraska Juvenile Intake Summary, which requests

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demographic information on the juvenile (including ethnicity), the law enforcement officer's view of the situation, the family's view of the situation, and the juvenile's view of his or her environment. OPA employees with whom the OCR spoke said that if a probation officer discovers that a juvenile or a family member of a juvenile is LEP, the probation officer will note this in the comment section of the Juvenile Intake Summary.

The intake probation officer also completes the Nebraska Juvenile Detention Screening Risk Assessment. This assessment instrument contains language noting that the purpose of detention is to detain only those juveniles who pose a severe risk to the community or are at risk to flee the jurisdiction, and that the intake probation officer should choose the least restrictive option in deciding where the juvenile shall be placed. In completing the Nebraska Juvenile Detention Screening Risk Assessment, the intake probation officer analyzes the type of offense allegedly committed, the risk that the juvenile will fail to appear in court, the risk of committing a new offense, any mitigating or aggravating factors, any victim or witness factors, and any substance abuse factors. Depending on this information, the intake probation officer decides to release the juvenile to the juvenile's family, release the juvenile to another responsible adult, or place the juvenile in secure detention at the Youth Center. According to the OPA's response to the OCR's data request, if the juvenile's family or another responsible adult is not willing to accept the juvenile, the intake probation officer must detain the juvenile at the Youth Center.

Once making a determination, the intake probation officer contacts the juvenile's family if they are not present at the Youth Center to inform them of the placement decision and, if applicable, to notify them of the time and date of the detention hearing. If the intake probation officer decides to detain a juvenile at the Youth Center, the probation officer completes a detention authorization form, listing the date of the detention hearing; OPA District 4J staff told the OCR that all detention hearings occur at 2:30 p.m. on the day following the detention determination. The detention authorization form is only available in English. The intake probation officer provides the juvenile's family with a copy of the detention authorization form if the family is present, and submits copies of the detention authorization form, the Nebraska Juvenile Detention Screening Risk Assessment, and the Nebraska Juvenile Intake Summary to the DCAO and the DCJC. If the intake probation officer is releasing the juvenile, the probation officer forwards a copy of the Nebraska Juvenile Intake Summary to the DCAO so that the DCAO may determine how to proceed.

In the OPA's response to the OCR's data request, the OPA indicated that the OPA District 4J has "I speak" cards to identify the language spoken by any LEP individuals that it encounters. However, at least one of the intake probation officers with whom the OCR spoke was not aware of these cards. Based on the information that the OCR gathered from OPA District 4J personnel, at the time of the OCR's onsite visit, the OPA District 4J did not have any mechanisms or

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procedures in place to communicate with LEP juveniles or LEP family members. According to state law, the AOC has a responsibility to provide interpreter services when a probation officer conducts a presentence investigation and during ongoing supervision of an individual placed on probation. Neb. Rev. Stat. § 29-2259 (2011). In the OPA's response to the OCR's data's request and during the OCR's onsite visit, the OPA stated that the AOC has a contract with a certified Spanish-speaking interpreter to coordinate interpreting services for the adult and juvenile probation offices in Douglas County. However, as will be discussed in Section III(A)(3) of this Report, at the time of the OCR's onsite visit, OPA District 4J intake probation officers were not using this contract interpreter to provide or arrange for interpretation during detention assessments.

The intake probation officers with whom the OCR spoke reported using juveniles or other English-speaking family members to interpret for LEP parents during the intake process, and one probation officer reported using Spanish-speaking staff at OPA District 4J or at the Youth Center to communicate with Spanish-speaking juveniles or family members of juveniles. An intake probation officer also referenced one occasion where the probation officer was unable to communicate with a Spanish-speaking juvenile and the probation officer decided to detain the juvenile in the Youth Center; the probation officer could not recall if the detention was due to the probation officer's inability to communicate with the juvenile or the circumstances of the offense. Both of the intake probation officers with whom the OCR spoke stated that once they discover that a juvenile or a family member of a juvenile is LEP, they contact the certified interpreter assigned to the DCJC (via telephone or e-mail) to inform her of the need for an interpreter during the juvenile's first court appearance.

#### 4. Juvenile Court Delinquency Proceedings

##### a. AOC Interpreter Certification Program

According to Nebraska state law, it is the policy of the state that "the constitutional rights of persons unable to communicate the English language cannot be fully protected unless interpreters are available to assist such persons in legal proceedings." Neb. Rev. Stat. § 25-2401 (2011). Pursuant to this stated policy, the presiding judge in any legal proceeding or hearing shall appoint an interpreter for a person unable to communicate the English language to assist the person in preparation or trial of his or her case. *Id.* § 25-2403 (2011). A "person unable to communicate the English language" refers to a person who cannot readily understand or communicate the English language. *Id.* § 25-2402(2) (2011). The costs of the interpreter shall be paid by the state with funding appropriated to the Supreme Court. *Id.* § 29-2259 (2011). During the OCR's onsite visits, staff from the AOC and the DCJC stated that pursuant to these statutes, interpreter services

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are always provided to LEP juveniles and LEP families of juveniles participating in juvenile delinquency proceedings at the DCJC.

As referenced in Section I(A) of this Report, the AOC administers an Interpreter Certification Program for individuals who wish to serve as interpreters in the Nebraska courts. The guidelines and examination procedures for the Interpreter Certification Program are set forth in the Nebraska Supreme Court Rules, codified at Nebraska Court Rules §§ 6-701 – 6-708. A candidate must first complete a two-day orientation course provided by federally-certified court interpreters, which includes a discussion of ethics; court structure, procedures, and vocabulary; and sight, consecutive, and simultaneous interpreting techniques. Upon completion of the orientation, the candidate must pass a written English comprehension examination provided by the Consortium for Language Access to the Courts<sup>15</sup> (Consortium) by receiving a score of 80% or better. If the candidate passes the written English examination, the candidate then takes an oral examination, which the Consortium created, that tests the candidate's interpreting skills in the relevant foreign language. During the OCR's onsite visit, AOC staff said that the AOC administers the oral examination by playing a compact disc containing the examination for the candidate, recording the candidate's responses, and forwarding the compact disc to a certified court interpreter to grade the candidate's performance. At the time of the OCR's onsite visit, the AOC offered a full examination<sup>16</sup> in the following fourteen languages: Cantonese, French, Haitian Creole, Hmong, Ilocano, Korean, Laotian, Mandarin, Polish, Portuguese, Russian, Spanish, Somali, and Vietnamese. The AOC also offered an abbreviated examination<sup>17</sup> in the following six languages: Modern Standard Arabic, Egyptian Colloquial Arabic, Chuukese, Bosnian/Croatian/Serbian, Marshallese, and Turkish.

If a candidate receives a score of 70% or better on each segment of the oral examination, the candidate is considered to be a "certified" interpreter; if a candidate receives a score over 50% but less than 70%, the candidate is considered to be a "registered" interpreter. In lieu of obtaining certification from the AOC, individuals may present federal certification or certification from another state participating in the Consortium in order to be considered a certified interpreter. Section 6-703 of the Nebraska Supreme Court Rules mandates that a court shall first attempt to appoint a certified interpreter, and if one is not available, then the court may appoint a registered interpreter; if the court is unable to locate either a certified or registered interpreter, the court may appoint an interpreter "who is otherwise competent to interpret in the courts." All individuals serving as interpreters must sign and agree to adhere to the Code of

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<sup>15</sup> Nebraska is a member of the Consortium for Language Access to the Courts.

<sup>16</sup> A full examination assesses a candidate's sight, consecutive, and simultaneous interpreting skills.

<sup>17</sup> An abbreviated examination only includes one or two of the three methods of interpretation.

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Professional Responsibility for Interpreters. Individuals are considered to be certified or registered in oral interpretation only; the Interpreter Certification Program does not assess an individual's skills in written translation. The AOC provided the OCR with the Nebraska Supreme Court Interpreter Fee Schedule and Payment Policy; this document indicates that the AOC compensates certified interpreters at a rate of \$50.00 per hour for a two-hour minimum, and compensates non-certified interpreters at a rate of \$35.00 per hour for a two-hour minimum.

The AOC maintains lists of certified, registered, and "other"<sup>18</sup> court interpreters and posts these lists on the AOC's website. At the present time, the AOC maintains a list of thirty-eight certified interpreters; thirty-six of these certified interpreters speak Spanish, one speaks Mandarin Chinese, and one speaks Somali<sup>19</sup>. The AOC currently maintains a list of twenty-nine registered interpreters; twenty-three of these interpreters speak Spanish, two speak French, two speak Russian, one speaks Vietnamese, and one speaks Arabic. Of the eighty-seven "other" interpreters listed by the AOC, seventy-eight speak Spanish, four speak Vietnamese, two speak Arabic, one speaks French, one speaks Cantonese-Mandarin, and one speaks Russian. According to the AOC's response to the OCR's data request, for the high-volume courts in Nebraska, the AOC enters into a contract with a certified interpreter and specifically assigns that interpreter to the particular court or county; at the time of the OCR's onsite visit, the AOC had one Spanish-speaking certified interpreter assigned to the courts in Douglas County (*i.e.*, the DCJC, the Douglas County District Court, and the Douglas County Court). For all other individuals who serve as interpreters in the Nebraska courts, the AOC contracts for their services on an as-needed basis.

During the OCR's onsite visit, AOC staff said that the Nebraska Supreme Court's Interpreter Advisory Committee<sup>20</sup> is developing a process for provisionally certifying interpreters in foreign languages for which tests are not currently available, such as Nuer. The AOC explained that this process may include consideration of factors such as the prospective interpreter's education, experience, and publishing history.

Based on the requirements related to the provision of language assistance services contained in the Nebraska Revised Statutes and the Nebraska Supreme Court Rules, the Interpreter Advisory

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<sup>18</sup> According to the AOC's list entitled "Other Court Interpreters," individuals on this list have completed the AOC's orientation program and have achieved a passing score on the written English comprehension examination.

<sup>19</sup> The Somali-speaking interpreter currently resides out-of-state, in Minnesota.

<sup>20</sup> According to information contained on the Nebraska Supreme Court's website at [www.supremecourt.ne.gov](http://www.supremecourt.ne.gov), the Interpreter Advisory Committee is responsible for creating, evaluating, and recommending statewide policies, rules and regulations relating to interpretation in the Nebraska courts, and is comprised of interpreters and representatives of Nebraska courts, probation offices, and universities.

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Committee has created a document entitled "Nebraska Interpreter Protocol 2008" (Interpreter Protocol). The Interpreter Protocol contains information in a question and answer format on the appropriate use of interpreters in Nebraska courts.

b. Detention and Arraignment Hearings

If an OPA intake probation officer decides to detain a juvenile at the Youth Center, the DCJC must hold a detention hearing within twenty-four hours to determine whether continued detention is appropriate. Neb. Rev. Stat. § 43-253(3) (2011). As discussed in Section II(C)(3) of this Report, upon deciding to detain a juvenile at the Youth Center, the intake probation officer provides the Youth Center, the DCAO, and the juvenile's family (if present) with a copy of the detention authorization form, which indicates that the detention hearing will occur at 2:30 p.m. on the following day. During the OCR's onsite visit of the DCJC, DCJC staff told the OCR that the OPA District 4J also provides the DCJC with a list each morning of the juveniles who are scheduled to appear at a detention hearing that day; this list does not indicate whether a juvenile or a family member of a juvenile is LEP.

According to DCJC staff, at the detention hearing, the judge considers the information that the intake probation officer gathered from the juvenile and the juvenile's family along with the probation officer's assessment. The judge then decides whether to continue pre-adjudication detention of the juvenile at the Youth Center, to release the juvenile to the juvenile's family or another responsible adult, or to place the juvenile in a temporary shelter. Pursuant to Nebraska law, a court shall not release a juvenile if it appears that further detention of the juvenile is necessary for the protection of the juvenile or of another's person or property, or if it appears that the juvenile is likely to flee the jurisdiction of the court. Neb. Rev. Stat. § 43-253(5) (2011). The DCJC staff told the OCR that a judge may order a juvenile to wear an electronic monitor as a condition of release, which is coordinated by either the Youth Center or the Nebraska Department of Health and Human Services. A DCJC judge with whom the OCR spoke said that the nature of the offense, the risk that the juvenile poses to others, and the juvenile's treatment needs are the primary factors that the judge takes into consideration when deciding whether to continue pre-adjudication detention of a juvenile, and that family involvement is not a primary consideration.

DCJC staff told the OCR that approximately fifty percent of the time the juvenile will also be arraigned at the detention hearing; if the juvenile requests an attorney or if the DCJC needs to appoint a guardian ad litem for the juvenile, the juvenile will be arraigned at a later date. If a juvenile is not arraigned at the detention hearing or if the juvenile's first court appearance is the arraignment (*e.g.*, the arresting law enforcement officer released the juvenile at the time of arrest, or the intake probation officer decided to release the juvenile following the detention

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assessment), the DCJC sends the juvenile's family a Notice in Lieu of Summons notifying the juvenile's family of the date of the arraignment hearing. This Notice in Lieu of Summons contains a paragraph in Spanish instructing the juvenile's family to contact the DCJC if the family needs an interpreter. If the juvenile and the juvenile's family fail to appear for the arraignment hearing, then the DCAO requests that the Clerk of the Douglas County District Court prepare and issue a Summons with a new court date.

In the DCJC's response to the OCR's data request, the DCJC explained that during arraignment, the judge reads the delinquency petition to the juvenile and explains the juvenile's right to counsel. The juvenile can choose to admit to or contest the charges; if the juvenile admits the charges, the DCJC proceeds immediately to adjudication. If the juvenile contests the charges, the DCJC schedules a pre-trial hearing where the attorneys and judges can discuss any plea agreements and how much time is needed for the adjudication. During the OCR's onsite visit, DCJC staff said that juveniles and their families are rarely present at pre-trial hearings.

As discussed in Section II(C)(4)(a) of this Report, a certified Spanish-speaking contract interpreter is specifically assigned to provide interpretation at the DCJC, the Douglas County District Court, and the Douglas County Court (hereinafter referred to as the DCJC contract interpreter). According to the AOC's contract with the DCJC contract interpreter and the DCJC's response to the OCR's data request, this interpreter provides twenty-five hours per week of Spanish interpreting in the Douglas County courts, and is responsible for arranging for the most qualified interpreter available to meet all other interpreter needs. DCJC staff told the OCR that the DCJC is usually aware prior to the first court appearance that a juvenile or a family member is LEP. As discussed in Section II(C)(3) of this Report, when an OPA District 4J intake probation officer discovers that a juvenile or a family member of a juvenile is LEP, the intake probation officer contacts the DCJC contract interpreter. Additionally, DCJC staff told the OCR that juveniles or family members of juveniles will also contact the DCJC administrative office upon receiving the Notice in Lieu of Summons to notify the DCJC of the need for an interpreter. DCJC staff said that if a juvenile or a family member of a juvenile contacts the administrative office to request an interpreter, the administrative staff sends a notice to the DCJC contract interpreter notifying her of the need for an interpreter.

Once the DCJC contract interpreter receives notice of the need for an interpreter at an upcoming detention or arraignment hearing, she schedules herself to provide the interpretation (if the LEP individual speaks Spanish and she is available), or else she consults the AOC's lists of certified, registered, and other interpreters that are located on the AOC's website. The DCJC contract interpreter told the OCR that she also maintains her own list of community members who can provide interpretation in various languages. During the OCR's onsite visit, the OCR observed a



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disposition hearing involving Spanish-speaking LEP family members of a juvenile, where the DCJC contract interpreter provided interpretation in the courtroom.<sup>21</sup>

DCJC staff and the DCJC contract interpreter told the OCR that if the DCJC first discovers at a detention or arraignment hearing that a juvenile or a family member is LEP, the courtroom staff contacts the DCJC contract interpreter to request language assistance services. If the LEP individual speaks Spanish, the DCJC contract interpreter provides interpretation herself if she is available; if she is not available or if the LEP individual speaks a language other than Spanish, the DCJC contract interpreter determines if an appropriate qualified interpreter is present at the DCJC and is available. If an appropriate qualified interpreter is not immediately available at the DCJC, the judge continues the hearing until a later date. A DCJC judge with whom the OCR spoke said that he continues a pre-adjudication hearing due to a lack of an interpreter approximately once or twice per month, and that it is rare that he would order the juvenile to be detained pending the hearing. Both the judge and the DCJC contract interpreter told the OCR that they use "I speak" cards to determine the language that an LEP individual speaks.

According to a front desk receptionist with whom the OCR spoke, if an LEP juvenile or LEP family member of a juvenile comes to the DCJC's front desk to request information or assistance, the receptionist contacts a Spanish-speaking administrative clerk at the DCJC to request that she provide interpretation, contacts the DCJC contract interpreter to request that she provide interpretation or locate an interpreter at the courthouse, or relies upon English-speaking friends or family members with the LEP individual to provide interpretation. If an LEP juvenile or LEP family member of a juvenile calls the front desk for assistance, the receptionist said that he transfers the call to the Spanish-speaking administrative clerk or to the DCJC contract interpreter's office.

Based on the OCR's interview with a judge at the DCJC, the OCR understands that if a judge issues a written order in connection with a detention or arraignment hearing, the DCJC mails the order to the juvenile and the juvenile's family, and that it is the responsibility of the juvenile's attorney to ensure that the juvenile and the juvenile's family understand the order. The judge said that during a detention or arraignment hearing he does provide a juvenile's family with a financial affidavit to complete so that the DCJC may determine whether the family qualifies for a court-appointed attorney; the financial affidavit is only available in English.

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<sup>21</sup> The DCJC provides language assistance services during a disposition hearing in the same manner as during a pre-adjudication detention or arraignment hearing.

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5. Complaints

a. AOC

The AOC does not have any written procedures in place governing the receipt of complaints about services provided by AOC staff or court reporters at the DCJC. Complaints alleging judicial misconduct by a DCJC judge are submitted to and investigated by the Nebraska Judicial Qualifications Commission, in accordance with Nebraska Revised Statutes §§ 24-715 – 24-728 (2011). The Chief Justice of the Nebraska Supreme Court is the chairperson of the Nebraska Judicial Qualifications Commission, which is comprised of judges, attorneys, and lay members. The Supreme Court of Nebraska has a complaint form on its website for complainants to complete and submit to the Nebraska Judicial Qualifications Commission, which is posted in English only. Complaints against AOC contract interpreters providing language assistance services at the DCJC are handled according to Nebraska Court Rules § 6-707 (2011), which states that complaints against interpreters shall be submitted in writing to the AOC and investigated by the AOC. The AOC does not have a complaint form for this purpose.

During the OCR's onsite visit, AOC staff said that the AOC has never received a complaint from an LEP juvenile or LEP family member of a juvenile regarding a judge or interpreter at the DCJC. AOC staff said that the AOC would rely upon a contract interpreter to communicate with an LEP complainant, and could also utilize Language Line. AOC staff further said that the AOC has never received a complaint alleging that a juvenile or a juvenile's family had difficulty communicating with an AOC staff member or could not understand the information that the AOC or the DCJC was conveying.

b. DCJC

As discussed in Section I(C) of this Report, with the exception of judges and court reporters, personnel at the DCJC are Douglas County employees. In the DCJC's response to the OCR's data request, the DCJC said that complaints alleging misconduct by DCJC staff are directed to the court administrator at the DCJC or the presiding judge at the DCJC. During the OCR's onsite visit, DCJC staff said that the DCJC does not have a complaint form for individuals to complete. DCJC staff told the OCR that the DCJC has not received any complaints from an LEP juvenile or LEP family member of a juvenile nor any complaints alleging that a juvenile or a juvenile's family member had difficulty communicating with the DCJC due to a language barrier. According to DCJC staff, if the DCJC did receive a complaint from an LEP individual, the DCJC would contact the DCJC contract interpreter to provide or arrange for language assistance services.

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c. OPA

At the time of the OCR's onsite visit, the OPA did not have a formal written policy or any complaint forms regarding complaints alleging misconduct by OPA employees. In the OPA's response to the OCR's data request, the OPA said that the chief probation officer or a designee from the respective OPA district investigates complaints against OPA district employees, and that the OPA investigates complaints against chief probation officers. During the OCR's onsite visit, OPA District 4J staff said that the OPA District 4J has never received a complaint from an LEP juvenile or LEP family member of a juvenile, and has never received a complaint alleging that an LEP individual had difficulty communicating with an OPA District 4J employee. OPA District 4J staff said that if the OPA District 4J should receive a complaint from an LEP individual, it would contact the AOC to determine what language assistance services are available.

d. JAC

According to the JAC's response to the OCR's data request, the director of the JAC handles any complaints alleging misconduct by JAC employees; the JAC does not have any formal complaint procedures in place, and does not have a complaint form for a complainant to complete. During the OCR's onsite visit, JAC staff said that the JAC has never received a complaint alleging that an LEP juvenile or an LEP family member of a juvenile had difficulty communicating with the JAC or understanding the information that the JAC was conveying, and has never received a complaint from an LEP individual. JAC staff said that the JAC would rely upon Spanish-speaking employees or an interpreter from Caring People Sudan to communicate with an LEP complainant, and would attempt to locate an interpreter from another source for languages not spoken by JAC employees or Caring People Sudan.

6. Community Outreach

a. AOC, DCJC, and OPA

The AOC and the OPA have not engaged in any specific outreach to LEP juveniles or LEP family members of juveniles in Douglas County. According to the AOC's Response to the Draft Report, judges with the DCJC have visited public schools with interpreters to speak to students regarding truancy. The DCJC and the OPA provided the OCR with lists of service providers within Douglas County that the DCJC and the OPA have contacted to ensure that they can provide post-adjudication services to juveniles and their families, including LEP juveniles and families.

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b. JAC

According to the JAC's response to the OCR's data request and on information that the OCR gathered during our onsite visit, the JAC has engaged in some community outreach with LEP juveniles and LEP families over the past few years. In the summer of 2009, employees from the JAC participated in a community forum sponsored by the Nebraska Minority Committee and Nebraska Equal Opportunity Commission, where they provided information on the juvenile justice system to approximately sixty participants from the Hmong and African refugee communities. JAC staff told the OCR that the Nebraska Minority Committee provided interpreters for LEP participants. Prior to 2008, the JAC sponsored a forum on the juvenile justice system that included attendees who spoke Dinka, Nuer, and Arabic, and where the non-profit organization Southern Sudan Association provided interpreters. One of the JAC's Spanish-speaking juvenile services specialist has participated in meetings of a parents' support group offered through the Boys and Girls Club of the Midlands, where the bilingual specialist conversed with parents in Spanish. Additionally, the JAC co-hosts a monthly juvenile justice provider forum, along with Douglas County and the City of Omaha, where the JAC meets with all community organizations that provide services to juveniles, including LEP juveniles, within Douglas County.

**Recommendations for the AOC, the DCJC, the OPA, and the JAC**

For recommendations for each agency relating to the services discussed in Section II(C), *see* Section III of this Report.

D. Available Resources

1. AOC, DCJC, and OPA

The fiscal year for the Nebraska judicial system, including the AOC, the DCJC, and the OPA, is from July 1 to June 30. According to the AOC's response to the OCR's data request, the AOC's total operational budget was \$8,563,299.00 in fiscal year 2009 and \$9,508,468.00 in fiscal year 2010. During the OCR's onsite visit, AOC staff said that the AOC's operational budget includes expenditures for interpretation services throughout the Nebraska judicial system during court proceedings and probation services. The AOC spent a total of \$1,123,573.58 on contract interpretation services in fiscal year 2009 and a total of \$1,133,153.00 in fiscal year 2010; AOC staff clarified that these figures do not include expenditures for Language Line or for the training and testing of interpreters. The AOC budgeted \$891,597.00 for interpretation services in fiscal year 2011.

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In regard to interpretation services at the DCJC, the AOC's response to the OCR's data request indicates that the AOC spent \$103,365.00 on interpreters in calendar year 2009, and spent \$75,780.00 on interpreters from January 1 to July 31, 2010. Additionally, the OPA's response to the OCR's data request states that the AOC spent \$72,370.00 on interpreters in connection with probation services in calendar year 2009, and spent \$40,600.00 on interpreters in connection with probation services from January 1 to July 31, 2010. During the OCR's onsite visit, OPA District 4J staff said this interpretation occurred during post-adjudication probation services.

In addition to the AOC's expenditures on contract interpreters, the DCJC spent some of its own county funding on language assistance services that the AOC does not provide. In the DCJC's response to the OCR's data request, the DCJC stated that it spent \$1,552.00 on language assistance services in fiscal year 2009 and \$1,434.95 on language assistance services in fiscal year 2010; during the OCR's onsite visit, DCJC staff explained that these language assistance services included the use of an interpreter during court-appointed attorneys' discussions with juveniles and their families, the use of an interpreter during depositions, and the translation of letters from court-appointed attorneys to juveniles' families. The DCJC's response to the OCR's data request further indicates that the DCJC budgeted \$40,000.00 for "professional fees" in fiscal year 2011, which includes county-funded language assistance services. As discussed in Section II(C)(4)(b) of this Report, the DCJC partially relies upon a Spanish-speaking administrative clerk to communicate with LEP individuals seeking assistance from the front desk. During the OCR's onsite visit, DCJC staff said that the DCJC provides this bilingual clerk with a four percent salary premium for her language skills. It does not appear that the DCJC included this additional compensation in its 2009 and 2010 reported expenditures for language services.

While OPA District 4J intake probation officers may rely upon bilingual employees to communicate with LEP juveniles during detention assessments, the OPA District 4J does not currently provide these bilingual employees with any additional compensation.

## 2. JAC

The JAC's fiscal year is also July 1 to June 30. According to the JAC's response to the OCR's data request, the JAC's total operational budget was \$631,430.00 in fiscal year 2009 and \$664,851.00 in fiscal year 2010. Of these amounts, the JAC spent \$1,320.00 on language assistance services in fiscal year 2009 and \$1,030.00 in fiscal year 2010; during the OCR's onsite visit, JAC staff said that these expenditures were for interpretation services provided by Caring People Sudan. The JAC budgeted \$3,000.00 for "services to youth" in fiscal year 2011, which includes language assistance services.

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As discussed in Section II(C)(2) of this Report, the JAC also utilizes two full-time and one-part time Spanish-speaking employees to communicate with LEP juveniles and LEP families. During the OCR's onsite visit, JAC staff said that the JAC provides additional compensation of \$1.00 per hour to the two full-time bilingual employees; the JAC did not include this additional compensation in its reported expenditures for language services in fiscal years 2009 and 2010.<sup>22</sup>

### **Recommendations for the AOC, the DCJC, and the OPA**

The AOC, the DCJC, and the OPA should undertake a review of their human and capital resources to assess how well they are responding to the needs of the LEP populations in Douglas County. One part of this review should include gathering feedback from the local LEP service population in Douglas County, along with local organizations and associations representing LEP juveniles and families of juveniles, on how the AOC, the DCJC, and the OPA can provide more effective language assistance services at the DCJC and the OPA District 4J. For example, the AOC, the DCJC, and the OPA may wish to develop a written survey of community groups serving LEP juveniles and LEP families of juveniles in Douglas County, or to convene a focus group of LEP juveniles and LEP families of juveniles. In analyzing any feedback, the AOC should be sure to assess whether it has a sufficient number of contract interpreters stationed at the DCJC and at OPA District 4J, and the DCJC and the OPA District 4J should assess whether they have a sufficient number of qualified bilingual employees to communicate with LEP juveniles and LEP families of juveniles when appropriate. The AOC should also work with local community organizations to determine what additional steps the AOC can take to attract more individuals who may serve as contract interpreters. Based on the increasing number of Douglas County residents who speak Arabic, Nuer, Somali, and Sudanese, the AOC should take action to recruit individuals who speak these languages in particular.

### **Recommendations for the JAC**

The JAC should also conduct a thorough review of its human and capital resources in assessing how well it is responding to the needs of LEP juveniles and LEP families of juveniles. The OCR recommends that the JAC gather feedback from the local LEP service population in Douglas County, along with local organizations and associations representing LEP juveniles and families of juveniles, on how the JAC can provide more effective language assistance services to LEP juveniles and LEP families of juveniles. In doing so, the JAC may wish to develop a written survey of community groups serving LEP juveniles and LEP families of juveniles in Douglas County, or to convene a focus group of LEP juveniles and LEP families of juveniles. The JAC should also work with community organizations to determine what additional steps the JAC can

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<sup>22</sup> In the AOC's Response to the Draft Report, the AOC said that additional compensation provided to bilingual employees in 2009 and 2010 totaled \$4,160.00.

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take to recruit bilingual employees who are qualified to provide interpretation and translation, particularly individuals who speak languages other than Spanish and the languages spoken by the contract interpreter Caring People Sudan. The JAC 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 to LEP juveniles and LEP families in Douglas County.

### III. General Language Services

As discussed in Section II of this Report, to provide the foregoing services to LEP juveniles and LEP families of juveniles in Douglas County, the AOC, the DCJC, the OPA, and the JAC offer both oral and written language assistance.

#### A. Oral Language Services

##### 1. AOC

For a detailed discussion of the AOC's Interpreter Certification Program and the oral language assistance services that it coordinates in the DCJC and the OPA District 4J, *see* Sections II(C)(4)(a) and III(A)(2) and (3) of this Report.

To notify Nebraska courts and probation offices, including the DCJC and the OPA District 4J, of the policies and procedures for providing language assistance, the AOC posts the Nebraska Supreme Court Rules and the Interpreter Protocol on the Nebraska Supreme Court's website. In the AOC's response to the OCR's data request and during the OCR's onsite visit, the AOC said that it provides periodic training sessions for judges and court personnel on the Nebraska Supreme Court Rules and the AOC's Interpreter Certification Program. For example, in October 2009, the AOC coordinated a training for Nebraska judges on the use of interpreters in the courtroom, and in June 2010, the AOC's Trial Court Services Director and two certified contract interpreters provided a webinar training for court reporters on how to work with interpreters. The AOC further said that it notifies judges and court administrators of any changes in the Nebraska Supreme Court Rules via e-mail and a monthly Administrative Memorandum. Additionally, in the OPA's response to the OCR's data request, the OPA said that in October 2009, the AOC met with chief probation officers throughout the state to discuss the AOC's Interpreter Certification Program.

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## 2. DCJC

As discussed in Section II(C)(4) of this Report, the DCJC communicates with LEP juveniles and LEP families of juveniles during court proceedings through the use of contract interpreters, who are designated as a certified, registered, or "other" interpreter under the AOC's Interpreter Certification Program. Additionally, the DCJC relies upon a Spanish-speaking administrative clerk to communicate with LEP juveniles and LEP families of juveniles seeking assistance from the front desk. According to the DCJC staff with whom the OCR spoke, the DCJC encounters LEP juveniles approximately three times per week, and encounters LEP family members approximately four times per week. The staff said that the most frequently encountered languages are Spanish, Nuer, and Arabic.

A DCJC judge with whom the OCR spoke said that if a juvenile or a family member of a juvenile does not appear to understand information that the judge or another party is conveying, the judge asks the individual if he or she needs an interpreter and explains that the DCJC will provide an interpreter at no cost. The AOC has assigned one certified Spanish-speaking contract interpreter to the DCJC to provide and arrange for interpretation services. AOC staff and the DCJC contract interpreter told the OCR that the DCJC only utilizes certified interpreters to communicate with Spanish-speaking LEP juveniles or family members. The DCJC contract interpreter said that prior to using a non-certified or non-registered "other" interpreter, she conducts a brief interview with the potential interpreter to discuss the interpreter's experience and educational background and whether the interpreter has attended the AOC's orientation training, and may also contact language professors at the University of Nebraska to determine whether they are familiar with the interpreter's skills.

According to the Interpreter Advisory Committee's Interpreter Protocol, if a prosecutor, public defender, or court-appointed attorney requires an interpreter to interview an individual outside of the courtroom, this is a local expense that should be billed to the local governmental agency, and not to the AOC. However, the DCJC contract interpreter told the OCR that if a contract interpreter is at the DCJC and is available, the contract interpreter provides interpretation during discussions outside of the courtroom between an LEP juvenile and the juvenile's attorney. The Interpreter Protocol also states that court personnel working at a front counter or desk should utilize bilingual court employees or a contract interpreter working in the courtroom to communicate with LEP individuals. DCJC staff told the OCR that the bilingual administrative clerk has not undergone any language proficiency testing, and that the DCJC provides this bilingual clerk with a four percent salary increase for her language skills.<sup>23</sup> DCJC staff said that the DCJC takes language skills into account when hiring for the front desk receptionist position;

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<sup>23</sup> According to the AOC's Response to the Draft Report, the DCJC is now implementing language proficiency testing for bilingual employees.



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however, at the time of the OCR's onsite visit, the front desk receptionist was monolingual. In the DCJC's response to the OCR's data request and during the OCR's onsite visit, the DCJC said that it never uses friends, family members, or DCJC employees to provide interpretation during court proceedings.

A DCJC judge with whom the OCR spoke said that he generally has been satisfied with the language assistance provided by contract interpreters at the DCJC, although there have been instances when the interpreter did not appear to be interpreting every word spoken by the LEP juvenile or LEP family member and the judge requested that the LEP individual speak more slowly. During the OCR's discussion with representatives of community organizations serving LEP populations, one representative opined that the DCJC is doing a fantastic job of ensuring that interpreters are in the courtroom and that LEP juveniles and LEP family members of juveniles understand everything that is occurring. However, a representative of a community organization serving individuals from Somalia indicated that the Somali language contains various dialects, and that there have been instances when the DCJC provided an LEP juvenile or LEP family member with a Somali-speaking interpreter who did not speak the particular dialect that the juvenile or the family member spoke, and that the juvenile or family member could not understand the interpreter.

In the DCJC's response to the OCR's data request, the DCJC said that in addition to the guidance and training provided by the AOC regarding the provision of language assistance services, the DCJC contract interpreter works individually with judges to ensure that they understand the AOC's policies and procedures. The DCJC contract interpreter told the OCR that she tries to attend the AOC's orientation training for prospective interpreters every year, where she invites prospective interpreters to shadow her and ask her questions regarding serving as an interpreter.

### 3. OPA

As discussed in Section II(C)(3) of this Report, at the time of the OCR's onsite visit, the OPA District 4J relied upon the following means to communicate with LEP juveniles and LEP families of juveniles when conducting detention assessments of juveniles: (1) English-speaking juveniles or other English-speaking family members; (2) Spanish-speaking OPA District 4J employees; and (3) Spanish-speaking Youth Center employees. OPA District 4J staff said that probation officers do not often encounter LEP juveniles during detention assessments, and estimated that probation officers encounter LEP family members approximately once per week. The staff stated that Spanish, Sudanese, and Somali are the most frequently-encountered languages.

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As also discussed in Section II(C)(3) of this Report, the Nebraska Revised Statutes state that the AOC shall provide interpreter services for individuals when a probation officer conducts a presentence or predisposition investigation and during ongoing supervision of an individual placed on probation. Neb. Rev. Stat. §29-2259 (2011). Additionally, the Interpreter Protocol states that the AOC shall pay for an interpreter for any person whom a probation officer needs to communicate with, and that this includes a defendant (or a guardian of a minor who does not speak English) who appears before a probation officer for a pre-sentence investigation or for supervision during a term of probation. The AOC has a contract with a certified Spanish-speaking interpreter to coordinate the interpreting services for the adult and juvenile probation offices in Douglas County, including OPA District 4J; similar to the DCJC contract interpreter, the contract interpreter assigned to the OPA District 4J provides twenty-five hours per week of Spanish interpretation and locates an interpreter from the AOC's lists of certified, registered, and other interpreters for other language needs.

During the OCR's onsite visit of the OPA District 4J, OPA District 4J staff said that it was their understanding that the contract interpreter assigned to the Douglas County probation offices may only provide language assistance services during a detention assessment if the juvenile is already on probation, and that the contract interpreter could not be utilized in connection with new cases. Based on the OCR's discussions with OPA District 4J staff and with the intake probation officers, it does not appear that intake probation officers have ever used the contract interpreter to provide or arrange for interpretation for an LEP juvenile or an LEP family member during detention assessments, even if a juvenile was already on probation. The AOC's Trial Court Services Director was present at the OCR's meeting with OPA District 4J staff, and clarified that the OPA District 4J could utilize the services of the contract interpreter assigned to the Douglas County probation offices to provide or arrange for interpretation services for LEP juveniles and LEP families of juveniles during pre-adjudication detention assessments. The Trial Court Services Director said that the AOC will soon meet with the chief probation officers throughout the state, including the chief probation officer from OPA District 4J, and that the AOC will inform them that their offices may utilize contract interpreters to provide or arrange for interpretation during detention assessments. The Trial Court Services Director stated that OPA district offices may also utilize Language Line to communicate with LEP juveniles and LEP families of juveniles during detention assessments, and that she will provide the chief probation officers with information regarding the AOC's contract with Language Line.<sup>24</sup> Additionally, she noted that the AOC intends to revise the Nebraska Supreme Court Rules to discuss the OPA's provision of language assistance services during detention assessments.

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<sup>24</sup> In the AOC's Response to the Draft Report, the AOC said that since October 2010, OPS District 4J staff have been using the contract interpreter or Language Line during detention assessments.

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At the time of the OPA's response to the OCR's data request, the OPA District 4J employed a drug technician who is proficient in Spanish, a clerical employee who is proficient in Spanish, and a probation officer who is proficient in German. Pursuant to the Nebraska Supreme Court Personnel Policies and Procedures, the State Court Administrator or the State Probation Administrator may approve an increased salary for bilingual employees who have successfully completed a language proficiency test administered by the AOC. During and subsequent to the OCR's onsite visit of the AOC, the AOC indicated that the AOC approved an examination to assess the language skills of Spanish-speaking OPA probation officers. During the assessment, a federally certified Spanish-speaking interpreter interviews the Spanish-speaking OPA employee and requires the employee to communicate in Spanish regarding common situations in a probation office. An employee who receives a passing score of 89% or higher is rated as "excellent" and receives a 7.5% pay increase, and an employee who receives a passing score of between 68% and 88% is rated as "adequate" and receives a 5% pay increase. The AOC explained that these bilingual employees are not authorized to act as interpreters, but are only permitted to communicate directly with a Spanish-speaking LEP individual. According to the AOC, the AOC and the OPA are in the process of defining the roles and responsibilities of bilingual OPA employees. The AOC indicated that one bilingual employee from OPA District 4J took but did not pass the language proficiency examination to qualify for additional compensation.

The DCJC contract interpreter told the OCR that when an OPA District 4J intake probation officer conducts a detention assessment of a juvenile at the DCJC (such as when the juvenile's case is transferred from the Douglas County Court to the DCJC and the intake probation officer meets with the juvenile outside of the courtroom at the DCJC), there have been times when she has provided interpretation for an LEP juvenile or LEP family member. However, during the OCR's interviews with the OPA District 4J intake probation officers, neither of the intake probation officers indicated that they have used the DCJC contract interpreter to provide or arrange for interpretation during a detention assessment.

As noted in Section III(A)(1) of this Report, in October 2009 the AOC met with the chief probation officers throughout the state to discuss the AOC's Interpreter Certification Program. During the OCR's onsite visit, OPA District 4J staff said that following this meeting, the chief probation officer from OPA District 4J shared this information with OPA District 4J staff, including the intake probation officers.

#### 4. JAC

As discussed in Section II(C)(2) of this Report, when conducting a diversion assessment and coordinating a diversion plan for juveniles referred by the DCAO, the JAC communicates with

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LEP juveniles and LEP families of juveniles through the following means: (1) Spanish-speaking bilingual JAC employees; (2) contract interpreters from Caring People Sudan; (3) interpreters brought by juveniles' families; and (4) English-speaking juveniles or English-speaking family members or friends. The JAC staff with whom the OCR spoke said that the JAC does not encounter LEP juveniles often, and estimated that it encounters Spanish-speaking LEP family members of juveniles approximately one to two times per week. JAC staff stated that they encounter LEP family members who speak other foreign languages, such as Nuer, Dinka, Arabic, or Somali, much less frequently, approximately once per month.

During the OCR's onsite visit, the JAC staff provided the OCR with a brief policy entitled "Services to Clients with Limited English Proficiency," effective September 2010, which JAC staff said the JAC recently distributed to JAC employees. This policy states that the JAC will provide services to the best of its ability to LEP clients and families, and that all Spanish-speaking clients or families will be assigned to a Spanish-speaking juvenile services specialist; the policy notes that if a Spanish-speaking specialist is not available, the Spanish-speaking receptionist will provide interpretation. The policy further states that if a client or a family member of a client speaks a language other than Spanish, the specialist should contact Caring People Sudan to request language assistance services, and if Caring People Sudan is not available, the JAC will attempt to obtain interpreting services from a court interpreter. The policy advises specialists that if a family brings its own interpreter to an assessment the JAC director shall determine whether the specialist should rely on the family's interpreter or should re-schedule the assessment, and that specialists should never use a client as an interpreter during an assessment.

At the time of the OCR's onsite visit, the JAC employed one full-time Spanish-speaking juvenile services specialist and one part-time Spanish-speaking juvenile services specialist, along with a Spanish-speaking receptionist. During the OCR's onsite visit, JAC staff said that the two full-time positions are designated as bilingual positions, and that the JAC assessed the language skills of the current employees by having an existing Spanish-speaking employee participate in the interview process and ask the applicant several questions in Spanish. The JAC staff said that the two full-time Spanish-speaking employees receive additional compensation of \$1.00 per hour, and that the JAC recruited for these positions by advertising in Spanish language newspapers, posting the vacancy announcement at a local university, and notifying the non-profit organization Chicano Center of the vacancy.

During the OCR's discussions with representatives from community organizations, one representative said that the JAC does a fantastic job at providing language assistance services to Spanish-speaking individuals. The representative also said that the JAC does a very good job of

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referring LEP juveniles or juveniles with LEP family members to service providers who have language resources available.

According to JAC staff, several times each year JAC management will discuss at staff meetings the provision of language assistance to LEP juveniles and LEP families of juveniles, including how to contact Caring People Sudan. The JAC staff stated that the JAC recently disseminated to all JAC employees a copy of the September 2010 policy on communicating with LEP clients.

## B. Written Language Services

### 1. AOC

The AOC produces and disseminates various written documents and forms relating to the judicial process. In the AOC's response to the OCR's data request, the AOC said that it decides to translate written materials into languages other than English based upon the frequency of use of a document and the availability of funding, and that the AOC may also decide to translate a document at the request of a court. The AOC said that it utilizes two certified contract interpreters to translate documents, if available, and that if certified contract interpreters are not available, the AOC utilizes the most qualified contract interpreters available with preference for those who have experience in translating documents. The AOC explained that one interpreter will translate a portion of the document and the other interpreter will review the translation for accuracy. During the OCR's onsite visit, AOC staff said that the AOC notifies courts, including the DCJC, of the availability of translated forms and other written materials.

The AOC provided the OCR with a document entitled "Juvenile Court Delinquency Handbook 2007" that was produced by the Nebraska Commission on Law Enforcement and Criminal Justice and which the AOC translated into Spanish, Arabic, and Vietnamese. During the OCR's onsite visit, AOC staff said that the AOC is not aware of whether the DCJC distributes these translated handbooks to the public; as discussed below, it appears that the DCJC distributes a different version of a delinquency handbook.

The AOC posts some translated forms, documents, and information related to juvenile delinquency proceedings on the Nebraska Supreme Court's website at <http://supremecourt.ne.gov>. The AOC posts several official juvenile court forms that are translated into Spanish and Arabic such as a Notice in Lieu of Summons, Summons, Subpoena, and Order for Hearing. However, during the OCR's onsite visit, DCJC staff said that the DCJC does not use these translated forms. The Nebraska Supreme Court's website also contains a Citizen's Guide to Nebraska Courts that it is available in Arabic, Spanish, and Vietnamese. Additionally, the website contains information in Spanish notifying the public that the court will

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provide an interpreter at no cost and providing resources and information regarding consulting a lawyer, representing oneself in court, and obtaining legal assistance.

## 2. DCJC

In the DCJC's response to the OCR's data request, the DCJC stated that it decides to translate documents into languages other than English after assessing the LEP populations that it encounters, and that the translation of materials is dependent upon the availability of funds. The DCJC provided the OCR with a Juvenile Court Delinquency Handbook developed by the DCJC, the Nebraska Crime Commission, and the DCJC Graduated Sanctions Team, which has been translated into Spanish, Arabic, and Nuer. During the OCR's onsite visit, the OCR observed the translated handbooks near the front desk of the DCJC, and the DCJC said that the handbooks are also available in each of the courtrooms. According to the DCJC's response to the OCR's data request, the DCJC utilized certified contract interpreters to translate the handbook.

As discussed in Section II(C)(4)(b) of this Report, the Notice in Lieu of Summons that the DCJC sends to juveniles' families contains information in Spanish instructing the family to contact the court administrator's office if the family requires an interpreter at an upcoming hearing. Otherwise, none of the DCJC's orders or forms are currently available in languages other than English. As noted above, the DCJC is not using any of the AOC's translated pre-adjudication court forms.

During the OCR's onsite visit, the OCR observed flyers in the lobby of the DCJC that have been translated into Spanish instructing the public to clean their hands and to never shake a baby. The DCJC does not have any signage in languages other than English to communicate with LEP juveniles or LEP families of juveniles about the juvenile justice process, or to inform them that free language services are available. The website for the DCJC, <http://juvenile.dc4dc.com>, is entirely in English.

## 3. OPA District 4J

According to the AOC's Response to the Draft Report, the OPA selects materials for translation into languages other than English, and the AOC attempts to locate the resources for the translation. In the OPA's response to the OCR's data request, the OPA explained that the OPA is in the process of creating new policies, guides, and forms, and that currently, the OPA does not have any translated materials. The OPA stated that once it has completed drafting the new policies, guides, and forms, the AOC will begin to translate forms utilized by LEP individuals. In the lobby of the OPA District 4J, the OCR observed the Juvenile Court Delinquency Handbook (also available at the DCJC) in English, Spanish, Arabic, and Nuer. The OPA District

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4J does not have any signage in languages other than English to communicate with LEP juveniles or LEP families of juveniles, or to inform them that free language services are available. For a discussion of the translated materials that are available on the Nebraska Supreme Court's website, *see* Section III(B)(1) of this Report.

#### 4. JAC

According to the JAC's response to the OCR's data request, the JAC determines which written materials should be translated into languages other than English based upon its interactions with LEP persons, and relies on bilingual JAC employees to translate materials. The JAC stated that it provides LEP juveniles and LEP family members with translated materials at the time of the assessment. As discussed in Section II(C)(2) of this Report, many of the JAC's written materials have been translated into Spanish. In addition to the translated materials discussed in Section II(C)(2), the JAC translated into Spanish instruction sheets for juveniles regarding completing an apology letter and drafting an essay on decision-making, along with a form for juveniles to complete documenting their community service hours. In the JAC's response to the OCR's data request, the JAC stated that it also maintains a stock of pamphlets and brochures in various foreign languages as they become available, such as a pamphlet entitled "Guide to Juvenile Court for Parents & Children" that was developed by the Nebraska Crime Commission and is available in Spanish and Vietnamese, and a booklet entitled "Keeping Your Teens Drug-Free, A Guide for Hispanic Families" that was developed by the Office of National Drug Control Policy and the National Youth and Anti-Drug Media Campaign and is available in Spanish. During the OCR's onsite visit of the JAC, the OCR observed the translated Guide to Juvenile Court for Parents & Children in the lobby of the JAC, along with a flyer in Spanish advertising parenting classes that was developed by the service provider Heartland Family Service.

As for signage used to communicate with juveniles and juveniles' families who arrive at the JAC, the JAC provided the OCR with copies of the following posters that are in Spanish: a poster on the Douglas County discount prescription card that the JAC posts in the lobby; and a poster instructing individuals to cover their mouths when they cough that the JAC posts in the women's restroom.

On the JAC's website, [www.co.douglas.ne.us/county/jaccms](http://www.co.douglas.ne.us/county/jaccms), the JAC posts the Spanish version of its intake form. All of the remaining information and documents contained on the JAC's website are in English.

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### **Recommendations for the AOC**

The AOC provides substantial language assistance services to LEP individuals through the DCJC and the OPA District 4J, such as administering a foreign language certification exam in numerous languages, assigning certified Spanish-speaking contract interpreters to the Douglas County courts and probation offices, and providing training and guidance on the provision of language assistance. However, the AOC should build on these steps to provide more effective language assistance to LEP juveniles and LEP families of juveniles under the jurisdiction of the DCJC and the OPA District 4J and to ensure that the AOC 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 participating in delinquency proceedings at the DCJC and receiving pre-adjudication probation services from the OPA District 4J, the OCR strongly recommends that the AOC implement our recommendations throughout the Nebraska judicial system, including programs and activities provided to juveniles and adults in other contexts. *See Language Access Guidance Letter to State Courts from Assistant Attorney General Thomas E. Perez* (Aug. 16, 2010), at [www.lep.gov](http://www.lep.gov).

The Nebraska Revised Statutes, the Nebraska Supreme Court Rules, and the Interpreter Advisory Committee's Interpreter Protocol provide helpful information regarding the types of language assistance services that are available for communicating with LEP juveniles and LEP families of juveniles in Douglas County. However, the AOC should supplement these materials and develop a comprehensive, written plan on providing services to LEP juveniles and LEP families of juveniles in variety of court and probation contexts. This written plan should clearly explain the types of language assistance services that are available, when to utilize particular forms of language assistance, and how court and probation personnel may access these services. The written plan should explicitly state that court and probation personnel should not use friends, family members, or other third-parties to interpret in court proceedings or probation interviews and assessments. *See* Section IV of this Report for additional guidance about developing an effective language assistance plan. Additionally, the AOC should provide clear guidance on the language assistance resources that are available to probation officers when conducting detention assessments.

Once the AOC has developed a comprehensive written language assistance plan consistent with the recommendations contained in this Report, the AOC should disseminate the plan to DCJC and OPA District 4J personnel and should immediately train personnel on the plan to ensure that all employees are aware of the proper procedures for providing language assistance services. Following this initial training, the AOC should continue to have periodic training sessions for



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DCJC and OPA District 4J personnel focused specifically on providing language assistance services to LEP individuals. As part of its training program, the AOC 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.

According to DCJC and OPA District 4J personnel, the most frequently encountered foreign languages include Spanish, Somali, Arabic, Nuer, and Sudanese. Currently, the majority of certified and registered contract interpreters utilized by the AOC speak Spanish, and only one certified interpreter speaks Somali and one registered interpreter speaks Arabic. The AOC should conduct outreach to the Somali, Arabic, Nuer, and Sudanese communities to recruit bilingual individuals who are interested in serving as interpreters in the Nebraska courts, perhaps by advertising its certification program in Somali-, Arabic-, Nuer-, and Sudanese-language newspapers or by meeting with representatives of community organizations serving these populations. In doing so, the AOC should be mindful of a community representative's perception that the Somali language interpreters utilized by the AOC have not always spoken the particular dialect spoken by the LEP juvenile or LEP family member of a juvenile. While the OCR understands that the Consortium has not yet created a language proficiency examination in Nuer or Sudanese, the AOC may wish to investigate whether an examination in these languages is available from another source. For languages for which examinations are not available, the AOC should implement the Interpreter Advisory Committee's procedures for provisionally certifying interpreters, once they are completed.<sup>25</sup>

In regard to written materials, the AOC has translated numerous court forms, including juvenile court forms, into foreign languages such as Spanish and Arabic. However, the DCJC is not using these translated forms. The AOC should ensure that the DCJC and the OPA District 4J are aware of any pre-adjudication juvenile delinquency and probation forms that the AOC has translated and utilize these forms as appropriate. Please be aware that in order to provide juveniles and their families with meaningful access to important court and probation 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 41,463. The AOC should work with the DCJC and the OPA District 4J to identify vital written materials that should be translated into foreign languages. See the OCR's Recommendations for the DCJC and the OPA, below, for additional guidance regarding the translation of written materials. To ensure the accuracy of translated materials, the

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<sup>25</sup> In the AOC's Response to the Draft Report, the AOC said that the Interpreter Advisory Committee adopted rules for provisionally certifying interpreters on March 16, 2011.

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AOC may wish to expand its interpreter certification program to include certification in translation, and to only use individuals who have been certified in translation to translate court documents. The AOC should continue to have a second, independent translator verify the work of the primary translator, and may also wish to use “back translation,” where one individual translates a document and the second individual translates it back into English to ensure that the appropriate meaning has been conveyed.

The AOC should also ensure that signage is posted at the DCJC and the OPA District 4J in the primary languages of the largest LEP populations in Douglas County stating that on request, free language services are available. Additionally, the AOC should ensure that important information regarding the Nebraska juvenile delinquency system that is available in English on the Nebraska Supreme Court's website is also available in prevalent foreign languages.

While the Nebraska Revised Statutes state that complaints against interpreters shall be submitted in writing to the AOC and investigated by the AOC, the AOC does not have a written complaint form for individuals to complete. The AOC should develop a written complaint form for this purpose, which will provide better documentation of the allegations and enhance the collection of information from complainants about their concerns. The AOC should ensure that the complaint form is translated into prevalent foreign languages and is made available to juveniles and their families. Additionally, to ensure that the public complaint process for submitting complaints against DCJC judges is accessible to LEP individuals, the AOC should recommend that the Nebraska Judicial Qualifications Commission translate its complaint procedures and complaint form into prevalent foreign languages.<sup>26</sup>

Regarding community outreach, the AOC should take steps to educate the LEP communities in Douglas County about available language resources and should develop a mechanism for gathering community feedback on its provision of services to LEP juveniles and LEP families of juveniles under the jurisdiction of the DCJC and the OPA District 4J. For example, the AOC may want to develop a written survey of community groups serving LEP populations in Douglas County. The AOC 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 AOC can hear the LEP community's unique needs regarding outreach.

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<sup>26</sup> In the AOC's Response to the Draft Report, the AOC indicated that it made this recommendation to the Nebraska Judicial Qualifications Commission, and that the Nebraska Judicial Qualifications Commission will translate its complaint procedures and complaint form into Spanish beginning August 1, 2011.

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### **Recommendations for the DCJC and the OPA**

With the assistance and coordination of the AOC, the DCJC and the OPA are currently taking steps to communicate with LEP juveniles and LEP families of juveniles participating in pre-adjudication court and probation functions. However, the DCJC and the OPA should take additional steps to ensure that they are in full compliance with Title VI and the Safe Streets Act. Once the AOC develops a comprehensive, written plan on providing services to LEP juveniles and LEP families of juveniles receiving services from court and probation offices, the DCJC and the OPA should immediately distribute the plan to their employees. In doing so, the OCR recommends that the DCJC and the OPA District 4J each develop accompanying procedures for their employees to explain the specific language assistance resources that are available at the DCJC or the OPA District 4J (*e.g.*, a certified contract interpreter specifically assigned to the DCJC or the OPA District 4J, bilingual employees, or Language Line), when each resource is appropriate, and how to access each resource. The OPA District 4J should be sure to explain to employees that they are authorized to utilize the contract interpreter assigned to the Douglas County probation offices as the primary resource for communicating with LEP juveniles and LEP families of juveniles during detention assessments. The DCJC and the OPA District 4J should instruct employees to only use English-speaking friends or family members to communicate general, non-sensitive information (*e.g.*, providing directions or general information regarding the status of a case at the front counter of the DCJC), and when using such parties would not raise concerns of privacy, confidentiality, or conflict of interest. The DCJC should instruct its employees that they should never use friends, family members, or bilingual DCJC employees to provide interpretation during court proceedings, and the OPA District 4J should notify employees that they should not rely upon friends or family members to communicate with LEP individuals during detention assessments. The DCJC and the OPA should work with the AOC to ensure that DCJC and OPA District 4J employees fully understand and implement the AOC's written language assistance plan and the accompanying local procedures.

In regard to written materials, other than a Juvenile Court Delinquency Handbook and a provision in Spanish in the Notice in Lieu of Summons instructing families to contact the DCJC to request an interpreter,<sup>27</sup> the DCJC and the OPA do not utilize any translated documents to communicate with LEP juveniles and LEP families of juveniles. 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 recipients

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<sup>27</sup> While the provision in Spanish in the Notice in Lieu of Summons instructs families to contact the court administrator's office if the family requires an interpreter at an upcoming hearing, the provision does not explain that the DCJC will provide language services free of charge. So that families are aware that they will not be charged for language assistance services, the OCR recommends that the DCJC expand this provision to explicitly state that the DCJC will provide an interpreter free of charge.

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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 41,463. 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 DCJC and the OPA should work with the AOC to perform an inventory of all of their written materials, identify the documents they consider “vital,” and then request that the AOC translate these documents into the languages that meet the safe harbor threshold. Based on the 2009 Census data, it appears that the Spanish-speaking LEP population in Douglas County clearly meets the 1,000 person safe harbor threshold, and other frequently-encountered languages such as Arabic, Somali, and Nuer may meet the threshold as well. The DCJC should also familiarize itself with the juvenile court forms that the AOC has already translated and should utilize these forms as appropriate. Once vital court and probation documents have been translated, the DCJC and the OPA should then develop a strategy for distributing the materials to the relevant LEP communities. The DCJC should make sure that important information regarding DCJC services available in English on its website is also available in prevalent foreign languages.

Neither the DCJC nor the OPA has any written procedures or complaint forms governing how members of the public can complain about the services provided by DCJC or OPA employees. The OCR recommends that the DCJC and the OPA develop written complaint procedures addressing receiving, investigating, and resolving complaints against DCJC and OPA employees, specifying how language assistance will be provided to LEP complainants. The DCJC and the OPA should also develop complaint forms to document the allegations from complainants, and should ensure that complaint procedures and forms are translated into relevant foreign languages and are made available to juveniles and their families.

Regarding community outreach, the DCJC and the OPA should work with the AOC to educate the LEP communities in Douglas County about available language resources and to solicit community feedback on their provision of services to juveniles and families of juveniles in Douglas County. *See* the OCR's Recommendations for the AOC, above, for additional guidance regarding community outreach.

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### **Recommendations for the JAC**

The JAC is currently taking action to communicate with LEP juveniles and LEP families of juveniles referred to the JAC for a diversion assessment, such as by employing Spanish-speaking juvenile services specialists and entering into a contract with Caring People Sudan for interpretation. However, the OCR recommends that the JAC 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 JAC should expand on its recent policy document entitled "Services to Clients with Limited English Proficiency" and develop a comprehensive, written plan on providing services to LEP juveniles and LEP families of juveniles referred to the JAC. In doing so, the JAC should work with community organizations serving LEP populations to identify individuals who are qualified to provide interpretation in languages other than Spanish, Arabic, Nuer, Dinka, Somali, and Amharic. The JAC should then provide information on how employees may access all available forms of language assistance services, and when each type of language assistance is appropriate. The JAC should advise employees against using English-speaking juveniles, friends, or family members to provide interpretation for LEP juveniles or LEP families of juveniles. The JAC should also set forth a process for assessing the qualifications of interpreters brought by juveniles and their families, such as evaluating the prospective interpreter's educational background, interpreting experience, and relevant certifications, as well as a process for assessing whether any confidentiality or conflict of interest concerns exist. *See* Section IV of this Report for further discussion of the elements that should be contained in a comprehensive written language assistance plan.

Once the JAC has expanded its existing policy into a comprehensive written language assistance plan, it should immediately train all employees on the revised plan to ensure that all employees are aware of the proper procedures for providing language assistance services. Following this initial training, the JAC 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 JAC 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.

The JAC relies upon two Spanish-speaking juvenile services specialists to communicate directly with Spanish-speaking juveniles and families of juveniles, and uses a Spanish-speaking receptionist to provide interpretation if the bilingual juvenile services specialists are not available. To ensure the accuracy of interpretation services provided by employees serving as interpreters (versus communicating directly with an LEP individual in a foreign language), the JAC should conduct an assessment of the employee's language skills that goes beyond testing the

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employee's skill of communicating in a foreign language and assesses 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.

It appears that the JAC is aware of several service providers who are able to communicate with LEP juveniles and the LEP families of juveniles referred for services, and that the JAC attempts to refer LEP juveniles or juveniles with LEP family members to these providers. The JAC should continue to research service providers to identify those providers who are able to communicate with LEP individuals in a variety of languages.

The OCR commends the JAC for translating many of its written letters and forms into Spanish. However, the JAC should further evaluate the LEP populations that it serves to ensure compliance with Title VI and the Safe Streets Act. 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 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 41,463. 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 JAC 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. The OCR understands that the JAC currently relies upon a Spanish-speaking juvenile services specialist to translate documents into Spanish. To ensure the accuracy of materials translated into Spanish, the JAC should have a second, independent translator verify the work of the primary translator, and the JAC 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. Additionally, the OCR recommends that the JAC utilize Caring People Sudan to translate vital documents into the African languages that meet the safe harbor provision. However, in case of illiteracy, an interpreter from Caring People Sudan should continue to verbally explain the information contained in the translated documents. The JAC should also

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post a sign in the primary languages of its largest LEP populations in its lobby stating that on request, free language services are available. The JAC should make sure that important information regarding JAC services available in English on its website is also available in prevalent foreign languages.

Currently, the JAC does not have any written procedures or complaint forms governing how juveniles and their families can complain about the services provided by the JAC. The OCR recommends that the JAC develop written complaint procedures addressing receiving, investigating, and resolving complaints against JAC employees, specifying how language assistance will be provided to LEP complainants. The JAC should also develop a complaint form to document the allegations from complainants, and should ensure that complaint procedures and forms are translated into relevant foreign languages and are made available to juveniles and their families.

The JAC should continue to participate in community forums with LEP populations to educate the LEP communities about the JAC's services and available language resources. The OCR recommends that the JAC develop a mechanism for gathering community feedback on its provision of services to LEP juveniles and LEP families of juveniles. For example, the JAC may want to develop a written survey of community groups serving LEP populations in Douglas County, or to convene a focus group of LEP individuals.

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

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 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 the AOC**

To ensure that court and probation personnel are aware of all of the available language assistance services and how to obtain these services, the AOC should supplement existing statutes and rules and develop a comprehensive, written plan on providing language assistance services to LEP juveniles and LEP families of juveniles that incorporates the five elements referenced above and addresses the recommendations raised in Section III of this Report. The plan should discuss the provision of language assistance services in a variety of court and probation contexts, including court proceedings, encounters at the front desk or counter of a court, conversations outside of the

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courtroom between an LEP individual and his or her attorney, and detention assessment interviews conducted by intake probation officers. The plan should explain the AOC's interpretation of applicable legal requirements regarding the provision of language assistance services, and should contain an assessment of the LEP populations served by the AOC, an explanation of all available resources and when they are appropriate, and an explanation of how local courts and probation offices should assess the qualifications of non-certified or non-registered interpreters. The written plan should also address topics such as how the AOC will train court and probation personnel on the available language assistance services, how courts and probation offices should notify LEP individuals that language assistance services will be provided at no cost to LEP individuals, how the AOC will work with local courts and probation offices to determine which documents to translate into foreign languages, how the AOC will ensure that complaint procedures are accessible to LEP individuals, and how the AOC intends to monitor and update its written plan to ensure that the AOC's language assistance services continue to be effective. In developing a written language assistance plan, the AOC 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, along with sample written language assistance plans, are available online at <http://www.lep.gov>, and should assist the AOC in ensuring that it is fully compliant with Title VI and the Safe Streets Act.

### **Recommendation for the JAC**

To ensure that JAC personnel are aware of available language assistance services, how to obtain the services, and when they are appropriate, the JAC should expand its current policy on communicating with LEP juveniles and develop a comprehensive, written language assistance plan that incorporates the five elements referenced above and addresses the recommendations raised in Section III of this Report. The JAC should be sure to explain all of the available sources of language assistance that JAC employees should rely upon to communicate with LEP juveniles and LEP family members while scheduling appointments, providing written correspondence and forms, conducting assessment interviews, utilizing survey instruments, monitoring a diversion plan, and processing complaints. The written plan should also address how the JAC will train employees on the available language assistance services, how the JAC will notify LEP individuals that language assistance services are available at no cost, how the JAC will determine which documents to translate into foreign languages, and how the JAC intends to monitor and update its written plan to ensure that the JAC's language assistance services continue to be effective. To revise its existing policy, the JAC 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) some sample written language assistance plans. These documents are available online at <http://www.lep.gov>, and should assist



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the JAC in preparing a language assistance plan on services to LEP juveniles and LEP families of juveniles. The OCR also recommends that the JAC 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 JAC.

#### V. Conclusion

This letter serves as notice that the OCR has made a preliminary determination that the AOC, the DCJC, the OPA, and the JAC appear to be taking steps to provide meaningful access to their programs and activities to LEP juveniles and LEP families of juveniles. However, the AOC, the DCJC, the OPA, and the JAC must build on these steps to become fully compliant with Title VI and the Safe Streets Act. On request, the OCR is available to provide technical assistance in implementing its recommendations and formulating comprehensive written language assistance plans. Immediately upon receipt of this letter, we ask that a responsible official from each of your agencies contact OCR attorney Shelley Langguth to develop a timeline and goals for implementing our recommendations.

Thank you for your cooperation and the assistance of your staffs 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

cc: Michael Heavican, Chief Justice  
Nebraska Supreme Court

Nicole Goaley, Deputy County Attorney  
Douglas County Attorney's Office, Juvenile Division

Alex N. Hayes, Chief of Police  
Omaha Police Department