



Legislation Text

File #: Int 0038-2002, **Version:** A

Proposed Int. No. 38-A

By The Speaker (Council Member Miller) and Council Members Liu, Brewer, DeBlasio, Barron, Comrie, Dilan, Martinez, Monserrate, Moskowitz, Perkins, Quinn, Reyna, Rivera, Serrano, Yassky, Reed, Sanders, Jr., Gennaro, Foster, Koppell, Clarke, Recchia, Jr., Baez, Nelson, Seabrook, Sears, Lopez, Felder, Espada, Jr., Katz, Stewart, Gonzalez, Jackson, James, Jennings, Addabbo, Jr., Avella, McMahon and the Public Advocate (Ms. Gotbaum); also Council Members Boyland, Vann, Fidler, Gerson, Weprin and Gioia

A Local Law to amend the administrative code of the city of New York, in relation to the provision of language assistance services.

Be it enacted by the Council as follows:

Section 1. Declaration of legislative findings and intent. Title VI of the Civil Rights Act of 1964 provides in pertinent part that "[n]o person in the United States shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance." The United States Department of Justice and the Department of Health and Human Services have stated that all recipients of federal funding must take reasonable steps to ensure meaningful access to the information and services they provide and that failure to do so may amount to a violation of Title VI.

It is and has been the policy of the City of New York to oppose all forms of discrimination, especially when such discrimination could undermine the welfare of New York City residents. Individuals should not face obstacles to receiving social services for which they may be eligible because they do not speak English. The purpose of this local law is to ensure that persons eligible for social services receive them and to avoid the possibility that a person who attempts to access services will face discrimination based upon the language s/he speaks.

§ 2. Title 8 of the administrative code of the city of New York is hereby amended by adding a new

chapter 10 to read as follows:

CHAPTER 10

EQUAL ACCESS TO HUMAN SERVICES

§ 8-1001	Short title.
§ 8-1002	Definitions.
§ 8-1003	Language assistance services.
§ 8-1004	Translation of documents.
§ 8-1005	Notices.
§ 8-1006	Screening and training.
§ 8-1007	Recordkeeping.
§ 8-1008	Implementation.
§ 8-1009	Rules.
§ 8-1010	Miscellaneous.
§ 8-1011	Severability.

§ 8-1001 Short title. This chapter shall be known and may be cited as the "Equal Access to Human Services Act of 2003."

§ 8-1002 Definitions. For purposes of this chapter, the following terms have the following meanings:

a. "Agency" means the human resources administration/department of social services, including any part, subdivision, field office or satellite facility thereof.

b. "Agency office" means a job center, food stamp office, medical assistance program office, or other part, subdivision, field office or satellite facility of the agency or agency contractor office that performs a covered function.

c. "Agency contractor" means any contractor that enters into a covered contract with the agency.

d. "Agency personnel" means bilingual personnel or interpreter personnel who are employees of the agency.

e. "Bilingual personnel" means agency, agency contractor, or other contractor employees, not including work experience program participants, who provide language assistance services in addition to other duties.

f. "Contract" means any written agreement, purchase order or instrument whereby the city is committed to expend or does expend funds in return for work, labor or services.

g. "Contractor" means any individual, sole proprietorship, partnership, joint venture or corporation or other form of doing business that enters into a contract.

h. "Covered contract" means a contract between the agency and a contractor to perform a covered function.

i. "Covered function" means any of the following functions:

1. Benefits or services offered or provided at agency offices;

2. Benefits or services provided by agency contractors to provide employment services in connection with participation of individuals engaged in activities required by sections 335 through 336-c of the social services law;

3. Home care services; and

4. Determinations regarding eligibility for subsidized child care.

j. "Covered language" means Arabic, Chinese, Haitian Creole, Korean, Russian or Spanish.

k. "Document" means the following forms and notices developed by the agency:

i. Application forms and corresponding instructional materials;

ii. Notices that require a response from the participant;

iii. Notices that concern the denial, termination, reduction, increase or issuance of a benefit or service;

iv. Notices regarding the rights of participants to a conference and fair hearing; and

v. Notices describing regulation changes that affect benefits.

l. "Interpretation services" means oral, contemporaneous interpretation of oral communications.

m. "Interpreter personnel" means agency, agency contractor, or other contractor employees, not including work experience program participants, whose sole responsibility is to provide language assistance services.

n. "Language assistance services" means interpretation services and/or translation services provided by bilingual personnel or interpreter personnel to a limited English proficient individual in his/her primary language to ensure their ability to communicate effectively with agency or agency contractor personnel.

o. "Limited English proficient individual" means an individual who identifies as being, or is evidently, unable to communicate meaningfully with agency or agency contractor personnel because English is not his/her primary language.

p. "Other covered agency" means the administration for children's services; the department of homeless services; the department of health and mental hygiene; and all functions served by the agency that are not covered functions, including any part, subdivision, field office or satellite facility thereof.

q. "Primary language" means the language in which a limited English proficient individual chooses to communicate with others.

r. "Translation services" means oral explanation or written translation of documents.

§ 8-1003 Language assistance services. a. The agency and all agency contractors shall provide free language assistance services as required by this chapter to limited English proficient individuals.

b. When a limited English proficient individual seeks or receives benefits or services from an agency office or agency contractor, the agency office or agency contractor shall provide prompt language assistance services in all interactions with that individual, whether the interaction is by telephone or in person. The agency office or agency contractor shall meet its obligation to provide prompt language assistance services for purposes of this subdivision by ensuring that limited English proficient individuals do not have to wait unreasonably longer to receive assistance than individuals who do not require language assistance services.

c. Where an application or form requires completion in English by a limited English proficient individual for submission to a state or federal authority, the agency or agency contractor shall provide oral translation of such application or form as well as certification by the limited English proficient individual that the form was translated and completed by an interpreter.

d. The agency shall make all reasonable efforts to provide language assistance services in person by bilingual personnel.

§ 8-1004 Translation of Documents. The agency shall translate all documents into every covered language as of the first day of the sixtieth month after the effective date of the local law that added this chapter.

§ 8-1005 Notices. a. Upon initial contact, whether by telephone or in person, with an individual seeking benefits and/or services offered by the agency or an agency contractor, the agency or agency contractor shall determine the primary language of such individual. If it is determined that such individual's primary language is not English, the agency or agency contractor shall inform the individual in his/her primary language of the right to free language assistance services.

b. The agency shall provide in all application and recertification packages an 8 1/2 inch x 11 inch or larger notice advising participants that free language assistance services are available at its offices and where to go if they would like an interpreter. This notice shall appear in all covered languages.

c. The agency and each agency contractor shall post conspicuous signs in every covered language at all agency offices and agency contractor offices informing limited English proficient individuals of the availability of free language assistance services.

d. Other covered agencies. Upon initial contact, whether by telephone or in person, with an individual seeking benefits and/or services offered by another covered agency, the other covered agency shall determine the primary language of such individual. If it is determined that such individual's primary language is not English, the other covered agency shall inform the individual in his/her primary language of available language assistance services.

§ 8-1006 Screening and training. The agency and each agency contractor shall screen bilingual personnel and interpreter personnel for their ability to provide language assistance services. The agency and each agency contractor shall provide annual training for bilingual personnel and interpreter personnel and ensure that they are providing appropriate language assistance services.

§ 8-1007 Recordkeeping. a. No later than the first day of the sixtieth month after the effective date of the local law that added this chapter, the agency and each agency contractor shall maintain records of the primary language of every individual who seeks or receives benefits or services from the agency or agency contractor. At a minimum, the agency and each agency contractor shall maintain specific records of the following:

1. The number of limited English proficient individuals served, disaggregated by agency, agency contractor or contractor, agency office, type of language assistance required and primary language;
2. The number of bilingual personnel and the number of interpreter personnel employed by the agency, disaggregated by language translated or interpreted by such personnel;
3. Whether primary language determinations are recorded properly; and
4. Whether documents are translated accurately and disseminated properly.

b. Other covered agencies. No later than the first day of the sixtieth month after the effective date of the local law that added this chapter, every other covered agency shall maintain records of the primary language of every individual who seeks or receives ongoing benefits or services. At a minimum, the other covered agency shall maintain specific records of the following:

1. The number of limited English proficient individuals served, disaggregated by type of language assistance required and primary language;
2. The number of bilingual personnel and the number of interpreter personnel employed by the other covered agency, disaggregated by language translated by such personnel;
3. Whether primary language determinations are recorded properly; and

4. Whether documents are translated accurately and disseminated properly.

§ 8-1008 Implementation. a. The agency shall phase in language assistance services for covered functions as follows:

1. As of the first day of the twenty-fourth month after the effective date of the local law that added this chapter, no less than 20% of covered functions provided by agency offices.

2. As of the first day of the forty-eighth month after the effective date of the local law that added this chapter, no less than 40% of covered functions provided by agency offices.

3. As of the first day of the sixtieth month after the effective date of the local law that added this chapter, 100% of covered functions provided by agency offices.

b. Contractors.

1. In all covered contracts entered into or renewed after January 1, 2005, the contractor shall certify that it shall make available language assistance services and maintain and provide access to records as required by this chapter.

2. Every covered contract must contain a provision in which the contractor acknowledges that the following responsibilities constitute material terms of the contract:

(a) to provide language assistance services as required by this chapter;

(b) to comply with the recordkeeping requirements set forth in this chapter;

(c) to provide the city access to its records for the purpose of audits or investigations to ascertain compliance with the provisions of this section, to the extent permitted by law; and

(d) to provide evidence to the city that the contractor is in compliance with the provisions of this section, upon request.

3. If an agency contractor enters into a subcontract agreement to provide any benefits or services under a covered contract, that subcontract will be considered a covered contract for purposes of this section and the provisions of this section will bind the subcontractor. Each contractor is required to include the contract

provision set forth in paragraph 2 of this sub-division in any such subcontract agreement.

c. Implementation plans. Within eight months of the effective date of the local law that added this chapter, the agency and each other covered agency shall develop an implementation plan that describes how and when the agency or other covered agency will meet the requirements imposed by this chapter. The agency and each other covered agency shall publish a copy of its implementation plan.

d. Implementation updates and annual reports. No later than 90 days after the end of each calendar year after the publication of the implementation plan and before implementation is complete, the agency and each other covered agency shall publish an implementation update. The implementation update shall describe steps taken over the prior year to implement the requirements of this chapter and shall describe any changes in the agency or other covered agency's plan for implementing the remaining requirements of the local law that added this chapter before the date set forth in subdivision a of this section. The implementation update for every year after 2004 shall include a report on the number of limited English proficient people served, disaggregated by language and by agency office or other covered agency office. Not later than 90 days after the end of each calendar year beginning with 2008, the agency and each other covered agency shall publish an annual report on language assistance services. At a minimum, this annual report of the agency, each agency contractor and each other covered agency shall set forth the information required to be maintained by this chapter.

§ 8-1009 Rules. The agency and each other covered agency shall promulgate such rules as are necessary for the purposes of implementing and carrying out the provisions of this chapter.

§ 8-1010 Miscellaneous. a. Nothing in this chapter precludes the agency or an agency contractor from providing language assistance services beyond those required by this chapter.

b. Nothing in this chapter precludes a limited English proficient individual from having an adult volunteer, relative, spouse or domestic partner accompany him/her to provide language assistance services with the agency office or agency contractor, provided that the agency office or agency contractor informs a limited

English proficient individual of the availability of free language assistance services and the agency remains responsible for ensuring effective communication.

c. This chapter does not apply to any contract with an agency contractor entered into or renewed prior to January 1, 2005.

§ 8-1011 Severability. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which shall continue in full force and effect.

§ 3. This local law shall take effect forty-five days after its enactment.