MEMORANDUM OF AGREEMENT
BETWEEN

THE UNITED STATES OF AMERICA
AND
THE WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES

CRC COMPLAINT NUMBER 12-WA-006

A. SCOPE OF THE INVESTIGATION

1. The United States Department of Labor (DOL) and Department of Justice (DOJ) have conducted an investigation pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), its implementing regulations at 29 C.F.R. part 31 and 28 C.F.R. part 42, Section 188 of the Workforce Investment Act of 1998, as amended, 29 U.S.C. § 2938 (Section 188 of WIA), and its implementing regulations at 29 C.F.R. part 37; and the Victims of Crime Act (VOCA), 42 U.S.C. § 10604(e).[1] The full investigation report is attached to this Memorandum of Agreement (MOA) and incorporated by reference. This investigation was initiated in response to an administrative complaint filed by the Northwest Justice Project on behalf of limited English proficient (LEP) individuals alleging national origin discrimination by the Washington State Department of Labor and Industries (L&I).[2] The complaint alleged that L&I failed to provide language assistance services, interpreter services and translated materials, and denied the complainants meaningful access to federally funded L&I programs and activities.

2. L&I is the agency that administers the state's workers' compensation system, develops and enforces rules that protect workers from hazardous job conditions, and enforces labor laws that protect workers' wages and working conditions in nineteen (19) offices throughout Washington. L&I also administers benefits to victims of violent crime through the Washington Crime Victims Compensation Program. The head of L&I is the Director.

B. JURISDICTION

1. DOL and DOJ have jurisdiction over this matter under Title VI, Section 188 of WIA, and VOCA. Together, these statutes and their implementing regulations, codified at 29 C.F.R. part 31, 28 C.F.R. part 42, and 29 C.F.R. part 37 prohibit discrimination on various bases, including, but not limited to, race, color, and national origin, in programs or activities that receive federal financial assistance.

2. DOL and DOJ conducted this investigation pursuant to Title VI, Section 188 of WIA, and their implementing regulations. 29 C.F.R. § 31.7(c); 29 C.F.R. § 37.60; 28 C.F.R. § 42.413(c). DOL and DOJ are authorized to investigate complaints filed against recipients of their federal funds pursuant to Title VI and its implementing regulations. 29 C.F.R.

[1] The implementing regulation for the nondiscrimination provision in VOCA is currently pending. 78 Fed. Reg 52,877 (proposed Aug. 27, 2013) (to be codified at 28 C.F.R § 94.104(h)).
[2] In total, DOL and DOJ have received national origin discrimination complaints from nine LEP individuals.

§ 31.7(c); 28 C.F.R. § 42.107(c). DOL is authorized to investigate complaints filed against recipients of financial assistance under WIA Title I, pursuant to Section 188 of WIA's implementing regulations. 29 C.F.R. § 37.60.

3. DOL and DOJ are authorized by Title VI to suspend or terminate financial assistance to recipients of their federal funds, should DOL and DOJ fail to secure voluntary compliance or to bring a civil suit or take other action to enforce the rights of the United States under applicable federal, state, or local law. 42 U.S.C. § 2000d-1; 29 C.F.R. § 31.8; 28 C.F.R. § 42.108. DOL is authorized to suspend or terminate WIA Title I financial assistance should DOL fail to secure voluntary compliance or to refer the case to DOJ with a request to file a civil suit against the grant applicant or recipient. 29 C.F.R. §§ 37.100, 37.113.

4. This MOA does not constitute an admission with regard to any specific allegations investigated in this matter. The purpose of the MOA is to memorialize L&I's commitment to devise, implement, and maintain the policies, plans, and procedures needed to ensure compliance with the non-discrimination provisions of Title VI, Section 188 of WIA, and VOCA as they relate to providing meaningful access to persons with limited English proficiency in Washington.

5. The parties to this MOA are the United States of America and L&I. The person(s) signing represent(s) that they are authorized to bind the parties to performance under this MOA.

6. In order to avoid the burdens and expenses of further investigation and possible litigation, the parties agree as follows:

C. REMEDIAL ACTION

1. L&I agrees to comply with Title VI, Section 188 of WIA, VOCA, and their corresponding implementing regulations. L&I and its staff shall provide timely and meaningful access at no cost to LEP individuals in all L&I programs and activities.

2. The Director of L&I shall issue the attached Language Access Policy (Policy) contemporaneously with this MOA. The Policy is effective August 1, 2015, and requires all L&I staff to ensure that all LEP individuals are provided language assistance services in all L&I programs and services at no charge. The Policy establishes and maintains standards for programs and services provided by L&I and contractors who are required to comply with L&I standards. L&I will share the Policy with L&I staff and the public by posting it on the L&I website and through employee training and information resources. L&I agrees to take such actions as are necessary to implement and maintain the provisions of the Policy.

3. L&I shall submit to DOL and DOJ for review and approval a proposed state Language Access Plan (LAP) within one hundred twenty (120) days of the effective date of this MOA. The LAP will be based on the Policy and will set forth the L&I management actions needed to implement the policy and ensure compliance with federal civil rights laws, including the

tasks to be undertaken, assignment of responsibility, deadlines, process, resources, quality controls, and periodic updates of its contents.

a. Specific items the LAP will address include, among others, how to:
    i. identify and track the oral and written language assistance service needs of LEP individuals and the effectiveness of the services provided;
    ii. initially test, and periodically and reasonably reassess, L&I staff for oral and written competency and skills in non-English languages;
    iii. work with the Washington Department of Enterprise Services (DES) to ensure that DES master agreements include quality assurance measures for assessing translation and interpreter contractor performance;
    iv. ensure translated vital documents and electronic materials are created and provided to LEP individuals;
    v. train L&I staff on civil rights and language access obligations;
    vi. provide effective notice of available oral and written language assistance services and outreach to LEP individuals and communities;
    vii. enable LEP individuals to file complaints regarding language assistance services; and
    viii. monitor the effectiveness of the language access program including the performance measures that will be used.

b. Within ninety days of receipt of the LAP, DOL and DOJ shall provide L&I with comments on the LAP. No later than ninety (90) days after DOL and DOJ deliver comments to L&I, the parties shall negotiate further changes needed, if any, to secure DOL and DOJ's approval of the LAP. L&I shall publish the LAP approved by DOL and DOJ on its website within thirty (30) days of notice from DOL and DOJ of its approval and shall take such feasible actions as are necessary to implement the LAP.

4. Within six (6) months of the issuance of the LAP, L&I shall submit to DOL and DOJ for review and approval any other policies, forms, and procedures related to the implementation of the Policy and LAP. L&I shall thereafter take such actions as are necessary to publish the forms and implement the policies and procedures.

5. Within sixty (60) days of the effective date of this MOA, the Director shall appoint advisory members to the L&I Language Access Steering Committee (Committee). L&I agrees to use its best efforts to appoint advisory members representing the Northwest Justice Project, Columbia Legal Services, the National Employment Law Project, the Center for Latino Farmers, the Asian Pacific Islander Coalition, or other advocates representing the interests of LEP workers in Washington, all of whom shall have relevant experience in language access issues. L&I will also appoint advisory members representing the Washington employer community. L&I will share the list of advisory members with DOL and DOJ. These advisory members will be invited to participate in all regular meetings of the Committee, either in person or remotely, and will advise L&I as it develops and implements the LAP.

6. For two years following the issuance of the Policy, L&I shall submit to DOL and DOJ for review and approval any proposed modifications to the approved Policy, LAP, or language-

access related policies and procedures. DOL and DOJ will review and approve any proposed modifications to the approved Policy, LAP, policies, or language-access related policies and procedures within fifteen (15) business days of its receipt.

7. After the submission of each report specified in D.1. below, and upon request of a party to the MOA at any other time, the parties shall discuss the extent to which L&I has succeeded in complying with the requirements of paragraph C.1.– C.6. above, the efficacy of the Policy, LAP, any other language access policies and procedures, and whether any agreed modifications are needed.

D. MONITORING

1. Every six (6) months after the effective date of this MOA, and thirty (30) days prior to its expiration, L&I will submit detailed written reports to DOL and DOJ documenting the efforts made to implement the Policy and to comply with the language access requirements of Title VI, Section 188 of WIA, VOCA, and their implementing regulations. L&I will submit a report to DOL and DOJ based on a reporting template and format agreed upon by the parties. These reports will include, but are not be limited to, the following categories of information:

a. The actions L&I has taken or intends to take to comply with the MOA, implement the Policy, and execute the LAP;
    i. Any policies or procedures that were drafted or issued for these purposes;
    ii. Any language assistance service related notices, forms, documents, signs, or electronic materials that have been drafted or issued in paper or online; and
    iii. Any contracts or agreements with language assistance service providers.

b. Available data on the number of LEP individuals L&I staff has encountered, by type of encounter (*i.e.*, in person, telephone, written, electronic), whether the LEP individual requested oral or written language assistance services, the preferred non-English language spoken by the individual, whether L&I provided language assistance services and if so, the type of language assistance services provided, and how these services were provided.

c. Available data on the language assistance services provided pursuant to Section IV. A. of the Policy and the LAP by L&I staff and the form and mode of language assistance services, including data that details:
    i. Any delays in service to LEP individuals resulting from unavailable language assistance services;
    ii. Instances in which language assistance services were not provided and the reasons why;
    iii. Instances in which family members, friends, or children, provided the language assistance services;

d. Available data on the notice and outreach L&I provided to LEP individuals about the availability of language assistance services pursuant to Section IV. B. of the Policy and LAP, including data that details:

i. The location of notices and signs in all L&I field offices;
ii. Translated notices provided on or accompanying written materials sent to LEP individuals;
iii. Translated notices provided on the L&I website;
iv. Outreach documents, telephone menus, and web pages that have been created in Spanish and in other non-English languages;
v. Outreach materials created for media and community-based organizations in Spanish and other non-English languages.

e. The number, nature, and disposition of any language access complaints made to L&I;

f. The trainings provided to L&I staff and contractors regarding the Policy, LAP, federal civil rights obligations, and any related language access matters, including the content of the trainings, training materials, dates held, trainers, and names and positions of attendees;

g. Steps taken to recruit, train, set standards for, qualify, and certify interpreters and translators, including current and future L&I bilingual staff;

h. Available lists of documents, signage, forms, web content, and audio or video content that have been or will be translated into non-English languages, the non-English languages completed or intended for each, whether it was accompanied by a description written in that same non-English language, and the means by which the items will be distributed internally and made available to LEP individuals;

i. Steps taken to ensure quality communication with LEP individuals when utilizing in-person or remote interpreter services;

j. Each report shall include the available number of interpretation and translation requests that L&I received by non-English language and figures on L&I spending for language assistance services, by type of interpretation and translation service and non-English language.

k. In each report required by D.1, L&I will specify any item or data required by a,b,c,d,e,f,g,h,i or j that is not included in that report. For each item or data that is not included in a report, L&I will explain why the item is not available, the steps that L&I took to obtain the specific item or related data for the report, and the efforts that L&I will undertake to have that specific item or data available for the next report.

2. DOL and DOJ may review compliance with this MOA at any time. If DOL and DOJ believe that L&I has failed to comply in a timely manner with any requirement of this MOA, without obtaining advance written approval from DOL and DOJ for a modification of the relevant terms, DOL and DOJ will notify L&I in writing and will attempt to resolve the issue or issues in good faith. If DOL and DOJ conclude that the parties have been unable to reach a satisfactory resolution of the issue or issues raised within sixty (60) days of the date it provided written notice to L&I, DOL and DOJ may institute a civil action in federal district court to enforce the terms of this MOA.

3. Failure by DOL or DOJ to enforce this entire MOA or any provision thereof with regard to any deadline, reporting of information, or any other provision herein shall not be construed as a waiver of DOL and DOJ's right to enforce the deadlines and provisions of this MOA.

4. This MOA is a public document that the parties shall post on their respective websites. L&I, DOL, and DOJ shall make this MOA available to any person upon request under Washington's Public Records Act or the Federal Freedom of Information Act.

5. This MOA constitutes the entire agreement between the parties on the matters raised, and no other statement or promise, either written or oral, made by either party or agents of either party regarding the matters raised that is not contained or referred to in this MOA shall be enforceable, without the agreement of the parties. This MOA does not purport to remedy any other potential violations of Title VI, Section 188 of WIA, VOCA, and their corresponding implementing regulations or any other federal laws or regulations. This MOA does not affect L&I's continuing responsibility to comply with Title VI, Section 188 of WIA, VOCA, and their corresponding implementing regulations or any other federal laws or regulations. Nor, does it preclude DOL or DOJ from carrying out their duties under Title VI, Section 188 of WIA, VOCA, or any other statute DOL or DOJ is authorized to enforce, should a complaint be filed with DOL or DOJ or any other information presented that alleges noncompliance with federal civil rights laws.

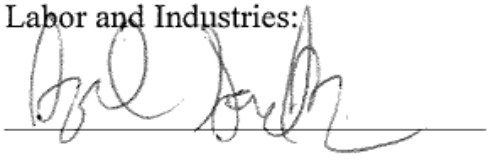
E. EFFECTIVE DATE AND TERMINATION

1. The effective date of this MOA is the date of the last signature below.

2. Except as otherwise set forth, all deadlines for action are counted from the effective date.

This MOA will remain in effect for two years following L&I's publication of the LAP submitted and approved in accordance with paragraphs C.3., above; provided, however, that L&I is in substantial compliance with the terms of this MOA continuously during the preceding year.

For the Washington State Department of Labor and Industries:



JOEL SACKS
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Attorney General of Washington

For the United States:

NAOMI BARRY-PÉREZ
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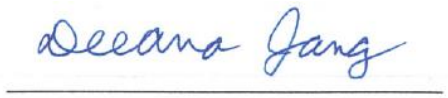
Deputy Assistant Attorney General



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Dated: 10/1/15

Washington State Department of
Labor & Industries

Administrative Policy No. XYZ

Subject: Language access services

Authorizing Source: Web and Communication Services

Effective Date:

Approved By:

I. Policy Statement

The policy of the Department of Labor & Industries (L&I) is to provide limited English proficient (LEP) customers timely and meaningful access to all agency programs and activities. All L&I staff shall provide free language assistance services to LEP customers whom they encounter or whenever an LEP customer requests language assistance services. L&I will inform members of the public that language assistance services are available free of charge to LEP customers and that the agency will provide these services to them.

II. Purpose and authority

This policy directs all L&I staff to provide LEP customers with meaningful access to agency programs and services. L&I staff shall ensure that all customers can effectively access agency services to understand their rights and responsibilities in a language they understand. This policy establishes and maintains standards for programs and services provided by L&I and contractors who are required to comply with L&I standards.

The purpose of this policy is to establish effective guidelines, consistent with Title VI of the Civil Rights Act of 1964 (Title VI) and Section 188 of the Workforce Investment Act of 1998 (WIA) and their implementing regulations, for agency personnel to follow when providing services to, or interacting with, individuals who have limited English proficiency. L&I, as a recipient of federal financial assistance, is required to take reasonable steps to ensure meaningful access to its programs and activities by LEP customers.

While meaningful access is always required, the level of language assistance services that L&I must provide is a fact-specific inquiry that balances a variety of factors including:

1. The number or proportion of LEP customers eligible to be served or likely to be encountered by each program and division;
2. The frequency with which LEP customers come in contact with each program and division;
3. The nature and importance of the program, activity, or service provided by the program to people's lives; and
4. The resources available to the program and costs.

For assistance in serving customers with disabilities, including customers who have vision or hearing impairments, please refer to Administrative Policy 3.11.

III. Definitions and Common Terminology for Language Access Related Services

1. **Authorized translator:** An L&I employee serving in a designated bilingual position who is responsible for translating documents in the language indicated in his/her position description.
2. **Certified interpreter**: A person employed by a vendor that has met the requirements to provide interpretation services by the Department of Enterprise Services and/or the Fee Schedules and Payment Policies (MARFS) published by Health Services Analysis in Insurance Services. A certified interpreter must either be an L&I provider or employed by an interpreter service contracted by L&I.
3. **Certified translator:** A person employed by a vendor that has met the requirements to provide translation services by the Department of Enterprise Services and/or the Fee Schedules and Payment Policies (MARFS) published by Health Services Analysis in Insurance Services at L&I. These translators can only bill for services rendered to L&I for the languages they are certified to translate.
4. **Contracted service provider or vendor:** A person, agency, or business entity that contracts with L&I to provide the amount and kind of services requested to serve customers in their language of preference. In some cases, these services can be provided through a vendor contracted through statewide contracts with the Department of Enterprise Services or an L&I provider.
5. **Cultural competency:** A set of behaviors, attributes, and policies enabling an agency (or individual) to function effectively and appropriately in diverse cultural interactions and settings. Creating culturally competent materials requires respect for individuals and cultural differences, and the use of appropriate language, messages, and images that are relevant to a specific community.
6. **Customer's preferred language:** The language that a customer identifies as the language in which s/he wishes to communicate verbally and/or in writing with L&I.
7. **Designated Bilingual Employee:** L&I staff in any position whose current, assigned job responsibilities include proficient use of written and/or oral English and proficiency in speaking and/or writing one or more foreign language, receive dual language assignment pay, and have met the qualifications for bilingual/multilingual proficiency as established by the Office of Human Resources (OHR).

8. **Interpretation:** Listening to a message in one language and orally converting it to another language in a manner that preserves the intent and meaning of the original message.
9. **Language access services:** The full spectrum of oral and written services available to provide meaningful access to L&I programs and services for LEP customers, including, but not limited to, in-person interpreter services, telephonic and video interpreter services, the translation of written materials, and services provided by designated bilingual staff.
10. **Language Access Steering Committee:** L&I committee comprised of representatives from all divisions that coordinates and monitors the implementation of the Language Access Service Policy and provides other oversight and advisory functions related to language access activities as needed.
11. **Limited English proficient (LEP):** Customers who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English and are entitled to language assistance with respect to a particular type of L&I service, benefit, or encounter.
12. **Sight translation:** Oral rendition of text written from one language into another language, usually done in the moment.
13. **Source language:** The language of the speaker or author from which translation or interpretation occurs. For example, if an English document is translated into Russian, the source language is English.
14. **Target audience:** The audience to which the translated document is intended for use. Some terms and concepts are hard to translate in a meaningful way due to cultural or linguistic differences. In these cases, it may be more appropriate to redesign and tailor the language of a document in English to ensure the intended message will be understood by the target audience that speaks a non-English language.
15. **Target language:** This is the language to which translation or interpretation occurs – the language of the listener or reader. For example: If an English document is translated into Russian, the target language is Russian.
16. **Translation:** The conversion of written communication from one language (source language) to another (target language) in a written form. An accurate translation is one that conveys the intent and essential meaning of the original text.
17. **Vital Documents**: Documents deemed as vital to customer access to L&I services and activities, or are required by law. Whether a document is considered vital or not may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP customer if the information in question is not provided accurately or in a timely manner.

IV. Policy

A. Provision of Language Access Services to Customers with Limited English Proficiency

L&I staff will provide LEP customers with meaningful access to L&I programs and services by offering language access services at no cost through one or more of the following methods:

1. Direct provision of services by designated bilingual or multilingual employees;
2. Interpreter services provided by certified contracted interpreters (in person or over the phone);
3. Interpreter services provided by qualified interpreters for languages in which certification is not available; and
4. Translation of written documents provided by certified or authorized translators.
5. When L&I is notified that an LEP individual is represented by an attorney, L&I will send written communications within the scope of the representation in English exclusively through the attorney.

L&I staff shall not use web-based applications or software to process or provide translations for LEP customers.

B. Notice of Language Access Services

L&I staff will inform LEP customers about the availability of language assistance, free of charge, by providing written notice in non-English languages LEP customers will understand. At a minimum, language access services notices and signs will be posted in conspicuous locations and provided to LEP customers at all L&I field offices. Notification of language access services will also be provided through one or more of the following methods: outreach documents, telephone menus, local newspapers, radio and television stations, and/or outreach to community-based organizations.

C. L&I Staff Responsibilities

1. Identify LEP customers as early as possible during initial contact.
2. Record the preferred language of LEP customers according to the program recordkeeping requirements. Use any relevant database systems that maintain a foreign language flag or other process or procedures identified to capture this language preference information.
4. Inform LEP customers of their right to have language access services provided at no cost to them.
5. Arrange and provide effective language access services to all LEP customers.

D. L&I Division Responsibilities

1. Appoint a representative to the Language Access Steering Committee;
2. Collaborate in the development and implementation of procedures for providing interpreter and translation services for the division by ensuring administrative support and funding for positions and additional resources as appropriate;
3. Ensure staff are trained on the Language Access Services Policy, can locate available language access resources, and receive any other training necessary for staff to perform their LEP related job duties.
4. In divisions where there is face-to-face interaction with the public, ensure that multilingual signs are posted in all L&I customer waiting areas that explain the availability, at no cost to the customer, of language access services.

5. Identify vital documents for translation. Federal guidelines are helpful in determining vital documents that need to be prioritized for translation and may not be readily provided through oral services through bilingual staff or interpreter services. Vital documents include, but are not limited to:
    a. Documents that must be provided by law;
    b. Complaint, consent, release or waiver forms;
    c. Claim or application forms;
    d. Conditions of settlement or resolution agreements;
    e. Letters or notices pertaining to the reduction, denial, or termination of services or programs or that require a response from the LEP customer;
    f. Time-sensitive notices, including notice of hearing, upcoming deposition appearance, or other investigation or litigation-related deadlines;
    g. Forms or written material related to individual rights;
    h. Notices of rights, requirements, or responsibilities;
    i. Notices regarding the availability of free language assistance services for LEP individuals; and
    j. Outreach or informational material when lack of awareness of the existence of a particular program may effectively deny LEP individuals meaningful access.
6. Include language in service contracts to advise providers of their responsibility under federal law to provide or arrange for language services.
    a. Note that service providers under contract with L&I must comply with all federal (e.g., Title VI of the U.S. Civil Rights Act of 1964) and state regulations, as well as contractual requirements pertaining to the provision of language services;
7. Ensure that data is collected and reviewed annually to determine the appropriate mix of language access services to provide LEP customers consistent with the four-factor analysis discussed in Section II.
8. Ensure customer reports and complaints of any failures by L&I staff to provide language access services are addressed promptly and then tracked and reviewed to identify improvements that may be made in the division's delivery of language services for all LEP customers.

E. Language Services for Oral and Written Communications

Depending on the LEP customer's communication needs and circumstances, L&I staff will choose among the following options when identifying the form of oral and/or written communication to use in a given situation. Staff may consult documents outlining specific procedures for accessing interpreter and translation services on the Director's Office, Bilingual Resources intranet site.

1. Oral Communications

a. If an LEP customer is not being served directly by a designated bilingual employee, L&I staff will communicate verbally with the customer through the use of a certified interpreter.

b. An oral interpretation of an English written communication may be acceptable, but the LEP customer must be informed that translations service are also provided at no cost to him/her.
c. L&I staff must not use children, family members, or friends of the LEP customer as interpreters.

2. Written Communications

a. Staff will provide LEP customers with one or more of the following forms of translated written communications:
    1. A fully translated written communication or correspondence from L&I in the customer's preferred language,
    2. A written summary of the English written communication or a short description, indicating the subject and its significance and any deadlines, in the customer's preferred language; or
    3. A note or letter in the customer's preferred language that tells him/her how to contact L&I for assistance in understanding written communication that they receive from L&I in English.
b. Vital documents are prioritized for translation.
c. Staff may consult with their division's Language Access representative for assistance in determining the most appropriate method of communicating with an LEP customer.

F. Training

Staff will receive training as part of the new employee onboarding process. Refresher training will be conducted as determined by the Language Access Steering Committee.

G. Monitoring

The Language Access Steering Committee will annually monitor and evaluate implementation of this policy and corresponding LEP activities for effectiveness and that language services are updated as needed to reflect information on relevant LEP populations, their language assistance needs, and their experience under this policy.

H. Complaint Procedure

When customers report failures by L&I staff to provide language access services, the first responsibility is to provide the service requested and resolve the issue at the lowest level possible.

Customers who believe they have been denied meaningful access to L&I services because of their lack of English proficiency shall be informed that they have the right to file a complaint with L&I or the U.S. Department of Labor, Civil Rights Center. Complaints filed with L&I should be sent to the Assistant Director of Web and Communication Services to investigate

and resolve with the appropriate Assistant Director and if necessary, the Language Access Steering Committee.

V. References

1. Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d-2000d-7 , http://www.gpo.gov/fdsys/pkg/USCODE-2008-title42/pdf/USCODE-2008-title42-chap21-subchapV.pdf
2. Section 188 of the Workforce Investment Act of 1998 (WIA), 29 U.S.C. § 2938, http://www.gpo.gov/fdsys/pkg/USCODE-2011-title29/pdf/USCODE-2011-title29-chap30-subchapV-sec2938.pdf
3. Title VI regulations, 28 C.F.R. 42.405(d)(1), http://www.gpo.gov/fdsys/pkg/CFR-2014-title28-vol1/xml/CFR-2014-title28-vol1-sec42-405.xml.
4. WIA regulations, 29 C.F.R. 37.35, http://www.gpo.gov/fdsys/pkg/CFR-2014-title29-vol1/xml/CFR-2014-title29-vol1-sec37-35.xml
5. U.S. Department of Labor (2003). Federal Register Vol. 68, No. 103. Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. http://www.gpo.gov/fdsys/pkg/FR-2003-05-29/pdf/03-13125.pdf
6. U.S. Department of Justice (2002). Federal Register Vol. 76, No. 117. Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. http://www.gpo.gov/fdsys/pkg/FR-2002-06-18/pdf/02-15207.pdf
7. U.S. Department of Justice (2011). Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Program. http://www.lep.gov/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf.
8. Presidential Documents. Federal Register Vol. 65, No. 159. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency. www.gpo.gov/fdsys/pkg/FR-2000-08-16/pdf/00-20938.pdf

VI. Resources

Translation and Language Reference Resources

1. American Translators Association, http://atanet.org/

2. Dictionary of Occupational Safety and Health Terms, Department of Consumer and Business Services and the Oregon Occupational Safety and Health Division (OR-OSHA), http://www.cbs.state.or.us/external/ osha/pdf/dictionary/english-spanish.pdf

3. Federal Interagency Website: LEP FAQs, http://www.lep.gov/faqs/faqs.html

4. Occupational Safety and Health Administration (OSHA) Dictionary of General Industry Terms in Spanish, https://www.osha.gov/dcsp/compliance_assistance/spanish/osha_gi_ensp.html

5. OSHA Glossary of Construction Terms, https://www.osha.gov/SLTC/etools/construction_sp/glossary.html

6. Real Academia Española, Spanish-language dictionary, usage and grammar handbook, www.rae.es

7. Top 10 Best Practices for Multilingual Websites, http://www.digitalgov.gov/2012/08/12/top-10-best-practices-for-multilingual-websites.

8. Washington Courts Glossaries of Legal Terms (multiple languages), http://www.courts.wa.gov/programs_orgs/pos_interpret/index.cfm?fa=pos_interpret.display&fileName=glossary/index

9. Workforce Investment Act (WIA) Services for Individuals with Limited English Proficiency: Glossary of Terms, http://www.doleta.gov/reports/pdf/English-Spanish.pdf

10. Washington State Coalition for Language Access, http://www.wascla.org/

Demography and Census Data Resources

1. Migration Policy Institute, http://www.migrationpolicy.org/

2. U.S. Census 2010, http://www.census.gov/2010census/

3. Office of the Superintendent of Public Instruction, Demographic information by school in Washington State, http://reportcard.ospi.k12. wa.us/ DataDownload.aspx

U.S. Department of Labor

Office of the Assistant Secretary
for Administration and Management
Washington, D.C. 20210

JUL 22 2014

Mr. Joel Sacks
Director
Washington State Department of Labor and Industries
P.O. Box 440000
Olympia, Washington 98504-4000

Ms. Penny Allen
Assistant Attorney General
Attorney General of Washington
P. O. Box 40121
Olympia, Washington 98504-0121

Sent Via U.S. Mail

Re: CRC Complaint No. 12-WA-006

Dear Mr. Sacks and Ms. Allen:

Thank you and your staff for your cooperation and assistance during this joint investigation by the U.S. Department of Labor's Civil Rights Center (DOL) and the U.S. Department of Justice's Civil Rights Division, Federal Coordination and Compliance Section (DOJ) of a national origin discrimination complaint filed by the Northwest Justice Project (NJP) against the Washington State Department of Labor and Industries (L&I), Insurance Services Division (ISD), Workers' Compensation Program.[1] As we notified you in our letter dated May 25, 2012, NJP filed a complaint on behalf of four limited English proficient (LEP) individuals and alleged violations of federal laws which prohibit national origin discrimination and require that LEP individuals be provided meaningful access to programs and activities receiving federal financial assistance.[2] The enclosed report includes the results of our investigation of the allegations in the NJP complaint and proposed steps to resolve this matter.

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[1] The national origin of each complainant in the NJP complaint dated May 26, 2011, was identified as follows: [redacted], Bosnian; [redacted], Bosnian; [redacted], Cambodian; and [redacted], Mexican. By a letter dated August 21, 2012, NJP requested that [redacted], Mexican, be added as a complainant. By letter dated January 4, 2013, NJP requested that [redacted], Mexican, be added as a complainant. By letter dated June 5, 2013, NJP requested that [redacted], Mexican, be added as a complainant. By letter dated November 26, 2013, NJP requested that [redacted], Mexican, be added as a complainant.

[2] Individuals who have a limited ability to read, write, speak, or understand English are limited English proficient, or "LEP." *See* U.S. Department of Labor, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 32290, 32291 (May 29, 2003) (DOL Guidance), *available at* http://www.gpo.gov/fdsys/pkg/FR-2003-05-29/pdf/03-13125.pdf (Last visited June 20, 2014); U.S. Department of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455, 41457 (June 18, 2002) (DOJ Guidance), *available at* http://www.gpo.gov/fdsys/pkg/FR-2002-06-18/pdf/02-15207.pdf (Last visited June 20, 2014).

When a complaint alleges a recipient of federal financial assistance has not complied with nondiscrimination requirements, each funding agency is authorized to conduct a civil rights investigation of that recipient. We conducted our investigation pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), its implementing regulations at 29 C.F.R. part 31 and 28 C.F.R. part 42, Section 188 of the Workforce Investment Act of 1998, as amended, 29 U.S.C. § 2938 (WIA Section 188), and its implementing regulations at 29 C.F.R. part 37. As Title VI and WIA have investigative and compliance regulations, the enclosed report serves a distinct purpose for each set of regulations. For the purposes of Title VI, the report is an Initial Findings and Recommendations report. 29 C.F.R. § 31.7 (c); 28 C.F.R. § 42.107 (c). Pursuant to the WIA regulations, the enclosed report is an Initial Determination. 29 C.F.R. § 37.91.

Because L&I receives federal financial assistance from both DOL[3] and DOJ,[4] it is required to comply with Title VI, both agencies' implementing regulations for this statute, and all grant obligations.[5] Because L&I is a recipient of federal financial assistance, each L&I component, including ISD, is a program or activity subject to the national origin nondiscrimination requirements of Title VI and its implementing regulations, as well as those of the Victims of Crime Act (VOCA). *See* 42 U.S.C. § 2000d-4a(1)(A) (Title VI);[6] 42 U.S.C. § 10604(e) (VOCA).[7] Because personnel of the state Workforce Board, which receives financial assistance in whole or in part under WIA Title I, are directly involved in determining which training programs and providers are eligible to participate in the return-to-work phase of the State's workers' compensation program,[8] the latter program is considered a recipient of WIA

[3] ISD has entered into grant agreements and has received over $21.5 million in federal financial assistance from the following DOL agencies: (1) Occupational Safety and Health Administration - Amount: $7,249,900.00, Period of Performance 10-1-10 to 9-30-11; Amount: $7,249,900.00, Period of Performance 10-1-11 to 9-30-12; Amount $6,947,400, Period of Performance 10-1-12 to 9-30-13; (2) Bureau of Labor Statistics – Amount: $131,900.00, Period of Performance 10-01-11 to 9-30-12; Amount: $289,757.00, Period of Performance 9-1-11 to 8-31-12; (3) Employment and Training Administration - Amount: $100,000.00, Period of Performance: 6-1-09 to 6-30-11.

[4] ISD has entered into the following grant agreements with DOJ and received over $14.4 million from the Office for Victims of Crime: Amount: $3,595,000.00, Period of Performance 10-1-08 to 9-30-12; Amount: $5,290,000.00, Period of Performance 10-1-09 to 9-30-13; Amount: $5,617,000.00, Period of Performance 10-1-10 to 9-30-14.

[5] As a recipient of federal financial assistance from DOL and DOJ, L&I agreed to comply with the nondiscrimination requirements of Title VI, 29 C.F.R. § 31.6, and 28 C.F.R. § 42.105.

[6] *See* DOL Guidance at 32293 ("[Title VI] coverage extends to a recipient's entire program or activity, *i.e.*, to all parts of a recipient's operations. This is true even if only one part of the recipient receives the federal assistance.")

[7] VOCA Victim Assistance Program, 28 C.F.R. § 94.104 (h), (Proposed Regulation), 78 Fed. Reg. 52877, 52887 (August 27, 2013) (42 U.S.C. 10604(e) is implemented in accordance with 28 C.F.R. part 42).

[8] Under the Washington State workers' compensation system, training plans for qualified claimants must "use licensed, accredited, or otherwise approved training programs." *See* http://www.lni.wa.gov/ClaimsIns/Voc/Schools/Eligible/Default.asp; http://www.lni.wa.gov/ClaimsIns/Claims/Benefits/TrainingPrograms/Default.asp. (Last visited June 20, 2014).

Section 296-19A-510 of the Washington Administrative Code lists the categories of programs that qualify as "licensed, accredited, or otherwise approved." http://apps.leg.wa.gov/WAC/default.aspx?cite=296-19A-510 (Last

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financial assistance, and is required to comply with WIA Section 188 and its implementing regulations. *See* 29 U.S.C. § 2938(a)(1); 29 C.F.R. 37.4 (definitions of "financial assistance under Title I of WIA," paragraphs (2) and (5), and "recipient"; 29 C.F.R. 37.2(a)(1). Under all of the above legal provisions, L&I, and its workers' compensation program, are obliged to provide language assistance services that ensure LEP individuals have meaningful access to all L&I programs and activities.

In a letter dated August 15, 2012, ISD provided responses to our initial request for information and documents and a position statement (Response Documents), in which ISD stated that it "does not have a specific language access plan or policy," and that "there has not been an issue over funding the language assistance services that are provided."[9] We appreciated ISD's prompt attention to our initial request for information and the continued assistance we received during our on-site visit in November 2012. Ms. Evelyn Fielding Lopez and ISD staff were present and assisted DOL and DOJ with all on-site logistics and meetings.

Based on the information we obtained in this investigation, we have determined that L&I policies, practices, and procedures are inconsistent with Title VI, Section 188 of WIA, the implementing regulations for these statutes, and L&I's grant obligations. These inconsistencies include ISD's failure to take sufficient steps to: (1) develop, monitor, and assess the effectiveness of its language access program; (2) effectively identify the number or proportion of LEP individuals served or encountered and the frequency with which they come into contact with ISD and the language needs of LEP workers' compensation claimants; (3) ensure that LEP workers' compensation claimants are provided timely language assistance services at no cost, including oral interpretation services and vital documents and information in the claimants' preferred language; (4) require testing procedures that assess the competency of all bilingual job applicants and employees who serve as interpreters and translators; (5) provide adequate training to staff on civil rights and language access obligations; and (6) provide LEP individuals appropriate notice

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(footnote cont'd from previous page)
visited June 20, 2014). Two of these categories are directly under the jurisdiction of the Washington State Workforce Training and Education Coordinating Board: programs offered by training providers that are "listed on the Workforce Board's Eligible Training Provider List," WAC 296-19A-510(4), and "licensed training program[s] or provider[s]," WAC 296-19A-510(2). The Administrative Code defines "Licensed," in pertinent part, as "regulated, licensed or approved by the state agency that regulates vocational education . . . ." WAC 296-19A-500(3), available at http://apps.leg.wa.gov/WAC/default.aspx?cite=296-19A-500 (Last visited June 20, 2014). Washington State Executive Order 99-02 (http://www.governor.wa.gov/office/execorders/eoarchive/eo_99-02 htm) designates the Workforce Board as "the state board of vocational education as provided for in [U.S.] P.L. 105-332, as amended." This Executive Order is still active. *See* http://www.governor.wa.gov/office/execorders/eoarchive/default.aspx#locke (Last visited June 20, 2014). Indeed, the "Current Licensed Schools" page on the Board's website explicitly states that "The Workforce Board licenses private career schools that do business in Washington." http://www.wtb.wa.gov/currentlicensedschools.asp (Last visited June 20, 2014). Therefore, personnel of the Workforce Board, which is funded in whole or in part under WIA Title I, are directly involved in determining which training programs and providers are eligible to participate in Phase 5, the return-to-work phase, of the State's workers' compensation program.

[9] Response Document, Question 22 ("The Department does not have a specific language access plan or policy."); Question 15 ("L&I has not attempted to secure additional funding for language assistance services over the 2009 to June 2012 period…Providing services and benefits to limited English proficient workers has always been important, and there has not been an issue over funding the language assistance services that are provided.").

of language assistance services. Our reasons for these determinations are detailed in the enclosed Initial Findings and Recommendations report. These policies, practices and procedures will need to be established and/or improved to ensure that LEP individuals are provided meaningful access to the ISD Workers' Compensation Program.

We understand that ISD is interested in pursuing voluntary compliance. Please notify us within **45 days** if you are interested in voluntarily remedying the inconsistencies we have identified. We can memorialize that commitment in an agreement that would include a timeframe for implementing the recommendations and reporting back to DOL and DOJ. If ISD is not interested in voluntarily complying, or if DOL and DOJ deem that ISD is not engaged in good faith efforts to achieve compliance by voluntary means, the United States will move forward with appropriate enforcement action authorized by Title VI, WIA, and their implementing regulations, which could include issuing a letter of finding (for the purposes of Title VI; referred to as a Final Determination under WIA).

We are obligated to inform you that no one may intimidate, threaten, coerce or discriminate against anyone because he or she has either taken action, or participated in an action, to secure rights protected by the civil rights laws we enforce. 29 C.F.R. § 31.7(e); 28 C.F.R. § 42.107(e); 29 C.F.R. § 37.11. Any individual alleging such harassment or intimidation may file a complaint with DOL or DOJ. We will investigate such a complaint if the situation warrants.

We look forward to working with you to resolve this matter. If you have any questions, please contact the DOL Investigator assigned to this matter, Ms. Margo McDaniel, by phone at (202) 693-6502 (voice) or through the toll-free Federal Relay Service at (800) 877- 8339 (TTY). You may also reach her by email at Mcdaniel.Margo.f@dol.gov. The DOJ attorney assigned to this matter is Mr. Michael Mulé. You may contact him by phone at (202) 514-4144 (voice) or through the Federal Relay Service at the same number provided above. You may also reach him by email at Michael.Mule@usdoj.gov.

Sincerely,

Naomi Barry-Pérez
Director
Civil Rights Center
U.S. Department of Labor

Deeana Jang
Chief
Federal Coordination and Compliance Section
Civil Rights Division
U.S. Department of Justice

cc: Ms. Jenny A. Durkan, United States Attorney, Western District of Washington
Mr. Jay Inslee, Governor of Washington State
Mr. Bob Ferguson, Washington State Attorney General
Mr. Kintu Nnambi, State EO Officer, Washington State Employment Security Department
Ms. Kelly Owen, Attorney at Law, Northwest Justice Project

The focus of this joint investigation by DOL and DOJ was to determine whether, during the period at issue, ISD (1) had policies and practices in place that discriminated against the complainants and other LEP individuals based on their respective national origins, and (2) failed to take reasonable steps to reduce language barriers and ensure LEP individuals had meaningful access to the Workers' Compensation Program, as required by Title VI, Section 188 of WIA, and their implementing regulations. We reviewed and analyzed the allegations of the individual complainants, the Response Documents, and the information we obtained during and after our on-site visit in November 2012 to develop this Initial Findings and Recommendations report. The report has six sections: (I) allegations in complaints, (II) investigative background, (III) applicable law, (IV) factual findings, (V) recommendations based on factual findings, and (VI) conclusions and recommended steps to address the areas of concern.

I. Allegations in Complaints

The NJP complaint dated May 26, 2011, alleged that ISD policies and practices result in national origin discrimination against LEP workers' compensation claimants. In its complaint, NJP stated that it had raised these concerns with L&I in the past. The initial complaint included individual declarations and supporting documents from four named complainants. Since the initial complaint, NJP has submitted four additional timely complaints to DOL that were added to this investigation.

A. Prior Conversations About LEP Claimants

The NJP complaint alleges that it had raised concerns with L&I in the past and made prior efforts to ensure that ISD provided meaningful access to LEP workers' compensation claimants in accordance with Title VI. NJP explained that on September 12, 2002, its attorneys and other advocates for Spanish-speaking LEP farm worker claimants, pursuant to the North American Accord on Labor Cooperation Public Submission Mexico 9802, obtained an agreement with L&I to add a "language preference" check box on the top of the Report of Accident (ROA) form which initiates every workers' compensation claim. NJP alleged that L&I had also agreed to gather and keep a record of the language preference information for LEP claimants.

Enclosed with the complaint were letters NJP had sent to L&I. These included a July 25, 2008 letter from NJP to L&I describing problems LEP claimants were having with L&I language assistance services and requesting a meeting to discuss L&I's obligations under Title VI. This letter noted, in part, that "while Spanish is the most frequent language spoken by immigrants, failing to provide services beyond Spanish would leave a huge share of the non-English-speaking population without language assistance." Also enclosed with the complaint was a 2010 letter from NJP to L&I requesting copies of its policies and procedures that addressed language assistance services for LEP workers' compensation claimants. Copies of the documents NJP received from L&I in response to this 2010 request were included with the complaint. The

concerns raised by NJP in these letters to L&I correlate with the actions alleged by the individual complainants.

B. Declarations of the Individual LEP Complainants

The allegations from the declarations of the individual complainants and the documents included with those declarations are noted below.

[redacted] was born in Cambodia. Her primary language is Cambodian and she requires the assistance of an interpreter or translator to understand spoken and written English. [redacted] completed her ROA form on August 23, 2009, and on that form circled her language preference as Cambodian. When L&I staff called [redacted] using a Cambodian telephonic interpreter, on several occasions she told the interpreter that she did not understand what was said and did not know if her concerns were communicated to the claims worker because [redacted] was never provided with any clarification of what the claims worker said. When [redacted] went to a medical appointment paid for by L&I, she was not provided an interpreter and when she asked for an interpreter [redacted] was told that she would have to pay for an interpreter or bring a friend or relative to interpret. Important letters and notices [redacted] received from ISD, including a January 4, 2011, Notice of Decision stating that her claim was closed and she had 60 days to file an appeal, were written in English only. [redacted] had to rely on her son's girlfriend, who is not an interpreter or translator, to explain the contents of these documents and help her write responses. When L&I did send her letters written in Cambodian, [redacted] could not understand the translated text because they were written in an older script with formal language; a number of the words were missing vowels; and consonants were in the place of vowels.

[redacted] moved to Washington State/United States from Bosnia. She has a limited ability to speak or understand English without the assistance of an interpreter and reads in Bosnian but not English. L&I did not send [redacted] letters, forms or other workers' compensation information in Bosnian. All the information she received was written in English, even before she had an attorney. Because [redacted] could not understand the English documents sent from L&I, she had to find someone to sight translate them for her. A handwritten note at the bottom of [redacted] Worker Verification Form (WVF) dated April 21, 2011 asked: "PLEASE PROVIDE ME MY NEXT WVF IN BOSNIAN AS I UNDERSTAND IT JUST LIKE ENGLISH FORMS TO GO ENGLISH SPEAKERS & SPANISH FORMS GO TO SPANISH...."

[redacted] is Bosnian. She informed L&I that she does not read English. [redacted] also needs an interpreter to speak to people in English. When [redacted] called L&I about her benefits, she had to use her cousin's daughter, who is not trained as an interpreter, to interpret the call. L&I did not send [redacted] letters or paperwork written in Bosnian. [redacted] had to pay an "interpreter" to translate the English L&I letters she received, and still owes this interpreter money for these services, because her only limited income is workers' compensation. [redacted] declaration included a letter dated January 24, 2008, from Cheri Ward, Program Manager, Policy and Quality Coordination at L&I, to [redacted] attorney at NJP, stating that "[f]orms are created in non-English languages on an as

needed basis. At the present, the department does not have forms in the Bosnian/Serbo-Croatian language."

[redacted] is a Mexican national working pursuant to the Temporary Agricultural Workers H-2A Visa Program. [redacted] doctor completed the ROA on his behalf, but a Spanish language preference was not identified on the ROA even though [redacted] is a monolingual Spanish speaker. Many documents in [redacted] claim file, including the Spanish versions of the Request for Travel Reimbursement forms he submitted on September 11, 2009, and October 9, 2009, identified his preferred language as Spanish, and L&I paid for Spanish interpreter services for his visits to a treating physician. After [redacted] returned to Mexico, ISD mailed him an Order and Notice dated November 2, 2009, written in English, explaining that his claim was allowed but had been closed. [redacted] NJP attorney requested a review of the claim, and an L&I claims manager supervisor agreed that the notice had not been communicated to [redacted] and rescinded the notice.

[redacted] is a Mexican national working pursuant to the Temporary Agricultural Workers H-2A Visa Program. [redacted] doctor completed the ROA on his behalf on July 6, 2010, and on that form circled his language preference as Spanish because he is a monolingual Spanish speaker. Despite the language preference information on the ROA, after it was submitted, [redacted] began to receive letters from L&I in English only. Even after his NJP attorney sent a letter dated July 16, 2010, to L&I, requesting that correspondence be sent to [redacted] in Spanish, not all of the notices he received were translated. For example, a Notice of Claim dated April 13, 2012, informing [redacted] that his claim had been closed, was written only in English.

[redacted] is a Mexican national working pursuant to the Temporary Agricultural Workers H-2A Visa Program. His treating physician completed the ROA on his behalf but no language preference was identified on the ROA even though [redacted] is a monolingual Spanish speaker. Many documents in [redacted] claim file, including an October 19, 2008 Work Verification form L&I sent to him in Spanish, indicate that L&I was aware his preferred language was Spanish. After multiple examinations in Washington State, it was determined that [redacted] required surgery. When [redacted] moved to California and continued to receive medical treatment from an L&I approved medical provider there, he was not provided an interpreter and was told he must bring someone to interpret for him. For the next seven months, [redacted] was required to bring family members and friends to interpret at these medical appointments. [redacted] was not informed by L&I that he had the right to have a certified medical interpreter provided at his medical appointments. After [redacted] informed L&I that he was no longer represented by a law office and asked L&I to send future communications to him directly in Spanish, L&I continued to send him correspondence in English, including a Payment Order dated October 11, 2012.

[redacted] was born in Mexico and her primary language is Spanish. While [redacted] speaks some English, she needs a Spanish interpreter to assist her to communicate more than basic information. Her treating physician completed the Self-Insured Accident Report form, also known as SIF-2, on her behalf, but a language preference was not identified even though [redacted] communicates primarily in Spanish. Because [redacted]

submitted a self-insured claim, it was administered by a private company, but L&I was responsible for overseeing the provision of benefits.[10] While [redacted] language preference was not indicated on the SIF-2, the private company that administered her claim was aware that she was a Spanish speaker and sent notices and letters to her in Spanish. Important notices from L&I were sent to her in English only. [redacted] claim was reopened when her treating physician submitted a Providers Initial Report that noted her language preference was Spanish. However, even after her claim was reopened, [redacted] continued to receive letters from L&I in English only.

[redacted] is a Mexican national. When he was injured at work, [redacted] doctor completed the ROA form for [redacted] on December 3, 2012 and on that form identified his language preference as Spanish. Because [redacted] is a monolingual Spanish speaker, a Spanish interpreter was provided for all of his medical appointments. After his ROA was submitted, [redacted] received notices and copies of letters from L&I in English only. These English documents included a Notice of Decision dated September 10, 2013, which explained his right to appeal the decision at the bottom of the page in English only.

II. Investigative Background

In a letter dated May 25, 2012, we notified you that we would be investigating the complaint filed by NJP against L&I on behalf of the self-identified LEP individuals who alleged they were subjected to national origin discrimination by ISD through its Workers' Compensation Program. The complaint alleged that ISD's failure to provide language assistance services denied the individual complainants meaningful access to the Workers' Compensation Program and was discrimination on the basis of the complainants' national origin. Our May 25, 2012 letter explained that we would be investigating whether ISD had discriminated against the complainants based on their respective national origins by failing to take reasonable steps to reduce language barriers and ensure meaningful access to its Workers' Compensation Program from August 2009 to May 2012. Our letter also requested that L&I submit a written position statement as well as responses to interrogatories and a request for documents and information. On August 15, 2012, ISD provided its Response Documents. On August 21, 2012, DOL received an additional complaint from NJP filed on behalf of [redacted].

After reviewing the allegations in the initial NJP complaints and the Response Documents, we determined that an on-site visit was necessary to obtain a better understanding of how LEP workers' compensation claimants navigate the Workers' Compensation Program, and how ISD staff interact with and provide language assistance services to LEP claimants. We conducted an on-site visit from November 13 through November 16, 2012. The on-site visit included individual and group meetings with ISD staff who serve, assist, or are otherwise involved in the workers' compensation claims process. Most of the on-site interviews were conducted at the L&I central office in Tumwater, and included interviews with ISD Claims Managers and Customer Service Specialists from the Office of Communication Services.

[10] *See* L&I, Publication F207-079-000, *Employers' Guide to Self-Insurance in Washington State*, 1 ("L&I oversees the provision of benefits by the self-insurer to ensure compliance with rules and regulations.") *available at* http://www.lni.wa.gov/IPUB/207-079-000.pdf (Last visited June 20, 2014).

During the on-site visit, we toured the L&I Field Offices in Tukwila and Seattle, spoke with staff, and observed staff providing customer service to LEP individuals. Following our November 2012 on-site visit, DOL received three additional complaints from NJP against L&I on behalf of [redacted], [redacted], and [redacted], which were added to this civil rights investigation.

III. Applicable Law

We conducted this investigation pursuant to Title VI, Section 188 of WIA, and their implementing regulations. 29 C.F.R. § 31.7(c); 29 C.F.R. § 37.60; 28 C.F.R. § 42.413(c). Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving [f]ederal financial assistance." 42 U.S.C. § 2000d. Prohibited discrimination under Title VI and its implementing regulations includes (1) intentional acts and (2) unintentional acts that result in a disparate impact on the basis of race, color, or national origin. 29 C.F.R. § 31.3 (DOL Title VI regulations); 28 C.F.R. § 42.104 (DOJ Title VI regulations). VOCA prohibits discrimination on the basis of race, color, or national origin by "any undertaking funded in whole or in part with sums made available" by the statute. 42 U.S.C. § 10604(e). DOL and DOJ have the authority to investigate complaints filed against recipients of their federal funds pursuant to Title VI and its implementing regulations. 29 C.F.R. § 31.7(c); 28 C.F.R. § 42.107(c).

The Title VI coordination regulations require that when a significant number or proportion of the population eligible to be served or likely to be affected needs services or information in another language, a recipient shall take reasonable steps to provide this information, which includes written materials, in the appropriate non-English languages. 28 C.F.R. § 42.405(d)(1); *Cabrera v. Alvarez*, 977 F. Supp. 2d 969, 977-78 (N.D. Cal. 2013) (citing 28 C.F.R. § 42.405(d)(1)).

Section 188 of WIA similarly prohibits discrimination on various bases, including, but not limited to, race, color, and national origin. 29 U.S.C. § 2938(a). The implementing regulations for Section 188 of WIA require that recipients take reasonable steps to provide services and information in appropriate non-English languages after considering "the scope of the program or activity," and "[t]he size and concentration of the population that needs services or information in a language other than English." 29 C.F.R. § 37.35(a). WIA recipients are also required to make reasonable efforts to meet the particularized language needs of LEP individuals who seek services or information. 29 C.F.R. § 37.35(b). The obligation to provide LEP individuals meaningful access to federally assisted programs and activities is consistent across the Title VI and WIA regulations.[11]

Longstanding federal judicial precedent holds that Title VI's prohibition against national origin discrimination covers discrimination against LEP individuals. Forty years ago, the Supreme Court held in *Lau v. Nichols*, 414 U.S. 563 (1974), that Title VI requires that LEP

[11] DOL Guidance at 32292 ("The [WIA] regulations implementing the nondiscrimination and equal opportunity provisions of Section 188 specifically address national origin discrimination and language access.").

individuals be provided with language assistance services, and that a denial of such services may constitute national origin discrimination. Since *Lau*, other courts have consistently found that a recipient's failure to provide meaningful access to LEP individuals can violate Title VI's prohibition of national origin discrimination. *See, e.g.*, *Colwell v. Dep't of Health & Human Servs.*, 558 F.3d 1112, 1116-17 (9th Cir. 2009) (noting that *Lau* concluded "discrimination against LEP individuals was discrimination based on national origin in violation of Title VI"); *Cabrera* at 977-78 (Title VI intent claim properly alleged when a federally funded housing project failed to provide language assistance services); *United States v. Maricopa Cnty.*, 915 F. Supp. 2d 1073, 1079 (D. Ariz. 2012) (*citing Lau*, 414 U.S. at 568); *Faith Action for Cmty. Equity v. Hawaii*, No. 13-00450 SOM, 2014 WL 1691622 at *14 (D. Haw. Apr. 28, 2014) (Title VI intent claim was properly alleged by LEP plaintiffs when it was based on the "foreseeable disparate impact of the English-only policy," a pretextual justification for the policy, and potentially derogatory comments by a state agency).

Executive Order 13166 required each federal agency that extends financial assistance to issue guidance explaining the obligations of its recipients to ensure meaningful access by LEP individuals to programs and activities receiving federal assistance. *See* 65 Fed. Reg. 50,121 (Aug. 16, 2000). The DOL Guidance explains that its Title VI regulations "require all recipients of federal financial assistance from DOL to provide meaningful access to LEP persons."[12] In determining a recipient's compliance with applicable nondiscrimination laws, DOL and DOJ must "ensure that the recipient's policies and procedures overcome barriers resulting from language differences that would deny LEP persons meaningful opportunities to participate in and access programs, services and benefits."[13] While meaningful access is always required, the level of language assistance services a recipient must provide is a fact-specific inquiry that includes consideration of the number and frequency of encounters with LEP individuals in the recipient's service area, the importance and impact of the program or activity on the LEP individual, and the resources appropriate to the circumstances.[14]

IV. Factual Findings

Our investigation found that ISD does not ensure that LEP individuals are provided meaningful access to its workers' compensation benefits programs and activities even though Washington State has a significant LEP population, ISD frequently encounters LEP claimants, workers' compensation benefits are vital to all injured workers, and ISD has sufficient resources to provide the necessary language assistance services.[15] As a result, we have determined that ISD is not fully compliant with Title VI, WIA Section 188, their implementing regulations, and current grant obligations. The remainder of this report first explains why ISD has an obligation

[12] DOL Guidance at 32293.

[13] DOL Guidance at 32301; *see also* DOJ Guidance at 41466.

[14] *See* 65 Fed. Reg. 50,124; *see also* DOJ Guidance at 41459.

[15] Response Document, Question 15 ("Providing services and benefits to limited English proficient workers has always been important, and there has not been an issue over funding the language assistance services that are provided.").

to provide meaningful access to LEP claimants. Second, we provide examples of ISD policies, practices, and procedures that deny LEP workers' compensation claimants meaningful access. Lastly, we explain how ISD policies, practices and procedures will need to be created or improved to ensure that LEP individuals are provided meaningful access to the Workers' Compensation Program in accordance with the law.

A. ISD is Obligated to Ensure LEP Individuals are Provided Meaningful Access

Washington State has a large LEP population. Approximately eighteen percent (18%) of Washington's residents speak a language other than English at home and 491,386 residents, approximately eight percent (8%) of the State's population, speak English "less than very well" and are considered LEP.[16] About half of the LEP individuals in the state are Spanish speakers (232,581).[17] In the non-English language groups of Washington State, 63% of the Vietnamese speakers and 57% of the Korean speakers reported speaking English less than very well.[18] High percentages of limited English proficiency are also reported among Laotian speakers (52.5%), Russian speakers (51.2%), Chinese speakers (Mandarin and Cantonese) (50.7%), and Cambodian speakers (50.7%).[19] When these LEP individuals are injured at work, they will need meaningful access to the ISD workers' compensation program.

Because LEP individuals represent almost 18% of the state population, ISD frequently encounters LEP workers' compensation claimants. ISD reported that since January 2009, on average, approximately 8,500 workers' compensation claims have been filed each month.[20] Of those claims, approximately 11 percent were flagged as being filed by LEP individuals. With respect to the languages flagged in the ISD claim system, approximately 88 percent were identified as Spanish-speaking, 4 percent as "Other," 2 percent as Russian, 2 percent as Vietnamese, 1 percent as Chinese, 1 percent as Cambodian, 1 percent as Korean, and less than 1 percent as Laotian.[21] This means that over 930 claims every month are filed by injured LEP workers.

Workers' compensation benefits are vital to all injured workers. Workers' compensation insurance covers medical expenses and pays a portion of wages lost while a worker recovers

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[16] U.S. Census Bureau, *Table S1601: Language Spoken at Home*, 2007-2011 AMERICAN COMMUNITY SURVEY FIVE-YEAR ESTIMATES, (using American Factfinder, *available at* http://go.usa.gov/T3y5, table name: Table S1601, geography: state of Washington; data set, 2011 ACS 5-year estimates) (Last visited June 20, 2014).

[17] *Id.*

[18] U.S. Census Bureau, *Table B16001: Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over*, 2007-2011 AMERICAN COMMUNITY SURVEY FIVE-YEAR ESTIMATES, (using American Factfinder, *available at* http://go.usa.gov/T3y5, table name: Table B16001, geography: state of Washington; data set, 2011 ACS 5-year estimates) (Last visited June 20, 2014).

[19] *Id.*

[20] Response Documents, Question 4, *Flagged "Language" Claims by Language and Year*, (June 6, 2012).

[21] *Id*.

from a workplace injury.[22] A worker who is injured on the job and is insured by the ISD Washington State Fund must complete an ROA to start the claims process.[23] If a worker is injured on the job when his or her employer is self-insured, he or she must complete the Self-Insurer Accident Report, also known as SIF-2, to initiate the claims process.[24] Once a claim is filed and approved, wage-replacement benefits may be the only source of income for the worker while he or she recovers from the workplace injury.

ISD has sufficient resources to provide the necessary language assistance services. ISD operates the nation's sixth largest workers' compensation system. ISD customers include 3.2 million workers and it "collects more than $1.5 billion in yearly premiums and pays about $1.4 billion in yearly benefits."[25] For L&I, funding levels "for the next 2 years total nearly $660 million."[26] Any claims of limited resources from large recipients or those serving a significant LEP population must be "well-substantiated" before those recipients are permitted to limit language assistance services.[27]

B. ISD's Current Language Access Policies, Practices, and Procedures

While ISD has been on notice that it must ensure LEP claimants have meaningful access to its workers' compensation programs and activities, we found ISD did not have an adequate plan, policies, or procedures in place and has not taken sufficient steps to:

1. Develop and assess the effectiveness of its language access program;[28]
2. Identify the language needs of LEP workers' compensation claimants;[29]
3. Assess the competency of bilingual employees who serve as interpreters and translators;[30]
4. Ensure that all LEP workers' compensation claimants are provided vital documents and information in a timely manner;[31]

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[22] L&I, *Employers' Guide to Workers' Compensation Insurance in Washington State*, 1, *available at* http://www.lni.wa.gov/ipub/101-002-000.pdf (Last visited June 20, 2014).

[23] *Id* at 17. ("This form [ROA]…must be filed with L&I within one year of the date of injury.").

[24] L&I, *Self-Insurer Accident Report (SIF-2)*, *at* http://www.lni.wa.gov/formpub/Detail.asp?DocID=2466. (Last visited June 20, 2014).

[25] L&I, *Session Wrap-up: 2013* (Aug. 2013), 10, available at http://lni.wa.gov/Main/AboutLNI/Legislature/Legislature/PDFs/SessionWrap2013.pdf (Last visited June 20, 2014).

[26] *Id.* at 4.

[27] DOL Guidance at 32295, DOJ Guidance at 41460.

[28] DOL Guidance at 32299-300, DOJ Guidance at 41464-65.

[29] DOL Guidance at 32299, DOJ Guidance at 41464-65.

[30] DOL Guidance at 32295-6, DOJ Guidance at 41461; DOL Guidance at 32298-99, DOJ Guidance at 41464.

[31] DOL Guidance at 32298, DOJ Guidance at 41463.

5. Provide adequate staff training on important civil rights and language access obligations;[32] and
6. Provide LEP individuals appropriate notice of language assistance services.[33]

Our investigation has found that because language assistance services are not adequately provided, LEP individuals have difficulty understanding and participating in the workers' compensation program and experience denials of benefits, delays, additional costs, and other disadvantages that are not experienced by other claimants. For the reasons detailed in this report, current policies and practices hinder a significant portion of LEP workers from having meaningful access to its workers' compensation programs and activities.[34]

1. ISD Fails to Assess and Monitor its Language Access Program

ISD does not appear to assess or monitor the effectiveness of its language access program, including policies and procedures, on an ongoing basis. ISD indicated in its Response Document that it does not have a specific language access plan or formal policies or procedures for providing language assistance services to workers' compensation claimants who are LEP individuals.[35] ISD also noted that several employees have been tasked with coordinating language assistance services.[36] From the documents we were provided and the information shared with us during and after the on-site visit, we were not able to identify formal policies and practices that addressed identifying LEP claimants, notifying LEP individuals in their non-English language of existing language assistance services, providing ISD staff LEP-related training, conducting outreach to non-Spanish LEP communities, and/or monitoring the agency's LEP-related efforts.

Our investigation revealed that ISD has not established a formal language access monitoring process to ensure that it continually assesses whether it is providing LEP workers' compensation claimants adequate language assistance services. During our on-site visit, we were told that L&I had attempted to gather some data to monitor the demographic changes of LEP populations. An L&I E-Government Manager explained to us that approximately three years ago L&I completed an in-depth data analysis prior to revamping the L&I website to determine the needs of its Spanish-speaking customers. According to the E-Government Manager, that research focused on L&I's largest single LEP group, Spanish speakers, and did not assess the needs of the other LEP communities in Washington State.

[32] *See* DOL Guidance at 32300, *see also* DOJ Guidance at 41465.

[33] *Id.*

[34] Response Document, Question 22 ("The Department does not have a specific language access plan or policy.").

[35] *See* Response Document, Question 22.

[36] *See* Response Document, Question 23.

2. ISD Does Not Effectively Identify or Assess the Needs of Eligible LEP Workers

This investigation revealed that ISD does not have a system that accurately assesses the language assistance needs of the LEP individuals it encounters, or the LEP individuals who are eligible for workers' compensation-related benefits and services and who may be underserved because of an existing language barrier. The current systems ISD has in place to identify and track LEP individuals only provide a limited assessment of the actual language assistance needs of LEP persons in the state who are eligible for or have sought benefits from or information about its workers' compensation program.

Most, if not all, of the information about ISD's contacts with LEP communities appears to be derived from the "Report of Industrial Injury or Occupational Disease" form, commonly known as the ROA or accident report. The ROA form is required to start the workers' compensation claims process. Information regarding the workers' compensation claimant's language preference, workplace injury, healthcare provider, and employer must be provided on the ROA.[37] The top of the ROA contains a section in which an injured worker can identify a specific language preference by circling one of the following languages: English, Spanish, Russian, Korean, Chinese, Vietnamese, Laotian, Cambodian, and Other. The specific languages that represent the "Other" category do not seem to be included in the ISD data analysis we were provided.[38] Once the ROA is received, the ROA data is scanned into the electronic claims records system (LINIIS), which can be accessed by Claims Managers. If an LEP claimant indicates a non-English language preference on his or her ROA, that language preference should be flagged in LINIIS.

According to ISD staff we spoke with, the ROA is the only systematic way ISD currently tracks the language preferences of LEP workers' compensation claimants. While other non-English languages are identified on the form, the ROA instructions have only been translated into Spanish.[39] Even with the assistance of a medical provider, it is unclear how someone who is LEP would be able to complete the ROA form, understand its purpose, the next stages of the claims process, or how to contact ISD.

Claims may also be filed by calling L&I or using an online system. The L&I Call Center uses a telephone interpreter service to take claims information required on the ROA from LEP workers. Following such a call, the completed ROA is to be translated into the workers' preferred language and mailed to the LEP claimant.[40] The claimant can also file an ROA on the ISD website through its FileFast system. Staff told us that the FileFast system is only available

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[37] Response Documents, Question 2.

[38] Response Documents, Question 4, *Flagged "Language" Claims by Language and Year* (June 6, 2012).

[39] L&I, *Report of Accident (ROA) Workplace Injury, Accident or Occupational Disease*, *at* http://www.lni.wa.gov/FormPub/Detail.asp?DocID=1599 (Last visited June 20, 2014) ("Order F242-130-999 from the warehouse to receive instructions in Spanish to complete the form in English").

[40] *See* Response Documents, Question 2.

in English; that the Spanish version of the FileFast website directs the claimant to call ISD; and that information about the FileFast system is not available in any languages other than English and Spanish.[41]

ISD provided us information on the number of all ROA forms that have been filed which indicated a language preference other than English. ISD sent us a spreadsheet showing the total number of claims filed, the total number of those claims in which a language preference was identified on the ROA form, and the percentage of the claims which were flagged to identify LEP claimants, in six-month intervals from January 2009 through June 2012.[42] The language preference categories shown on the spreadsheet include Spanish, Russian, Vietnamese, Chinese, Cambodian, Korean, Laotian, and Other. The data indicated that since January 2009, approximately 51,000 workers' compensation claims have been filed every 6 months with ISD. In the ISD spreadsheet, the "Other" category was the second largest language group, with 1,676 claimants over the last three years.[43] While this is the second largest language category, ISD does not appear to have systems to track or identify the specific non-English languages of LEP claimants who indicate "Other" on the ROA form.[44] Thus, ISD's method of assessing the LEP claimants served by its Workers' Compensation Program using the language preferences provided on their ROAs does not appear to be an accurate measure of the LEP claimants it has encountered. Aside from two documents we were provided which similarly noted the growth of the "Hispanic population" based on 2010 Census data, it does not appear that ISD uses other data sources to validate or assess the encounters it has or could have with injured LEP workers.[45]

3. ISD Oral Language Assistance Services and Related Policies and Procedures are Insufficient to Meet the Needs of LEP Claimants

We have determined that the in-person and telephonic interpreter services ISD currently provides do not adequately address the needs of LEP claimants. ISD has bilingual staff to assist LEP individuals, but we found that the language skills of this staff may not be adequately tested initially or reassessed to ensure competency. When a bilingual staff person is not available to communicate with an LEP individual, ISD does not require staff or medical providers to use competent interpreters and permits the use of family members as in-person interpreters. LEP individuals who speak a non-English language other than Spanish are also not provided meaningful access to the ISD telephone interpreter services.

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[41] *See* L&I, *FileFast: Report of Accident (ROA)*, *at* http://www.lni.wa.gov/ORLI/ECS/FileFast.asp (Last visited June 20, 2014); L&I, *Streamline your L&I claim*, *available at* http://www.lni.wa.gov/IPUB/242-398-000.pdf (Last visited June 20, 2014); *See also* L&I, *Registrando su Reclamo*, *at* http://www.lni.wa.gov/Spanish/ClaimsIns/Claims/File/FilingClaim/default.asp (Last visited June 20, 2014) ("Como puedo presentar un reclamo? Quiere simplificar su reclamo de L&I? presente su reclamo en linea (en ingles solamente). No Puede Presentar su reclamo en linea? Presente su reclamo por telefono: 1-877-561-3453").

[42] Response Documents, Question 4, *Flagged "Language" Claims by Language and Year*, (June 6, 2012).

[43] *Id.*

[44] Response Documents, Question 4, *Flagged "Language" Claims by Language and Year*, (June 6, 2012).

[45] Response Documents, Question 4, *Limited English proficient Customers – A topic in Brief for the Director*.

We also found that ISD policies and procedures do not adequately address when oral language assistance services are provided and who should be permitted to provide those services to LEP individuals. During this investigation, we were not able to identify an ISD policy or procedure that addressed who can serve as an interpreter, who is prohibited from serving as an interpreter, or how ISD staff should assess the competency of an in-person or remote interpreter. While ISD has asserted that it is not required to provide an interpreter when a worker is involved in a workers' compensation-related hearing or other legal proceeding, it did not refer to any legal authority for that policy.[46] ISD also stated that it provides unrepresented LEP workers' compensation claimants interpreters if needed for medical or vocational appointments, or at independent medical examinations (IMEs).[47] ISD will need to improve how it provides oral language assistance services to ensure that LEP individuals are provided meaningful access to the workers' compensation program.

a. ISD Assessment and Reassessment of Bilingual Staff is Inadequate

We found L&I does not have an assessment or proficiency test for individuals seeking a bilingual staff position in a language other than Spanish and L&I Spanish bilingual staff do not have their skills reassessed periodically. According to L&I, in 2008 it increased the language proficiency standards for bilingual staff and began to require that any individual seeking a Spanish bilingual staff position had to pass a proficiency test. During our on-site visit, L&I staff in the Spanish bilingual unit told us that their job requires them to provide both types of language assistance services, in language communication when an LEP claimant calls, and the translation of written documents into Spanish.

There are 113 total bilingual staff at L&I, 104 speak Spanish, 4 speak Vietnamese, 3 speak Korean, and 2 speak Chinese.[48] Of the 104 bilingual Spanish-speaking staff currently working at L&I, only 53 have been tested, and the remaining 51 maintain their bilingual classification because they began working at L&I prior to the time the examination process was developed in 2008.[49] Our on-site visit and the Response Documents revealed that L&I does not have an examination or assessment process in place for bilingual staff who speak Vietnamese, Korean, or Chinese.[50] This means that 60 of the 113, or 53%, of the bilingual staff currently working at L&I have not had their competence or interpreter skills assessed.[51]

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[46] *See* Response Documents, Question 6.

[47] *See* Response Documents, Question 3.

[48] Response Documents, Question 20, June 26, 2012 email message, LNIBilingualStaffLanguages.pdf; Question 23, June 27, 2012 WASCLA Conference Call, LNIinfoBilingualStaffandOutreachJune2012.pdf.

[49] Response Documents, Question 23, June 27, 2012 WASCLA Conference Call, LNIinfoBilingualStaffandOutreachJune2012.pdf.

[50] *See* Response Documents, Question 20. One bilingual Chinese Customer Service Specialist told us that L&I did not have a test for Chinese speakers but instead required that she take an interpreter test conducted by the Washington State Department of Social and Health Services (DSHS) before she was hired in her position.

[51] Response Documents, Question 20, Jun. 26, 2012 email message, LNIBilingualStaffLanguages.pdf.

On February 1, 2008, L&I initiated a testing policy for any individual selected as a final candidate for a bilingual position requiring proficiency in Spanish. Washington State University (WSU) administers three tests for L&I that have been designed to assess varying proficiency levels (basic, intermediate, and advanced) of applicants who are seeking L&I Spanish bilingual staff positions.[52] L&I asserts that WSU administers tests that sufficiently assess the oral skills of applicants seeking bilingual Spanish-speaking staff positions that require competent interpreter skills.[53] However, during our on-site visit, most of the L&I bilingual Spanish-speaking staff with whom we spoke indicated that the initial assessment of their language skills did not match the demands or responsibilities of their job. A bilingual Spanish-speaking Customer Service Specialist at the Tukwila L&I Field Office indicated that WSU assessed her interpreter skills by asking her to respond to a few general questions in Spanish, and that none of those questions related to L&I programs, terminology or concepts, and that the entire test lasted approximately 15 minutes. Another ISD Bilingual Claims Manager indicated that her oral language skills test lasted approximately 15 minutes and only entailed having a casual conversation with a WSU professor by video conference.

All of the L&I bilingual staff with whom we spoke also told us that since they took the initial test, they have not received a reassessment of their skills, any training on common L&I words and phrases in either language, or any additional training on their role or ethical responsibilities when serving as an interpreter or translator.

b. Competent Interpreters are Not Consistently Provided to All LEP Claimants

While L&I requires contract interpreters to be assessed for competency, we found L&I does not require its staff or medical providers to use competent interpreters to communicate with LEP workers' compensation claimants. For example, a bilingual Spanish-speaking Customer Service Specialist at the Tukwila Office told us that half of the LEP individuals who come to that office speak Spanish, but the other half speak other non-English languages. This Customer Service Specialist indicated that Russian-speaking LEP individuals have often sought L&I program information on a walk-in basis. According to the Specialist, the Russian customers are frequently permitted to have their minor children act as interpreters to communicate with staff. In the Specialist's view, the children could not always provide adequate interpretation of the information provided by L&I staff.

L&I has contracts with interpreters to provide interpreter services for LEP workers' compensation claimants who need an interpreter to communicate with a medical provider, but permits family members to be used as interpreters. L&I contract interpreters are classified as "providers." Each interpreter provider must complete the provider application process, which requires a candidate to submit copies of his/her language certifications and any credentials s/he has received from a selected list of certifying organizations, including the Washington State Department of Social and Health Services (DSHS). Candidates for interpreter positions are

[52] *See* Response Documents, Question 20.

[53] Response Documents, Question 20, *Proficiency Levels*, LNIBilingualStaffProficiencyLevels.pdf.

required to take a series of tests to receive credentials as a certified or qualified interpreter. While certified or qualified in-person or remote interpreters are available, L&I informs doctors that they are authorized to permit an LEP workers' compensation claimant to use a family member or friend over the age of 18, another healthcare provider or the doctor's employee to serve as their interpreter, but that L&I will not reimburse an interpreter who does not have a provider account number.[54]

From the information we received, it also does not appear that L&I has a contract interpreter complaint process that is accessible to LEP claimants who speak a language other than Spanish. We were told by L&I staff during our on-site visit that L&I has an online complaint form for workers' compensation claimants to report inappropriate practices by contract interpreters. An L&I Medical Program Specialist indicated that if she received a complaint from an LEP workers' compensation claimant regarding a contract interpreter's conduct, the Medical Program Specialist would act as an advocate for that claimant and notify the designated Claims Manager. However, another L&I Medical Program Specialist we spoke with indicated that if an LEP individual wanted to make a complaint, the online complaint form is only available in English and Spanish, and that there are no formal enforcement mechanisms in place for L&I to address these types of complaints.

c. ISD Telephone Interpreter Services Do Not Meet the Needs of LEP Claimants

Workers' compensation medical providers and ISD staff use telephone interpreter services to communicate with LEP claimants, but we found that the audio prompts for the customer services hotline are not available in languages other than English and Spanish. The documents we received from ISD indicate that all of the telephone interpreter services are provided through a statewide contract.[55] We were told that medical providers used telephone interpreters for quick in-person conversations and to assist LEP workers' compensation claimants who speak less frequently encountered languages.

ISD staff explained that they frequently use the telephone interpreter service to communicate with LEP workers' compensation claimants. During our on-site visit, several ISD employees indicated that the telephone interpreter service is used in a variety of circumstances during the workers' compensation process, including assisting intake personnel in providing information to LEP individuals on how to file a claim by telephone using the FastFile system or to assist LEP individuals in communicating with their designated Claims Manager.

The L&I Office of Communication Services also maintains a customer service Hotline that provides information to LEP callers about workers' compensation benefits. According to a Customer Service Manager from the L&I Communication Services' Office of Information and

[54] *See* Response Document, Question 12. *See also* L&I *Interpreter Services: What you can and cannot do as an interpreter*, *available at* http://www.lni.wa.gov/ClaimsIns/Providers/TreatingPatients/Interpreters/default.asp#3 (Last visited June 20, 2014).

[55] *See* Response Documents, Question 12.

Assistance,[56] this Hotline receives approximately 600-800 calls daily, of which approximately 50 to 60 calls are from Spanish-speaking persons. At the time of our on-site visit, eight of the fourteen L&I employees who worked on the Hotline were Spanish-speaking. If an LEP individual who speaks a language other than Spanish contacts the Hotline, the L&I employee is supposed to use a telephone interpreter service to provide assistance. The Customer Service Manager indicated that there is an audio prompt in Spanish if a Spanish-speaking LEP individual were to call the Hotline, but that audio prompts or options are not available for LEP individuals who speak languages other than Spanish.[57]

4. ISD Translators and Translated Program Information Appear Generally Available to Spanish-Speaking LEP Claimants

The Response Documents and our on-site visit revealed that in addition to interpretation, bilingual staff are required to do translations of written documents but may not be provided adequate training or have their translation skills reassessed. Bilingual employees who serve as interpreters are also required to translate documents and correspondence to and from LEP workers' compensation claimants. An L&I Hotline Supervisor told us that bilingual Spanish-speaking L&I employees were expected to simultaneously respond to L&I Hotlines calls and to translate L&I documents. Our on-site visit revealed additional information regarding how L&I assesses and reassesses the translator skills of applicants and L&I bilingual staff.

Various current bilingual staff, including a Claims Manager and a Medical Treatment Adjudicator, indicated that the written translation exam they received was administered by the L&I Human Resources Office. A bilingual Claims Manager indicated that she was given a written test in which she was asked to (1) respond to questions regarding a passage that was written in Spanish; (2) translate a passage from English to Spanish and from Spanish to English; and (3) write a letter to a worker in Spanish. A bilingual Medicare Treatment Adjudication specialist with whom we spoke indicated that she was given a written test for translation assessment that required her to translate a passage from English to Spanish and from Spanish to English. This specialist also indicated that the test did not require her to translate documents or terminology specific to L&I programs or her work responsibilities and that her translation skills had not been tested or reassessed since her initial assessment in 2007. The Customer Services Manager in the Communication Service's Office of Information and Assistance also indicated that the Spanish translation assessment they were given consisted of writing an essay in Spanish, translating a couple of paragraphs and responding to multiple choice questions. The Customer Services Manager also told us that she thought L&I should implement more rigorous testing standards that accurately assess the translation skills of bilingual staff.

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[56] The Office of Communication Services' Office of Information and Assistance has been renamed Communication and Web Services Hispanic Language Communications.

[57] *See* L&I, *Workers' Compensation Benefits: A guide for injured workers* 22-23, *available at* http://www.lni.wa.gov/IPUB/242-104-000.pdf (Last visited June 20, 2014) ("This telephone-based system allows you to retrieve specific details about your claim and listen to the information over your phone. This service is available in English or Spanish… To speak with someone in English or Spanish and get current, general information about your claim, call L&I's Office of Information and Assistance (OIA) at 1-800-547-8367. Translation services are available for other languages.").

A Spanish Language Communication Manager, tasked with ensuring that Spanish-speaking customers can navigate L&I services throughout the agency, indicated that the first and only time that staff had received training on translation skills was in October 2012 in anticipation of the November on-site visit by DOL and DOJ. The Communication Manager also said that there was no formal process for re-assessing the translation skills of current L&I bilingual staff persons tasked with translating documents that are sent to LEP individuals.

a. ISD Has Translated A Limited Number of Vital Documents.

It appears that ISD has not developed a list of documents vital to the workers' compensations program, or translated documents ISD units deem vital into non-English languages other than Spanish. We asked ISD to list and provide copies of all vital documents used in the workers' compensation program and to indicate if each of the documents were translated into non-English languages. ISD responded that it "does not have a standard set of vital documents," but ISD units identified forms, letters, orders and other documents they believe are vital in a workers' compensation claim, and noted that documents translated into Spanish are available on the L&I website.[58]

ISD indicated that the following letters are vital: a letter indicating that ISD would be unable to process the claimant's claim because of lack of information, and requesting a response within 10 days to avoid rejection of the claim; Notice of Decision letters indicating that a claimant's claim for benefits was being rejected and that the claimant could appeal the decision within 60 days; a letter denying a claimant's request to protest a decision issued by ISD; and a letter alerting the claimant that ISD made an overpayment to the claimant and that the claimant had 60 days to make a written request for reconsideration of the determination. Of the 44 claims, letters, and order documents ISD provided, all were written in English.[59] While ISD provided copies of a "Protest Rights" form translated into 35 languages, a discrimination form it provided is only available in Chinese.[60] Many of the translated documents ISD provided do not appear to be available on its website.

In addition to the documents identified as vital by ISD, the L&I website indicates that a workers' compensation claimant receives the following vital documents: a Claim Arrival Card; a First Payment Letter; a copy of the information pamphlet, *Getting Back to Work: It's Your Job and Your Future*;[61] a copy of *Workers' Guide to Industrial Insurance Benefits;*[62] *Notices of Decision*; correspondence requesting any necessary additional information; and a *Worker Verification Form*[63] for claimants receiving time-loss compensation. These listed documents

[58] Response Documents, Question 8.

[59] Response Documents, Question 8, ClaimsLettersAndOrders.zip.

[60] Response Documents, Question 8, Forms Available in Foreign Languages, VitalFormsForeignLang.xlsx.

[61] *Available at* http://www.lni.wa.gov/IPUB/200-001-000.pdf (Last visited June 20, 2014).

[62] *Available at* http://www.lni.wa.gov/IPUB/242-104-000.pdf (Last visited June 20, 2014).

[63] *Available at* http://www.lni.wa.gov/Forms/pdf/242052af.pdf (Last visited June 20, 2014).

appear to be available only in English and Spanish on the website. Further, as we noted to staff during our on-site visit, almost all of the descriptions for these and other Spanish documents on the L&I website are only provided in English.[64]

It also appears that the L&I website does not have vital documents and informational materials available in the non-English languages listed at the top of the ROA form. While over 140 documents are available in Spanish,[65] only 20 total documents were available in the remaining 6 languages listed on the ROA form: 4 in Russian,[66] 8 in Korean,[67] 3 in Chinese,[68] 4 in Vietnamese, [69] none of the documents on the website were available in Laotian,[70] and only 1 was available in Cambodian.[71] Of the 20 documents on the website translated into a language other than Spanish, none had the document title or the document description translated into the corresponding non-English language. The current website also makes it difficult for someone who reads a non-English language other than Spanish to identify these vital documents. For example, the ROA form and its instructions, the form every claimant must complete to begin the claims process, did not appear to be available in any non-English languages.[72] While the ROA instructions are available in Spanish, claimants are to "complete the form in English"[73] and instructions are not available in other languages. A Chinese Bilingual Customer Service Specialist told us that she has not come across the ISD documents translated into Chinese and instead must explain the claims process to each Chinese-speaking claimant.

ISD also asserted that "Department claims letters all end with the statement that an interpreter will be provided if the worker needs one."[74] However, each of the letters we were provided ended with the following sentence written in English: "I have phone interpretation

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[64] *See* L&I, *Formularios y publicaciones en espanol at* http://www.lni.wa.gov/Spanish/FormPub/SpanishForms.asp (Last visited June 20, 2014).

[65] *Id*.

[66] http://www.lni.wa.gov/FormPub/results.asp?Keyword=russian&Submit=Search. (Last visited June 20, 2014).

[67] http://www.lni.wa.gov/FormPub/results.asp?Keyword=Korean&Submit=Search (Last visited June 20, 2014).

[68] http://www.lni.wa.gov/FormPub/results.asp?Keyword=chinese&Submit=Search&SubSection=&DocType=0 (Last visited June 20, 2014).

[69] http://www.lni.wa.gov/FormPub/results.asp?Keyword=Vietnamese&Submit=Search (Last visited June 20, 2014).

[70] http://www.lni.wa.gov/FormPub/results.asp?Keyword=Laotian&Submit=Search (Last visited June 20, 2014).

[71] http://www.lni.wa.gov/FormPub/results.asp?Keyword=Cambodian&Submit=Search (Last visited June 20, 2014).

[72] *See* L&I, Report of Accident (ROA) Workplace Injury, Accident or Occupational Disease, *available at* http://www.lni.wa.gov/FormPub/Detail.asp?DocID=1599 (Last visited Feb. 26, 2014).

[73] *Id*.

[74] Response Documents, Question 9.

services if you don't speak English."[75] This statement was not translated into non-English languages or followed by a reference to an ISD policy or legal authority.

b. ISD Translation Procedures are Inconsistent.

We also asked ISD to explain how an LEP workers' compensation claimant would obtain a translation of a vital document that is not in his or her primary language. ISD responded that the Translation Unit sends documents that require translations into a language other than Spanish to a contracted translation company. We were told documents that require Spanish translations are mostly done in-house and the Translation Unit has developed specific guidelines for translating letters from English to Spanish. For Spanish translations, the in-house translator must verify that the letter is addressed to the injured worker, as letters addressed to doctors or employers cannot be translated unless approved by the Translation Unit Supervisor.[76]

This two-track translation process has resulted in discrepancies between the translation times for documents that are completed in-house by the Translation Unit and documents prepared by an outside translation company. Because of the various time lines and deadlines associated with the workers' compensation claims process, including time requirements for responding to requests for documents and appealing closure letters and other determinations, the LEP claimants' receipt of accurate, translated documents in a timely manner is very important. According to L&I staff, translations by the outside company take considerably more time. A Claims Manager indicated that while the time for English to Spanish translations done in-house generally takes between 24 to 48 hours, non-Spanish translations completed by the outside translation company take approximately 14 days. Another Claims Manager indicated that in-house Spanish translations take 2-3 days while translations completed by the outside translation company take up to approximately three weeks.

Moreover, L&I does not have a reliable system where translated documents are shared throughout its system. A staff person at the L&I Regional Office in Seattle indicated that her office utilizes a different translation company than that of L&I's central office in Tumwater, and that translated documents she requests are not shared with L&I's central office. The staff person at the Regional Office in Seattle told us that she was not sure if the L&I terms in the translated letters and forms they received are correct or consistent with the meaning of the terms in the English L&I documents. It was also unclear if documents that have been translated privately or in-house at L&I Regional Offices are then stored by the central L&I office and shared with other Regional Offices.

Additionally, our on-site investigation revealed that the current arrangement between L&I and the private translation company tasked with translating non-Spanish documents has resulted in various inefficiencies. The Customer Services Manager in the Director's Office of Information Assistance for L&I said that while they only use one translation company, they do not have a formal contract for services with that company that sets forth terms including quality

[75] Response Documents, Question 9.

[76] Response Documents, Question 19, Translation Unit Spanish Translation Guidelines (June 18, 2012).

standards and time frames for translating documents. The Customer Services Manager also indicated that L&I and the translation company have not developed a uniform glossary of commonly used L&I terms and phrases in non-English languages, and that L&I does not provide a list of common terms for the translation company to use when it does a translation. When L&I receives a translated document from the translation company, the document is not provided in an editable word processing file format like Microsoft Word, which the Customer Service Manager would prefer. We were also told by this Customer Services Manager that the translation company they currently rely on does not use translation memory software,[77] which means that the company does not have a method to re-use previously translated words and content that L&I has previously paid the company to translate. L&I should consider the above to improve the efficiency and quality of translations and ultimately save on translation costs.

5. ISD Appears to Not Provide Civil Rights and Language Access Training For Staff

During our on-site visit, we were consistently told by both new and experienced L&I staff that they had not received training that addressed the legal obligations of Title VI, Section 188 of WIA, their implementing regulations, or discrimination against LEP individuals on the basis of national origin. Of the L&I staff we spoke with, only one had received training on Title VI language access obligations. The L&I staff members with whom we spoke did appear to be sufficiently trained on how to access telephone interpreters for LEP individuals and how to request translated materials from the Translation Unit.

6. ISD Does Not Consistently Provide Notice of Language Assistance Services and Outreach to LEP Individuals

The Response Documents indicated that every L&I field office posts a notice with information in multiple languages stating that interpreter services are available free of charge.[78] ISD also indicated that LEP claimants are encouraged to point to the language they speak on "point to" signs to receive further language assistance. However, our on-site visit revealed that not all local offices post interpreter service notices or "point to" signs in their common areas. For example, when we visited the Tukwila L&I Field Office, there was no sign or other notice posted in English or in non-English languages that indicated language assistance services were available and would be provided free of cost, or that explained how to obtain or request such services. Translated brochures were found in the lobby areas of the L&I Field Offices we visited but were available in Spanish only. A bilingual staff person from the Translation Assistance Unit of the Office of Information Assistance who answers calls for all of the L&I offices also told us that if an LEP individual calls the L&I number, they will only get a prompt in English or Spanish, but not any other non-English language listed on the top of the ROA form.

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[77] Jessica Sperling, *Communicating More for Less: Using Translation and Interpretation Technology to Serve Limited English Proficient Individuals* 12 (January 2011) ("This technology uses a stored memory system to reuse pretranslated phrases in subsequent translations.") (Communicating More for Less), *available at* http://www migrationpolicy.org/pubs/LEP-translationtechnology.pdf. (Last visited June 20, 2014).

[78] Response Documents, Question 10. ("The poster used at all L&I field offices is clear that interpreter services are provided with no cost to the worker.").

When we reviewed the materials on the L&I website, we noticed that the main page of the website does not contain non-English language indicators other than in Spanish that would direct LEP users to information available in languages other than Spanish. We did find other State agencies that provided non-English indicators on their main page and translated materials on their websites.[79] Because the L&I website does not include non-English text in other languages, it would be difficult for an individual who speaks a non-English language other than Spanish to find information about the ISD workers' compensation programs and activities, translated forms or documents, or the language assistance services that are available. While the L&I E-Government Manager explained to us how L&I conducted in-depth research on Spanish-speaking website users, we were not provided information about initiatives in place to improve the experience of LEP individuals who do not speak Spanish.

For written correspondence, ISD has developed standard letters for its Claims Managers. Many of these letters include a notice of language assistance services. Unfortunately for LEP claimants, that notice, included below, is written in English only.

> If you need more information:
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> - Get prompt, automated information about your claim in English or Spanish: 1-800-831-5227.
> - Speak to someone about your claim: 1-800-LISTENS (1-800-547-8367).
> - Read about workers' compensation benefits and laws: www.claiminfo.lni.wa.gov
> - View your claim, and send information to me electronically: www.claiminfo.lni.wa.gov
>
> We have phone interpretation services if you don't speak English.

Our investigation also revealed that while L&I engages in outreach activities with the Spanish-speaking community to provide information about L&I programs, including the Workers' Compensation Program, it has not developed outreach activities for other LEP communities.[80] The Spanish outreach efforts included disseminating L&I program information to the Mexican consulate, airing information in Spanish on Spanish radio programs, and providing presentations translated into Spanish for the Commission on Hispanic Affairs.[81] During our on-site visit, several L&I employees with whom we spoke, including the L&I Spanish Communication Consultant, explained to us that L&I does not have an outreach program for non-Spanish language communities.

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[79] *See* Washington State Employment Security Division, http://www.esd.wa.gov/index.php and http://www.esd.wa.gov/languages/uibenefits/world-map.php (Last visited June 20, 2014); Washington State Office of Attorney General, http://www.atg.wa.gov/ (June 20, 2014); Washington State Department of Revenue, http://dor.wa.gov/Content/Home/Default.aspx (June 20, 2014).

[80] Response Documents, Question 22, *List of L&I's Staff that do outreach in Spanish* (Feb. 3, 2011).

[81] Response Documents, Question 22.

V. Recommendations Based on Factual Findings

Based on the information we obtained in our investigation, we have determined that several ISD policies, practices, and procedures appear to be inconsistent with Title VI, Section 188 of WIA, the implementing regulations for these statutes, and ISD's grant obligations. Current ISD policies and practices will need to be improved and updated and others developed to ensure that LEP individuals are provided meaningful access to the Workers' Compensation Program.

As detailed below, we recommend ISD develop, implement, monitor, and assess the quality and effectiveness of its language access plan and formal language access policies and procedures; improve how it assesses the LEP communities it encounters and those LEP communities who are eligible but may be underserved; improve the quality of bilingual staff and interpreters that are provided for LEP individuals to ensure meaningful access to programs and activities; increase the quality and quantity of written materials, including electronic materials, in languages other than Spanish; provide training to ISD staff on civil rights and language access requirements; and provide all LEP individuals notice of available language assistance services and ISD programs and services. The specific recommendations below address many of the issues we have identified in our investigation. The failure to implement these recommendations and change current policies and practices to ensure LEP individuals have meaningful access to programs and activities may lead to a finding that ISD and L&I are in violation of Title VI, WIA, and their implementing regulations.

A. ISD Should Develop a Language Access Program with Monitoring

We recommend that ISD develop an effective language access plan that can be used to provide timely language assistance services to LEP individuals and that incorporates our recommendations, as appropriate. To implement the language access plan, ISD will need to develop appropriate policies and procedures. We also recommend that ISD designate a staff person or committee that is chiefly responsible and has the authority necessary to implement the plan and systematically disseminate LEP-related material. DOL and DOJ have both developed language access self-assessment tools for recipients that may serve as a useful guide for developing a language access plan and the necessary implementing policies and procedures.[82]

ISD should also monitor its policies and procedures to ensure that LEP workers' compensation claimants continue to receive meaningful access to effective language assistance services. ISD will need to develop a schedule for periodic monitoring of language assistance services rendered, including developing a policy whereby staff are required to record perceived oral and written languages needs of claimants, and gathering and using demographic data to monitor the effectiveness of its policies and procedures. The analysis of this information should

[82] U.S. Department of Labor, *Language Assistance and Planning Self-Assessment Tool for Recipients of Federal Financial Assistance*, *available at* http://www.dol.gov/oasam/programs/crc/LEPAssessmentToolfinal.doc (Last visited June 20, 2014); DOJ, *Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs* (May 2011), *available at* http://www.lep.gov/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf (Last visited June 20, 2014).

occur on a fixed schedule and include the most frequently encountered languages spoken by LEP workers' compensation claimants, and should not rely solely on interactions and experiences with Spanish-speaking individuals.

B. ISD Needs to Identify and Assess the Needs of the LEP Populations it Serves

1. Improve Language Identification in the Claims Process

To ensure that ISD collects adequate data on LEP individuals who access the Workers' Compensation Program, the current language identification options available to LEP Workers' Compensation claimants should be expanded. We suggest that in doing so, ISD develop a "language identification card" that could be attached to the ROA or be sent to Workers' Compensation claimants, and that would instruct LEP claimants to circle which non-English language they speak and which non-English language they read.[83] The contents of the card will need to be translated into many non-English languages and should instruct the claimant to send the card back to ISD. These cards should accompany the ROA form to ensure that this information is identified and tracked at the beginning of the claims process. This type of approach will provide ISD with accurate information about an LEP claimant's spoken and written language preferences and help identify the specific languages that currently represent the "Other" category listed on the ROA form.

2. Develop and Standardize the Collection of Language Preference Data

ISD should also fully develop and standardize its procedures for entering language preference data in its computer systems so that all LEP language preferences identified, for spoken and written communication, can be captured to provide notice to ISD staff and for analysis. A standardized process that collects the language preference information of the LEP population it serves will allow ISD to determine what language assistance services are optimal for LEP workers' compensation claimants. Since one of the encounters claimants will have with ISD staff is through the Call Center or a call to a Claims Manager, ISD should track the language of all LEP claimant callers, not just those who speak English or Spanish. Systematically tracking the LEP caller information will allow L&I to identify how frequently it encounters specific language communities.

3. Edit the ROA to Include Non-English Languages and Collect Data

The ROA form should be edited to include the names of the non-English languages indicated in the non-English language text of that language (e.g. Spanish/Español). This would allow someone who speaks a non-English language, even if they have low-literacy in that language, to identify the name of their language. While the ROA instructions appear to be available in Spanish,[84] the ROA form itself, or at least the claimant instructions that accompany

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[83] *See* Federal Interagency Working Group on Limited English Proficiency Website, *available at* http://www.lep.gov/resources/resources html#MM. (Last visited June 20, 2014).

[84] L&I, Report of Accident (ROA) Workplace Injury, Accident or Occupational Disease, *available at* http://www.lni.wa.gov/FormPub/Detail.asp?DocID=1599. (Last visited June 20, 2014).

the form, should be translated into the non-English languages listed on the top of the ROA form and made available on the L&I website. The translation of the language indicators on the ROA form into non-English languages and the ROA instructions would be a minimal one-time cost and ensure meaningful access is provided to the many LEP workers in Washington State.

While ISD relies on the ROA form data to assess LEP communities, it should validate the language information it currently collects with other reliable sources of language data to get an accurate picture of the LEP workers it does not encounter but who are eligible for its services. One way that ISD could identify the language communities in Washington State would be to ensure that Regional L&I offices track and share language information about their local LEP populations.[85] ISD should also consult with other State agencies that already seem to have systems in place to track and record language preference information,[86] such as the Department of Social and Health Services[87] and the Washington State Superintendent of Public Instruction.[88] ISD should then compare the ROA and Call Center information it collects to the data it receives from other state agencies and other reliable sources to develop an accurate assessment of the number and proportion of LEP individuals it encounters and those who are eligible to be served. By having an accurate assessment of the language communities encountered and those eligible to be served, ISD can determine the types of language assistance services and outreach[89] that will need to be in place to ensure that LEP individuals are provided meaningful access to the Workers' Compensation program.

C. ISD Needs to Improve the Oral Language Assistance Services it Provides

1. Avoid Using Children, Family, and Friends as Interpreters

ISD should not require or suggest that LEP workers or claimants use family members, friends, or children as interpreters at L&I Regional offices or to facilitate written or oral

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[85] DOL Guidance at 32294 (When a recipient is responsible for a statewide program, it should "assess statewide language groups to identify potentially significant LEP populations, and ensure that local offices conduct similar surveys of their local service populations.").

[86] Other language data should be consulted, including the "latest census data for the area served, data from school systems and from community organizations, and data from state and local governments." DOL Guidance at 32294, DOJ Guidance at 41460.

[87] *See* DSHS, *Limited English Proficiency (LEP)*, *at* http://www.dshs.wa.gov/manuals/eaz/sections/LEP.shtml (Last visited June 20, 2014); State System and Health Disparities Workgroup, Governor's Interagency Council on Health Disparities, Language Access Briefing Document, 150-152 (Sept. 13, 2012) *at* http://healthequity.wa.gov/Portals/9/Doc/Meetings/2012/09-13/HDC-Packet-09-13-12.pdf (Last visited June 20, 2014); Stipulation Agreement of Settlement and Consent Order, *Reyes v. Thompson*, W.D. Wash. March 12, 1991 (No. C91-303) *available at* http://www.imiaweb.org/uploads/docs/ReyesConsentDecree.pdf; (Last visited June 20, 2014).

[88] OSPI, *Education Data System (EDS)*, Limited English Proficiency (LEP) *available at* http://www k12.wa.us/EDS/LEPApplication.aspx. (Last visited June 20, 2014).

[89] DOL Guidance at 32294, DOJ Guidance at 41460 ("[C]onsider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups…")

communication with ISD staff.[90] Staff should receive adequate training and procedures that explain why minor children and other informal interpreters are not appropriate to explain complex terms and phrases related to workers' compensation benefits.[91] The ISD staff training on working with interpreters should also explain how informal interpreters may not be appropriate because of personal conflicts and that, while an LEP person's choice to have a minor child act as his or her interpreter is voluntary, ISD staff should inform the LEP individual that an interpreter who speaks their preferred language is available in a timely manner and at no cost.[92]

Likewise, we are concerned that L&I permits medical providers to use family members, friends and other individuals serve as interpreters for LEP individuals. We note, as explained in the U.S. Department of Health and Human Services LEP Guidance for health care providers that receive federal financial assistance, that "a recipient may not require an LEP person to use a family member or friend as an interpreter."[93] In addition, while medical providers and ISD staff can access telephone interpreter services, it does not appear that ISD staff has received training on how to determine whether the telephonic interpreter is competent or explaining the information that is important to the conversation.[94] There is also difficulty for an LEP individual who speaks a language other than Spanish and calls the L&I Hotline, as s/he will not hear an audio prompt in his/her language. We recommend that audio prompts be added to the Hotline in the non-English languages listed on the ROA form to ensure meaningful access for LEP individuals who do not speak Spanish.[95]

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[90] *See* DSHS, *WAC 388-271-0020 What are the department's responsibilities in providing me with an interpreter?* ("Family members, friends and children should not be used as interpreters.") *available at* http://www.dshs.wa.gov/manuals/eaz/sections/LEP.shtml#388-271-0020. (Last visited June 20, 2014).

[91] DOL Guidance at 32297, DOJ Guidance at 41463. ("[T]ake special care to ensure that family, friends, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity."), DOJ Guidance at 41463 ("[T]ake special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or ractivity… In many circumstances, family members (especially children), friends, other inmates or other detainees are not competent to provide quality and accurate interpretations").

[92] *See* DOL Guidance at 32297, DOJ Guidance at 41462 ("[R]ecipients should generally offer competent interpreter services free of cost to the LEP person."); DSHS, *WAC 388-271-0020* ("These services are provided at no cost to the client and without significant delay.").

[93] U.S. Department of Health and Human Services, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 47311, 47318 (Aug. 8, 2003), *available at* http://www.gpo.gov/fdsys/pkg/FR-2003-08-08/pdf/03-20179.pdf. (Last visited June 20, 2014).

[94] DOL Guidance at 32297 ("Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters are competent to interpret any technical or legal terms specific to a particular program that may be important to the conversation."), DOJ Guidance at 41462 ("Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation.").

[95] *See* Minnesota Department of Human Services, *Multilingual referral lines*, *at* http://www.dhs.state mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_016627 (Last visited June 20, 2014).

2. Institute a New Process for Assessing an L&I Job Applicants' Language Skills and Reassessing Bilingual Staff's Language Competency

It appears that L&I has not established an adequate assessment process for individuals seeking bilingual positions that require interpreter skills. To ensure that bilingual staff is appropriately assessed for competency, we recommend that L&I staff work with WSU and DSHS to develop a more comprehensive and rigorous test that adequately assesses the skills and vocabulary the potential bilingual employee and staff applicants will need when they interact with LEP individuals.

Although L&I has contracted with WSU to test the competency of applicants for L&I bilingual staff positions, the exams do not appear to adequately assess the skills applicants will need when they are acting as an interpreter. In this investigation Spanish bilingual staff explained, and we agree, that a test which only lasts 15 minutes, and does not address the words or phrases commonly used when speaking to an LEP claimant, and that is not unique to the workers' compensation process, cannot adequately assess the applicant's ability to serve as an interpreter.[96]

ISD should adequately assess the skills of all applicants who seek bilingual staff positions and such an assessment should cover Spanish and languages other than Spanish.[97] A key component of the bilingual staff assessment should be words and phrases commonly used by staff during the workers' compensation claims process.[98] All newly hired and current bilingual staff should also receive adequate training on his or her responsibilities and professional and ethical obligations when serving as an interpreter.[99]

We also recommend that newly hired and current bilingual staff receive periodic follow-up assessments of their competence in a non-English language(s) and their interpretation skills. If it is determined at a follow-up assessment that a current bilingual staff person is no longer competent and does not have adequate interpretation skills language, they should no longer be permitted to serve as a bilingual staff person or interpret in that non-English language.

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[96] DOL Guidance at 32296, DOJ Guidance at 41461 ("Competency requires more than self-identification as bilingual.").

[97] *See* DSHS, *Bilingual Employee Test Scheduling Guidelines, available at* http://www.dshs.wa.gov/pdf/ltc/Bilingual%20Employee%20Test%20Scheduling%20Guidelines.pdf (Last visited June 20, 2014).

[98] *See* DOL Guidance at 32296, DOJ Guidance at 41461 (Indicating that an interpreter must be able to demonstrate proficiency and the ability to communicate information accurately in both English and the other language(s), knowledge in both languages of any specialized terms or concepts peculiar to the recipients' program, and any particularized vocabulary that may be used by the LEP individual.).

[99] *See* DSHS, *Language Interpreter and Translator Code of Professional Conduct*, *at* http://www.dshs.wa.gov/ltc/ethics.shtml. (Last visited June 20, 2014).

D. ISD Should Expand and Improve Translated and Electronic Materials

1. Develop a Tool to Assess the Translation Skills of Applicants and Staff

To ensure the competency of bilingual L&I employees tasked with translating documents, we recommend that appropriate L&I staff work with WSU to develop a more comprehensive and rigorous testing tool that adequately assesses the translation skill levels of applicants for bilingual positions. The assessment should require the applicant to demonstrate knowledge of words and phrases commonly used in L&I documents in English and the second language(s), including those associated with the workers' compensation claims processes.[100] We also recommend that bilingual staff receive periodic follow-up assessments of their translation skills after they are hired. Additionally, it appears that L&I has not established an assessment process for individuals seeking bilingual positions that require translation skills in languages other than Spanish. We recommend that appropriate L&I staff develop a plan to assess the skills of applicants who wish to serve in bilingual staff positions as translators for languages other than Spanish. L&I should also institute periodic assessments of the translation skills of all current bilingual employees that sufficiently assesses competency in key terms and phrases in English and the second language(s).

2. Ensure Documents are Translated Into Frequently Encountered Languages

ISD should analyze and determine which documents in the workers' compensation program are considered "vital documents" [101] to claimants and ensure that those documents are translated into the most frequently encountered languages other than Spanish. For example, because the ROA is the form that initiates the workers' compensation claims process and is a vital document, we recommend that the ROA and its instructions be translated into the non-English languages that are listed on the form and into a few of the other more frequently encountered non-English languages. These translated documents should also be provided online.

The main page of the L&I website is also not accessible to LEP individuals who speak languages other than Spanish.[102] In addition, only about 13% of the translated documents on the L&I website are available in the languages other than Spanish listed on the ROA form. While

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[100] DOL Guidance at 32298-99, DOJ Guidance at 41464. (Stating that competent translators should "understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology.").

[101] *See* DOL Guidance at 32297-988, DOJ Guidance at 41463 (Indicating that vital documents could include applications to participate in a recipient's program, consent forms, letters containing important information regarding the recipient's programs, and notices pertaining to the denial or termination of benefits or services.).

[102] DOJ, *Common Language Access Questions, Technical Assistance, and Guidance for Federally Conducted and Federally Assisted Programs* 13 (2011) *available at* http://www.lep.gov/resources/081511_Language_Access_CAQ_TA_Guidance.pdf (Last visited June 20, 2014) ("Public website content and electronic documents that contain vital information about agency programs and services should be translated into frequently-encountered languages to ensure meaningful access by LEP individuals."). More information on building multilingual websites can be found at http://www.digitalgov.gov/tag/lep (Last visited June 20, 2014).

ISD has translated documents and web content into Spanish, the titles and descriptions of many Spanish and non-Spanish documents are not translated. L&I will need to improve the accessibility of its website by including additional non-English indicators on the main page and increasing the number of vital documents that are translated into languages other than Spanish.[103]

Our on-site visit also revealed that it is the Translation Unit staff, rather than the ISD Claims Managers, that appear to be ultimately responsible for mailing translated documents to LEP workers' compensation claimants. ISD Claims Managers should work more closely with the Translation Unit in tracking those documents that have been sent to the Unit for translation to ensure that documents are and have been mailed in a timely manner.[104] It also appears that this process has occasionally led to inadvertent incidents in which letters and orders have been mailed to LEP workers' compensation claimants prior to being translated even though some procedures have been established to limit the frequency of such incidents. We recommend that ISD develop a process in which the Claims Manager is more closely involved in ensuring that LEP workers' compensation claimants receive translated forms, orders, letters, and other vital documents in a timely manner.

c. Improve the Timing and Quality of Translations

We recommend that L&I improve the timeliness and quality of the documents translated by in-house Spanish translators as well as those documents that are sent to outside translators for translations.[105] Based on our conversations with staff, there appears to be a significant difference between the translation times for documents translated into Spanish by in-house translators and documents translated into other languages by the outside translation company, with some estimates indicating time differences of fourteen (14) days or more. We recommend that L&I establish a process whereby documents sent to the outside agency for translations are completed in a timely and reliable manner so that translation times do not jeopardize the LEP workers' compensation claimant's ability to receive access to benefits and services. Timelines and timeliness penalties should be required terms in contracts and agreements with external translation companies. Similar timelines should also be developed for internal translations.

To improve the quality of in-house translations, L&I should establish uniform processes, glossaries and training for staff translators to ensure consistency, improve efficiency, and reduce

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[103] DOL Guidance at 32298, DOJ Guidance at 41463 (Stating that a lack of resources does not relieve a recipient of its obligation "to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time.").

[104] *Communicating More for Less* at 16 (explaining the translated document distribution process used by DSHS).

[105] *See* U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, *Toolkit for Making Written Material Clear and Effective, Section 5: Detailed guidelines for translation*, 2010, *available at* http://www.cms.gov/Outreach-and-Education/Outreach/WrittenMaterialsToolkit/downloads/ToolkitPart11.pdf (Last visited Feb. 26, 2014) ;*King County Written Language Translation Process Manual*, *available in* King County Executive, *Executive Order INF 14-2 (AEO) Written Language Translation Process,* Appx. B (Oct. 13, 2010), *available at* http://www kingcounty.gov/operations/policies/executive/itaeo/inf142aeo.aspx (Last visited June 20, 2014).

duplication.[106] L&I should also develop a centralized process to track documents that have been previously translated. With a uniform and centralized translation process and internal tracking system for translations, L&I can realize considerable savings and develop an accurate record of translation costs.[107]

L&I should also establish a contract with its current translation company, or an alternative company, with terms that require consistency and quality checks. L&I does not appear to have a contract with the translation company it currently uses or require that the company use standardized terminology, translation memory, or provide completed translated documents in a reusable editable format. L&I should consider negotiating a contract that can provide these features and services, and that uses a standardized request process for all L&I offices which will reduce the time for each translation request and ensure that L&I terms and phrases are translated consistently statewide. Obtaining editable electronic documents from the translation company will also expand the readily accessible store of frequently translated terms and vital documents and assist in maintaining quality while reducing translation times. L&I may also want to negotiate with an alternative translation company if it can offer more efficient processing of translation requests and services.

E. ISD Must Provide Civil Rights and Language Access Training For Staff

ISD should develop and provide mandatory training on legal obligations and current language access related policies and procedures to managers, supervisors, and employees at least once each calendar year and as part of new employee orientation.[108] Issues addressed in this mandatory training would include the civil rights obligations of ISD staff under Title VI, Section 188 of WIA, and their implementing regulations to provide language assistance services to LEP individuals, ISD's policies and procedures for providing those services, and how staff can identify situations when in-person and telephonic interpreter services are inadequate or inappropriate. We also recommend that training for new employees and supervisors be conducted within thirty 30 days of the date on which they assume their duties. The DOL Office of Compliance and Policy (OCAP) and the DOJ Civil Rights Division are available to provide technical assistance regarding the development of these training materials.

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[106] DOL Guidance at 32299 n. 15, DOJ Guidance at 41464 n. 13 ("Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient."); *See* Massachusetts Executive Office of Health and Human Services, *Translation Services and Materials*, *available at* http://www mass.gov/eohhs/gov/departments/dph/programs/admin/health-equity/translation-services-and-materials html (Last visited June 20, 2014).

[107] *See Communicating More for Less* at 14-16.

[108] *See* DOL Guidance at 32300, DOJ Guidance at 41465 (Stating that staff should be trained about their obligation to provide meaningful access to information and services for LEP individuals and how to access and provide language assistance services.).

F. ISD Should Improve Notice of Language Assistance Services to LEP Individuals

L&I should provide each Field Office a language identification poster or sign to be posted in all intake areas, translated into several non-English languages, that explains to LEP individuals that language assistance services are available and are provided free of charge, and describes how to access those services.[109] The main L&I phone numbers should have voice prompts added in additional non-English languages to ensure that LEP individuals are directed to appropriate bilingual staff and to indicate to L&I staff the non-English language of the individual so they may connect to the appropriate telephonic interpreter. Additionally, we recommend that ISD begin to develop an outreach program for LEP individuals who speak languages other than Spanish so they are aware of ISD programs and services and the language assistance services that will be provided.

We recommend that L&I improve the main page of its website to ensure that it is accessible to individuals who speak a language other than Spanish and that it provides notice of available language assistance services. All future ISD public outreach brochures and publications should also be translated into appropriate languages other than Spanish and contain a notice explaining that language assistance services are available at no cost. We also recommend that ISD ensure that all standard letters and notices contain a translated tagline indicating that the language assistance services will be provided. This tagline should be translated and appear in the most frequently encountered non-English languages.[110]

VI. Conclusion and Recommended Steps to Address the Areas of Concern

As we stated at the outset in our letter, we appreciate the information and cooperation we received during the on-site visit, and recognize that ISD has indicated an interest in pursuing voluntary compliance. We believe the recommended policy, practice, and procedural changes described above will address many of the issues raised in the NJP complaints, and look forward to working together with you to reach an amicable resolution of this matter.

[109] *See* DOL Guidance at 32300, DOJ Guidance at 41465; Examples are available at www.LEP.gov, Multilingual Materials / I Speak Cards, http://www.lep.gov/resources/resources.html#MM (Last visited June 20, 2014).

[110] *See* Minnesota Department of Human Services, *Language block*, *available at* http://www.dhs.state mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_016628# (Last visited June 20, 2014).