

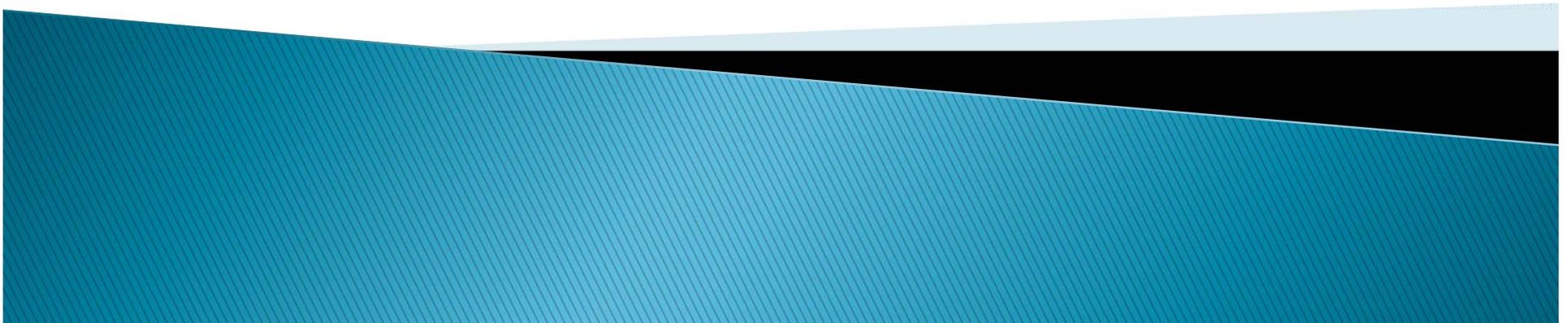


Language Access Law Basics

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2016 HDOT Civil Rights Symposium

January 27, 2016



Imagine . . . you are a celebrity . . . in another country . . . where you don't speak the language.

- ▶ http://www.dailymotion.com/video/xhr7nk_suntory-time_shortfilms

<https://www.youtube.com/watch?v=FiQnH450hPM&index=2&list=PLF582B66D8845E3CF>

How different would this be if you are a marginalized member of an immigrant – limited English proficient community, here in Hawaii?



Our Audience's Profile

- ▶ Who here speaks English as a second language?
- ▶ Who here has a parent who is LEP?
- ▶ Who here has/had a grandparent who is LEP?

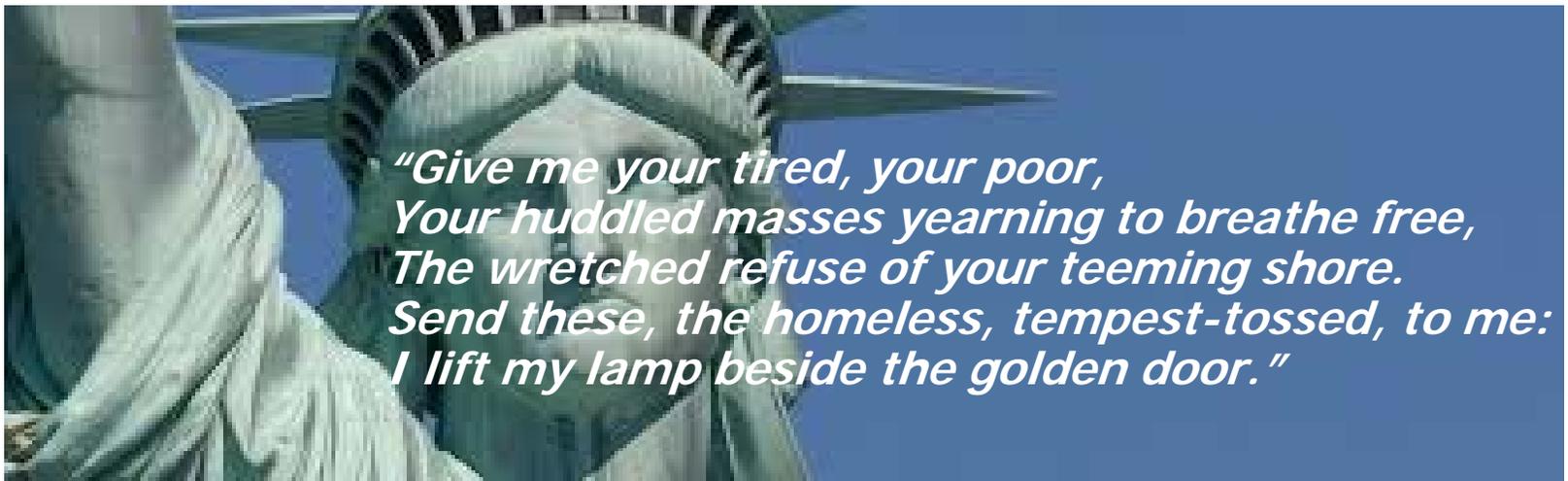
(A cross-section of Hawaii's population)



Why Language Access ?

The Promise of 'America'

- ▶ Historically, our diversity has defined American society. Our country has expressly opened its arms to immigrants – the “huddled masses”.



Why Language Access?

It's Better for Society

- ▶ After several generations, most individuals living in the United States now speak, read, write and understand English. But this should not obscure the fact that so many living here are limited English proficient (LEP).

(Remember, English is not the 'Native' language of our land.)

- ▶ Language for LEP persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by government and government-funded programs and activities.
- ▶ Denial of Language Access can be costly in lost opportunity, lost human capital, and increased damage control.



Why Language Access?

Because it is Justice . . .

- ▶ “The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue.”

Justice McReynolds – Meyer v. Nebraska, 262 U.S. 390, 401 (1923)

- ▶ “Simple justice requires that public funds, to which *all* taxpayers of *all* races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.”

Justice Douglas in – Lau v. Nichols, 414 U.S. 563, 569 (1974) quoting President John F. Kennedy’s message to Congress, June 19, 1963.

- ▶ “Language Access is NOT an unfunded mandate. It is like water and electricity—a necessity if you are going to take federal funds.” –

Deeana Jang, JD Chief of the Federal Coordination and Compliance Section of the Civil Rights Division of DOJ

Language Access is a CIVIL RIGHT

- ▶ Language access – is a CIVIL RIGHT. It is the provision of language services (interpretation and translation) to limited English proficient (LEP) individuals to ensure meaningful access to government services, programs and activities.



Federal and State Mandates & Case Law

- Title VI, Civil Rights Act of 1964
- Lau v. Nichols, 414 U.S. 563 (1974)
- Executive Order 13166 (2000) &
Related Regulations/Guidance
- Hawaii's Language Access Law (2006),
Chapter 321c, Hawaii Revised Statutes



Title VI – Civil Rights Act of 1964



Title VI – Civil Rights Act of 1964

- ▶ No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.



Lau v. Nichols

In 1974, the US Supreme Court held in Lau, that Title VI requires federally funded entities to provide language access sufficient to give LEP people *meaningful* access to a recipient's programs and activities. Denial of such access constitutes "national origin" discrimination.



Source: Historical Photograph Collection of San Francisco Public Library's San Francisco History Center.

Executive Order 13166 (2000)

President Clinton

- ▶ Purpose was to improve access to federal government services for persons with limited English proficiency (LEP).
 - ▶ Required each federal agency to prepare a Language Access Plan to improve access to its federally conducted programs and activities by eligible LEP persons, consistent with the compliance standards set forth by the LEP guidance issued by the DOJ– released on same date.
 - ▶ Required each federal agency to draft its own guidance, reflective of principles in DOJ guidance.
- 

Resources on Language Access Compliance:

Check your federal agency counterpart for LEP Guidance. <http://www.lep.gov/>

The screenshot shows the LEP.gov website interface. At the top, it reads "Limited English Proficiency (LEP) A Federal Interagency Website" and "LEP.gov Mission Statement". A left-hand navigation menu includes links for "LEP Information", "Frequently Asked Questions", "Executive Order 13166", "Resources by Subject", "Interpretation and Translation", "LEP and Title VI Videos", "Demographic Data", "LEP Resources and Compliance", "Federal Agency LEP Plans", "LEP Guidance for Recipients", "DOJ LEP Guidance for Recipients", "Recipients of Federal Assistance", "File a Complaint with DOJ", and "DOJ Agreements and Settlements". The main content area is titled "Federal Agency LEP Guidance for Recipients" and contains a paragraph explaining Executive Order 13166. Below this is a section "Select an Agency Below to View its LEP Guidance Materials for Recipients" with a list of 20 federal agencies. A red arrow points to the "Department of Education (ED)" in the list.

Limited English Proficiency (LEP) A Federal Interagency Website

LEP.gov
Mission Statement

- LEP Information
 - Frequently Asked Questions
 - Executive Order 13166
 - Resources by Subject
 - Interpretation and Translation
 - LEP and Title VI Videos
 - Demographic Data
- LEP Resources and Compliance
 - Federal Agency LEP Plans
 - LEP Guidance for Recipients
 - DOJ LEP Guidance for Recipients
 - Recipients of Federal Assistance
 - File a Complaint with DOJ
 - DOJ Agreements and Settlements

Federal Agency LEP Guidance for Recipients

Executive Order 13166 required each federal agency that provides financial assistance to develop an LEP guidance for its recipients on the obligation to provide meaningful access to limited English proficient (LEP) individuals. Select an agency below to view its LEP guidance materials for recipients.

Select an Agency Below to View its LEP Guidance Materials for Recipients

Department of Agriculture (USDA)	Department of Transportation (DOT)
Corporation for National Community Service (CNCS)	Department of the Treasury (Treasury)
Department of Commerce (DOC)	Department of Veterans Affairs (VA)
Department of Defense (DoD)	Environmental Protection Agency (EPA)
Department of Education (ED)	General Services Administration (GSA)
Department of Energy (DOE)	National Aeronautics and Space Administration (NASA)
Department of Health and Human Services (HHS)	National Archives and Records Administration (NARA)
Department of Homeland Security (DHS)	National Endowment for the Arts (NEA)
Department of Housing and Urban Development (HUD)	National Endowment for the Humanities (NEH)
Department of Justice (DOJ)	National Science Foundation (NSF)
Department of Labor (DOL)	Nuclear Regulatory Commission (NRC)
Department of State (DOS)	Office of Management and Budget (OMB)
Department of the Interior (DOI)	Small Business Administration (SBA)

Specific matters discussed in the Federal Department of Transportation Guidance

- ▶ Who is covered, including sub-recipients.
 - ▶ Hazardous material transport
 - ▶ Emergency transportation – supplies for natural disasters, etc.
 - ▶ Public transportation passengers
 - ▶ Drivers license applicants; visitors to motor vehicle offices
 - ▶ Commercial motor vehicle drivers
 - ▶ Disadvantaged Business Enterprise Program
 - ▶ Persons living in areas affected by public transportation projects
 - ▶ Use of volunteers; bilingual staff; contracted language service providers
 - ▶ Educational tours of airports, train or bus stations
 - ▶ Vital documents like: drivers licenses; auto registrations; parking tickets & citations; emergency transportation information; Haz Mat signage; directional signage; public hearing notices; safe driving handbooks; etc.
 - ▶ Bicycle safety courses;
 - ▶ Right-of-way acquisitions;
 - ▶ Regulations for trucking firms;
 - ▶ Project/roadway planning;
 - ▶ Environmental justice;
 - ▶ Child passenger & pedestrian safety;
 - ▶ Subway/bus maps;
 - ▶ Metrocard vending machines;
 - ▶ Fare changes;
 - ▶ Airport information – public announcements;
 - ▶ Best practices for outreach;
- 

Helpful Handbook from DOT-FTA:

http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwipn4Gz-MjKAhVN92MKHeH2AwwQFggcMAA&url=http%3A%2F%2Fwww.fta.dot.gov%2Fdocuments%2FLEP_Handbook.doc&usq=AFQjCNGYka162nNjj6FuCm8Mcv4j7_UZ9A&sig2=Lzvsmp-WVwd5t-OUh0Q3Yw



U.S. Department
of Transportation
Federal Transit
Administration

Implementing the Department of Transportation's Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons

A Handbook for Public Transportation
Providers

Prepared by:
The Federal Transit Administration Office
of Civil Rights

April 13, 2007

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Language Access in Hawaii



Background: Hawaii's Language Access Law

Hawaii's Language Access Law was passed in 2006 under **Act 290**, which was codified as HRS 371 part II.



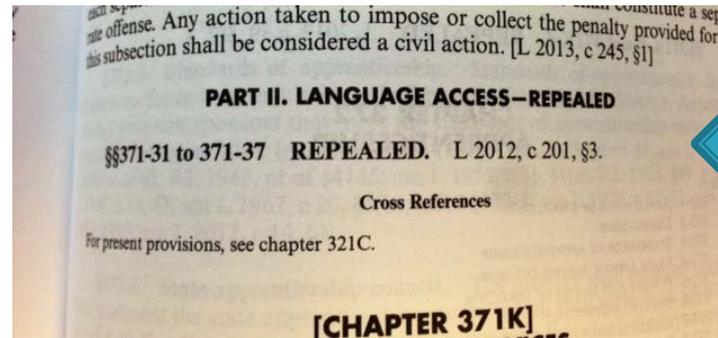
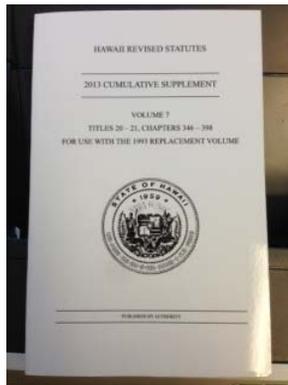
Governor Lingle signed a bill to improve language access for immigrants with limited English proficiency and presented ceremonial copies to immigrant service providers and advocates.

Background: Hawaii's Language Access Law



2009-2012 - BUDGET CRISIS POLITICAL AND PRIORITY SHIFTS

Look at Chapter 371 Part II in the latest edition of HRS, and you'll see that . . .



HAWAII'S LANGUAGE ACCESS LAW was
REPEALED IN 2012!

Background: Hawaii's Language Access



**SAVED BY
THE DEPARTMENT OF HEALTH**



ACT 201 Session Laws Hawaii 2012 - Purpose Statement:

“to improve access to government services and programs for [LEP] individuals by transferring the Office of Language Access, along with all the functions and duties of the office, from the department of labor and industrial relations to the department of health.”

The Office of Language Access and the Language Access Advisory Council are now within the Department of Health “for administrative purposes only.”

Now codified in **HRS 321C**

Background: Hawaii's Language Access

Act 201 Signing on July 3, 2012



Background: Hawaii's Language Access Law

Hawaii's Language Access Law is now:

HRS Chapter 321C

Within Title 19 relating to Health – for administrative purposes.

Please correct your citations in your pamphlets, rules, policy memos, contracts, etc. because if you are referring to **chapter 371**, you are citing to a **REPEALED . . . DEAD . . . law.**



Background: Hawaii's Language Access Law

The **purpose** of Hawaii's Language Access Law is to:

“affirmatively address, on account of national origin, the language access needs of limited English proficient persons [**LEP**] .”



FOUNDATIONAL CONCEPT- What is LEP under Hawaii Law?

A “Limited English Proficient [LEP] individual” is defined under Hawaii Law as:

“an individual who, on account of national origin, does not speak English as the person’s primary language and self identifies as having a limited ability to read, write, speak or understand the English language.”

HRS sec. 321C-2



Hawaii's LEP Profile

based on U.S. Census Bureau, 2009–2011 American Community Survey Public Use Microdata Sample (PUMS) from DBEDT

- ▶ Out of Hawaii's total population of 1,361,628; more than 24% or 329,827 speak a language other than English at home.
- ▶ Out of those who speak a language other than English at home, 151,187 or 46% are LEP.
- ▶ Out of the total LEP population, 125,602 or 83% live on Oahu.
- ▶ Out of the total LEP population, 80% are Asian language speakers while more than 13% are Native Hawaiian and Pacific Island language speakers.



Top LEP Languages

(1,000 or more speakers)

based on U.S. Census Bureau, 2009–2011 American Community Survey Public Use Microdata Sample (PUMS) from DBEDT

1. Ilokano
2. Tagalog
3. Japanese
4. Chinese (Cantonese and Mandarin)
5. Korean
6. Vietnamese
7. Spanish
8. Hawaiian
9. Samoan
10. Marshallese
11. Chuukese
12. Tongan
13. Bisaya (Cebuano)



Top Non-English Languages Spoken at Home

The table below displays the top 21 languages spoken at home in Hawaii. The people speaking these 21 languages made up 95% of all people speaking a language other than English at home in our state.

Rank	Language spoken at home	Number of speakers	Percent
	Total spoke a language other than English at home	326,893	100.0
1	Tagalog	58,345	17.8
2	Ilocano	54,005	16.5
3	Japanese	45,633	14.0
4	Spanish	25,490	7.8
5	Hawaiian	18,610	5.7
6	Chinese	17,360	5.3
7	Korean	17,276	5.3
8	Samoa	12,795	3.9
9	Vietnamese	9,418	2.9
10	Cantonese	7,890	2.4
11	Marshallese	6,930	2.1
12	Mandarin	5,650	1.7
13	German	4,615	1.4
14	Trukese	4,475	1.4
15	French	4,405	1.3
16	Micronesia	3,965	1.2
17	Tongan	3,860	1.2
18	Bisayan	3,005	0.9
19	Laotian	2,279	0.7
20	Thai	1,920	0.6
21	Portuguese	1,915	0.6

Source: U.S. Census Bureau, 2009-2013 American Community Survey 5-Year Estimates; compiled by the Hawaii State Department of Business, Economic Development & Tourism, Research and Economic Analysis Division.

Background: Hawaii's Language Access Law

The purpose of Hawaii's Language Access Law is to:

“affirmatively address, on account of national origin, the language access needs of limited English proficient persons [LEP].”



Office of Language Access

- ▶ Established in 2007.
 - ▶ Provides oversight and central coordination.
 - ▶ Provides technical assistance.
 - ▶ Reviews and monitors language access plans for compliance.
 - ▶ Receives, investigates and resolves complaints.
 - ▶ Provides multilingual signage.
 - ▶ Operates a language access resource center – including a publicly available roster of language service providers.
 - ▶ Assisted by a 17-member language access advisory council.
- 

Background: Hawaii's Language Access Law

State agencies and covered entities are required to:

- ▶ Assess the need for providing language services and take “reasonable steps” to ensure “meaningful” access to state services, programs and activities.
- ▶ Provide oral language services in a “timely” and “competent” manner
- ▶ Provide written translations of “vital” documents
- ▶ Establish a “language access plan”

*A “**covered entity**” (revised) is defined as “a person organization receiving state financial assistance, including grants, purchase-of-service contracts, or any other arrangements by which the State provides or otherwise makes available assistance in the form of funds to the person or organization for the purpose of rendering services to the public. *(Some exemptions.)*”

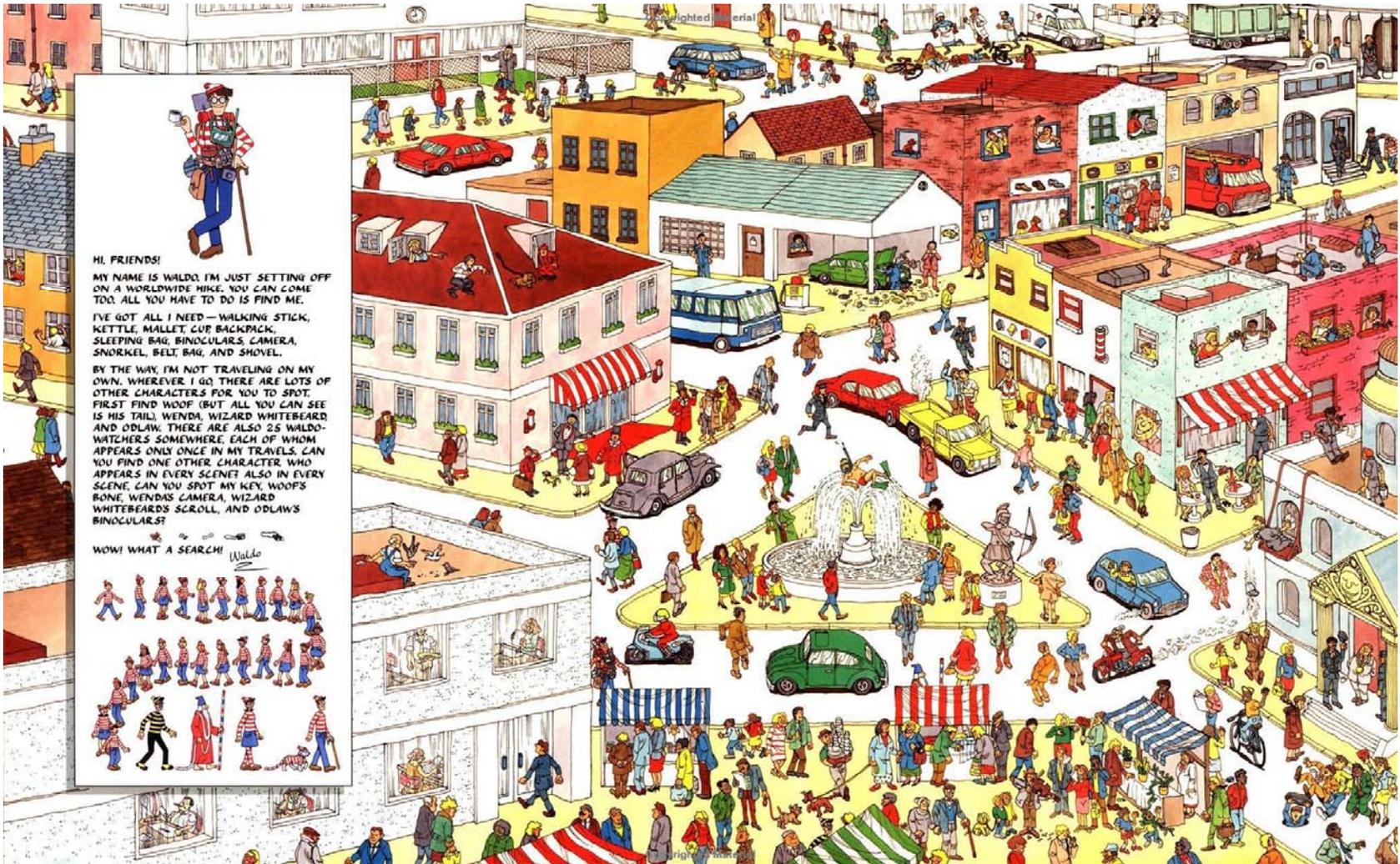


What do you need to know about Language Access Law?

To help us, let's look for this guy, and his friends . . .

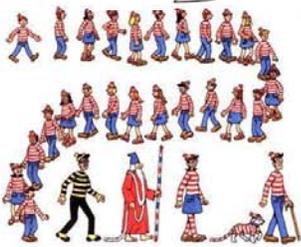


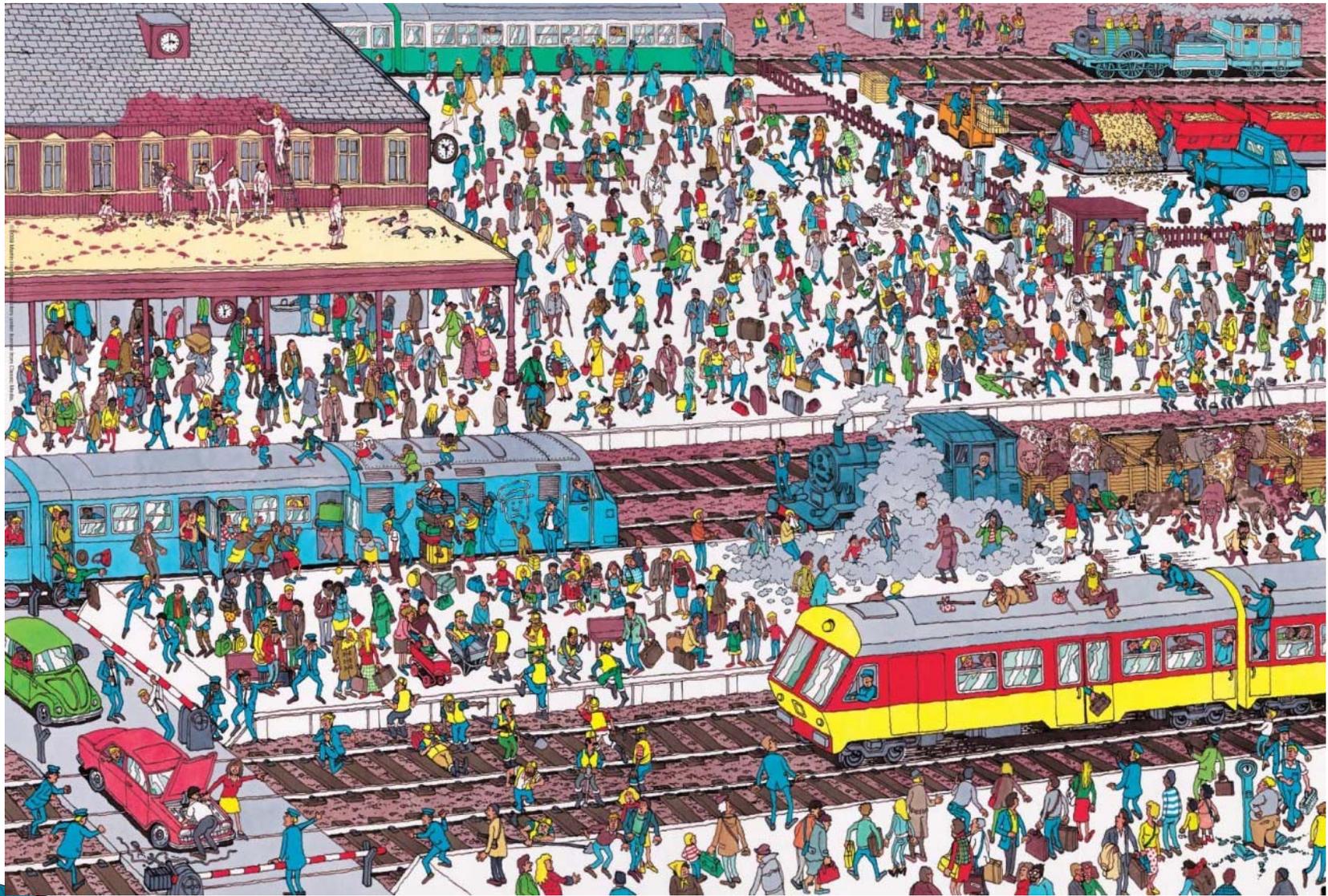
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HI, FRIENDS!
 MY NAME IS WALDO. I'M JUST SETTING OFF ON A WORLDWIDE MIKE. YOU CAN COME TOO. ALL YOU HAVE TO DO IS FIND ME.
 I'VE GOT ALL I NEED — WALKING STICK, KETTLE, MALLET, CUP, BACKPACK, SLEEPING BAG, BINOCULARS, CAMERA, SNORKEL, BELT BAG, AND SHOVEL.
 BY THE WAY, I'M NOT TRAVELING ON MY OWN. WHEREVER I GO, THERE ARE LOTS OF OTHER CHARACTERS FOR YOU TO SPOT. FIRST FIND WOOF (BUT ALL YOU CAN SEE IS HIS TAIL). WENDA, WIZARD WHITEBEARD, AND ODLAW. THERE ARE ALSO 25 WALDO-WATCHERS SOMEWHERE, EACH OF WHOM APPEARS ONLY ONCE IN MY TRAVELS. CAN YOU FIND ONE OTHER CHARACTER WHO APPEARS IN EVERY SCENE? ALSO IN EVERY SCENE, CAN YOU SPOT MY KEY, WOOF'S BONE, WENDAS CAMERA, WIZARD WHITEBEARD'S SCROLL, AND ODLAW'S BINOCULARS?

WOW! WHAT A SEARCH!







Action #07

Look closer

Sometimes it pays to take your time. To look closer, to find the things no one else does. It makes you good at Where's Wally? It makes you good at life.

Ten of our actions have wandered into Wally's world. Can you find them? (And him).



Can you “find” the following language access principles, concepts & tools which are in BOTH state and federal language access law?



WALDO = MEANINGFUL LANGUAGE ACCESS

(our star)



HRS sec. 321C-3 provides:

“Each state agency and all covered entities shall take reasonable steps to ensure meaningful access to services, programs, and activities by limited English proficient persons[.]” in the form of oral interpretation or written translations.



WENDA = LANGUAGE ACCESS PLAN



HRS sec. 321C-4(a) provides:

“Each state agency and covered entity shall establish a **plan for language access.**”

Each state agency is required to file its plan with the Office of Language Access every two years.

- Does your office have a language access plan?
- Have you filed it with OLA?
- Is it updated every 2 years?



WIZARD WHITEBEARD = FOUR FACTOR ANALYSIS

HRS sec. 321C-3(a) provides:

Meaningful language access is to be “determined by a *totality of circumstances*, including the following factors:

- (1) The number or proportion of limited English proficient persons served or encountered in the eligible service population;
- (2) The frequency with which limited English proficient persons come in contact with the services, programs, or activities;
- (3) The nature and importance of the services, programs, or activities; and
- (4) The resources available to the State or covered entity and the costs.





WOOF=

EXECUTIVE ORDER 13166

HRS sec. 321C-1 provides:

language access services are to “be guided by **Executive Order 13166** and succeeding provisions of federal law, regulation, or guidance.”



ODLAW = SIMILAR
“ACCESS” REQUIREMENTS
IN LAW & POLICY

BUT NOT STEMMING FROM
“NATIONAL ORIGIN”



Find the BONUS ITEMS

Scroll, Key, Bone, Camera, Binoculars



WALDO's KEY = **Prohibition against** **National Origin** **Discrimination**



HRS sec. 321C-1 provides: “The purpose of this chapter is to affirmatively address, on account of national origin, the language access needs of limited English proficient persons.”

The “KEY” idea behind meaningful language access.



WOOF'S BONE =
TITLE VI of the CIVIL
RIGHTS ACT OF 1964



HRS sec. 321C-1 references Executive Order 13166,
as guiding law; which is premised upon Title VI of
the Civil Rights Act of 1964.

Woof (aka Executive Order 13166) 'feeds' off Title VI - its bone.



WIZARD WHITEBEARD'S SCROLL



= VITAL DOCUMENTS



HRS sec. 321C-2 defines “vital documents” as “printed documents that provide important information necessary to access or participate in services, programs, and activities of a state agency or covered entity, including but not limited to applications, outreach materials, and written notices of rights, denials, losses, or decreases in benefits or services.”

HRS sec. 321C-3(c) requires that each state agency and covered entity “shall provide written translations of vital documents” to LEP persons who seek access to their services – in accordance with certain statutory formulas and the four-factor analysis.



WENDA'S CAMERA = DATA & EVALUATION



OLA requires agencies to report to it the number and nature of its LEP encounters, and the types of language services it provides. This process of collecting **DATA & EVALUATION** helps the agency in developing an adequate and appropriate **language access plan** and to engage in a 'informed' 4-factor analysis.



ODLAW 'S BINOCULARS=

Other “ACCESS” legislation



Many similarities in application and enforcement,
though stemming from a different protected
category.



OLA's (not-so) subliminal messages:

- ▶ OLA does not have interpreters or translators on staff.
- ▶ OLA does not handle the procurement of interpreters or translations for your office. (Only for its own office's services.)
- ▶ OLA's purview extends to *all* state and state-funded agencies, not just the Department of Health, to which it is now *administratively attached*.
- ▶ OLA does not enforce Title VI – the federal government does.



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