

**MPD PROVISION OF POLICE SERVICE
TO PERSONS WITH LIMITED
ENGLISH PROFICIENCY (LEP)**



**REPORT AND RECOMMENDATIONS OF THE
POLICE COMPLAINTS BOARD**

TO

**MAYOR ADRIAN M. FENTY,
THE COUNCIL OF THE DISTRICT OF COLUMBIA, AND
CHIEF OF POLICE CATHY L. LANIER**

July 16, 2009

POLICE COMPLAINTS BOARD

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I. INTRODUCTION AND OVERVIEW

Persons with limited English proficiency (LEP) are those whose primary language is not English and who have a limited ability to read, write, speak, or understand English.¹ As a major metropolitan area, Washington, D.C. and its suburbs are home to many temporary and permanent residents whose primary language is not English. As of 2006, “[t]he Washington metropolitan region [was] home to more than one million immigrants, solidifying its position as a gateway to America”² Indeed, “Washington has emerged as an immigrant destination,”³ joining the ranks of other major immigrant magnets such as New York, Los Angeles, San Francisco, Miami, Chicago, Houston, and Dallas.⁴

A demographic study conducted in conjunction with passage of the District of Columbia’s Language Access Act of 2004⁵ found that 21 percent of the Washington metropolitan region’s population communicates in non-English languages at home and 17 percent of District of Columbia residents speak at home in languages other than English.⁶ Although more than 100 languages are spoken in the Washington area,⁷ Spanish, Chinese, Vietnamese, Korean, French, and Amharic are the non-English languages most frequently encountered by District of Columbia government agencies.⁸ Significantly, the Washington area’s LEP population increased by nearly 80 percent between 1990 and 2000.⁹ Moreover, by 2004, 43 percent of the Washington area’s foreign-born population was LEP.¹⁰ Furthermore, many U.S.-born children of immigrants who have faced constraints in learning English add to the area’s total LEP population. As of 2004, 21 percent of the District’s total LEP population was native born.¹¹

¹ The acronym LEP is frequently accompanied by NEP, which means no English proficiency or non-English proficient. OPC has adopted the U.S. Justice Department’s practice of using the single acronym LEP to include both LEP and NEP individuals. Accordingly, the recommendations herein apply to both the LEP and NEP populations.

² Lyndsey Layton and Dan Keating, *Area Immigrants Top 1 Million; Educations Levels Are Higher Than Elsewhere, Census Finds*, *The Washington Post*, August 15, 2006, at A1.

³ *Id.*

⁴ *Id.*; Interview via washingtonpost.com of Audrey Singer, Senior Fellow, Brookings Institution (August 15, 2006) available at: http://www.brookings.edu/interviews/2006/0815demographics_singer.aspx?p=1.

⁵ D.C. Code §§ 2-1931 – 2-1937 (2001, 2009 Supp.).

⁶ Audrey Singer & Jill H. Wilson, *Polyglot Washington: Language Needs and Abilities in the Nation’s Capital* 3 (The Brookings Institution) (2004).

⁷ *Id.*

⁸ See D.C. Office of Human Rights, *Language Access Fact Sheet*, available at: <http://www.ohr.dc.gov/ohr/frames.asp?doc=/ohr/lib/ohr/la667c~1.pdf>.

⁹ Singer & Hill, *supra* note 6, at 4.

¹⁰ *Id.* at 6.

¹¹ *Id.*

The demographic data cited above make clear that in the District of Columbia, contact between police officers and persons with LEP is inescapable. Yet, federal and District of Columbia law specifically mandate the equal provision of law enforcement services to the LEP community. The District's Metropolitan Police Department (MPD) has begun numerous initiatives aimed at fulfilling its legal obligation to treat equally members of the public who are not proficient speakers of English. Nevertheless, over the past few years, the Office of Police Complaints (OPC) has received complaints alleging that LEP individuals have received less than adequate police service or have been mistreated by MPD officers as a result of their limited English proficiency. Specifically, complaints have alleged that MPD officers failed to obtain interpreters when interacting with LEP individuals, even in circumstances that clearly demonstrated the need for language assistance.

Although persons with limited English proficiency face difficulty accessing public services in numerous contexts,¹² the failure of police officers to recognize the need for and provide language assistance is significant, because encounters between citizens and police have the potential to result in physical injury, through police use of force, and/or loss of liberty, outcomes that have been reported in complaints filed with OPC as well as with the D.C. Office of Human Rights.¹³

Because the potential consequences of language barriers in the law enforcement context are so serious, MPD has a heightened duty to ensure that its officers view language access as fundamental to justice and understand that providing language assistance is a mandatory legal obligation, not a discretionary act of good customer service. The complaints filed with OPC suggest that, notwithstanding MPD's significant and commendable investment of resources in language assistance services, there is still a gap between MPD's available language resources and its officers' understanding of how and when to employ those resources, particularly during field encounters with LEP persons.

Accordingly, to help enhance MPD-community relations and specifically to improve MPD's ability to serve LEP individuals, the Police Complaints Board (PCB) recommends that MPD:

- develop a written policy statement enunciating MPD's unequivocal commitment to providing language assistance to LEP individuals, and include the policy statement in MPD's language access plan and all MPD language access-related directives and training materials;

¹² See, Kathryn Alfisi, *Language Barriers to Justice*, 23 Washington Lawyer 18, 18-25 (April 2009) (describing efforts of Washington-based legal services providers to assist LEP clients obtain vital language assistance services).

¹³ See *D.C. Office of Human Rights v. Metropolitan Police Department*, Docket No. 08-264-LA (Dec. 2008) (concluding that MPD violated the District's Language Access Act of 2004 in failing to provide language assistance to a Korean-speaking, U.S. permanent resident, who mistakenly was arrested and held in custody).

- communicate to officers (e.g., through directives, training, teletypes, roll call announcements etc.) the legally binding, mandatory nature of the task of providing language assistance to LEP persons;
- develop clearer, more specific guidance, detailing step-by step precisely how and when, *particularly during field encounters with LEP individuals*, to employ the various language assistance services available (including, MPD certified bilingual staff, Language Line interpretation service, translations of vital documents, and qualified non-MPD interpreters) and incorporate the updated protocols in new or revised general orders, directives, and training materials; and
- enhance LEP training by including in MPD’s cultural competency and diversity training a segment that provides a step-by-step review of how to identify and provide language assistance to LEP individuals, particularly during field encounters; and refine the mandatory online LEP training course as needed to clarify the distinction between voluntary customer service standards and MPD’s mandatory legal obligations.¹⁴

II. COMPLAINTS RECEIVED BY OPC

The following case summaries are illustrative of citizen complaints OPC has received in which complainants alleged that MPD officers failed to recognize or address language barriers and thereby deprived them of meaningful access to MPD services or other important rights:

- The complainant, whose primary language is Chinese, was taken into custody by an MPD officer and made to pay a delinquent hotel bill. She alleged that the officer ignored her repeated requests for a Chinese interpreter while in custody. The complainant was not provided language assistance even though she briefly was taken to MPD’s Asian Liaison Unit. The MPD officer later discovered that the complainant was not responsible for the delinquent hotel bill and that he had taken the wrong person into custody. OPC did not conclude that the officer engaged in police misconduct in not providing language assistance, because it found that MPD’s then-existing training and directives did not spell out clearly when officers are required to offer language assistance. That finding, together

¹⁴ PCB is making these recommendations pursuant to D.C. Official Code § 5-1104(d), which authorizes the Board to recommend changes to the Mayor, the Council of the District of Columbia, and MPD’s Chief of Police if the reforms may reduce the incidence of police misconduct. PCB is grateful for the assistance of OPC’s staff in preparing this report and accompanying recommendations. OPC’s executive director, Philip K. Eure, supervised the project. Other OPC staff members who performed research or assisted in drafting the report include the agency’s special assistant, Nicole Porter, attorney Angela Kiper, summer 2008 law clerk, Emily Snider, a student at the University of Florida’s Levin College of Law, and fall 2008 law clerk, Kyle Krohn, a student at the Georgetown University Law Center.

with observations made in other language bias complaints, led to development of this policy recommendation.¹⁵

- The complainant, whose primary language is Spanish, was in a traffic accident. The complainant alleged that the MPD officer who came to the scene to write an accident report spoke to him only briefly but spoke to the other driver, a native English speaker, at length and thereafter determined the complainant to be at fault. The complainant felt convinced that the officer did not speak to him at length about his version of events because he is a native Spanish speaker who had difficulty speaking English. OPC ultimately concluded that the officer had not assigned fault in the accident based on the complainant's ethnicity or limited English proficiency. Nevertheless, the case highlights the need for officers to be well trained in recognizing and assisting LEP individuals because even the perception that officers are biased against persons with LEP can undermine cooperation and compliance with law enforcement.
- The complainants alleged that they observed two MPD officers forcibly detain and handcuff two Latino men, frisk them, and search the backpack of one of them. The officers gave repeated orders to the men in English, despite responses from the men indicating that they did not speak English. The men's apparent inability to understand and comply with the officers' orders led to use of extreme physical force against them. The officers acknowledged that they made no attempt to call in an interpreter or use other MPD language assistance services, despite that the incident occurred in the immediate vicinity of MPD's Latino Liaison Unit. Although this incident occurred before passage of the District's Language Access Act of 2004 and hence before adoption of many MPD initiatives designed to comply with the act, MPD nevertheless was at the time obligated to provide language assistance pursuant to Title VI of the Civil Rights Act of 1964, as a recipient of federal funds. Moreover, MPD's Latino Liaison Unit, located at 18th Street and Columbia Road, NW, had been in existence for more than a year at the time this incident occurred.¹⁶ This case illustrates that notwithstanding the existence of language access resources and programs, efforts must continually be made to ensure that all officers understand their obligation to employ MPD's available resources in interacting with LEP individuals.

¹⁵ The complaints discussed above are not the only language discrimination complaints that OPC has received. Nevertheless, it was not a flood of language access complaints but the importance of the issue that prompted PCB to develop this policy recommendation. PCB notes that MPD has in the past adopted valuable policy reforms, sometimes in response to numerous police misconduct complaints and at other times in response to few, as MPD rightly has recognized that it is the nature of an issue and not the number of complaints received that determines whether reforms should be undertaken.

¹⁶ See "Review of the MPD Recruitment, Deployment and Outreach in the Latino Community," July 11, 2002 (discussing, among other things, deployment of certified bilingual Spanish speaking officers and establishment of the Latino Liaison Unit), available at: <http://newsroom.dc.gov/show.aspx/agency/mpdc/section/4/release/5487/year/2002/month/page1>.

III. FEDERAL GUIDELINES FOR PROVIDING SERVICE TO LEP INDIVIDUALS

Federal law mandates that agencies receiving federal funds provide LEP individuals with “meaningful access” to their services. Title VI of the Civil Rights Act of 1964 (Title VI) prohibits discrimination based on race, color, or national origin by any federally funded service.¹⁷ Failure to provide appropriate language assistance to LEP individuals can amount to unlawful discrimination based on national origin. Recipients of federal funds risk losing funding if they fail to comply with Title VI.¹⁸ Executive Order 13166 requires federal agencies that distribute federal funds to issue guidance to its recipients on how to provide LEP individuals meaningful access to services.¹⁹

The Department of Justice (DOJ), which provides federal funding to many law enforcement agencies including MPD, provided guidance to its recipients in 2002.²⁰ The 2002 guidance urges recipients to adopt an LEP plan using a four-factor analysis that considers: 1) the number or proportion of LEP individuals served; 2) the frequency of the recipient’s contact with LEP individuals; 3) the importance of the services provided by the recipient; and 4) the resources the recipient has available for providing LEP services.²¹

According to DOJ, an effective LEP plan identifies the LEP individuals to be served, specifies the language services to be provided and how they will be provided, sets forth the LEP training to be provided to relevant staff, lists the ways in which LEP individuals will be notified of the availability of language services, and explains how implementation will be monitored and assessed.²² Although failure to provide appropriate language assistance to LEP individuals can result in termination of federal funds,²³ the goal is for recipients to achieve voluntary compliance. Thus, termination of funds is considered only after informal efforts to obtain compliance have failed.²⁴

¹⁷ 42 U.S.C § 2000d (2008).

¹⁸ *Id.* § 2000d (1).

¹⁹ Exec. Order No. 13166, 65 Fed. Reg. 50,121 (Aug. 16, 2000).

²⁰ Department of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Persons, 67 Fed. Reg. 41,455 (June 18, 2002).

²¹ *Id.* at 41,459.

²² *Id.* at 41,464-65.

²³ *Id.* at 41,465.

²⁴ *Id.* at 41,465-66.

IV. THE DISTRICT'S AND MPD'S EFFORTS

In April 2004, the District of Columbia Council enacted the D.C. Language Access Act of 2004 (Act).²⁵ The purpose of the Act is to provide the District's LEP population with greater access to and participation in District of Columbia services, programs, and activities by requiring District agencies with major public contact to assess the need for and provide language assistance to the LEP community. The Act designates responsibility for oversight and enforcement to the D.C. Office of Human Rights (OHR). OHR Director Gustavo Velasquez described the law as "reflect[ing] the sentiments of [Title VI] [while] designat[ing] enforcement, regulation and compliance to the local level."²⁶ One of the most innovative aspects of the Act is its formal inclusion, as a consulting partner, of the D.C. Language Access Coalition, "an alliance of community-based and civil rights organizations that advocate for language access rights within the District of Columbia."²⁷ In June 2008, regulations were promulgated to provide guidance and assistance to District agencies in implementing the Act's requirements and to establish a process for investigating complaints of non compliance.²⁸

MPD is among 35 District agencies found to meet the "major public contact" criteria of the Act, and it was among the first agencies required to comply under the Act's phased implementation timeline.²⁹ The Act requires MPD and other covered agencies to provide "oral language services" to LEP individuals³⁰ and to annually perform a four-factor analysis, similar to that in DOJ's 2002 LEP guidance, in order to determine which oral services to provide.³¹ Covered agencies, including MPD, are also required to provide translations of vital documents into any languages spoken by at least 500 individuals or three percent of the individuals served.³² Other major requirements include establishing a language access plan, which must be updated every two years,³³ and designating a language access coordinator.³⁴

²⁵ D.C. Code §§ 2-1931 - 2-1937 (2001, 2004 Supp.).

²⁶ Letter from Gustavo F. Velasquez to District Government Agencies (April 200), available at: <http://www.ohr.dc.gov/>.

²⁷ See D.C. Language Access Coalition Mission Statement, at: <http://www.dclanguageaccess.org/cm/>.

²⁸ See D.C. Mun. Regs., Title 4, §§ 1200-1226 (2008).

²⁹ D.C. Code § 2-1931(3)(B).

³⁰ *Id.* § 2-1932(a).

³¹ *Id.* § 2-1932(b).

³² *Id.* § 2-1933(a).

³³ *Id.* § 2-1934(a)(2).

³⁴ *Id.* § 2-1934(b).

A companion act, the Interpreters for Hearing Impaired and Non-English Speaking Persons Act of 1987 (Interpreter Act)³⁵ requires that “whenever a communications-impaired person is arrested and taken into custody for an alleged violation of a criminal law,” either a qualified interpreter, or a qualified interviewer certified by MPD as being fluent in the relevant language, must be provided to conduct the interrogation or other communication.³⁶ The D.C. Court of Appeals has held that this provision does not apply to questioning of LEP individuals by MPD officers during field investigations.³⁷ Although the Language Access Act of 2004 does not explicitly address whether MPD must provide qualified interpreters or certified interviewers during non-custodial field investigations, its general purpose of seeking to ensure that language assistance is provided to LEP persons during encounters with D.C. agencies has been interpreted as applying to MPD’s field encounters with LEP individuals.

MPD has created and implemented a number of positive measures in an effort to comply with the Language Access Act. MPD has designated a language access coordinator and has established several programs to promote better interactions with the LEP population. MPD’s Language Access Programs Division monitors recruitment of bilingual personnel, translates documents into multiple languages, provides oral interpretation services, develops diversity and cultural sensitivity training, and works with community organizations on LEP issues.³⁸ MPD’s Asian Liaison Unit, an office with a staff of five officers and a community outreach specialist that serves the entire District, employs speakers of Chinese Cantonese, Korean, Thai, and Vietnamese.³⁹ The Latino Liaison Unit, with a staff of ten, assists MPD patrol and support units, provides translation services, and conducts community outreach to the Latino community.⁴⁰ Bilingual officers within MPD are encouraged to become certified as qualified interviewers, and receive a significant stipend if certified. As of June 2009, 225 MPD employees were certified as qualified interviewers.⁴¹ Additionally, MPD subscribes to the Language Line service, which allows for telephonic language interpretation at all hours.⁴²

³⁵ D.C. Code §§ 2-1901 – 2-1912.01.

³⁶ *Id.* § 2-1902(e)(1).

³⁷ *Castellon v. United States*, 864 A.2d 141, 151 (D.C. 2004).

³⁸ Metropolitan Police Department: Policing for Prevention Division, *available at*: <http://mpdc.dc.gov/mpdc/cwp/view.A.1232.Q.541012.asp>.

³⁹ Metropolitan Police Department: Asian Liaison Unit, *available at*: http://mpdc.dc.gov/mpdc/cwp/view.a.1232.q.540914.mpdcNav_GID.1523.mpdcNav,%7C31417%7C.asp.

⁴⁰ Metropolitan Police Department: Latino Liaison Unit, *available at*: http://mpdc.dc.gov/mpdc/cwp/view.a.1232.q.540963.mpdcNav_GID.1523.mpdcNav,%7C31417%7C.asp.

⁴¹ The specific number of MPD bilingual staff certified in particular languages changes constantly. As of January 5, 2009, however, the language breakdown for MPD certified bilingual interviewers was as follows: Spanish 177; Vietnamese 8; French 7; Korean 6; Cantonese, Arabic, Italian, Polish, Yoruba, and Haitian (Creole) - 2 each; Chinese, Urdu, Japanese, Thai, Greek, Cebuano, Dutch, Serbo-Croatian, Bengali, German, Laotian - 1 each. *See* MPD Biennial Language Access Plan for October 1, 2008 – September 30, 2010.

⁴² MPD Circular 02-10, “Foreign Language Translation Services,” (effective July 17, 2002).

As required by the Act, MPD has developed a language access plan. The current plan, dated January 5, 2009, covers the two-year period from October 1, 2008, through September 30, 2010 (Fiscal Years 2009 and 2010). The plan details the status of MPD efforts to develop a data collection method that will track the number of LEP individuals MPD serves and the languages they speak; discusses ongoing efforts by MPD to translate vital documents into languages other than English; describes MPD's oral language services (e.g., MPD certified bilingual staff, the aforementioned Latino and Asian Liaison Units, telephonic Language Line, and professional interpreter services); describes plans for MPD's Office of Risk Management to begin auditing and evaluating the quality of MPD's language services; describes current language access-related training; and discusses MPD's LEP community outreach.

In addition to a language access plan and various language assistance resources, MPD has several departmental directives that address the issue of language access. Circular 02-10 "Foreign Language Translation Services," (effective July 17, 2002) discusses the availability of the telephonic Language Line service. General Order 304.6, directs officers who are investigating sexual assaults to seek MPD-certified bilingual interviewers or utilize the Language Line service whenever a victim or witness appears to have limited English skills.⁴³ General Order 304.16 provides that a recorded interrogation of an LEP individual must be conducted through a qualified interpreter⁴⁴ General Order 308.12, which concerns diplomats and other noncitizens, provides a list of suggested statements to be made to foreign nationals in 13 different languages.⁴⁵

Recently, MPD has issued a series of teletypes (department-wide communications read at roll calls and displayed at all district stations and specialized units); published articles in its weekly newsletter, "the Dispatch;" and developed an online training course, all of which inform officers of the requirement to make MPD services as accessible to LEP individuals as to native English speakers. These tools refer to the primary language assistance services available through MPD, including certified bilingual staff, the Language Line, and written document translation, and review procedures for accessing the services, such as a reminder that certified bilingual staff are to be requested through dispatch, officers may consult Circular 02-10 or MPD's Language Line information cards (carried by officers and available at MPD district stations) for instruction on how to access the Language Line, and officers may contact the Language Access Programs Division for document translation services.⁴⁶

MPD also is in the process of developing and issuing a language access general order which will incorporate information from the teletypes, Dispatch articles, and the online training course. Issuance of the general order is a necessary step because although the teletypes are read at roll calls and displayed at stations, not all officers may have occasion to see them, particularly

⁴³ MPD General Order 304.6.VII.B.4, "Adult Sexual Assault Investigations," (effective Dec. 22, 2006).

⁴⁴ MPD General Order 304.16.V.D.1, "Electronic Recording of Custodial Interrogations," (effective Feb. 2, 2006).

⁴⁵ MPD General Order 308.12.VI.A.3, "Diplomats, Foreign Nationals and Resident Aliens," (effective Aug. 24, 2001).

⁴⁶

if they are on leave when this information is presented. Similarly, Dispatch articles, though informative and vital, are not binding and do not have the same weight as official directives. In contrast, officers are required to read, know, and abide by all general orders, special orders, and circulars, and they are able to access and consult these documents electronically. Until a comprehensive language access general order is issued, there is no one binding source of information on: 1) how to recognize LEP individuals, a difficult task because such persons may speak some English, 2) which circumstances dictate that language assistance be provided, and 3) how to access the various services available through MPD. The goal of the general order should be to ensure that the questions whether, when and how to provide language assistance to LEP individuals is clear.

V. MPD Compliance with District and Federal Lanuage Access Obligations

OHR recently audited MPD's compliance with the D.C. Language Access Act and issued a report in September 2008. The report states that MPD is in full compliance on 12 of 14 measures. The two areas in which the report found MPD non complaint were training of staff on use of the Language Line or other telephonic interpretation services and customer service testing by mail. The report gave MPD an overall rating of Partial Compliance (+) and a grade of 1.7 out of 2.

Notwithstanding that OHR has determined MPD to be nearly fully compliant with the D.C. Language Access Act, MPD acknowledges that work remains to be done to ensure that it fully meets the needs of LEP constituents. For example, a number of MPD's vital documents are being re-translated into the non-English languages most frequently encountered by District agencies because prior translations were found to have errors. Similarly, MPD seeks to improve its collection of data regarding agency contacts with LEP individuals by employing a new computerized records management system that will allow MPD to capture information on all contacts the department has with members of the LEP community and assess whether the contacts have been handled appropriately.

Despite OHR's favorable rating in September 2008 of MPD's overall effort to comply with the Language Access Act, OHR in December 2008 issued a decision in response to a language access complaint, finding that MPD had violated the Act and mandating significant corrective action.⁴⁷ The complaint was filed by Jong Yeol Lee, a Korean-speaking permanent U.S. resident who was arrested at his home in Fairfax County, Virginia, pursuant to a District of Columbia warrant. Mr. Lee was held in custody in Virginia for several days without language assistance, but once he was transferred to the District, MPD officers failed to provide an interpreter, Language Line service, or Korean translations of relevant, vital MPD documents. MPD ultimately released Mr. Lee, however, after determining that the U.S. Attorney's Office for the District of Columbia had intended to but inadvertently failed to invalidate the warrant.

OHR concluded that MPD's handling of Mr. Lee violated the Language Access Act and it ordered MPD to take a number of specific steps, including: training MPD employees who serve in public contact positions on how explicitly to avail themselves of all of MPD's language

⁴⁷ See *D.C. Office of Human Rights v. Metropolitan Police Department*, Docket No. 08-264-LA (Dec. 2008).

assistance resources, including the Language Line; involving first-line supervisors in monitoring compliance with the Language Access Act; ensuring that informational materials intended to advise the LEP population of the existence of language services are displayed in visible locations and are available in all of the non-English languages that MPD most frequently encounters; completing the translation of vital documents into all of the relevant languages; and requiring managers and supervisors to take personnel action when staff fail to adhere to LEP policies and procedures. The corrective action mandated is specifically limited, however, to MPD's Sixth District, because it was this MPD unit that failed to provide service to Mr. Lee.⁴⁸

In addition to being monitored by OHR, MPD has also been the subject of a DOJ compliance review to determine whether MPD's provision of language services to LEP persons complies with Title VI. DOJ summarized the results of its audit in a letter dated October 14, 2008.⁴⁹ DOJ's compliance review found that MPD had taken steps to provide LEP individuals with meaningful access to police services.⁵⁰ However, the review also found, among other things, that MPD did not have reliable translations of several vital MPD documents; its process for tracking contacts with LEP individuals needed improvement; and, most important, it lacked a formal policy specifically addressing how MPD officers should provide language services to LEP individuals during field encounters and stops.⁵¹

According to the compliance review, MPD officers were not receiving consistent, reliable training on how to provide language services to LEP individuals during field encounters. As a result, officers were left to their own devices regarding how adequately to handle interactions with LEP persons. Several officers reported being unfamiliar with how to access the Language Line, and many stated that they "never used it."⁵² One officer described how in communicating with LEP individuals during traffic stops, she would extend her fingers in the shape of a rectangular bracket in order to indicate that she wanted the persons stopped to produce identification.⁵³

In addition, some officers engaged in practices that differed widely from MPD's stated policy. According to MPD, officers should contact dispatch services when in need of an interpreter. DOJ found, however, that some officers would contact bilingual officers directly instead of going through dispatch.⁵⁴ In cases where officers were unable to obtain interpreters through dispatch, some officers would contact the U.S. Secret Service, which would then send

⁴⁸ *Id.*

⁴⁹ *See* Letter from Michael L. Alston, Director, U.S. Department of Justice, Office of Justice Programs, Office of Civil Rights, to Cathy L. Lanier, Police Chief, District of Columbia Metropolitan Police Department.

⁵⁰ *Id.* at 2.

⁵¹ *Id.* at 2-8.

⁵² *Id.* at 8.

⁵³ *Id.* at 8-9.

⁵⁴ *Id.* at 8

interpreters to the scene. This would occur even though MPD did not appear to have a stated practice of urging officers to contact the U.S. Secret Service in the event that an MPD interpreter was not available.⁵⁵

At the time of the DOJ compliance review, MPD had not completed the extensive Language Access Plan that it issued January 5, 2009. Accordingly, DOJ's report indicates that MPD lacked a comprehensive LEP plan and should develop one. However, DOJ also urged MPD to include both in its comprehensive language access plan, as well as in new or revised departmental directives, "clear, detailed protocols" that MPD officers in the field should follow in order to ensure the provision of language assistance services to LEP individuals.⁵⁶

VI. BEST PRACTICES

A. Federal Guidance

DOJ has issued a planning tool that law enforcement agencies can use in developing or updating their comprehensive LEP plans as well as in developing or revising departmental directives that address provision of LEP services.⁵⁷ The planning tool is even more specific than DOJ's 2002 guidance. It recommends that agencies develop a policy statement affirming the agency's commitment to providing meaningful access to LEP individuals. It also recommends standards to be employed in certifying employees as qualified interviewers, and suggests specific protocols that officers and certified interpreters should follow in handling 911 calls, arrests, enforcement stops, field investigations, and general requests for service from LEP individuals. The planning tool notes that all of an agency's detailed LEP protocols need not be included in its LEP plan; rather, it is often more useful to include detailed procedures in departmental directives, such as general orders, and in training materials.⁵⁸

A wealth of other federal resources is available at the website of the Federal Interagency Working Group on Limited English Proficiency, www.lep.gov, and from the Coordination and Review Section of DOJ's Civil Rights Division.⁵⁹

B. Philadelphia, PA

In 2005, the Philadelphia Police Department issued Directive 71 (Directive), which contains the department's LEP plan.⁶⁰ The Directive includes definitions of several key LEP

⁵⁵ *Id.* at 8-9.

⁵⁶ *Id.* at 9.

⁵⁷ See "Planning Tool For Creating a Language Assistance Policy and Plan in a Law Enforcement Agency," Coordination and Review Section, Civil Rights Division, Department of Justice, *available at*: http://www.lep.gov/Law_Enforcement_Planning_Tool.htm.

⁵⁸ *Id.*

⁵⁹ See <http://www.usdoj.gov/crt/cor/13166.php>.

terms;⁶¹ procedures for acquiring translation assistance during 911 calls, field contacts, interviews, and interrogations;⁶² processes for the identification and translation of vital documents;⁶³ departmental standards regarding public notification of available LEP services;⁶⁴ procedures for training personnel about the department's LEP policies;⁶⁵ and information regarding departmental monitoring and updating of its language assistance efforts.⁶⁶ The directive contains an unequivocal statement of policy regarding the provision of services to LEP persons, stating that police officers "shall provide free language assistance services to LEP individuals whom they encounter or whenever an LEP person requests language assistance services."⁶⁷ The directive also makes clear that police officers should avoid making assumptions about the language in which a person most effectively communicates.⁶⁸

C. San Francisco, CA

Subsequent to a 2004 DOJ compliance review,⁶⁹ and a recommendation by the San Francisco Office of Citizen Complaints,⁷⁰ the San Francisco Police Department adopted an LEP plan.⁷¹ Among other things, the plan provides guidance on how to determine an individual's primary language,⁷² and stresses that an officer should contact San Francisco's Department of Emergency Management or a professional interpretation service if the individual's primary language cannot be identified.⁷³ The plan provides for the use of translation services or interpreters, including an order of preference and restrictions on the use of on-site volunteer

⁶⁰ See Philadelphia Police Department Directive 71, Limited English Language Proficiency," (effective Dec. 9, 2005).

⁶¹ *Id.* at 71-1.

⁶² *Id.* at 71-2-6.

⁶³ *Id.* at 71-6.

⁶⁴ *Id.* at 71-7.

⁶⁵ *Id.*

⁶⁶ *Id.* at 71-8.

⁶⁷ *Id.* at 71-1.

⁶⁸ *Id.*

⁶⁹ "OCC's Quarterly Report Regarding Outstanding Policy Proposals," June 29, 2006, available at http://web1.sfgov.org/site/uploadedfiles/occ/OCC_Pend_Policy062806.pdf.

⁷⁰ "OCC's Proposed Language Access Policy for the San Francisco Police Department," May 11, 2006, available at http://web1.sfgov.org/site/uploadedfiles/occ/OCC_Language_Access.pdf.

⁷¹ San Francisco Police Department General Order 5.20, "Language Access Services for Limited English Proficient (LEP) Persons," (effective Oct. 17, 2007).

⁷² *Id.* at 2.

⁷³ *Id.*

interpreters.⁷⁴ The plan also provides specific instructions for noncustodial interviews and custodial interrogations, as well as victim interviews, field contacts, and other scenarios.⁷⁵

D. New Jersey

New Jersey's Department of Transportation has adopted an LEP plan for its Emergency Service Patrol, Central Dispatch Unit, and Traffic Operations Center staff.⁷⁶ Among other things, the plan provides guidance for the identification of LEP individuals, noting that many LEP individuals are in the process of learning English, and, although they may have basic English skills, may not speak English proficiently enough to communicate detailed information.⁷⁷ The plan also provides for staff training to ensure awareness of departmental LEP policies and procedures,⁷⁸ LEP community outreach,⁷⁹ and quarterly evaluations of the department's LEP efforts to determine if changes in the plan are necessary.⁸⁰

⁷⁴ *Id.* at 3.

⁷⁵ *Id.* at 4-5.

⁷⁶ New Jersey Department of Transportation, Division of Statewide Traffic Operations, Limited English Proficiency (LEP) Plan.

⁷⁷ *Id.* at 2.

⁷⁸ *Id.*

⁷⁹ *Id.* at 3.

⁸⁰ *Id.*

VII. RECOMMENDATIONS

Based on the complaints it has received and the issues discussed above, PCB finds that MPD's service to LEP individuals would be significantly improved if MPD undertakes the following measures:

- **Develop a written policy statement that unequivocally affirms MPD's commitment to providing language assistance to LEP individuals in order to ensure that persons with LEP have meaningful access to MPD's services.**
The policy statement, in addition to voicing support for equalizing the treatment of LEP individuals, should emphasize the legally binding, nondiscretionary nature of this duty. The policy statement should then be included in MPD's language access plan, in any new or revised language access directives, and in all language access-related training materials. PCB believes, based on the many steps MPD already has taken, that MPD accepts and proactively seeks to fulfill its legal obligations to the LEP community. However, given the current deficiencies in LEP compliance at the rank-and-file level, PCB believes that committing MPD's official position to writing and disseminating it in the manner suggested will help ensure that MPD management's strong support for LEP compliance permeates the entire MPD chain of command.
- **Include in MPD's forthcoming language access general order clear, specific guidance for officers regarding: 1) how to recognize the need for LEP assistance 2) the mandatory legal obligation to provide such assistance, and 3) step-by-step instruction on how, *particularly during field encounters with LEP individuals*, to employ the various language assistance services currently available.** A binding directive that brings together all of the relevant information would clarify for officers how to handle field stops and routine encounters with LEP individuals. The new general order should:
 - define "LEP,"
 - explain that LEP individuals may be able to communicate on a basic level but warn that it is easy to overestimate an LEP person's English comprehension skills,
 - require officers to provide language assistance to anyone who meets the objective criteria of having difficulty communicating and/or understanding and to anyone who specifically requests language assistance,
 - discourage officers from relying on family members, friends, or bystanders except in exigent circumstances, and
 - instruct officers to err on the side of providing language assistance when in doubt.

With respect to which services to provide, the general order should outline the services and techniques available to be used, such as MPD-certified interpreters and interviewers, the Language Line, qualified outside interpreters, and translated documents. The step-by-step instruction contained in the teletypes and “Dispatch” articles should be included. This directive also should inform officers of any preferable order in which the services should be accessed and spell out when the provision of particular services is mandatory.

- **Enhance LEP training by including in MPD’s cultural competency and diversity training a segment that provides step-by-step review of how to identify and provide language assistance to LEP individuals, particularly during field encounters. Additionally, refine MPD’s mandatory online LEP training course to more clearly distinguish between officers’ mandatory legal obligation to provide language assistance to LEP individuals and voluntary customer service standards.** As part of its LEP plan, MPD annually offers cultural competency training, a course which officers may take to partially fulfill their annual 40-hour in-service training requirement. The cultural competency course addresses diversity awareness and cultural sensitivity but does not include review of how to access or provide MPD’s language resources to LEP individuals. Recognizing that the diversity awareness aspect of this course is valuable and necessary, PCB nevertheless believes that including a section on assisting persons with LEP would be a good way to combine cultural awareness with concrete review of LEP procedures. In addition to its cultural competency training, we understand that MPD very recently instituted a mandatory online LEP training course. The course is highly-commendable in that it provides step-by-step instruction in accessing the Language Line during field and station-based encounters and addresses how to handle incoming calls for service from LEP persons as well as how to arrange preparation of written correspondence in non-English languages in order to communicate with LEP individuals. While this online course also explains that failure to provide language assistance can be construed as unlawful discrimination, the training contains extensive reference to MPD and District of Columbia customer service standards, emphasizing that providing language assistance is a form of good customer service. PCB commends efforts to encourage good customer service but recommends that this training tool be modified slightly to make clearer the legal obligation under Title VI and the Language Access Act to provide language assistance to the LEP community so that officers will understand that whether to offer language assistance where it is needed is not discretionary but rather mandatory.
- **Adopt and incorporate the recommendations made by DOJ in its compliance review and those made by OHR in its 2008 ruling in *OHR v. MPD (08-264-LA)*.** Although many of the issues highlighted in DOJ’s compliance review were not the focus of OPC complaints, PCB believes that DOJ’s assessment of MPD’s language access services identified key areas of concern that should be addressed. Additionally, many of the corrective actions mandated by OHR for MPD’s Sixth

District, if implemented in all MPD districts, would foster citywide compliance with the Language Access Act, thereby increasing meaningful access to MPD by persons with LEP.

- **Consider and utilize the federal, state, and municipal resources identified in the Best Practices section of this report.** The DOJ planning tool referenced herein and the LEP departmental directives that have been adopted in Philadelphia, San Francisco, and New Jersey serve as clear, relevant examples of how to incorporate and implement many of the improvements recommended by DOJ and OHR. PCB therefore strongly recommends that MPD make use of these valuable resources as it updates and revises MPD's LEP plan, directives, and training.

VIII. CONCLUSION

PCB initiated the development of this policy recommendation over a year ago in response to OPC complaints, unaware that related action on other fronts, including OHR's investigation of a language access complaint against MPD, DOJ's Title VI Compliance Review of MPD, and even the District of Columbia Bar's recent publication of a major article on language access issues in the District -- would bring the issue of LEP compliance into such sharp public focus at roughly the same time. Nevertheless, PCB believes that the confluence of these separate examinations of the same issue, rather than being duplicative, underscores the significance of the issue and the need for it to be seriously addressed. PCB believes strongly that MPD upper management, led by Chief Lanier and assisted by MPD language access coordinator Enrique Rivera-Torres, is fully committed to addressing the needs of the LEP community. We therefore urge that the refinements recommended herein be adopted so that MPD's commitment to serving the LEP community can become the reality. As DOJ aptly noted in one of its LEP resource documents, "It is not the plan, but the actual delivery of appropriate and competent language assistance when and where needed that defines 'meaningful access.' [Agencies must not] let the good work done in developing [their] plans and policies go to waste by failing to implement them effectively."⁸¹

⁸¹ Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools from the Field, U.S. Department of Justice, Civil Rights Division (September 21, 2004), *available at*: http://www.usdoj/crt/cor/lep/tips_and_tools-9-21-04.php.