

Commissioner's Memo

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Meaningful Access for Persons with Limited English Proficiency (LEP) in the School Meal Programs: Guidance and Questions and Answers (Q&A)

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Memo Text

The purpose of this memorandum is to remind School Food Authorities/Local Education Agencies (SFA/LEAs) and schools that they are required to take reasonable steps to ensure meaningful access to school meals for eligible students from households comprised of Limited English Proficiency (LEP) individuals. This memorandum summarizes existing U.S. Department of Agriculture (USDA) and Food and Nutrition Service (FNS) guidance intended to assist Program participants (SFA/LEAs) in providing meaningful access for LEP persons. Guidance incorporated in this memorandum is described in detail below.

The intent of the school meal programs is to provide nutritious and appealing meals that support the growth and development of students during the school day. In order to connect children in need with healthy meals, schools must make families aware of the National School Lunch Program (NSLP), and the School Breakfast Program (SBP). They also must reduce barriers to participation and certify children who are eligible for free and reduced price meals within 10 operating days of the receipt of the application. Some schools, however, face challenges in reaching eligible students from households comprised of individuals with Limited English Proficiency (LEP).

USDA guidance released in 2014 requires State agencies, SFA/LEAs, and schools that receive Federal funding to ensure language is not a barrier to receiving school meal benefits. State agencies, SFA/LEAs, and schools are required to take reasonable steps to ensure meaningful access for individuals with LEP to the information and services they provide. *Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency* is available at: <https://www.gpo.gov/fdsys/pkg/FR-2014-11-28/pdf/2014-27960.pdf>. Agency-specific requirements are included in *FNS Instruction 113-1: Civil Rights Compliance and Enforcement – Nutrition Programs and Activities*, available at: <http://www.fns.usda.gov/sites/default/files/113-1.pdf>.

In addition, as required by Section 9(b) of the *Richard B. Russell National School Lunch Act*, 42 USC 1758(b), and program regulations at 7 CFR 245.5, SFA/LEAs must publicly announce the availability of free and reduced price meals. The announcement must include an assurance that there will be no discrimination against LEP persons in the school meal programs. An overview of the public announcement requirement may be found in the *Eligibility Manual for School Meals*, available on the Guidance page of the Arkansas Child Nutrition Unit website.

FNS is issuing the following Question and Answer (Q&A) to provide straightforward responses to questions that FNS has received regarding communications with LEP individuals. Topics include:

- General information about language access for LEP persons;
- Identification and assessment of the language assistance needs of LEP persons and the resources to serve them;
- Translation of vital information using qualified, competent translators;
- Provision of oral interpretation services using qualified, competent interpreters; and
- Other factors to consider when developing procedures for serving LEP persons.

SFA/LEAs, should direct any questions concerning this guidance to their Area Specialist at the Child Nutrition Unit.

Limited English Proficiency Q&A

1. What is “Limited English Proficiency”?

A person with Limited English Proficiency (LEP) is someone who does not speak English as their primary language and who has a limited ability to read, speak, write, or understand English.

2. What are the main responsibilities for schools communicating with LEP individuals?

Consistent with Section 9(b) of the *Richard B. Russell National School Lunch Act*, 42 USC 1758(b), and according to 7 CFR 245.6 (a)(2), schools are required to communicate school meals eligibility information “in an understandable and uniform format and to the maximum extent practicable, in a language that parents and guardians can understand.”

Once a school becomes aware of an LEP individual’s needs, the school is responsible for ensuring that their application and other household materials (letter, instructions, notices, and verification materials) are available in a language the LEP individual can understand.

3. What factors should be considered when planning LEP communications?

According to *FNS Instruction 113-1*, when determining the need for and extent of LEP communications, State agencies, LEAs, and schools should consider:

- The overall number of students from households comprised of LEP individuals,
- The proportion of students from households comprised of LEP individuals as compared with the overall student population,
- The frequency of communications with LEP individuals,
- The means through which communications are sent (e.g., mail, telephone, websites, etc.), and
- The resources already available (i.e., USDA translation materials) and the resources that will need to be supplied (i.e., oral interpreters).

4. How can schools pay for translations that are not readily available, either on the USDA website, through the State agency, or through local partners?

The nonprofit food service account may be used to pay for translation services for food service purposes if there is a need to translate materials in a language that is not currently available.

5. How are schools evaluated for LEP compliance?

Compliance with LEP requirements is considered part of the general areas for review in an Administrative Review. Schools that fail to provide services to LEP individuals may be discriminating on the basis of national origin in violation of Title VI of the *Civil Rights Act of 1964*. Findings that indicate probable noncompliance must be handled in accordance with the procedures for resolving noncompliance contained in *FNS Instruction 113-1*.

6. When should LEP individuals be identified?

FNS recommends identifying LEP individuals prior to the distribution of school meal applications and when additional eligibility information, such as approval or denial, is sent. Many schools identify a LEP individual's primary language during the school enrollment process, and store this information in an online database to ensure that communications sent to families throughout the school year are sent in the appropriate language. Using a central database also reduces duplication of efforts, and may reduce paperwork and administrative costs for the school food service staff.

7. How do schools determine which languages to include in household communications?

Most schools have a system in place to identify a parent or guardian's primary language. Options include:

- Conducting a Home Language Survey during student enrollment.
- Sharing USDA's "I Speak" document with parents and guardians to determine which language they are most comfortable speaking. The "I Speak" document can be downloaded from the USDA Translated Applications Web page: <http://www.fns.usda.gov/school-meals/translated-applications>.
- Checking with organizations that work with local families, such as migrant or refugee assistance agencies, to determine which translations are needed.

Schools are responsible for ensuring LEP individuals receive the language services they need to complete the application, certification, and verification process. Simply offering the most common non-English language is not sufficient. Schools may use the Department of Justice's (DOJ) *Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs* to evaluate their LEP activities. This resource is available at:

http://www.lep.gov/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf.

After assessing language needs, schools should determine where translation services in those languages may be obtained. According to *FNS Instruction 113-1*, this may include training bilingual staff to act as interpreters and translators, sharing language assistance materials with advocacy groups, or using telephonic and video conferencing interpretation services.

8. What is required in a written translation?

Information about school meals is often communicated in writing, so it is of particular importance that LEP individuals have access to accurate translations. As described in the *Eligibility Manual for School Meals*, applications and other related written materials must provide LEP individuals access to the same information that is provided to non-LEP persons.

The permanent nature of written translations imposes additional responsibility on LEAs and schools to ensure that the quality and accuracy permit meaningful access by LEP individuals. As stated in *Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency (USDA LEP Guidance)*, LEAs and schools opting to provide their own translations should ensure that translators understand the expected reading level of their audiences and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Community organizations may be able to determine whether a document is written at the appropriate level for the audience.

9. What are the minimum requirements for State agencies and LEAs when providing written translations?

According to the *USDA LEP Guidance*, when determining which materials should be translated, LEAs and schools should consider which materials are “vital” to an individual’s participation. This may include, “applications to participate in a recipient’s program or activity or to receive recipient benefits or services,” such as school meal applications.

Consistent with previously issued LEP guidance, at a minimum, State agencies must make USDA’s translations of prototype materials available to LEAs through a link on their website, and provide printed copies of application materials as needed. Alternatively, State agencies and LEAs may choose to develop written translations of their own application materials. FNS also expects LEAs to take appropriate measures to ensure that language and communication are not barriers to program participation.

10. Where can schools find written translations?

The USDA Translated Applications website includes two written translation resources available for use by State agencies, LEAs, and schools:

- Translations for applications intended to be used directly by families: <http://www.fns.usda.gov/school-meals/family-friendly-application-translations>.
- Translations for applications and verification form prototypes for State agency consideration: <http://www.fns.usda.gov/school-meals/translated-applications>.

The translated Free and Reduced Price School Meals Application package includes the letter to households, the application, the notification of selection for verification of eligibility, and the letter of verification results. The translated application package also includes optional materials that may be provided to households, such as the form to share information with Medicaid/SCHIP and other programs.

LEAs may accept the USDA prototype of the translation, reach out to State or local organizations to inquire about the availability of translations in languages common in their community, or choose to develop translations of their own written materials. If a State or LEA makes changes to the USDA prototype application, the State or LEA is responsible for ensuring the translations are also changed accordingly.

11. What translations are available on USDA’s Child Nutrition Programs website?

The languages currently available through USDA include: Arabic, Armenian, Cambodian Chinese (Traditional), Chinese (Simplified), Croatian, English, Farsi, French, Greek, Gujarathi, Haitian-Creole, Hindi, Hmong, Japanese, Korean, Kurdish, Laotian, Mien, Polish, Portuguese, Punjabi, Russian, Samoan, Serbian, Somali, Spanish, Sudanese, Tagalog, Thai, Tigrinya, Ukrainian, Urdu, and Vietnamese.

To assist LEAs and schools in their effort to ensure meaningful access for individuals with LEP, USDA periodically updates the translations available on the Child Nutrition Programs website. For SY 2016-2017, the following translations will be added: Albanian, Amharic, Bengali, Burmese, Creole (French), Karen, Kru, Ibo, Ilokano, Italian, Jamaican Creole, Nepali, Romanian, Serbo-Croatian, Yiddish, and Yoruba.

12. Are schools required to include written translations for verification requests?

As noted in Q&A #9, when determining which materials should be translated, LEAs and schools should consider which materials are “vital” to an individual’s participation. According to the regulations, this may include, “any documents that require a response from applicants, beneficiaries, and other participants,” such as verification letters.

State agencies and LEAs are expected to have a system in place to provide verification notices to each household in the parent or guardian’s primary language, follow up with households that do not respond

to the initial verification request, and provide oral assistance if the parent or guardian has difficulty understanding the written request. USDA translations of prototype verification materials are available on the FNS website.

13. Are schools required to provide written translations for their web-based materials?

As previously stated, schools are responsible for ensuring that their application and other household materials (letter, instructions, notices, and verification materials) are available in a language LEP individuals can understand. However, schools are not required to make online application tools available in all languages. Schools are encouraged to ensure language barriers do not prevent LEP individuals from navigating the website to find information about the school meal application process.

14. When must oral interpretations be provided?

According to *Executive Order No. 13166, Improving Access to Services for Persons with Limited English Proficiency*, 3 C.F.R. 50121-50125 (2000), each Federal agency is responsible for ensuring that recipients of Federal financial assistance, including schools operating the school meal programs, provide meaningful access to their LEP applicants and beneficiaries. Further, *Executive Order 13166* states that "...a recipient's obligation to provide meaningful opportunity is not limited to written translations. Oral communication between recipients and beneficiaries often is a necessary part of the exchange of information." *Executive Order 13166* is available at: <https://www.justice.gov/crt/executive-order-13166>.

In previous guidance, including the *Eligibility Manual for School Meals*, USDA has said that State agencies and LEAs must, "provide the necessary services so that parents or guardians, who are unable to read or have limited literacy, are assisted with completing the application process. This may entail providing oral interpretation services." For example, if no written translation is available in a parent or guardian's primary language, or if a parent or guardian has limited literacy or otherwise requires assistance for completing the school meal application, schools must provide an oral interpretation to ensure the LEP individual has a "meaningful opportunity" to benefit from the school meal programs.

As outlined in Q&A #3, however, State agencies, LEAs, and schools may consider the resources available and costs of providing services when determining what steps are considered "reasonable" as related to LEP. According to *FNS Instruction 113-1*, LEAs and schools "with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, 'reasonable steps' may cease to be reasonable where the costs imposed substantially exceed the benefits."

LEP guidance from the Department of Education (ED) is consistent with this guidance. According to *U.S. Department of Education Policy Directive to Ensure Meaningful Access to Federally Conducted Services, Programs and Activities for Individuals with Limited English Proficiency*, to determine "accurate, meaningful, and effective" language services, Federal recipients should, on a "case-by-case basis, determine which mix of services should be provided." ED's LEP guidance is available at: <http://www2.ed.gov/policy/gen/leg/foia/acsocroco1102.pdf>.

15. What steps can State agencies, LEAs, and schools take to reduce the costs of providing oral interpretations, when oral interpretations are necessary?

State agencies, LEAs, and schools should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. *FNS Instruction 113-1* includes several recommendations for Federal recipients working to provide oral interpretations to LEP individuals, including:

- Sharing language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies,
- Training bilingual staff to act as interpreters and translators,
- Using telephonic and video conferencing interpretation services,
- Centralizing interpreter and translator services to achieve economies of scale, and

- Formally using qualified community volunteers as interpreters.

16. Who should provide the oral interpretation?

As outlined in the *USDA LEP Guidance*, State agencies and LEAs are strongly encouraged to identify oral interpretation services available within the school or district that can be used to communicate with LEP individuals about school meal benefits. When possible, State agencies and LEAs are also encouraged to partner with local organizations, such as migrant or refugee assistance agencies, to provide oral interpretations. Third-party interpreters also may provide oral interpretations. Household members (especially students) are not expected to provide interpretive services. In many circumstances, household members are not competent to provide accurate interpretations and the use of household members to provide interpretations may create a conflict of interest. Oral interpreters should:

- Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting,
- Have knowledge in both languages of any specialized terms or concepts peculiar to the recipient's program or activity (i.e. school meals eligibility) and of any particularized vocabulary and phraseology used by the LEP person who is being assisted,
- Understand and follow confidentiality and impartiality rules to the same extent as the recipient (i.e. the school) for whom they are interpreting, and
- Understand and adhere to their role as an interpreter, without deviating into a role as counselor, advisor, or other inappropriate roles.

LEP guidance from ED is consistent with this recommendation. According to *U.S. Department of Education Policy Directive to Ensure Meaningful Access to Federally Conducted Services, Programs and Activities for Individuals with Limited English Proficiency, individuals providing services to LEP persons should, "understand their ethical obligations, and must emphasize confidentiality, impartiality, accuracy, (and) avoidance of a conflict of interest."*

17. Where can State agencies, LEAs, and schools find certified translators and interpreters?

DOJ's Federal Coordination and Compliance Section includes the following key interpretation assessment and certification bodies on their website:

- Federal Language Assessments Using the ILR Scale
- The American Translation Association (ATA)
- The Federal Court Interpreter Program (FCIP) Certification
- The American Council for the Teaching of Foreign Languages (ACTFL)
- The National Association of Judiciary Interpreters and Translators (NAJIT)
- Select State court programs
- Select university and college programs

For more information, see: <http://www.lep.gov/resources/BEFORE%20YOU%20HIRE%20ASK%20YOURSELF%20%203-19-14%20%20508.pdf>.

18. What can schools and LEAs do to improve access to school meals for migrant children?

Migrant students are categorically eligible for free schools meals and are therefore not required to complete an application. Categorically eligible migrant students are those enrolled in the Migrant Education Program (MEP) as determined by the State or local MEP coordinator. As stated in the *Eligibility Manual for School Meals*, LEAs need to establish procedures with the MEP coordinator to ensure prompt notification, especially when a new migrant child is identified. LEAs are encouraged to work directly with MEP officials or homeless liaison to identify migrant children and to document their

eligibility for free benefits.

19. How should schools communicate with low-literacy LEP individuals?

As stated in the *Eligibility Manual for School Meals*, it is important for State agencies, LEAs, and schools to ensure that LEP individuals with limited literacy can complete the application, certification, and verification process. Schools are encouraged to take the following steps to reduce barriers for LEP individuals with limited literacy:

- Use and accept USDA prototype materials, including translations, which are designed for a 6th grade reading level.
- Develop applications and instructions using plain language. The Federal Government's guidelines for plain writing are available at <http://www.plainlanguage.gov/howto/guidelines/bigdoc/TOC.cfm>.
- Ensure application materials only include information necessary to determine eligibility.
- Make clear that only a single application is needed for all students in the household attending schools in the LEA.
- Designate a school official that can complete an application for an individual student known to be eligible and for whom no application was submitted.

20. Are translated application materials available for USDA's other Child Nutrition Programs?

The CACFP Meal Benefit Income Eligibility Form, which may be used to determine individual income eligibility for the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP), is available in 33 languages. The translated CACFP Meal Benefit Income Eligibility Form package includes the letter to Tier I and Family Day Care Home Providers, the Child Day Care Meal Benefit Income Eligibility Form, and the Adult Day Care Meal Benefit Income Eligibility Form with instructions. The package contains the notification of selection for verification of eligibility and verification results. The translated application package also includes optional materials that may be provided to households, such as the form to share information with Medicaid/SCHIP and other programs.

The CACFP Meal Benefit Income Eligibility Form translations may be found here:
<http://www.fns.usda.gov/cacfp/meal-benefit-income-eligibility>.

21. How do State and local laws interact with the requirement to provide meaningful access to LEP individuals?

Some State and local laws might identify language access obligations or requirements. According to the *USDA LEP Guidance*, LEAs and schools may apply State and local requirements, so long as they do not conflict with or set a lower standard than is required under Title VI and Title VI regulations. For example, some LEAs and schools may operate in a jurisdiction where English has been declared the official language. These recipients, however, continue to be subject to Federal nondiscrimination requirements, and must continue to provide meaningful access to LEP individuals.