



**LAWYERS FOR
CIVIL RIGHTS
BOSTON**



**Massachusetts
APPLESEED**

**Center for
Law & Justice**

July 14, 2021

Via HHS online portal and electronic mail

Paul Jacobsen, Acting Regional Director and Executive Officer
U.S. Department of Health and Human Services, Region One
John F. Kennedy Federal Building
Government Center - Room 2100
Boston, MA 02203

Susan Rhodes, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services, Region One
John F. Kennedy Federal Building
Government Center - Room 1875
Boston, MA 02203

Centralized Case Management Operations
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Room 509F HHH Bldg.
Washington, D.C. 20201
OCRComplaint@hhs.gov

Dear Acting Regional Director Jacobsen and Regional Manager Rhodes:

Enclosed please find our Title VI complaint filed on behalf of Haitian-Americans United, Greater Boston Latino Network, and Jane Doe against the Massachusetts Department of Children and Families (DCF) for its failure to provide federally mandated language access to its limited English proficient (LEP) clients. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, prohibits discrimination in federally assisted programs on account of race, color, or national origin. As detailed in the attached documents, this complaint is being filed within 180 days of an act or omission that violated Title VI and falls within the jurisdiction of HHS because DCF is a recipient of considerable grant funding from the agency.

Lawyers for Civil Rights and the Massachusetts Appleseed Center for Law and Justice, our clients, and their membership stand ready to assist in this investigation. For further information, please contact us at (617) 988-0624.

Sincerely,

Lauren Sampson
Erin Fowler
Oren Sellstrom

Deborah Silva
Massachusetts Appleseed Center for Law and Justice

61 BATTERYMARCH STREET • 5TH FLOOR • BOSTON, MA 02110
(617) 482-1145 (TELEPHONE) • (617) 482-4392 (FACSIMILE)
WWW.LAWYERSCOM.ORG



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Lawyers for Civil Rights

Counsel for Complainants

cc: Linda Spears, Commissioner of Massachusetts Department of Children and Families
Haitian-Americans United
Greater Boston Latino Network
Iris Coloma-Gaines and Susan Elsen, Attorneys at Massachusetts Law Reform Institute
Michael Dsida, Deputy Chief Counsel at Committee for Public Counsel Services

**BEFORE THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN
SERVICES**

HAITIAN-AMERICANS UNITED, INC.,)
GREATER BOSTON LATINO NETWORK,)
and JANE DOE,)

Complainants,)

v.)

MASSACHUSETTS DEPARTMENT OF)
CHILDREN AND FAMILIES,)

Respondent.)

**COMPLAINT UNDER TITLE VI OF
THE CIVIL RIGHTS ACT OF 1964**

I. INTRODUCTION

The Commonwealth of Massachusetts was quick to lambast the Trump Administration’s family separation policy, highlighting the need to keep immigrant families together.¹ Yet in its own backyard, the Massachusetts Department of Children and Families—one of the largest agencies in the state—has systematically discriminated against and separated immigrant families. For years, the Department of Children and Families (DCF) has failed to provide federally mandated language access to their limited English proficient (LEP) population. As a result, child welfare decisions, including whether to remove a child from their home, often turn not on what is in the best interests of the child, but rather on whether or not the parent speaks English.

DCF’s failure to provide adequate language access to LEP parents directly results in the separation of non-English speaking families across the Commonwealth. As a recent report by the Massachusetts Appleseed Center for Law and Justice documents in detail,² when DCF fails to prioritize language access, LEP parents are unable to comprehend or participate in DCF’s processes.³ LEP families—who are already at a disadvantage due to poverty, racism, and cultural bias—cannot communicate with DCF workers and advocate for their families. Often LEP parents are then deemed “unengaged” or “willfully non-compliant.”⁴ As a result, LEP families

¹ See, e.g., Press Release, OFFICE OF ATTORNEY GENERAL MAURA HEALEY, *AG Healey to Sue Trump Administration Over Illegal Family Separation Policy* (June 21, 2018), <https://www.mass.gov/news/ag-healey-to-sue-trump-administration-over-illegal-family-separation-policy>.

² MASSACHUSETTS APPLESEED CENTER FOR LAW & JUSTICE, *FAMILIES TORN APART: LANGUAGE-BASED DISCRIMINATION AT THE MASSACHUSETTS DEPARTMENT OF CHILDREN AND FAMILIES VIII* (2021) [hereinafter *FAMILIES TORN APART*] (attached hereto as Exhibit A). For this report, Massachusetts Appleseed conducted over 25 qualitative interviews with members of community and legal services organizations who work closely with DCF-involved LEP families between February 2019 and October 2020. *Id.* at IV.

³ *Id.* at VIII.

⁴ *Id.*

face an increased likelihood of separation compared to their English-speaking counterparts.⁵ In fact, Latinx families are more overrepresented in foster care in Massachusetts than in any other state.⁶

This is unconscionable—and a violation of well-established federal law. Specifically, these practices violate Title VI of the Civil Rights Act of 1964 (Title VI) and its accompanying regulations, which prohibit federal funding recipients from engaging in unjustified practices that disproportionately harm people of color and immigrants. As such, Title VI requires federally funded agencies to ensure LEP persons have meaningful access to programs and activities. DCF has failed to meet these obligations.

DCF has been on notice of its civil rights violations for years and has had ample opportunity to remedy its discriminatory practices. In 2018, the United States Department of Health and Human Services' (HHS) Office of Civil Rights (OCR) investigated a Title VI complaint made by a Spanish-speaking person who had received inadequate language assistance from DCF. HHS OCR's investigation brought to light DCF's woefully inadequate usage of interpreters for LEP families. Following the investigation, HHS OCR issued a set of voluntary compliance measures intended to bring DCF's language access practices in line with federal law.⁷

But DCF refused to comply voluntarily. In the absence of ongoing monitoring and enforcement, DCF has continued to deprive non-English speaking families of meaningful language access, and consequently of access to their children. Complainants therefore ask HHS

⁵ *Id.*

⁶ Shira Schoenberg, *Why are Latinos so Overrepresented in the State Child Welfare system?*, COMMONWEALTH MAG. (Feb. 21, 2021), <https://commonwealthmagazine.org/courts/why-are-latinos-so-overrepresented-in-the-state-child-welfare-system/>.

⁷ FAMILIES TORN APART, *supra* note 2, at Appendix E.

to revisit this pressing issue and take the necessary steps to remedy the discrimination. Specifically, Complainants ask HHS to: (1) suspend any further federal funding disbursements until DCF adopts and implements a comprehensive remediation plan for meaningful access by LEP individuals; (2) working in concert with other federal agencies, including but not limited to the Department of Justice, ensure that DCF achieves full compliance with its federal obligation to provide meaningful access to LEP individuals through a conciliation agreement and remediation plan, which must include reporting and monitoring mechanisms to ensure HHS oversight; and (3) provide all other necessary and appropriate relief that justice may require.

II. PARTIES

a. The Complainants

Complainants respectfully submit this complaint on behalf of their members and constituents, including LEP and immigrant families against whom DCF has systematically discriminated for decades.

Haitian-Americans United (HAU) is a nonprofit, membership organization committed to improving the quality of life of Haitians and Haitian-Americans. Many of HAU's members are Haitian Creole speakers who are LEP or have LEP family members, and many interact or have interacted with DCF. Due to DCF's failures, HAU has been systemically forced to divert time and resources to supporting its LEP members in their contacts with DCF, including but not limited to providing community interpreters or translating documents that members have received in English. In this way, HAU has been directly harmed by DCF's discriminatory practices and has a strong interest in ensuring its members receive adequate language resources.

Greater Boston Latino Network (GBLN) is a coalition of Latinx-led and Latinx-serving community-based organizations whose goal is to increase the visibility, impact, and voice of the Latinx community. As part of this work, GBLN seeks to ensure immigrant families have

adequate language access to government resources and programs. GBLN's members serve immigrant and LEP families who struggle to interact with DCF. As a result of DCF's discriminatory practices, GBLN and its members have been forced to divert resources towards advocating for Latinx LEP families.

Jane Doe is a Latinx resident of Methuen, Massachusetts and the mother of a child with a diagnosis of autism. Her primary language is Spanish and her English proficiency is limited. The Lawrence Area DCF office investigated Jane Doe's family after her child's school district made allegations of child neglect. Throughout the investigation, DCF did not provide any oral interpretation in conversations with Jane Doe, nor did they translate a single document sent to Jane Doe into Spanish.

b. The Department of Children and Families

DCF is Massachusetts' child welfare agency and a subdivision of the Commonwealth's Executive Office of Health and Human Services. It is one of the largest and most highly funded agencies in the Commonwealth, with an annual budget of over \$1 billion.⁸ DCF is a powerful institution, endowed with the authority to terminate parental rights—a result that is sometimes referred to as the “civil death penalty.”⁹

III. JURISDICTION

Title VI of the Civil Rights Act of 1964 provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be

⁸ MASSACHUSETTS DEPARTMENT OF CHILDREN AND FAMILIES, ANNUAL REPORT FY 2020 (Oct. 1, 2020), <https://www.mass.gov/doc/dcf-annual-reportfy2020/download> [hereinafter DCF ANNUAL REPORT FY 2020].

⁹ See, e.g., Stephanie N. Gwillim, Comment, *The Death Penalty of Civil Cases: The Need for Individualized Assessment & Judicial Education When Terminating Parental Rights of Mentally Ill Individuals*, 29 ST. LOUIS U. PUB. L. REV. 341, 344 & n.13 (2009).

denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”¹⁰ Acceptance of federal funds creates an obligation on the recipient to comply with Title VI and the federal agency’s implementing regulations.¹¹ As explained below, DCF receives federal assistance from HHS, making it subject to the requirements of Title VI and HHS’s implementing regulations. Indeed, HHS previously asserted jurisdiction over DCF in a 2018 investigation into DCF’s language access policies.¹² HHS also asserted jurisdiction over DCF as recently as November 2020 to reach a settlement in relation to its findings that DCF violated Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.¹³ In addition, this complaint is timely and satisfies all other jurisdictional requirements.

a. Timeliness

As with any application for federal funding, the recipient, DCF, is required to submit an assurance that it will comply with all funding requirements.¹⁴ Importantly, the recipient is expected to adhere to all regulations, such as the non-discrimination requirements mandated by Title VI, throughout the duration of the project in which federal funds are used.¹⁵ This complaint alleges that Respondents are in continuing violation of Title VI. At present, and as detailed below, DCF discriminates against LEP persons by failing to provide adequate professional interpretation and failing to properly translate vital documents into languages other than English. This complaint is therefore timely because DCF’s discriminatory rules and practices are in effect

¹⁰ 42 U.S.C. § 2000d.

¹¹ 45 C.F.R. § 80.4(a).

¹² FAMILIES TORN APART, *supra* note 2, Appendix E.

¹³ Agreement Between United States Department of Justice, United States Department of Health and Human Services, and Massachusetts Department of Children and Families (November 19, 2020), https://www.ada.gov/mdcf_sa.html (asserting jurisdiction because “DCF is a recipient of financial assistance from HHS, including grants under Titles IV-B and IV-E of the Social Security Act . . .”).

¹⁴ *See* 45 C.F.R. § 80.4(a).

¹⁵ *Id.*

each and every day, and its discriminatory acts under those rules are ongoing.¹⁶ Further, as set forth below, this complaint is filed within 180 days of some of the most recent and egregious examples of this continuing violation, including a letter regarding DCF’s findings against Jane Doe sent to her in English, and only English, on March 3, 2021 (attached hereto as Exhibit B).

b. DCF’s Receipt of Federal Funding

DCF is a recipient of considerable grant funding from HHS. HHS’s Title VI regulations define a “recipient” as “any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary.”¹⁷

DCF has directly received at least \$2.4 billion in federal funds from HHS from Fiscal Year 2008 to 2021.¹⁸ For example, on October 1, 2019, DCF received \$6,454,645 in funding from HHS in connection with the Marylee Allen Promoting Safe and Stable Families Program.¹⁹ On that same day, HHS also granted DCF \$311,888 for Children’s Justice programs²⁰ and \$3,391,500 for Adoption and Legal Guardianship Incentive Payments.²¹ On October 1, 2020

¹⁶ See 45 C.F.R. § 80.7(b).

¹⁷ 45 C.F.R. § 80.13(i).

¹⁸ *Recipient Profile, Massachusetts Department of Children and Families*, USA SPENDING (last visited Jun. 14, 2021), <https://www.usaspending.gov/recipient/bb60d015-441b-b687-de9e-cb7a25cfdd34-C/latest>.

¹⁹ *Award Profile, Grant Summary: Marylee Allen Promoting Safe and Stable Families Program*, USA SPENDING.GOV (last visited Mar. 4, 2021), https://www.usaspending.gov/award/ASST_NON_2001MAFFTA_7590.

²⁰ *Award Profile, Grant Summary: Children’s Justice Grants to States*, USA SPENDING.GOV (last visited Mar. 4, 2021), https://www.usaspending.gov/award/ASST_NON_2001MACJA1_7590.

²¹ *Award Profile, Grant Summary: Adoption and Legal Guardianship Incentive Payments*, USA SPENDING.GOV (last visited Mar. 4, 2021), https://www.usaspending.gov/award/ASST_NON_2001MAAIPP_7590.

HHS granted DCF \$4,512,128 for Community-Based Child Abuse Prevention Grants, an award set to terminate on September 30, 2025.²² In addition to federal reimbursement for expenditures made by DCF under, for example, Title IV-E and Title IV-B of the Social Security Act, which flows into the Commonwealth's general fund before being disbursed to the state agency, DCF presently receives at least fifteen grants from HHS that are not scheduled to terminate until on or after September 30, 2022. These payments—and many others—subject DCF to the obligations of Title VI and its accompanying regulations and place the agency squarely within the jurisdiction of HHS.

c. Other Jurisdictional and Prudential Considerations

This complaint satisfies all other jurisdictional criteria under Title VI and HHS's implementing regulations. Specifically, this complaint is in writing, describes the alleged discriminatory acts, identifies the challenged practice, and is filed with HHS by HAU, GBLN, and Jane Doe on behalf of LEP individuals who have experienced adverse impacts as a result of DCF's violations of Title VI.²³

IV. LEGAL ANALYSIS

a. Title VI and Its Accompanying Regulations Require DCF to Ensure Meaningful Access to Its Programs and Activities by LEP Individuals.

i. Under Title VI and Its Accompanying Regulations, Failure to Ensure Meaningful Access to LEP Individuals is National Origin Discrimination.

Title VI prohibits discrimination against LEP persons in federally funded programs and activities. The statutory text provides that “[n]o person in the United States shall, on the ground

²² *Award Profile, Grant Summary: Community-Based Child Abuse Prevention Grants*, USASPENDING.GOV (last visited Jun. 14, 2021), https://www.usaspending.gov/award/ASST_NON_2101MABCC6_7590.

²³ 45 C.F.R. § 80.7(b).

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.”²⁴

Discrimination against LEP individuals is illegal under this framework. Courts have consistently held that discrimination against LEP individuals is prohibited under Title VI as a form of discrimination based on national origin. *See, e.g., Lau v. Nichols*, 414 U.S. 563, 567–69 (1974); *see also Colwell v. Dep’t of Health & Hum. Servs.*, 558 F.3d 1112, 1116–17 (9th Cir. 2009) (noting *Lau* held that “discrimination against LEP individuals was discrimination based on national origin in violation of Title VI”); *United States v. Maricopa Cnty., Ariz.*, 915 F. Supp. 2d 1073, 1079 (D. Ariz. 2012) (“[L]ongstanding case law, federal regulations[,] and agency interpretation of those regulations hold language-based discrimination constitutes a form of national origin discrimination under Title VI.”); *accord* Enforcement of Title VI-National Origin Discrimination Against Persons with Limited English Proficiency, 65 Fed. Reg. 50,123, 50,124 (Aug. 11, 2000) (noting that the Department of Justice has “consistently adhered to the view that the significant discriminatory effects that the failure to provide language assistance has on the basis of national origin, places the treatment of LEP individuals comfortably within the ambit of Title VI and agencies’ implementing regulations” (citing 28 C.F.R. § 42.405(d)(1))).

The scope of Title VI is broad. It prohibits discrimination in any program or activity receiving federal financial assistance, which includes “all of the operations of . . . a department, agency, . . . or other instrumentality of a State or of a local government . . . any part of which is extended Federal financial assistance.”²⁵

²⁴ 42 U.S.C. § 2000d.

²⁵ 42 U.S.C. § 2000d-4a.

Although section 601 of Title VI prohibits intentional discrimination, section 602 allows federal agencies to proscribe conduct that has a disparate impact on protected groups and individuals.²⁶ Pursuant to HHS regulations, recipients of federal funding “may not...utilize criteria or methods of administration which have the *effect* of subjecting individuals to discrimination”²⁷ Criteria and methods utilized may not “have the *effect* of defeating or substantially impairing accomplishment of the objectives of the program as respect [*sic*] individuals of a particular . . . national origin.”²⁸

The HHS Office of Civil Rights (OCR) is authorized to secure Title VI compliance. HHS regulations require OCR to conduct a prompt investigation when information indicates a recipient’s possible failure to comply with Title VI.²⁹ If there “appears to be a failure or threatened failure to comply” and “noncompliance or threatened noncompliance cannot be corrected by informal means,” OCR may effectuate compliance through the suspension or termination of federal financial assistance.³⁰ OCR may also use other means authorized by law, such as referring the matter to the U.S. Department of Justice with a recommendation that appropriate proceedings be brought.³¹

ii. *DCF Is Required to Take Reasonable Steps to Ensure Meaningful Access to Its Programs and Activities by LEP Individuals.*

To effectuate the mandates of Title VI, all recipients of federal financial assistance from HHS are required “to take reasonable steps to ensure meaningful access to their programs and

²⁶ *Alexander v. Sandoval*, 532 U.S. 275, 280–81 (2001).

²⁷ 45 C.F.R. § 80.3(b)(2) (emphasis added).

²⁸ *Id.* (emphasis added).

²⁹ *See* 45 C.F.R. § 80.7(c).

³⁰ 45 C.F.R. § 80.8(a).

³¹ *Id.*

activities by LEP persons.”³² To determine whether recipients are taking reasonable steps to ensure meaningful access, HHS uses a four-factor test³³ that balances:

- 1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;
- 2) The frequency with which LEP individuals come in contact with the program;
- 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 grantee/recipient and costs.

Under the HHS Language Access Guidance,³⁴ this four-factor analysis drives the appropriate mix of oral and written language services that recipients are required to provide. The most pertinent guidance on oral interpretation provides the following:

- Interpreters must be competent. Competency “requires more than self-identification as bilingual.” Interpreters must demonstrate “proficiency in and ability to communicate information accurately in both English and in the other language.” Competency requires knowledge in “both languages of any specialized terms or concepts peculiar to the recipient’s program or activity.”

³² U.S. DEP’T OF HEALTH AND HUM. SERVICES, GUIDANCE TO FEDERAL FINANCIAL ASSISTANCE RECIPIENTS REGARDING TITLE VI PROHIBITION AGAINST NATIONAL ORIGIN DISCRIMINATION AFFECTING LIMITED ENGLISH PROFICIENT PERSONS [hereinafter HHS LANGUAGE ACCESS GUIDANCE], <https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-vi/index.html>. The HHS Language Access Guidance was issued pursuant to Executive Order 13166. To help effectuate the dictates of Title VI as expressed in *Lau v. Nichols*, 414 U.S. 563, 566–69 (1974) and other federal court decisions, then-President Bill Clinton issued Executive Order 13166, “Improving Access to Persons with Limited English Proficiency.” Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000). In August 2000, President Clinton ordered agencies providing federal financial assistance to draft Title VI guidance “specifically tailored to its recipients that is consistent with LEP Guidance issued by the Department of Justice.” *Id.* As set forth in the Department of Justice’s LEP Guidance referenced in the Executive Order, the Guidance did not “create new obligations, but rather, clarifie[d] existing Title VI responsibilities” clarified, for example, by the Supreme Court in *Lau*. Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency; Policy Guidance, 65 Fed. Reg. 50,123, 50,123 (Aug. 16, 2000).

³³ HHS LANGUAGE ACCESS GUIDANCE, *supra* note 32.

³⁴ *Id.*

- Where “individual rights depend on precise, complete, and accurate interpretation . . . particularly in the context of administrative proceedings, the use of certified interpreters is strongly encouraged.”
- Interpreters must understand and follow “confidentiality and impartiality rules . . . to the extent their position requires.”
- “To be meaningfully effective, language assistance should be timely.” Language assistance “should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person.”
- Use of family members (especially children) as interpreters can raise issues of competency and accuracy. Issues of “confidentiality, privacy, or conflict of interest may also arise.” LEP individuals may feel uncomfortable revealing or describing “sensitive, confidential, or potentially embarrassing . . . information.” Such informal interpreters may have “an undisclosed conflict of interest, such as the desire to protect themselves or another perpetrator in a domestic violence matter.” For HHS recipient programs and activities, “this is particularly true, for example, in . . . child or adult protective service investigations.”

The four-factor analysis set forth in the Title VI HHS Language Access Guidance similarly informs to what extent there is a need to translate “vital written materials” into the language of “each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient’s program.”³⁵ The most pertinent guidance on written translations includes the following:

- The languages spoken by the LEP individuals with whom the recipient has contact “determine the languages into which vital documents should be translated.”
- Whether or not a document is “vital” depends on “the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.”
- “Awareness of rights or services” is extremely important. “Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access.”
- Examples of vital written materials include, among others: “Consent and complaint forms”; “[i]ntake forms with the potential for important consequences”; “[w]ritten notices of

³⁵ *Id.*

eligibility criteria, rights, denial, loss, or decreases in benefits or services, *actions affecting parental custody or child support*, and other hearings.”³⁶

b. DCF Has Systematically Failed to Provide Meaningful Access to LEP Parents and Children Involved in Protective Intakes and Care and Protection Cases.

DCF’s contact with families in protective intakes and in care and protection cases³⁷ starts with reports of neglect or abuse (51As).³⁸ After screening the report, DCF employees complete a series of investigations designed to result in an agreement with the family to remedy their problematic actions or behaviors.³⁹ If parents do not complete the requirements of the agreement, DCF may seek permanent custody of the child through a legal process in the Juvenile Court or the Probate and Family Court.⁴⁰ Thus, when DCF touches a family’s life, it does so in a very invasive and profound way. In light of this power, the need to ensure that families have adequate language access and support is critical.

The four-factor analysis in the Title VI HHS Language Access Guidance sets a high bar for reasonable steps that DCF is required to take to ensure meaningful language access to LEP parents and children.

First, the number or proportion of LEP persons eligible to be served or likely to be encountered by DCF is significant. Around 23.8 % of the Massachusetts population above the

³⁶ *Id.* (emphasis added).

³⁷ DCF provides a wider variety of services, including protective intakes and care and protection cases, where DCF investigates allegations of neglect and abuse, works with parents to address issues, and can seek custody of children if necessary. *See generally* FAMILIES TORN APART, *supra* note 2, at 12–16 (describing protective intakes and care and protection cases).

³⁸ *Id.*

³⁹ *Id.* at 12–14.

⁴⁰ *Id.* at 16.

age of five speak languages other than English at home.⁴¹ Just under 10% of the adult population in the state is LEP.⁴²

Second, the frequency with which LEP individuals come in contact with DCF is high. According to DCF's own data, approximately 10% of its total "consumers" report primary languages other than English.⁴³ Spanish is by far the most significant primary language after English. Roughly 6.9% of those served by DCF in Q2 FY 2021 reported Spanish as their primary language.⁴⁴ Other notable primary languages include Portuguese, Haitian Creole, and Cape Verdean Creole.⁴⁵ Certain area offices have high percentages of LEP clients in specific languages. For example, in Q2 FY 2021, 19.9% of those served by DCF (357 individuals) in Lawrence reported Spanish as their primary language.⁴⁶ Similarly, 5.6% (134 individuals) of those served by DCF in Framingham reported Portuguese as their primary language,⁴⁷ 5.3% (107 individuals) reported Cape Verdean Creole in Brockton,⁴⁸ and 3.1% (51 individuals) reported Haitian Creole in the Metro North region.⁴⁹

Furthermore, LEP parents and children involved in DCF's protective intakes and in care and protection cases typically have repeated interactions with DCF. Interactions happen over the

⁴¹ QUICKFACTS: MASSACHUSETTS, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/MA>.

⁴² THE BOSTON PLANNING & DEV. AGENCY, DEMOGRAPHIC PROFILE OF ADULT LIMITED ENGLISH SPEAKERS IN MASSACHUSETTS 3 (2019), <http://www.bostonplans.org/getattachment/dfe1117a-af16-4257-b0f5-1d95dbd575fe>.

⁴³ MASS. DEP'T OF CHILDREN AND FAMILIES, QUARTERLY PROFILE – FY'2021, Q2 1 (figure calculated by combining data for children, youths, and adults) [hereinafter DCF QUARTERLY PROFILE FY'2021, Q2], <https://www.mass.gov/doc/area-profile-fy2021-q2/download>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 18.

⁴⁷ *Id.* at 15.

⁴⁸ *Id.* at 23.

⁴⁹ *Id.* at 20.

phone and in person at DCF offices, family homes, adoptive homes, foster homes, group homes, and the like.⁵⁰ Interactions also occur in other community settings, such as courts, schools, daycare centers, and medical facilities. For example, when DCF receives an allegation of neglect or abuse, DCF caseworkers visit the family's home and collect information.⁵¹ If DCF finds reasonable cause to believe the allegation, a DCF social worker will initiate a family assessment and planning process, which includes at least three face-to-face interactions with the family. If a child is removed from the home, DCF will arrange visitation for the parents. If the child remains at home, DCF staff will conduct home visits. DCF will also meet with parents periodically to review and assess progress on the case. The frequency with which LEP individuals come in contact with DCF is thus very high.

As to the third factor of HHS's four-factor analysis, the nature and importance of the program, there can be no denying that issues of whether to separate children from their parents are of paramount importance. The "interest of parents in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests recognized by [the Supreme Court]."⁵² In that sense, DCF's work in care and protection investigations implicates the most fundamental rights of parents protected by the Due Process Clause of the United States Constitution's Fourteenth Amendment. Utmost care and caution are therefore needed on DCF's part to ensure that it does not erroneously deny LEP parents their constitutional rights.

⁵⁰ FAMILIES TORN APART, *supra* note 2, at 34.

⁵¹ *Id.* at 12–16.

⁵² *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

Moreover, separation from parents can be extremely traumatic for children.⁵³ Children separated from parents experience significant loss, grief, and confusion.⁵⁴ Separation combined with the lack of permanency through reunification or adoption is associated with increased likelihood of developing behavioral problems, including the likelihood of encountering the juvenile justice system.⁵⁵ Great care is needed to avoid the trauma that children might experience from being separated due to miscommunication resulting from inadequate language access rather than actual abuse and neglect. Given what is at stake for children and parents alike in these proceedings, it is unsurprising that the HHS Language Guidance specifically identifies “actions affecting parental custody” as a context in which translation of vital documents is critical and the provision of competent interpretation is necessary to comply with Title VI.⁵⁶

Finally, as to the fourth prong, DCF has substantial resources available at its disposal to provide adequate language access. DCF’s annual budget for FY 2020 was roughly \$1.06 billion.⁵⁷ DCF has extensive statewide coverage, with one central office, five regional offices, and 29 area offices throughout Massachusetts.⁵⁸ As of July 2020, DCF’s staff consisted of approximately 4,236 full-time employees.⁵⁹

Applying the four-factor analysis, Title VI and the accompanying regulations require DCF to provide robust oral interpretation and written translation services. DCF has systematically failed to provide the requisite level of services to LEP parents and children.

i. DCF Has Failed to Provide Adequate Oral Interpretation Services.

⁵³ FAMILIES TORN APART, *supra* note 2, at 51–53.

⁵⁴ MONIQUE MITCHELL, THE NEGLECTED TRANSITION: BUILDING A RELATIONAL HOME FOR CHILDREN ENTERING FOSTER CARE 12 (2016).

⁵⁵ DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 18–19 (2002).

⁵⁶ HHS LANGUAGE ACCESS GUIDANCE, *supra* note 32.

⁵⁷ DCF ANNUAL REPORT FY 2020, *supra* note 8, at 40.

⁵⁸ FAMILIES TORN APART, *supra* note 2, at 83.

⁵⁹ DCF ANNUAL REPORT FY 2020, *supra* note 8, at 42.

DCF has failed to provide adequate oral interpretation services to LEP parents and children involved in its protective intakes and in care and protection cases. As detailed below, these failures take four primary forms: (1) the regular conduct of home visits and other interactions with LEP families without professional interpreters; (2) the cancellation of or interference with parenting time because of the agency's own failure to provide interpreters; (3) the failure to hire and train interpreters with specific training in child welfare; and (4) the failure to engage interpreters who conform to professional standards of impartiality.⁶⁰

DCF's myriad failures regarding the provision of oral interpretation pervade the case of Complainant Jane Doe. Although she speaks some English, Jane Doe's proficiency is limited and her primary language is Spanish. She uses an interpreter for conversations regarding important, legal, medical, or technical matters, such as her child's special education team meetings or medical records. She also requests to have his Individualized Education Plan and other special education documents provided to her in Spanish. DCF was aware that Jane Doe's English proficiency is limited. Indeed, Jane Doe's DCF case file contains numerous emails between her son's school district, which made the initial report of child neglect to DCF, and Jane Doe, where the district sent emails in both English and Spanish and Jane Doe responded only in Spanish.⁶¹ Furthermore, DCF's case file specifically notes that Jane Doe's primary language is Spanish.⁶²

⁶⁰ Even the DCF Office of the Ombudsman, which provides oversight over DCF, is not accessible to many LEP individuals. The Ombudsman hotline is only available in English and Spanish. A contact form listed on the official website is only available in English. *See* DCF OMBUDSMAN CONTACT FORM, <https://powerforms.docusign.net/91f5c815-077c-418b-9601-9a3666ca4901?accountId=5651e352-bfe3-457b-9b9d-452d6ab6d80e&env=na3> (last visited July 13, 2021).

⁶¹ DCF CASE FILE at 11–19. These documents are on file with Lawyers for Civil Rights and can be made available to HHS investigators.

⁶² *Id.* at 10.

Accordingly, when DCF opened an investigation into Jane Doe and her husband following allegations of neglect by her son’s school district, the agency was required—under its own Language Access Plan and Title VI—to provide an interpreter. However, DCF failed to make an interpreter available for conversations with her, even when Jane Doe requested one for the caseworker’s visit to her home. Indeed, the only time interpretation was provided was for a Zoom call with Jane Doe’s mother. Between February 11 and March 3, 2021, a DCF caseworker from the Lawrence Area Office spoke to Jane Doe four times over the phone, several times over email, and once in person—all in English, forcing Jane Doe to communicate in a language she did not fully comprehend about complex, sensitive subjects such as child neglect, DCF’s statutory role, and the accommodations made for her child’s disability. On one of these occasions, Jane Doe’s husband, a fluent English speaker,⁶³ was present and was able to interpret for Jane Doe. However, the use of family members—especially and including those named in an investigation—for interpretation is entirely at odds with the requirements of Title VI and DCF’s own Language Access Plan.⁶⁴ DCF ultimately ruled that it had substantiated the allegations of child neglect made by the school district, an outcome Jane Doe believes was based on her inability to fully understand the gravity of the allegations and to defend herself and her husband in conversations with the agency.

Jane Doe’s experience is not unique. As documented in the Massachusetts Appleseed report, numerous attorneys and DCF social workers confirm that DCF often does not regularly

⁶³ Jane Doe’s husband works long hours outside of the home, such that Jane Doe is their children’s primary caretaker.

⁶⁴ See HHS LANGUAGE ACCESS GUIDANCE, *supra* note 32 (stating funding recipients “should not plan to rely on an LEP person’s family members, friends, or other informal interpreters to provide meaningful access to important programs and activities”).

utilize professional interpreters for home visits and informal interactions with LEP individuals.⁶⁵ Attorneys representing parents in DCF proceedings or otherwise engaged in DCF-related advocacy report that “DCF may use an interpreter at best in approximately 25% of the LEP home visits the agency conducts.”⁶⁶ Notably, these observations continued after 2018, when HHS OCR expressly asked DCF to revise its policies and procedures to require that interpreters be present during visitations with LEP individuals.⁶⁷ OCR made this recommendation after finding that “DCF policy does not require an interpreter at all supervised visits.”⁶⁸

The ramifications for LEP families are dire. If there is no interpreter, in the experience of CPCS attorneys and advocates, DCF will either cancel the visit, or permit it to occur but forbid the parents from speaking to their children in their own language.⁶⁹ Not only does this present a near-insurmountable barrier to reunification, but over time, children—who are more likely than not living in an English-speaking DCF placement—may lose the ability to communicate with their family and the attendant connection to their culture and heritage.

Especially in the context of the COVID-19 pandemic, DCF’s failure to provide meaningful language access is evident in the apparent lack of policies in place for remote

⁶⁵ FAMILIES TORN APART, *supra* note 2, at 36. Massachusetts Appleseed conducted 26 interviews between February 2019 and October 2020. Twenty of these interviews were with attorneys who represent clients involved with DCF, including those employed by the Committee for Public Counsel Services (CPCS). Massachusetts Appleseed also interviewed one social worker who serves clients involved with DCF, and one social worker who works with many DCF-involved families through a Family Resource Center. Four interviews were with academic or policy experts on language access in child welfare systems. Massachusetts Appleseed staff used snowball sampling to find these participants. Complainants and their co-counsel will work diligently with HHS to ensure that these individuals, and other witnesses, are available to speak with, or otherwise provide evidence to, investigators.

⁶⁶ *Id.*

⁶⁷ *Id.* at 128.

⁶⁸ *Id.* at 126.

⁶⁹ *Id.* at 50.

interpretation for virtual visits by DCF caseworkers, for example. DCF has not revised its Language Access Plan to include such provisions to reflect the challenges created by the pandemic.

Moreover, DCF caseworkers are not properly trained on when interpreters are needed. Some caseworkers deny interpretation services when they believe that an LEP individual speaks some basic level of English.⁷⁰ In one case, DCF denied an interpreter for a Haitian Creole-speaking individual, noting that the individual spoke “enough English.”⁷¹ DCF staff had apparently seen a “Facebook video” in which the individual spoke some English.⁷² A neutral court-appointed investigator later found that child reunification would have been possible for this individual had DCF provided the necessary language services.⁷³

Without adequate training, caseworkers are likely to act based on their own subjective attitudes towards LEP individuals. One CPCS attorney notes, for example, that a DCF caseworker told her that “[a]t a certain point [the client] is going to have to learn English to parent this child.”⁷⁴

In the absence of trained interpreters, DCF caseworkers frequently and inappropriately rely on family members and relatives to communicate with LEP individuals—as was the case with Jane Doe. Caseworkers even use neighbors and sometimes children as interpreters. A CPCS attorney notes that these practices have occurred even over the objection of family members or

⁷⁰ *Id.* at 35.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 28.

the attorney.⁷⁵ In one particularly egregious case, DCF caseworkers asked a father accused of violently abusing his partner to interpret for the partner.⁷⁶

These observations amount to violations of Title VI, particularly since HHS OCR has previously asked DCF to revise its policies and procedures to state that the “use of family members and friends as interpreters is expressly prohibited.”⁷⁷ OCR made this recommendation after learning that DCF social workers “use an interpreter if there is no family member that can interpret on behalf of a parent” and that “children [are] used as interpreters unless the information being interpreted is too sensitive.”⁷⁸

The practice of using hand gestures to communicate with LEP individuals instead of using competent interpreters deprives LEP individuals of meaningful language access. However, several attorneys familiar with or involved in DCF work report that English-speaking caseworkers will at times communicate with families using hand gestures during home visits and assessments.⁷⁹ DCF caseworkers conduct home visits sometimes “just speaking English, and leaving forms. . . communicat[ing] with their hands by pointing to things.”⁸⁰

Attorneys also remark on the lack of language fluency and the general lack of competency among interpreters—when they are actually utilized at all.⁸¹ Specifically, interpreters tend to not be well-versed on the terminology utilized in child welfare and family court proceedings, which can be quite complicated. As a result, interpreters fail to convey the importance of various meetings or documents that can determine parental rights. One attorney

⁷⁵ *Id.* at 37.

⁷⁶ *Id.*

⁷⁷ *Id.* at 128.

⁷⁸ *Id.* at 126.

⁷⁹ *Id.* at 37–38.

⁸⁰ *Id.* at 38.

⁸¹ *Id.* at 34.

notes, for example, that a DCF-provided interpreter told a Russian-speaking client during a fair hearing process that “[t]his hearing is not that important.”⁸²

Some interpreters are not only incompetent, but also lack the impartiality required by the HHS Language Access Guidance. One attorney notes, for example, a Mandarin interpreter who was actively hostile to a client, criticizing and lecturing the client in Mandarin.⁸³ DCF caseworkers made aware of the issue refused to address the situation, simply stating that they had “gone above and beyond” in ensuring that an interpreter was present.⁸⁴

By frequently not providing interpreters at all—relying instead on family members, relatives, neighbors, and children, and using hand gestures to communicate—and by using interpreters who are not competent or impartial when they are provided, DCF has failed to provide adequate oral interpretation services to LEP individuals.

ii. DCF’s Has Failed to Provide Adequate Written Translation Services.

Complainant Jane Doe’s experience also typifies DCF’s failure to translate vital documents for LEP clients. Despite the highly technical nature of a child welfare investigation, DCF did not translate a single document sent to Jane Doe over the course of the investigation. For example, on February 11, 2021, Jane Doe and her husband received a letter from DCF notifying them that the Department had received a report of child neglect and enclosing a booklet about the investigation process. Both documents were entirely in English. A response worker at DCF emailed Jane Doe several times during February exclusively in English, making no effort to

⁸² *Id.* at 34–35. Fair hearings allow individuals who disagree with a decision made by DCF to appeal the decision, including the determination of abuse or neglect of a child by a caregiver, the listing of a person on the registry of alleged perpetrators, etc. EXECUTIVE OFF. OF HEALTH AND HUM. SERVICES DEP’T OF CHILDREN AND FAMILIES, GUIDE TO FAIR HEARINGS 3, <https://www.mass.gov/doc/dcf-fair-hearing-guide-2019/download>.

⁸³ FAMILIES TORN APART, *supra* note 2, at 34.

⁸⁴ *Id.*

translate complex concepts or terms, including those pertaining to Jane Doe’s child’s medical care. Most egregiously, DCF did not translate the March 3, 2021 notice stating that DCF had substantiated the serious allegations of neglect against Jane Doe and her husband (attached hereto as Exhibit B). The Title VI HHS Language Access Guidance specifically references “[w]ritten notices of . . . rights, denial, loss, or . . . actions affecting parental custody or child support” as vital written materials that should be translated.⁸⁵ Jane Doe’s husband did not understand the technical, legal, and specialized terminology used in the DCF documents and was unable to fully translate for his wife. Accordingly, when Jane Doe received the letter in English, she misunderstood its import, believing, based on her understanding of the conversation with the DCF caseworker during the home visit, that the letter indicated that the neglect allegation was unsupported. It was only upon speaking with her attorney, who is fluent in Spanish, that Jane Doe learned that DCF had in fact substantiated the neglect allegation.

In another particularly egregious case documented in the Appleseed report, DCF asked an LEP individual to sign an untranslated Open Adoption Agreement in which the individual gave up parental custody for visitation rights.⁸⁶ A court interpreter orally translated the agreement, and the individual signed away his parental rights without any chance to meaningfully review the agreement.⁸⁷

To comply with Title VI, DCF must provide written translations of vital documents for certain LEP language groups. Written translations must be furnished for “each eligible LEP language group that constitutes five percent . . . of the population of persons eligible to be served

⁸⁵ HHS LANGUAGE ACCESS GUIDANCE, *supra* note 32.

⁸⁶ FAMILIES TORN APART, *supra* note 2, at 42.

⁸⁷ *Id.*

or likely to be affected or encountered” if there are more than fifty persons in the language group.⁸⁸

Documents are considered vital if they are of “consequence to the LEP person [when] the information in question is not provided accurately or in a timely manner.”⁸⁹ “Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access.”⁹⁰ Examples of vital documents include, “consent forms” and other “[w]ritten notices of eligibility criteria, rights, denial, loss, or decreases in benefits or services, actions affecting parental custody or child support, and other hearings.”⁹¹

DCF-provided “action plans” in care and protection investigations are undoubtedly also vital documents that require written translation. Action plans are written agreements that DCF requires parents to sign. They outline tasks that parents need to complete and the behavioral changes required to obtain a favorable outcome in the case.⁹² Tasks may include attending counseling, anger management classes, substance use disorder classes, or parenting classes. Failure to comply can eventually lead to the termination of parental rights.

Attorneys who regularly interface with DCF report, however, that action plans are rarely translated completely into the primary language of LEP individuals.⁹³ Action plans are regularly “shoved in front of” LEP parents to sign without understanding what is going on.⁹⁴ While DCF appears to do a better job translating action plans into Spanish, only some portions of the action plans are actually translated into Spanish in many cases. For example, DCF will translate the

⁸⁸ HHS LANGUAGE ACCESS GUIDANCE, *supra* note 32.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² FAMILIES TORN APART, *supra* note 2, at 39–40.

⁹³ *Id.*

⁹⁴ *Id.* at 40.

tasks parents have to complete and exclude other critical parts, such as those describing DCF's obligations.⁹⁵

At times, DCF staff or contract interpreters orally translate action plans, or informally translate the document, annotating some parts in the LEP individual's language.⁹⁶ This practice contradicts HHS's guidance on using "certified translators" in translating legal or other vital documents.⁹⁷ Where certified translators are not available, HHS urges review by a "second, independent translator."

Attorneys report that they sometimes resort to convincing the judge overseeing their case to compel DCF to translate action plans.⁹⁸ One attorney, who did just that for a Khmer-speaking client, reports that after the judge's order, DCF still "did the bare minimum of just translating the list of tasks and not all of the other information on there," stating "[o]h well that's the important part. She can figure the rest of it out."⁹⁹

Besides action plans, DCF sends families significant written correspondence, including but not limited to notices of hearings and updates on case progress.¹⁰⁰ Such correspondence includes "deadlines for clients to complete tasks, dates for meetings, and other key concerns related to a client's case," many of which never get translated.¹⁰¹ Because these documents relate to actions affecting parental custody, they are vital under HHS Language Access Guidance and require written translation.

⁹⁵ *Id.* at 39–40.

⁹⁶ *Id.* at 40.

⁹⁷ HHS LANGUAGE ACCESS GUIDANCE, *supra* note 32.

⁹⁸ FAMILIES TORN APART, *supra* note 2, at 40.

⁹⁹ *Id.* at 39.

¹⁰⁰ *Id.* at 40–41.

¹⁰¹ *Id.*

DCF has long been aware that its client population includes many LEP residents of Massachusetts.¹⁰² The agency's failure to translate action plans and many other vital documents has violated and continues to violate Title VI—a failure made all the more egregious by HHS OCR's express instructions to DCF in 2018 that the agency shall revise its policies to reflect that “*all* DCF documentation provided to consumers must be translated to consumers' preferred languages.”¹⁰³ Immediate action is necessary to ensure the agency provides written translations of vital documents in Spanish, Portuguese, Haitian Creole, and Cape Verdean Creole, among other languages.

c. DCF's Has Failed in Providing Meaningful Language Access to Required Programs and Services.

DCF effectively deprives LEP parents of meaningful language access by requiring parents and children to attend various programs and services not readily available in the LEP individuals' primary languages and holding the resulting delays against the parents.

For example, DCF may require LEP parents to attend therapy, parenting classes, and substance disorder meetings to maintain or regain custody of their children.¹⁰⁴ In one case, DCF required LEP children to attend trauma therapy, which they were unable to complete for almost a year due to the unavailability of services in the appropriate language.¹⁰⁵ The DCF caseworker in the case blamed the parents for failing to ensure that the children received therapy. The delays in completing services may even result in the termination of parental custody, as was the case with a child removed from his LEP parent due to concerns over neglect.¹⁰⁶ The parent could not

¹⁰² DCF QUARTERLY PROFILE FY'2021, Q2, *supra* note 43. For an overview of relevant statistics, see page 13 of this complaint.

¹⁰³ FAMILIES TORN APART, *supra* note 2, at 128 (emphasis added).

¹⁰⁴ *Id.* at 42.

¹⁰⁵ *Id.* at 45.

¹⁰⁶ *Id.* at 46.

participate in the services prescribed by DCF for over a year due to language barriers. The length of time that the child had spent in a foster home meant that reunification was no longer deemed in the best interest of the child.

d. DCF’s Continuous Failure to Provide Meaningful Access to LEP Parents and Children Despite Years of Notice Regarding Title VI Noncompliance Supports a Strong Inference of Intentional Discrimination.

While intentional discrimination is not needed to prove a Title VI violation, the facts here strongly suggest intentional discrimination against LEP individuals. Despite the intervention of multiple federal agencies and repeated requests from advocates, activists, attorneys, and families, DCF has refused to provide enhanced language access to the constituents it serves—a deliberate indifference to their needs that is consistent with intentional discrimination. In addition to the findings and voluntary compliance measures set forth by HHS OCR in 2018, DCF has failed to implement any policy or programmatic changes in response to the Massachusetts Appleseed report.

Complainant Jane Doe’s interactions with DCF typifies the experience of many LEP parents who interact with DCF and encounter both inadequate language access and national origin discrimination. Throughout the investigation, her DCF caseworker acted aggressively or rudely towards Jane Doe, expressing hostility regarding her travel to the Dominican Republic¹⁰⁷ (for necessary surgery) and pressuring Jane Doe to have a home visit with the caseworker, despite the ongoing COVID-19 pandemic, Jane Doe’s compromised health following surgery, and her vulnerable child with a disability.¹⁰⁸ Because of this pressure, Jane Doe eventually

¹⁰⁷ The DCF case file mentions Jane Doe’s travel to the Dominican Republic multiple times. *See* DCF CASE FILE at 22, 24, 31 (on file with Lawyers for Civil Rights).

¹⁰⁸ According to the Massachusetts Department of Public Health, during the week of February 25, 2021, Jane Doe’s city of residence—Methuen, Massachusetts—was designated as “Red” for COVID-19, the Department’s most severe category, with an average daily incidence rate of 29.7

relented—only to experience an in-person interview without the benefit of an interpreter. Shortly after the visit, she received the English-only decision letter from DCF. Jane Doe believes that the outcome of the investigation would have been very different had she been afforded an interpreter to advocate and defend herself against allegations of child neglect.

DCF is a repeat offender of civil rights and no stranger to HHS OCR. In 2015, the U.S. Department of Justice (DOJ) Civil Rights Division and HHS OCR issued a joint letter to DCF finding that “DCF has committed extensive, ongoing violations of Title II [of the Americans with Disabilities Act] and Section 504 [of the Rehabilitation Act of 1973].”¹⁰⁹ The letter was based on HHS and DOJ’s investigation into DCF’s handling of a case involving a mother with developmental disability, which revealed “systemic failures by DCF to ensure social workers follow appropriate policies and procedures and have necessary training.”¹¹⁰ More recently, an investigation conducted by the Massachusetts Office of the Child Advocate into the October 2020 death of a 14-year-old boy and the emaciation of his triplet due to starvation and neglect found that “DCF...lacked a basic knowledge and understanding of Autism Spectrum

per 100,000 and a 5.3% positivity rate. MASS. DEP’T OF PUBLIC HEALTH, *Weekly COVID-19 Public Health Report—Thursday, February 25, 2021*, COVID-19 Dashboard at 14 (Feb. 25, 2021), <https://www.mass.gov/doc/weekly-covid-19-public-health-report-february-25-2021/download>.

¹⁰⁹ Letter from U.S. Dep’t of Justice Civil Rights Div. and U.S. Dep’t of Health and Human Services Office for Civil Rights to Erin Deveney, Interim Comm’r, Massachusetts Dep’t of Children and Families 1 (Jan. 29, 2015), https://www.hhs.gov/sites/default/files/mass_lof.pdf. DCF recently entered a settlement with DOJ and HHS based on the findings in this letter. Agreement Between United States Department of Justice, United States Department of Health and Human Services, and Massachusetts Department of Children and Families, *supra* note 13.

¹¹⁰ Letter from U.S. Dep’t of Justice Civil Rights Div. and U.S. Dep’t of Health and Human Services Office for Civil Rights to Erin Deveney, Interim Comm’r, Massachusetts Department of Children and Families, *supra* note 107, at 2–3.

Disorder...which significantly impacted DCF's ability to make decisions in [the boys'] best interest.”¹¹¹

More pertinently for this complaint, in 2018, HHS OCR issued DCF a set of voluntary compliance measures specific to language access after investigating a complaint by a Spanish-speaking individual.¹¹² OCR found that DCF social workers lacked training on using interpreters, arranged for interpreters when no family members could interpret, and did not cancel appointments when interpreters were not available. OCR found that DCF policy did not require interpreters for all supervised visits.

Upon making these findings and taking DCF's list of assurances in good faith, HHS OCR issued voluntary compliance measures, including asking DCF to revise its policies and procedures. Specifically and most pertinently, OCR asked that policies and procedures reflect that “the use of family members and friends as interpreters is expressly prohibited,” “interpreters must be present during [all LEP] visitations,” and “*all* DCF documentation provided to consumers must be translated to consumers' preferred languages.”¹¹³

DCF's subsequent and systematic failure to provide interpreters for LEP visitations, to translate vital documents to consumers' preferred languages, and to halt the use of family members as interpreters support a strong inference of intentional national origin discrimination. Courts have held that the denial of language access coupled with awareness of the need for

¹¹¹ OFFICE OF THE CHILD ADVOCATE, INVESTIGATIVE REPORT: A MULTI SYSTEM INVESTIGATION INTO THE DEATH OF DAVID ALMOND 6, 34 (Mar. 2021), <https://www.mass.gov/doc/office-of-the-child-advocateinvestigative-reportmarch-2021/download>.

¹¹² FAMILIES TORN APART, *supra* note 2, at 122–29.

¹¹³ *Id.* at 128 (emphasis added).

language access support a claim of intentional national origin discrimination.¹¹⁴ The facts here are even more compelling.

DCF's intentional discrimination is evident in the evolution of its own Language Access Plans over the years with respect to the requirement of translating vital documents:

- DCF's 2011 Language Access Plan stated under a section titled "Vital Document Translation" that DCF had identified 76 letters and forms that needed to be translated into Spanish, Portuguese, Haitian-Creole, Khmer, and Russian. DCF stated that it had already translated some and that the "plan is to have all the forms translated over the next 12-18 months."¹¹⁵
- Several years later, DCF's 2013-2015 Language Access Plan again identified 76 letters and forms that needed translation, stating that the "plan is to have all the required forms for the client population translated." DCF admitted that it had not been able to translate the forms into "languages regularly encountered" due to "budget constraints."¹¹⁶
- DCF's 2019-2021 Language Access Plan still states that the "plan is to have all forms and letters translated over the next 12-24 months."¹¹⁷

Moreover, despite this history, DCF still has no policies or procedures describing steps DCF would take upon receipt of a language access complaint.¹¹⁸

¹¹⁴ See *Reyes v. Clarke*, 2019 WL 4044316, at *25 (E.D. Va. Aug. 27, 2019) (finding a plausible claim of intentional discrimination based on national origin where plaintiff alleged in part that a prison commissioner knew of the significant Spanish speaking population but failed to ensure adequate interpretation services and to enact a language access policy); *H.P. v. Bd. of Educ. of City of Chicago*, 385 F. Supp. 3d 623, 638 (N.D. Ill. 2019) (finding a plausible claim of intentional discrimination where plaintiffs alleged that Chicago Public Schools systematically and intentionally failed to provide interpretation and translation services while aware of the need for those services).

¹¹⁵ DEP'T OF CHILDREN AND FAMILIES, LANGUAGE ACCESS PLAN 12 (2011), <https://www.masslegalservices.org/system/files/library/DCF%20LAP.pdf>.

¹¹⁶ DEP'T OF CHILDREN AND FAMILIES, LANGUAGE ACCESS PLAN 10 (2014), https://www.migrationpolicy.org/sites/default/files/language_portal/LAP-Dept%20of%20Children%20and%20Families_0.pdf.

¹¹⁷ DEP'T OF CHILDREN AND FAMILIES, LANGUAGE ACCESS PLAN 11 (2019), <https://www.mass.gov/doc/language-access-plan-7/download>.

¹¹⁸ FAMILIES TORN APART, *supra* note 2 at 150–51. DCF's December 15, 2020 response to a public records request sent by Massachusetts Appleseed confirms this lack of policies or procedures.

Finally, DCF has not implemented any policy or programmatic changes in response to Massachusetts Appleseed's robust report on DCF's language access failures published in January, 2021, and based on DCF interactions, policies, and decisions between 2019 and 2020—well after the HHS OCR findings and recommendations. The report, cited throughout this complaint, draws significantly on the experiences of attorneys who serve or represent clients involved with DCF, including many highly experienced attorneys from CPCS.¹¹⁹ Between January 28, 2020 and March 25, 2021, Massachusetts Appleseed sent DCF at least six communications, including to the DCF General Counsel, Language Access Coordinator, and others, to request relevant data and to set up meetings to discuss the issues highlighted in the report. DCF did not respond to most of these communications and turned down at least three meeting requests, including one in March, 2021, to DCF's Acting General Counsel regarding implementation of recommendations in the report. DCF's non-responsiveness to the serious issues detailed in the report suggests intentional discrimination under Title VI.

V. RELIEF REQUESTED

To demonstrate a violation of Title VI's regulations, it is not necessary to show intentional discrimination; an unjustified disparate impact is sufficient. Here, however, DCF's disregard for the voluntary compliance measures set forth by HHS OCR in 2018 shows much more than disparate impact. Stronger measures are therefore necessary to compel DCF to comply with its federal obligations. Specifically, OCR should:

1. Suspend any further federal funding disbursements until DCF adopts and implements a comprehensive remediation plan for meaningful access by LEP individuals. The remediation plan should:

¹¹⁹ *Id.* at 24–25 (discussing the research methodology for the report).

- a. Require DCF to conduct a language access audit, create a meaningful language access plan, and hire Regional Language Access Coordinators, placing at least one Coordinator within each of DCF's five regions.
- b. Set concrete targets for hiring bilingual caseworkers for languages frequently encountered, with a focus on the needs of individual area offices.
- c. Require quarterly trainings for all caseworkers and contract interpreters on the importance of language access, tools and techniques for competent interpretation, the importance of confidentiality and impartiality, and DCF terminology and procedures.
- d. Require that interpreters be present during *all* visitations, phone or video conversations, and interactions with LEP individuals.
- e. Expressly forbid the use of family members, relatives, friends, neighbors, and children as interpreters.
- f. Require the translation of *all* vital documents into the preferred languages of LEP individuals.
- g. Require all community social service providers DCF contracts with to offer in-person interpretation services, or else allow providers access to DCF's telephonic interpretation services.
- h. Require the creation of policies and procedures describing detailed steps for caseworkers to identify alternative social services for LEP families.
- i. Require DCF to adopt more flexible protocol to acknowledge the difficulty many LEP families experience when attempting to receive non-English social services.

- j. Require the creation of policies and procedures describing detailed steps DCF should take upon receipt of a language access complaint.
2. Ensure that DCF achieves full compliance with its federal obligation to provide meaningful access to LEP individuals through a conciliation agreement that incorporates the points outlined above for the remediation plan, and which includes reporting and monitoring mechanisms to ensure oversight by HHS and DOJ.
3. Provide all other necessary and appropriate relief that justice may require.

VI. CONCLUSION

For these reasons, Complainants respectfully request that HHS OCR promptly and thoroughly investigate the allegations set forth herein and take all actions necessary to ensure that DCF fulfils its obligation to ensure meaningful access by LEP individuals.

Dated: July 14, 2021

Respectfully Submitted,

/s/ Lauren Sampson
Lauren Sampson
Erin Fowler
Oren Sellstrom
Lawyers for Civil Rights
61 Batterymarch St, Fifth Floor
Boston, MA 02110
(617)-988-0609
lsampson@lawyersforcivilrights.org

/s/ Deb Silva
Deborah Silva
Massachusetts Appleseed Center for Law
and Justice
44 School Street, Suite 415
Boston, MA 02108
(617)-482-8686
deb@massappleseed.org

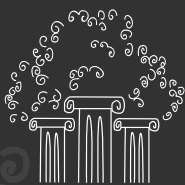
EXHIBIT

A



FAMILIES TORN APART

Language-Based Discrimination at the Massachusetts
Department of Children and Families



**Massachusetts
Appleseed**
Center for Law & Justice

Families Torn Apart: Language-Based Discrimination at the Massachusetts Department of Children and Families

Massachusetts Appleseed Center for Law & Justice

"If an [LEP] client doesn't have a lawyer with them and is also not understanding what's going on... then things get held against them that maybe shouldn't...It makes them less likely to get their kids back by making it look like they're not complying, when it may be that they're just not understanding."

- Anonymous CPCS Attorney, interviewed on 8/19/19

PROJECT DIRECTOR

Deborah M. Silva, Esq.
Executive Director
Massachusetts Appleseed

RESEARCH DIRECTORS

Jake Hofstetter
Research and Policy Associate
Massachusetts Appleseed

Melanie Rush
Research and Policy Assistant
Massachusetts Appleseed

PRO BONO PARTNERS

Fish & Richardson P.C.
Paula Minella

RESEARCH ASSISTANTS

Jackson Barnett
Maya Jackson
Christin Lal
Maya McCann
Henry Sturm



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Appleseed**
Center for Law & Justice

About the Massachusetts Appleseed Center for Law & Justice

The Massachusetts Appleseed Center for Law & Justice (Massachusetts Appleseed) is part of a non-profit network of 16 public interest justice centers in the United States and Mexico. Massachusetts Appleseed's mission is to promote equal rights and opportunities for Massachusetts residents by developing and advocating for systemic solutions to social justice issues. Collaborating with volunteer lawyers and community partners, we identify gaps in services and access in areas such as education, homelessness, and the legal system. Our goal is to create systemic change through in-depth research, community problem-solving, and consensus building. Central to this work is identifying ways to make state administrative agencies in Massachusetts more inclusive, fair, and accessible for everyone in the Commonwealth.

As part of this work, in 2018 Massachusetts Appleseed began examining the extent to which Massachusetts' administrative state agencies accommodated limited English proficient (LEP) individuals who require such agency's services. There are a number of state agencies that appear to be insufficiently providing language access services to their LEP populations; however, after conducting preliminary research and consulting with numerous stakeholders, we identified the Massachusetts Department of Children and Families (DCF) as an agency whose provision of language access services for LEP families necessitated further review, given the significant consequences of child removal that may come with DCF involvement.

Between February 2019 and October 2020, Massachusetts Appleseed conducted over 25 qualitative interviews with members of community and legal services organizations who work closely with DCF-involved LEP families. The following report relies upon this research, analyzing to what extent DCF is fulfilling its legal obligation to provide meaningful language access to all Massachusetts residents. "Families Torn Apart" reflects Appleseed's belief that all Massachusetts residents deserve equal access to the services and protections provided by our state government, regardless of their English language proficiency.

We must also acknowledge that a significant portion of our research occurred prior to the spread of COVID-19. However, while our research is grounded within the experiences of DCF-involved LEP families before the pandemic began, we have heard directly from advocates that the problems DCF previously faced when providing meaningful language access services have been exacerbated by such an all-encompassing public health crisis.

Our publication of "Families Torn Apart" thus represents the culmination of a two-year process of extensive research and collaboration, resulting in a report that is now more relevant than ever before. This essential project would not have been possible without the support and contributions of our interviewees from legal aid organizations and social services agencies across the state. In addition, Massachusetts Appleseed would also like to recognize the significant research contributions of our legal pro bono partners Paula Minella and Fish & Richardson P.C.

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EXECUTIVE SUMMARY

This report identifies the failure of the Massachusetts Department of Children and Families (DCF) to provide federally mandated language access to their limited English proficient (LEP) population. It examines how the Department of Children and Families violates the civil language access rights of parents, the reasons for this systemic failure within DCF, and what steps DCF, the Massachusetts Legislature, and the Massachusetts legal community must take for the Commonwealth's child welfare system to comply with federal civil rights law.

In the state of Massachusetts, almost one in ten residents are considered limited English proficient. They do not speak English as their primary language and have a limited ability to speak, write, or understand English. Roughly the same percentage of parents¹ involved in DCF cases are limited English proficient.

Title VI of the Civil Rights Act of 1964 requires federally funded agencies to ensure LEP persons have "meaningful" access to programs and activities.² In practice, meaningful language access is not ensured by many government programs and agencies. The Massachusetts Department of Children and Families is no exception.

Whether or not DCF removes a child from their home should have nothing to do with the primary language their parent speaks. However, the findings of this report show that child welfare decisions involving LEP parents are often impacted by language access. These are a few of those findings:

- Despite a few individual "superstar" caseworkers, the majority of LEP parents do not receive sufficient interpretation services, document translation services, or social services in their primary language.
- A lack of competent and impartial interpretation plagues DCF casework; it is estimated that an interpreter is present in only 25% of the LEP home visits the agency conducts.³
- LEP families regularly do not receive Action Plans, letters, notices, and agreements translated into their primary languages.
- Often LEP parents experience wait times double those that English-speaking parents face when trying to attend the social services (such as therapy, substance use disorder meetings, or parenting classes) that are mandated by DCF.⁴

Because DCF does not prioritize language access, LEP parents are unable to meaningfully comprehend or participate in the Department's process; LEP families are then deemed unengaged or willfully non-compliant and face an increased likelihood of separation compared to their English-speaking counterparts.

Language-based discrimination directly impacts not only the parents who might lose custody of their children, but also the children of LEP parents themselves. Children separated from their families

¹ Throughout this report, the term parent is utilized to represent a DCF-involved primary caretaker, as the majority of DCF investigations involve parents, rather than a relative or other person acting as a legal guardian.

² 42 U.S.C. 2000(d) (1964).

³ Elizabeth McIntyre, GBLS Senior Attorney, interviewed on 6/25/19; Anonymous Attorney, interviewed on 6/29/19.

⁴ Anonymous CfJ Attorney, interviewed on 7/11/19; Anonymous CPCS Attorney, interviewed on 8/20/19*

* This asterisk is used throughout the report to differentiate between the two CPCS attorneys that were both interviewed on 8/20/19.

regularly experience complex trauma, grief, and poor educational outcomes.⁵ They are more likely to develop behavioral problems and engage in delinquent activities.⁶ This is true of any child involved with the child welfare system; however, DCF's failure to provide meaningful language access for LEP families means that at every stage of the removal process, children of LEP parents are more vulnerable to experiencing trauma compared to their English-speaking counterparts.

To address these issues, Massachusetts Appleseed has produced a number of recommendations directed at DCF, the Massachusetts Legislature, and the Massachusetts legal community.

Actionable Recommendations for the Massachusetts Department of Children and Families include:

1. **Language Access Training:** DCF should train its staff on the federal mandate (Title VI of the Civil Rights Act of 1964) that requires them to provide "meaningful" language access services, and on how to implement policies in line with this mandate.
2. **Development of Robust Language Access Protocols:** DCF should develop practical, step-by-step instructions for caseworkers on requesting and working with interpretive services for in-person and written communication.
3. **Hire More Language Access Coordinators and More Bilingual Staff:** DCF should hire Regional Language Access Coordinators, and prioritize the hiring of more bilingual caseworkers, based upon language demographic data within each of its five regions.
4. **Improved Language Service Contracting:** DCF should use its purchasing power to ensure all professional interpreters are competent and impartial, and that all service providers it contracts with offer sufficient in-person or telephonic interpretation services.
5. **Monitor Implementation of Language Access:** DCF should improve and publicize the process for requesting language access and making language access complaints, ask for feedback from LEP families to ensure that their needs are met, and establish a working group of stakeholders tasked with implementation of the above recommendations.

Recommendations for external enforcement from the Massachusetts Legislature and legal community include:

1. **Increase Training and Advocacy Efforts at the Committee for Public Counsel Services (CPCS):** CPCS should increase the number and frequency of trainings it provides staff in meeting the needs of LEP clients, and CPCS attorneys should strongly advocate for their clients' meaningful access to DCF services through all means available, including the submission of complaints, if necessary.
2. **Enact a Language Access Statute:** The Massachusetts Legislature should enact a language access statute to a) standardize and strengthen language access requirements for government-funded programs across the state, and b) establish enforcement mechanisms.

5 Monique B. Mitchell, *The Neglected Transition: Building a Relational Home for Children Entering Foster Care*. New York, NY: Oxford University Press, 2016; Trivedi, Shanta. "The Harm of Child Removal." *N.Y.U. Review of Law and Social Change* 43, no. 523 (2019), p. 532

6 Joseph J Doyle, "Child Protection and Child Outcomes: Measuring the Effects of Foster Care," *American Economic Review* 97, no. 5 (December 2007): 1583-1610, <https://doi.org/10.1257/aer.97.5.1583>; Citizens for Juvenile Justice, *Missed Opportunities: Preventing youth in the child welfare system from entering the juvenile justice system*, Citizens for Juvenile Justice, September 2015, p.i. <https://static1.squarespace.com/static/58ea378e414fb5fae5ba06c7/t/59020af046c3c44b405cb544/1493306111142/MissedOpportunities2015.pdf>.

3. ***Enact a Private Right of Action for Disparate Impact Discrimination:*** The Massachusetts Legislature should enact legislation that provides a right for individuals to sue state-level government entities for disparate impact discrimination.
4. ***Explore the Value of Impact Litigation or Further OCR (Office for Civil Rights) Complaints Against DCF:*** Massachusetts Civil Rights Organizations and the Massachusetts Legal Community should examine alternative legal strategies for enforcing the rights of LEP families to be free from language-based discrimination at DCF.

By implementing these and the full list of recommendations at the end of this report, DCF leadership will make it clear that language access is essential, not only to comply with federal law, but to ensure families are not torn apart unjustly. In addition, DCF caseworkers will be equipped with the tools necessary to implement these policies in practice. Lastly, further legislative and legal measures will create external enforcement mechanisms to uphold the civil right of language access—not only at the Department of Children and Families, but at all levels of Massachusetts government.

I. WHAT DOES DCF DO?

The Department of Children and Families (DCF) acts as the child welfare agency for Massachusetts. DCF is responsible for ensuring that children and minors are safe from neglect and abuse while also providing services to assist and stabilize families. The Department's stated mission is to "protect children from abuse and neglect and, in partnership with families and communities, ensure children are able to grow and thrive in a safe and nurturing environment."⁷ In addition to investigating reports of neglect and abuse, DCF also manages Massachusetts' foster care system and utilizes a large network of community organizations in order to provide services to DCF clients.

The most visible portion of DCF's work are its investigations of neglect and abuse, and the subsequent legal and departmental processes that follow those investigations. As will be discussed in more detail below, DCF investigates allegations of neglect or abuse and then, if necessary, starts a court proceeding – by filing what is known as a Care and Protection petition – through which the Department seeks custody of the child. Even when DCF initiates a court proceeding, it also provides referrals to services for the parents and attempts to assist them in resolving whatever behaviors or attitudes were leading them to allegedly neglect or abuse their child.

Consequently, DCF carries a dual challenge of strengthening families, while in some cases engaging in the legal process to take custody away from parents. This work is informed by the legal mandate that the Department should first attempt to maintain or reunify families, as well as the presumption that children are better off being cared for by their families in their original homes.⁸

A. What Happens in a DCF Case?

DCF provides a variety of services to residents of Massachusetts, but this report will focus primarily on protective intakes, as well as Care and Protection cases. In these instances, DCF receives a report of neglect or abuse and then begins an investigation, assessment, and potentially a court process to seek custody of the child or children. These cases differ from Child Requiring Assistance (CRA) cases, which commonly occur when parents or schools voluntarily seek out the court's assistance in supervising a child.

Our focus on Care and Protection cases was chosen due to the involuntary nature of these cases. Within these cases, DCF enters the life of a family and potentially separates a child from their parents. In instances where a government entity is entering the private life of a family and then potentially disrupting that family's structure, language access becomes even more important. Without policies and practices that ensure LEP individuals will receive proper interpretation and translation services, DCF runs the risk of separating children from their parents in part, or entirely, due to miscommunication or misunderstanding caused by improper language services rather than out of necessity.

⁷ Massachusetts Department of Children and Families, *Annual Report FY19*, Dec. 30, 2019, iv.

⁸ Mass. Gen. Laws Ann. ch. 119, § 1 (West 2019) ; See *Petition of the Dep't of Pub. Welfare to Dispense with Consent to Adoption*, 421 N.E.2d. 28, 35-36 (Mass. 1981).

1. Protective Intakes and Care and Protection Cases

DCF investigates and resolves cases involving allegations of neglect and abuse of children, both of which are defined by Massachusetts law. Within the Code of Massachusetts Regulations on DCF, “neglect” refers to a caretaker not providing “minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care” while “abuse” refers to “any ‘non-accidental act’ which causes, or creates a substantial risk of physical or emotional injury, or any sexual contact between a caretaker and the child.”⁹ The vast majority of protective DCF cases respond to allegations of neglect (85.9%) compared to physical or sexual abuse (14.3%).¹⁰

The following section lays out how DCF investigates allegations of neglect and abuse, as well as how the Department and the Court’s processes assess, manage, and adjudicate these cases. It should be noted that these processes are extremely complex. The following analysis does not aim to give a complete picture of every twist and turn a DCF case could take, but instead provides a basic outline of what steps are involved in Care and Protection cases. The flowchart included in this section listed as FIGURE 1 also provides a simplified graphic explaining this process.

DCF investigations begin with a report of neglect or abuse. Reports, also known as 51As, can come right to a DCF office or, after hours, to the Child-at-Risk Hotline.¹¹ These reports come both from the general public and mandated reporters (police officers, teachers, healthcare providers, etc.). DCF staff will then conduct a screening in which they determine if the Department needs to respond to the report. If the screener concludes that a child may have been or will be neglected or abused, then DCF will “screen in” the report for a response.¹²

An allegation that is “screened in” will lead to an investigative report, known as a 51B, which enables DCF to discern if there is “reasonable cause to believe” a child has been abused or neglected.¹³ Through these investigations, DCF caseworkers go to the family’s home and gather information.¹⁴ Once all necessary information has been gathered, DCF staff then assess the parent’s “ability to safely parent” and determines if any risks the children are facing in the home are from the parents.¹⁵ Both of these determinations require DCF staff to use standardized assessment tools.¹⁶

After completing its investigation, the DCF area office decides if the allegation of neglect or abuse that was reported is credible and evaluates whether DCF needs to intervene to “safeguard child safety and well-being.”¹⁷ If DCF finds reasonable cause to believe the allegation of neglect or abuse, and that

9 110 Mass. Code Regs. 2.00, p. 15-20 (West through 2020). <https://www.mass.gov/doc/110-cmr-2-glossary/download>

10 Massachusetts Department of Children and Families, *Annual Report FY19*, Dec. 30, 2019, 19.

11 Mass. Gen. Laws ch. 119, § 51A (West through 2020).

12 A report will be “screened out” due to lack of danger to the child/minor’s safety and/or the case not being in DCF’s jurisdiction.

13 Mass. Gen. Laws ch. 119, § 51B (West through 2020).

14 DCF staff may also gather information from the family’s contacts, criminal background checks (CORI), local law enforcement, and other relevant sources. In emergency situations, per Massachusetts General Law, these investigations are to be conducted within 24 hours of the initial screening and end within five working days. In non-emergency scenarios, Massachusetts General Law states that DCF shall initially visit the home of the child within three working days of the screening decision, and the investigation is intended to be completed within 15 working days after receipt of the initial screening. Mass. Gen. Laws ch. 119, § 51B (West through 2020).

15 Massachusetts Department of Children and Families, “Protective Intake Policy,” revised Feb. 28, 2016, 4.

16 Ibid.

17 Ibid.

Figure 1: Overview of DCF Care and Protection Cases



intervention is needed to ensure the child's safety and well-being, the allegation will be "supported."¹⁸

Following a supported 51B investigation, a DCF social worker will begin the Family Assessment and Action Planning process – including a minimum of three face-to-face contacts with the family¹⁹ – through which the Department examines the parent, and the family's overall profile and functioning.²⁰ Through this process, DCF lays out what concerns exist for the child's safety and well-being, as well as what parental behaviors or actions need to change for the child to remain in the home.²¹

Then DCF, ostensibly in partnership with the family, creates an agreement known as an Action Plan²² which lays out the case history, what behaviors or actions are problematic, how the parents will address these issues, and what services DCF will provide to help parents address these issues.²³ The Action Plan is then reviewed and signed by the parent and intended to be updated at a minimum of every six months.²⁴

To assist families with following through on the requirements of their Action Plan, DCF provides parents with referrals to community organizations and contracts with service providers that can help parents address a variety of issues that may have led to DCF involvement. For example, DCF refers many parents to substance use disorder classes, emotional therapy, or parenting classes. If the child is removed from the home, DCF also must arrange visitation for the parents. If the child remains at home, DCF staff will continue to conduct home visits and maintain contact with the family. DCF also holds meetings with parents and their attorneys (if they have them) to review and assess progress on the case, including Foster Care Reviews, if the child is placed in foster care.

The Action Plan also lays out the Permanency Plan for the child, including three potential types of outcomes: stabilization (if the child is at home and DCF is monitoring the family), reunification (if DCF removes the child from the home), or other means (such as kinship care or adoption) through which custody, after a court process, will be assigned to someone other than the parents.

As displayed in FIGURE 2, most DCF cases involve in-home placements, though the Department may remove children from their homes throughout an investigation if it feels there is a threat to their safety or well-being. Out-of-home placements can include several different types of arrangements as displayed in FIGURE 3.

18 If such intervention is not needed, DCF will determine the allegation to be "unsupported." If DCF finds reasonable cause to believe that the child in question was neglected or abused, but there is no immediate danger to the child's safety or well-being, the report may get the consideration of a "substantiated concern." It should be noted that this finding is not included as an option in DCF regulations, and as such some advocates and attorneys believe that DCF acts unlawfully. However, the "substantiated concern" finding is included within DCF's Protective Intake Policy and does permit this finding. More information about the "substantiated concern" finding can be found here: Massachusetts Department of Children and Families, "Child Abuse and Neglect Reporting: A Guide for Mandated Reporting," 2016. <https://www.mass.gov/doc/dcf-child-abuse-and-neglect-reporting-guide/download>

19 Massachusetts Department of Children and Families, "Family Assessment and Action Planning Policy," effective Feb. 6, 2017, 11.

20 Massachusetts Department of Children and Families, "Family Assessment and Action Planning Policy," effective Feb. 6, 2017, 5.

21 Massachusetts Department of Children and Families, "Family Assessment and Action Planning Policy," effective Feb. 6, 2017, 3.

22 DCF regulations refer to both Action Plans and Service Plans. Based on our research, Action Plan is the more updated phrase, so this report will refer to these documents as Action Plans.

23 It should be noted that this process can take several months to complete.

24 Massachusetts Department of Children and Families, "Family Assessment and Action Planning Policy," effective Feb. 6, 2017, 8.

FIGURE 2: Children and Youth In-Placement vs Not In-Placement FY14-FY19 (from DCF quarterly data reports)

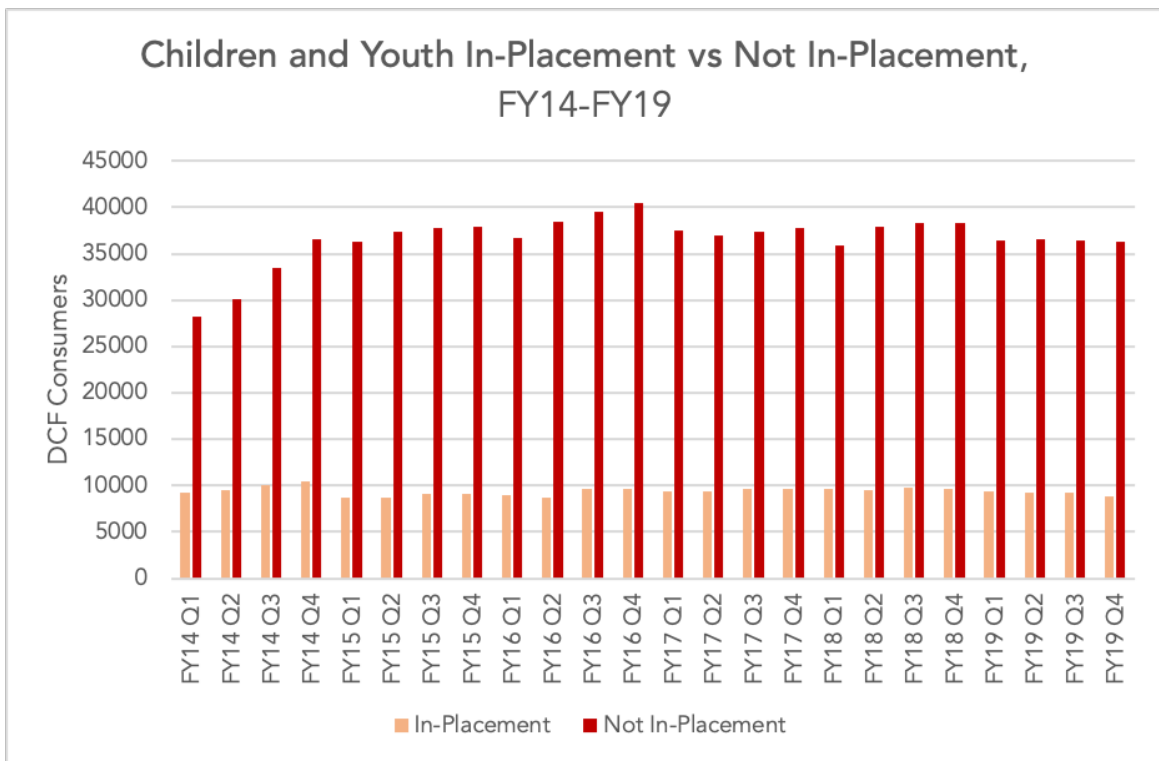
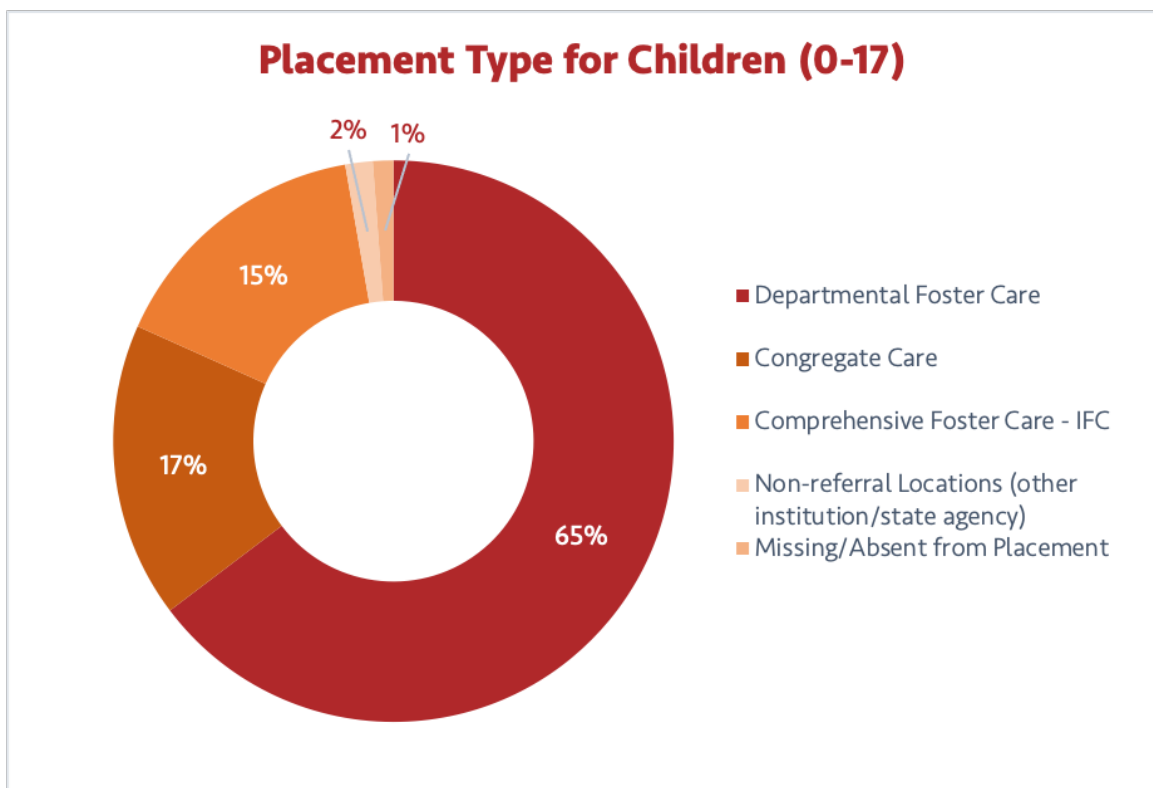


FIGURE 3: Placement Type for Children (age 0-17) for FY19 (graphic adapted from Massachusetts Department of Children and Families Annual Report 2019)



If parents do not complete the requirements of their Action Plans or do not demonstrate that they are able to ensure their child's safety and well-being, DCF may seek more permanent custody of the child. DCF, however, does not have complete control over this process. Although DCF has the ability to investigate reports of neglect and abuse and provide voluntary services to parents, DCF must use the legal process in either the Juvenile Court or Probate and Family Court to, if necessary, permanently change who has custody of a child.²⁵

If DCF chooses to file a Care and Protection Petition, the Department will notify the parents that a court case has been opened. Following the opening of such a case, a Temporary Custody Hearing, also known as the 72-Hour Hearing (which usually takes place at the Juvenile Court) will be conducted within 72 hours to determine one of three likely outcomes: 1) DCF obtains or maintains temporary custody of the child. A ruling providing DCF with custody will lead to a child being removed from their home and subsequently placed in foster care or kinship care, if they have not already been removed. However, in the vast majority of cases DCF has already taken custody of the child by the time of the temporary custody hearing, 2) A third party (usually a relative) gains temporary custody of the child, or 3) The child remains in their home under DCF supervision, and DCF conducts regular home visits and monitoring.

Usually about a year after the 72-Hour Hearing, a trial will be held to determine whether DCF or a third party should take permanent custody of the child. If the court determines "parental unfitness" at this trial, then the parents can lose permanent custody of the child, and DCF will seek a new arrangement for the child whether that be via adoption, guardianship, or other long-term care.

2. The Importance of Language Access in Care and Protection Cases

As mentioned at the beginning of this section, this summary of DCF procedure is not meant to be all-encompassing of every path a DCF case may take. This report instead highlights the complicated route a nonvoluntary DCF case may take, as the outcome could result in a family structure unwillingly devastated. Given the life-altering impact a DCF investigation could have on a child and their family, ensuring that families understand what is asked of them throughout this process is of the utmost importance. Imagine the difficulty navigating the differences between 51A's, 51B's, Family Assessments, Action Plans, Permanency Plans, and Permanency Hearings. This process is clearly difficult for individuals who speak English to fully comprehend. Thus, translation and interpretation services for LEP children and parents are some of the most essential services DCF provides. Ultimately, when a child's safety and well-being are at stake, miscommunication, misunderstanding, or confusion as a result of limited English proficiency should never be the reason children are deprived of their parents.

The next section will evaluate the language access standards that federally funded agencies such as DCF are legally beholden to.

²⁵ In emergencies or where the risk to the child's safety is high, DCF staff may take custody of the child immediately without first completing the investigation or filing a petition in court. DCF may also contact the local police department or District Attorney's office if the neglect or abuse may constitute a criminal act. However, this does not represent the vast majority of cases. Although DCF receives many allegations of maltreatment, a minority of cases end with DCF finding both evidence of neglect or abuse and the need for DCF intervention. According to DCF's *Annual Report FY19*, the Department received 95,661 reports of neglect or abuse that year. Of these allegations, 57% (54,347) were screened in for a response. Of those responses, 46% (25,193) were supported, representing 26% of all reports made to DCF. Massachusetts Department of Children and Families, *Annual Report FY19*, Dec. 30, 2019, 19.

II. LANGUAGE ACCESS AS A CIVIL RIGHT

People who do not speak English as their primary language and who have a limited ability to speak, write, or understand English are considered to be individuals with limited English proficiency (LEP). In certain instances, failure to provide LEP persons with sufficient language access – keeping them from effectively participating in or benefiting from federally assisted programs and activities – constitutes discrimination on the basis of national origin in violation of Title VI of the Civil Rights Act of 1964. The following sets forth the legal basis for the right to language access in government programs, as well as the obligations under which the federal and state governments must provide interpretation and translation to LEP individuals.

A. Legal Framework for Protecting Language Access

Title VI, Section 601 of the Civil Rights Act of 1964 provides that “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.”²⁶ Section 602 grants federal agencies the authority to prohibit programs receiving their financial assistance²⁷ from engaging in actions that result in disparate impact discrimination.²⁸

This language is mirrored at the state level in Massachusetts. The Massachusetts Constitution provides that “Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.”²⁹ In addition to these protections, state Executive Order 526 details that “[a]ll programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on...national origin...”³⁰

Beyond these two state-level protections, the Massachusetts Office of Access and Opportunity (OAO) developed Language Access Policy and Implementation Guidelines in March of 2015, to provide further direction for Massachusetts state agencies to rely upon when developing their own language access protocols. Yet these Guidelines explicitly state that they “are intended for the guidance of state agencies and not enforceable by law.”³¹ This widespread lack of enforceability with respect to the OAO guidelines is similar to the limited enforcement measures embedded within Executive Order 526, leaving Title VI of the Civil Rights Act as the most rigorous mandate for all agencies and programs receiving federal funds in the state of Massachusetts to follow, especially with reference to language access.

26 42 U.S.C. 2000(d) (1964).

27 42 U.S.C. 2000(d)(1) (1964). Federal financial assistance includes money grants, the use of or rent of federal land or property below market value, federal training, loan of federal personnel, use of federal equipment, donations of surplus federal property, and other assistance.

28 On December 21, 2020 the Trump administration’s Justice Department submitted a change for how it plans to enforce Title VI of the Civil Rights Act to the White House Office of Management and Budget. Under this change, the Justice Department would no longer enforce Title VI’s protection in instances where a program that receives federal financial assistance enacts policies or practices that have a disparate impact on protected classes. At the time of this report’s writing, it remains to be seen whether this change will actually go into effect, and if so, whether such a change would be challenged in court; Katie Benner and Erica L. Green, “Justice Dept. Seeks to Pare Back Civil Rights Protections for Minorities” *New York Times*, January 5, 2021. <https://www.nytimes.com/2021/01/05/us/politics/justice-department-disparate-impact.html>

29 Mass. Const. art. CVI.

30 Exec. Order No. 526 “Order regarding non-discrimination, diversity, equal opportunity, and affirmative action,” Mass Register #1177, (February 7, 2011).

31 Office of Access and Opportunity, “Language Access Policy Implementation Guidelines,” March 20, 2015. <https://www.mass.gov/doc/language-access-guidelines/download>

The text of Title VI prohibits discrimination based on a person's national origin, but does not explicitly address discrimination based upon one's native language.³² However, in 1970 the Office for Civil Rights (OCR) – the federal agency charged with enforcing Title VI – issued a memorandum setting forth the policy that national-origin discrimination includes discrimination based on a person's native language.³³ Importantly, OCR's interpretation did not require LEP individuals to prove discriminatory *intent* by a government agency or program.³⁴ Rather, it stated that LEP individuals are entitled to affirmative relief if an agency or program had the *effect* of excluding them from meaningful participation, regardless of the motivations underlying the program.³⁵ The OCR did not have enough resources to enforce this until the 1974 Supreme Court case *Lau v. Nichols*, which upheld the OCR's interpretation that Title VI covered discrimination based upon one's native language.³⁶

Language access rights remained largely unchanged from the mid-1970's until the early 2000's, when both the Judicial and Executive branches made a substantial impact on civil rights regulation relating to language access. On the judicial level, the Supreme Court case *Alexander v. Sandoval* weakened an individual's right to sue for disparate treatment.³⁷ While the OCR's original memo on language access stated that discrimination did not have to be proven intentional to bring a Title VI claim, the Supreme Court's 5-4 decision in *Sandoval* held that Section 601 of the Civil Rights Act of 1964 prohibits *intentional* discrimination only.³⁸ Thus, *Sandoval* significantly limited the ability for victims of discrimination to find redress within the court system. *Sandoval* left private plaintiffs who could not prove intentional discrimination to rely only on an individual federal agency's administrative enforcement of their rights. However, around the same time as the *Sandoval* decision, President Clinton released an Executive Order to defend the validity of disparate impact regulations.

In 2000, shortly before the *Sandoval* decision was issued, President Clinton issued Executive Order 13166 (Order) which outlined specific procedures relating to the provision of language access services to LEP persons. In particular, the Order states that federal agencies are required to: (1) develop a plan that provides LEP individuals "meaningful" access to the agency's programs and/or services; (2) issue agency-

32 Moran, "The Politics of Discretion: Federal Intervention in Bilingual Education." *California Law Review* 76, no. 6 (December 1988): pp. 1249-1352, <https://doi.org/10.2307/3480675>.

33 This expanded understanding of Title VI came as a result of language-based discrimination within public education. The 1970 OCR memo stated that where the inability to speak and understand the English language excludes national origin-minority group children from effective participation in the education program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students Identification of Discrimination and Denial of Services on the Basis of National Origin, 35 Fed. Reg. 11,595 (July 18, 1970); Peter Margulies, "Bilingual Education, Remedial Language Instruction, Title VI, and Proof of Discriminatory Purpose: A Suggested Approach", *Columbia Journal of Law and Social Problems* 17 no.1 (1981)115-116 (setting forth history of administrative interpretations of title VI).

34 Moran, "The Politics of Discretion: Federal Intervention in Bilingual Education." *California Law Review* 76, no. 6 (1988): 1267. doi:10.2307/3480675.

35 Margulies, "Bilingual Education, Remedial Language Instruction, Title VI, and Proof of Discriminatory Purpose: A Suggested Approach".

36 *Lau v. Nichols*, 414 U.S. 563 (1974), was a class action filed on behalf of 2,856 Chinese-speaking students in the San Francisco school system, nearly two-thirds of whom received instruction only in English. Although the school district offered special language assistance to Spanish-speaking students, it did nothing to accommodate Chinese-speaking students. In demanding relief, the plaintiffs relied not only on the equal protection clause but also on OCR's interpretation of Title VI. Relying on the OCR's 1970 memorandum, Justices Stewart and Blackmun as well as Chief Justice Burger ruled that when a San Francisco school district – which served 2,856 Chinese-speaking students – accepted federal funds, it had agreed to abide by OCR's requirements. As a result of *Lau*, Congress enacted legislation to codify equal education opportunities for students who do not speak English by passing the Equal Educational Opportunities Act (EEOA), and amending the 1968 Bilingual Education Act (BEA) in 1974 to include clearer definitions of a bilingual education program, program goals, regional support centers, and capacity-building efforts. In addition, after *Lau* the OCR issued a memorandum – known as the *Lau* guidelines – which led to the development of bilingual instruction in elementary schools where at least 20 LEP students spoke the same foreign language. As a result, over the next five years nearly 500 public school districts that had previously neglected children's language needs adopted bilingual programming.

37 532 U.S. 275, 293 (2001).

38 John Arthur Laufner, *Alexander v. Sandoval and Its Implications for Disparate Impact Regimes*, 102 COLUM. L. REV. 1613, 1635 (2002).

specific guidance to bring the agency's programs and the recipients of federal funds into compliance with Title VI, if the agency has not already done so; and (3) ensure that LEP individuals have input throughout the process.³⁹

B. The Practical Requirements of Language Access: Language Access Plans, Oral Interpretation, and Written Translation

Utilizing President Clinton's Order, the Department of Justice (DOJ) sought to break down the practical requirements of the right to language access in June of 2002, with a policy document entitled "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (LEP Guidance).⁴⁰ The DOJ's LEP Guidance details best practices in reference to the creation of a Language Access Plan (LAP),⁴¹ the provision of oral language services, and the provision of written language services.

1. Language Access Plan

The LEP Guidance strongly recommends that federal fund recipients create a Language Access Plan. Many LAPs include similar sections, such as a needs assessment that evaluates the size of the LEP community served and the most prevalent languages spoken, an overview of the language services offered (such as oral and written language services), procedures for training staff on language access policies, methods of evaluation to ensure these policies are complied with, and a clear timeline for when these policies are to be monitored and updated.

2. Oral Language Services

Within the vast majority of LAPs, a given agency, program, or activity outlines the type of in-person or over-the-phone interpretation they offer. The LEP Guidance on oral language services and interpretation states encourages the utilization of:

- 1. Competent Interpreters.** Competent interpreters demonstrate proficiency in communicating information in both English and the other language, have knowledge in both languages of specialized terms, follow confidentiality and impartiality rules, and can provide interpretation in a timely fashion;
- 2. Bilingual Staff.** Bilingual staff may be used to help answer questions, provide services to LEP persons, or serve as competent interpreters;
- 3. Contract Interpreters and Community Volunteers.** Contract interpreters or community volunteers may be used when there is no regular need for an on-site interpreter, so long as they are qualified as competent interpreters and knowledgeable about applicable confidentiality and impartiality rules; or
- 4. Family Members or Friends as Interpreters.** Family members or friends may be used to interpret for LEP individuals if this arrangement is appropriate. In instances where the recipient-provided service is critical or necessary to an LEP person, the use of an informal interpreter will likely be considered

³⁹ Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000).

⁴⁰ 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. 41,455-41,460 (June 18, 2002).

⁴¹ This is also known as an LEP Plan.

inappropriate. For example, when a police officer responds to a domestic violence dispute, it would be inappropriate for a neighbor to provide interpretation for the alleged LEP victim. In addition, recipients should make sure that the services provided by the informal interpreter do not create a conflict of interest with, or violate confidentiality or privacy of, the LEP person.

3. Written Language Services

Just as the DOJ specified the considerations for providing meaningful oral interpretation, within their LEP Guidance the DOJ has provided two clear guidelines on determining the extent of necessary written translation services:

1. **Vital Documents in Need of Translation.** A federal fund recipient's language access plan must include how "vital" written materials will be translated into the language of each frequently encountered language group likely to be served by the program. Vital materials are documents critical to accessing a program, such as consent or complaint forms; intake forms with potential consequences; written notices of rights, denials, or changes in benefits; notices of disciplinary actions; notices advising of free language assistance; and applications to participate in a recipient's program.
2. **"Safe Harbor" Activities.** While the need to translate written documents should be determined on a case-by-case basis, the DOJ has specified two "safe harbor" activities – two forms of conduct deemed to meet the requirements for written language services – that can be utilized by federal fund recipients as a guideline:
 - (a) written translations of vital documents for each language group that constitutes five percent or 1,000 individuals, whichever is less, of the population served or likely to be served by the program or agency; or
 - (b) if fewer than 50 persons are in a language group that reaches the five percent trigger, "the recipient does not translate vital documents but gives written notice in the group's primary language of the right to receive competent oral interpretation of those documents, free of cost."⁴²

It should be noted that the safe harbor provision applies to the translation of written documents only and does not affect the requirement to provide interpretation services whenever they are needed and can be reasonably supplied.⁴³ For documents that are not vital or for language groups that do not meet the numerical threshold, it is sufficient to provide written notice in the group's primary language – commonly called a "babel notice" – which states that LEP speakers have the right to an interpreter who will read the document to them.

⁴² 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. 41,455-41,460 (June 18, 2002).

⁴³ Ibid.

C. Department of Justice: Four-Factor Test

The DOJ's LEP Guidance also includes a four-factor test that federal fund recipients should utilize to determine the extent to which their agency, program, or activity needs to provide "meaningful" language access services required by them through President Clinton's Order.⁴⁴ The four-factors of this test must be weighed equally, and recipients must not assign a greater value to any factor that may lessen the program's language access responsibility.⁴⁵ Recipients of federal funding must consider the following four factors when determining what language assistance is necessary to provide meaningful access to its programs:

- 1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee.** The more LEP individuals there are who speak a particular language, the more an agency must do to provide language access services to that group.⁴⁶
- 2. The frequency with which LEP individuals come in contact with the program.** The more frequent a particular language group has contact with a given program, the more likely it is that that particular language group needs enhanced language services.⁴⁷ This guidance also places greater weight on programs where a LEP individual has daily contact (i.e., school) than on a program where contacts are infrequent.⁴⁸
- 3. The nature and importance of the program, activity, or service provided by the program to people's lives.** The more important the activity, information, service or program is to people's lives, the greater the obligation to provide language access services.⁴⁹ For programs with life or death implications – disaster response or domestic abuse – the obligation is strongest.⁵⁰ Decisions by federal, state, or local entities to make a service or program mandatory is sufficient to prove the importance of such a service or program (i.e., the communication of Miranda rights).⁵¹ Similarly, if people are compelled to participate in a program – like criminal proceedings or education – language access will likely be viewed as critical.
- 4. The resources available to the grantee/recipient or agency, and costs.** The LEP Guidance recognizes that smaller programs may not have the same resources available to them as larger programs and, therefore, are not expected to provide the same level of language assistance as larger recipients.⁵² However, while the LEP Guidance recognizes that cost is a legitimate factor, the DOJ explains that recipients should carefully explore the most cost-efficient means of delivering competent and accurate language services before limiting services due to resource concerns.⁵³

44 Jessica Rubin-Wills, "Language Access Advocacy after Sandoval: A Case Study of Administrative Enforcement Outside the Shadow of Judicial Review," *N.Y.U. Review of Law & Social Change* 36, no. 3 (2012): pp. 465-511.

45 Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000), 41,459.

46 Ibid.

47 Ibid.

48 Ibid.

49 Ibid.

50 Ibid.

51 Ibid.

52 Ibid.

53 Ibid.

1. DCF and the Four-Factor Test

The Massachusetts Department of Children and Families receives a substantial portion of its funding from the federal government, through the Department of Health and Human Services (HHS). As such, all DCF clients are protected from discrimination based upon national origin through Title VI of the Civil Rights Act of 1964. DCF is thus required by the DOJ, and HHS, to provide meaningful access to LEP individuals through interpretation and translation services. By applying the DOJ four-factor test to DCF, the degree to which oral and written language access must be provided to DCF's LEP population can be more succinctly understood.

- 1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee.** Within the entire state of Massachusetts, around 22% of the population speaks a language other than English at home. Furthermore, 9% of the state population speaks English less than very well, and are thus classified as LEP individuals.⁵⁴ The percentage of LEP persons DCF serves mirrors the statewide number of LEP individuals. Based on quarterly data from June 2013 until June 2018, an average of 9.82% of DCF's clients speak a primary language other than English.
- 2. The frequency with which LEP individuals come in contact with the program.** As approximately one out of every ten DCF clients speaks a language other than English, a significant minority of cases DCF handles will require services in languages other than English. These services may take the form of language interpretation over the phone, in a DCF office, in a family home, adoptive home, foster home, or group home, or visits within the community including courts, schools, daycare centers, or medical facilities. In addition, the high frequency of over-the-phone or in-person meetings that DCF conducts almost always require written communication as well – many of which are vital documents relating to the guardianship and care of potentially neglected and abused children, and thus require written translation.
- 3. The nature and importance of the program, activity, or service provided by the program to people's lives.** As DCF's stated purpose is to keep children safe from neglect and abuse, the impact that DCF may have on the life of a child or a parent is enormous. The impact of DCF on a child's life is clear. Children suffering from physical abuse, emotional abuse, or neglect may require outside intervention to achieve safety and stability. Protecting a child from imminent danger is one of the most important tasks a state welfare agency could take on. At the same time, the impact of removing a child from their own home is often traumatic, and the further impact of multiple home placements on a child's mental welfare, medical care, or education could be detrimental if not dealt with extreme precaution. DCF also engages with adults who may require social services to be reunited with their children. Thus, in addition to the impact DCF could have on a child's welfare, DCF has an immense influence on the life of an investigated parent.
- 4. The resources available to the grantee/recipient or agency, and costs.** Compared to other state welfare agencies in Massachusetts, the Fiscal Year 2020 final Massachusetts budget revealed that DCF was one of the highest funded social service departments, receiving a budget of \$1,058,393,333.⁵⁵

⁵⁴ Massachusetts Continuing Legal Education New England, Title VI Language Access Conference (MCLE, Inc. 2016), p.363.

⁵⁵ Office of the Governor Commonwealth of Massachusetts, FY2020 Budget Summary <https://budget.digital.mass.gov/summary/fy20/line-item>.

Within their own regulatory documentation, DCF does make an effort to explicitly acknowledge the ways in which elements of their budget go directly to language accessibility services. In particular, DCF protocol encourages the use of bilingual social workers or service providers to meet the needs of LEP clients, and allocates differential pay to those staff members that provide interpretation.⁵⁶ When bilingual staffers are unavailable, DCF protocol states that vendors approved by the Massachusetts Operational Services Division should be utilized for interpretation services, and that the Department has “contracts with providers that have the capacity to provide counseling and other client services in the preferred language of the client, including community-based and congregate care providers that serve particular linguistic communities.”⁵⁷

Thus, DCF’s own regulatory documentation acknowledges both their need to provide significant LEP services, and their resource capacity to provide such services. The following sections of this report will analyze 1) whether these stated protocols are sufficiently enforced, and 2) whether the *quality* of services provided match up with the legal standards of Title VI, Executive Order 13166, and the DOJ’s LEP Guidance.

⁵⁶ As of June 2012, DCF had a total of 562 staffers authorized to receive bilingual differential pay, according to the Massachusetts Department of Children and Families Language Access Plan February 2013-2015, February 2015, p. 6 https://www.migrationpolicy.org/sites/default/files/language_portal/LAP-Dept%20of%20Children%20and%20Families_0.pdf. See *Appendix C*

⁵⁷ *Ibid.*

III. FINDINGS

The Department of Children and Families is failing to provide limited English proficient (LEP) residents of Massachusetts with federally mandated language access to its programs and services. Our findings below indicate that DCF's failure to provide sufficient language access services places LEP families at increased risk of being unnecessarily torn apart.

A. Methodology

This report is based on research conducted from February 2019 to October 2020. The data in this report were collected from DCF's Quarterly Data Reports which are publicly available on the Department's website and organized in *Appendix A*. Findings are based on two public records requests submitted to DCF during October of 2020 that can be found in *Appendix G* and *I*,⁵⁸ in addition to 26 interviews.

Out of the 26 interviews we conducted, 20 interviews were with attorneys who serve or represent clients involved with DCF. These attorneys include those employed directly by the Committee for Public Counsel Services (CPCS) – court-appointed attorneys who are contracted to represent indigent DCF-involved clients – and attorneys who work on advocacy or policy programs relating to DCF-involved families. In addition, we interviewed one social worker who serves clients involved with DCF, and one social worker who works with many DCF-involved families through a Family Resource Center. The other four interviews were conducted with academic or policy experts on language access in child welfare systems.

The interviews were conducted across Massachusetts, over the phone, and over video calls from February 2019 to October 2020. Interviews with service providers followed an interview guide included as *Appendix F* of this report. Massachusetts Appleseed staff used snowball sampling to find these participants. When the participants consented, interviews were also recorded for later analysis. Appleseed staff then analyzed and coded interviews before synthesizing them for use in this Findings section of the report.

The attorneys and social workers interviewed for this report had extensive experience working on child welfare cases in Massachusetts. Years of experience ranged from two to 43 years, with an average of approximately eleven years of experience. The number of clients each attorney had represented within DCF cases ranged from 50 to 700 with an average of approximately 180 clients per interviewee. As for limited English proficient (LEP) clients per attorney, the low was "a handful" (interpreted as five for statistical purposes), and the high was 125. The average number of LEP clients each attorney had represented was approximately 52. The attorneys and social workers interviewed for this project also had practiced in courts across Massachusetts and dealt with DCF area offices all over the state. The areas represented in our interviews include the Boston, Southeastern, Northern, and Western regions (identified as regions by DCF).

Most attorneys agreed to speak with Massachusetts Appleseed on the basis of anonymity to avoid any institutional conflict of interest or public conflict with the Department of Children and Families, with whom they work on a regular basis. These attorneys are marked as "Anonymous [position], interviewed on [date]" throughout the report. Attorneys who were willing to be identified by name have been.

⁵⁸ Due to the length of the documents submitted to Massachusetts Appleseed, totaling over 800 pages, we have only published DCF's explanatory response documents to our request within *Appendix H* and *J*. If you are interested in reviewing the content of the documents that were turned over to us by DCF, Massachusetts Appleseed would be willing to share those with you upon request.

In addition to the 26 interviews we conducted, Massachusetts Appleseed was also able to speak with a group of DCF social workers about their experiences with language access and the Department (the exact circumstances have been withheld for confidentiality purposes). This group largely confirmed our findings citing challenges with the certification of bilingual social workers, serving dialects of particular languages, translating documents, and finding linguistically appropriate social services for clients.

Massachusetts Appleseed also relied on the 2018 findings of a Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) investigation into DCF's language access policies, which can be found in *Appendix E* of this report. These findings largely support the findings of our interviews.

Massachusetts Appleseed believes strongly in the philosophy of including affected individuals and communities in any research efforts, reflecting the mantra of "not about us without us." For this project, however, while Appleseed staff asked interviewees if they had any clients that might wish to be interviewed, the vast majority of attorneys reported that clients would not wish to be interviewed or that the attorneys themselves were not comfortable making such a request. Massachusetts Appleseed also contacted a variety of community organizations that serve immigrant communities for their perspective; however, most reported not having exposure to language access issues at DCF, did not respond to our attempts to contact them, or reached out to LEP families who confirmed they did not wish to be contacted. This is understandable, given that DCF cases are incredibly personal, involving allegations and instances of child neglect and abuse. DCF's intervention in a family's life may be an extremely traumatic and sensitive occurrence; in order to respect these considerations, Massachusetts Appleseed chose to use attorneys and social workers as the primary source of information for the findings of this report.

Attorneys in particular are often an essential resource in ensuring their DCF-involved LEP clients receive language access services. Attorneys can and frequently do play an integral role in making sure clients understand DCF's and the court's expectations through their role as advisors. Attorneys often advocate for DCF to provide linguistically appropriate services for their clients and can help clients in finding social services themselves.

It should be noted, however, that a majority of families involved with DCF are not court involved. As such, the clear limitation to speaking primarily with attorneys is that our results do not directly shed light on the many LEP individuals who do not have an advocate to represent their interests. Nevertheless, many of these attorneys' insights reflected DCF's language access practices within the investigative phase, which remains fundamentally the same regardless of whether a DCF client has an attorney. Even attorneys cannot correct the misinformation and misunderstandings that arise when DCF workers talk to LEP clients outside an attorney's presence – which includes the majority of their conversations – unless it is a formal meeting that the attorney is invited to. Similarly, attorneys cannot create social services that do not exist in their client's language. Most fundamentally, attorneys cannot help their clients from facing an increased likelihood of separation compared to their English-speaking counterparts.

Thus, while our findings reveal the difficulty that many LEP individuals *with* an attorney have faced when attempting to obtain meaningful language access at DCF, we can extrapolate the increased difficulty many LEP families *without* an advocate may face when involved with DCF.

B. Language Access Inconsistency

"It's always a sort of a patchy process."
- Anonymous CPCS Attorney, interviewed on 9/3/19

The Department of Children and Families is failing to provide limited English proficient (LEP) residents of Massachusetts with federally mandated language access to its programs and services. DCF's failure to provide consistent, "meaningful" language access to its clients represents a violation of the Department's own regulations and the legal rights of the Massachusetts residents it serves. All of the attorneys and advocates interviewed for this project indicated that a significant amount of DCF's provision of services for LEP clients is insufficient and ineffective.

DCF's inability to provide consistent language access to clients across Massachusetts represents a systematic failure to turn the Department's policies on language access into everyday practice. The Department's regulations explicitly guarantee that it will serve clients in a manner that is "fair, just, and equitable" while making "all reasonable efforts to ensure that communications with every client, whether written or oral, are made in a language, or in a manner, that the client can understand."⁵⁹

Similarly, the Department's Language Access Plan (LAP) echoes the urgent need for language access: "The uniquely personal and sensitive nature of our mission requires DCF to create working relationships wherein children and families feel safe and supported regardless of their cultural background or linguistic capabilities."⁶⁰ DCF's own regulatory policies state that it will achieve the goal of meaningful access through the use of bilingual workers as well as interpreters, the professional translation of vital documents, and the referral of clients to community and social services in their native languages.⁶¹ Yet despite these guarantees, DCF regularly does not adhere to its own Language Access Plan nor implement its policies on serving LEP clients effectively.⁶²

DCF's Language Access Plan warrants further discussion as the most recent iteration of this document, the 2019-2021 Language Access Plan, includes very little updated content compared to DCF's 2011 and 2014 Language Access Plans. Within the most recent LAP's introduction, this plan states that "The Department will review and update, on a bi-annual basis, this LAP in order to ensure continued responsiveness to community needs," yet it appears that very little updating ever actually occurs. Without continual review and refinement, language policies outlined within a Language Access Plan are thus placed on the backburner or treated as an afterthought. This has clearly become the case, as confirmed by the Department of Health and Human Services (HHS) Office for Civil Rights investigation of DCF from 2018.⁶³

HHS' Office for Civil Rights established that, broadly speaking, the Department appears to not treat language access as a priority or train its staff on the importance of, and federal requirement to, provide

⁵⁹ 110 Mass. Code Regs. 1.06 p.12, (West through 2020), <https://www.mass.gov/doc/110-cmr-1-principles-and-responsibilities-of-the-department-of-social-services/download>.

⁶⁰ Massachusetts Department of Children and Families Language Access Plan 2019-2021, p.2 <https://www.mass.gov/doc/language-access-plan-7/download>. See *Appendix B*

⁶¹ Massachusetts Department of Children and Families Language Access Plan 2019-2021, <https://www.mass.gov/doc/language-access-plan-7/download>. See *Appendix B*; 110 Mass. Code Regs. 1.06 p.12, (West through 2020), <https://www.mass.gov/doc/110-cmr-1-principles-and-responsibilities-of-the-department-of-social-services/download>.

⁶² Jessica Salinas-Thomas, CPCS Attorney, interviewed on 5/3/19; Anonymous CPCS Attorney, interviewed on 8/19/19; Anonymous CPCS Attorney, interviewed on 9/3/19.

⁶³ Department of Health and Human Services, OCR DCF Language Access Complaint Decision 2018. See *Appendix E*

linguistically appropriate services.⁶⁴ In its independent analysis of DCF's language access practices, HHS' Office for Civil Rights found that DCF does not provide appropriate interpretation or translation to LEP clients and that the Department would need to make several "voluntary compliance measures" to "ensure compliance with Title VI and its implementing regulation."⁶⁵

Unfortunately, a lack of emphasis on language access within DCF's everyday practice does not only represent a shirking of the Department's legal responsibility. DCF's maintenance of the status quo and inconsistency in providing language access services may have a direct impact on whether a child will be taken from their home and separated from their family, as will be discussed later in this report. Taking a child away from their parents can result in complex trauma and long-term emotional, mental, and educational instability. This is not a task that should be taken lightly. While there are many situations in which a child may be rightly removed from their home for the benefit of their health and safety, the native language of their parents should have nothing to do with that decision. DCF's current practice, however, indicates that is not always the case.

The following Sections will lay out how DCF is regularly failing to meet its federal mandate to provide language access to LEP clients, and the ultimate impact of such insufficient practices. This first Section will examine the inconsistency within DCF's provision of language services, and include an analysis of languages served by DCF. The next two Sections will examine the lack of essential information LEP clients receive about their case – due to DCF's insufficient interpretation services, translation services, and social services – and how such a deprivation of case information may lead to an LEP parent's lack of engagement (or appearance thereof) within their case. These two Sections discuss how an LEP client's confusion about their case and subsequent lack of action is extremely serious, as it is often perceived negatively by an LEP parent's caseworker. The following Section examines the impact poor information sharing, a lack of understanding, a lack of engagement, and a negative relationship with one's caseworker can have on an LEP parent's case: an increased likelihood they may be separated from their child. This Section then discusses how such separation may lead to long-term trauma for the children of LEP parents. Finally, the last Section examines why this failure to provide language access is occurring: in part due to the nature of DCF's mission, and in part due to DCF's staffing and training practices.

1. Superstar Staff

Systemically, language access at DCF is often an afterthought. Without an organizational emphasis on the importance of language accessibility, the provision of language access services is largely dependent on the judgment or compassion of individual "superstar" caseworkers, supervisors, and managers. As such, DCF effectively leaves the provision of meaningful language access for LEP families to the luck of the draw. Some staff members will go the extra mile in ensuring documents are translated, services are available in the client's language, and that a bilingual co-worker or interpreter is present in all interactions.⁶⁶ However, these actions require extra effort from staff and may put them at odds with demands on their time from the Department or their supervisors.

⁶⁴ This finding has also been confirmed through our qualitative research; Anonymous Attorney, interviewed on 11/21/19.

⁶⁵ Department of Health and Human Services, OCR DCF Language Access Complaint Decision 2018. *See Appendix E*

⁶⁶ Anonymous CPCS Attorney, interviewed on 7/11/19; Anonymous CLCM Attorney, interviewed on 7/17/19; Anonymous CPCS Attorney, interviewed on 8/20/19*; Thomas Roy, Attorney, interviewed on 10/18/19.

"It just comes down to the social worker's willingness to work with this family and try to find a solution, versus the social worker who is not willing to work with the family and is fine with the status quo of 'well this is a parent who just isn't doing what I asked them to do.'"

- Anonymous CPCS Attorney, interviewed on 7/11/19

On the other end of the spectrum, many DCF staff put little to no weight on language issues and will often not make accommodations or ensure that LEP clients have the ability to meaningfully engage in the Department's processes.⁶⁷ In one example, an attorney described a DCF caseworker who told her that "At a certain point [the client] is going to have to learn English to parent this child."⁶⁸ These DCF staff members tend to adopt an attitude that language issues are not "their problem" and fail to recognize, let alone address, how language may be hindering a client's ability to engage in their case.⁶⁹ These wide-ranging language access practices – dependent on the convictions of individual caseworkers – fundamentally represent the rampant inconsistency within DCF's provision of language access services.

2. Bilingual Staff

Although DCF is thus broadly failing to consistently serve many of its LEP clients, there are some bright spots for the Department to build on. The primary areas where DCF is succeeding are within the Department's capacity to respond to Spanish-speaking clients with bilingual workers.⁷⁰ In particular, some of those interviewed for this project expressed confidence in DCF's ability to consistently provide Spanish-speaking caseworkers in the Western region, Lowell and Lawrence, as well as Greater Boston.⁷¹

It should be noted, however, that DCF prefers the use of bilingual staff for interpretation and translation when it comes to languages other than Spanish as well, as it is much more efficient than the time-consuming process of finding and scheduling an interpreter. Unfortunately, a much smaller number of DCF staff speak Khmer, Portuguese, and Haitian Creole, languages which together represent a significant portion of LEP clients.⁷² Overall, DCF does not have enough bilingual staff to meet the demand for language services, especially for rare languages.

As a result of this staffing inconsistency, not every LEP family involved with DCF is matched with a caseworker who speaks their language. DCF's Language Access Plan from 2011 indicates that the Department employed 358 Spanish-speakers, 50 Portuguese speakers, 47 Haitian Creole speakers, 23 Khmer speakers, 26 Cape Verdean Creole speakers, and eight Vietnamese speakers in total across all five regions of the Commonwealth.⁷³ FIGURE 4 displays this information below. DCF has not publicly issued updated numbers on bilingual staff as of the publication of this report, and it is unclear whether

67 Anonymous CPCS Attorney, interviewed on 7/11/19; Anonymous CLCM Attorney, interviewed on 7/17/19; Anonymous CPCS Attorney, interviewed on 8/20/19; Darlene A. Spencer, Child Welfare/Family Support Advocate and Leader, interviewed on 10/22/20.

68 Anonymous CPCS Attorney, interviewed on 9/3/19.

69 Anonymous CPCS Attorney, interviewed on 7/11/19.

70 Although this section will refer to all of these caseworkers as "bilingual," this category may include workers who are fluent in another language due to education or training rather than being a native speaker. In cases where a social worker is fluent in the client's or family's language, the worker simply speaks in that language during all interactions.

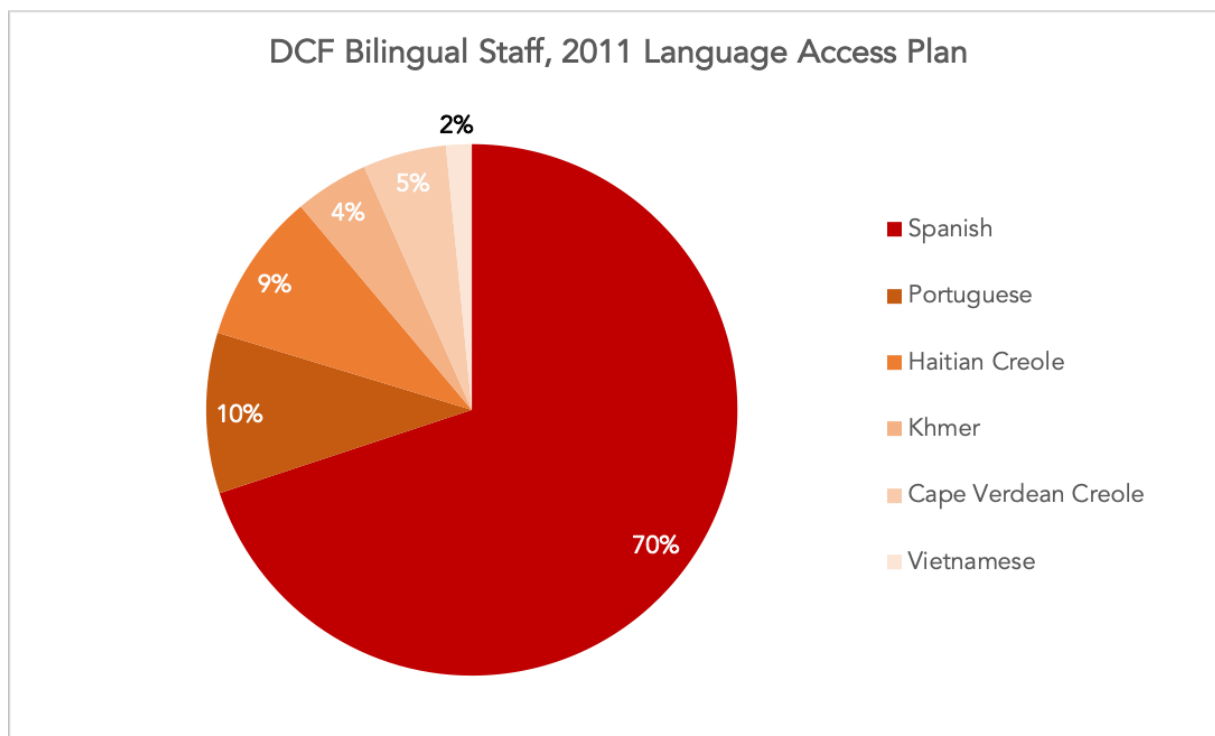
71 Anonymous CPCS Attorney, interviewed on 7/11/19; Anonymous CLCM Attorney, interviewed on 7/17/19; Anonymous Attorney, interviewed on 9/13/19; Thomas Roy, Attorney, interviewed on 10/18/19.

72 Anonymous CPCS Attorney, interviewed on 7/11/19; Anonymous CLCM Attorney, interviewed on 7/19/19; Anonymous CPCS Attorney, interviewed on 8/20/19*; Anonymous CPCS Attorney, interviewed on 9/3/19; Anonymous CPCS Social Worker, interviewed on 9/17/19; Anonymous CPCS CAFL Trial Attorney and Mentor, interviewed on 9/17/19.

73 Massachusetts Department of Children and Families Language Access Plan, January 10, 2011, <https://www.masslegalservices.org/system/files/library/DCF%20LAP.pdf>. See Appendix D

DCF continually keeps track of how many bilingual staff they have within each region, as that data is not currently mandated for them to report.

FIGURE 4: DCF Bilingual Staff, 2011 Language Access Plan



In its most recent Language Access Plan, DCF states that “area management is constantly reviewing case assignments, and is faced with many challenges in assigning bilingual cases to bilingual staff, while balancing case assignment to bilingual and non-bilingual workers.”⁷⁴ Our interviews have similarly confirmed that there is a lack of consistency overall when it comes to the assignment of bilingual staff to LEP families.

3. Analysis of Languages Served

Given DCF’s primary reliance on bilingual caseworkers to provide meaningful interpretation and translation services, the quality of language access at DCF depends greatly on the specific language a family or client speaks. Our interviews indicate that among DCF’s LEP clients, Spanish-speakers receive the highest level of access. This finding reflects the large number of Spanish speakers in Massachusetts and the relative availability of bilingual caseworkers who speak Spanish.⁷⁵ However, while DCF’s efforts to increase access for Spanish-speakers have had some success, attorneys and advocates indicate that challenges remain. Cultural and linguistic nuances continue to complicate DCF’s provision of Spanish services and investigations of Spanish-speakers.

⁷⁴ Massachusetts Department of Children and Families Language Access Plan 2019-2021, p.7, <https://www.mass.gov/doc/language-access-plan-7/download>. See Appendix B

⁷⁵ Jessica Salinas-Thomas, CPCS Attorney, interviewed on 5/3/19; Anonymous Attorney, interviewed on 6/29/19; Anonymous CLCM Attorney, interviewed on 7/19/19; Anonymous CPCS Attorney, interviewed on 8/19/19; Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous CPCS Attorney, interviewed on 9/3/19; Thomas Roy, Attorney, interviewed on 10/18/1; Anonymous Attorney, interviewed on 11/21/19.

According to those interviewed for this report, there is a divide between DCF staff, most of whom are from Puerto Rico or of Puerto Rican heritage, and DCF's Spanish-speaking clients, most of whom are from the Dominican Republic, Mexico, or Central America.⁷⁶ Differences in vocabulary and accent can create misunderstandings and difficulties in communication between clients and their bilingual caseworkers.⁷⁷ In one instance, an attorney recounted how a Spanish-speaking client felt a DCF caseworker had disrespected her due to a word the worker used to describe the parent's parenting style. Until the attorney was able to explain that the word had a different meaning for the caseworker, the client distrusted the caseworker and was hesitant to engage with her.⁷⁸

Taking into consideration DCF's complications with providing Spanish language services, it logically follows that languages other than Spanish – even if they are routinely encountered in Massachusetts, such as Portuguese and Haitian Creole – receive considerably poorer access to interpretation, translation, and community services than those who speak English or Spanish. The majority of those interviewed for this project indicated that if a family or parent does not speak English or Spanish, then the quality of language access and services they receive from DCF will decline.⁷⁹ These clients who speak neither English nor Spanish represent a significant number of people, totaling over 1,000 people being served by DCF in each quarter since 2013 (i.e., the first quarter of fiscal year 2014).

Examining DCF's own data more broadly similarly indicates that LEP clients overall make up a significant portion of the population they serve. DCF publicly releases Quarterly Profiles that provide a number of statistics on those being served, including a field entitled "Primary Language." Under this category, DCF includes nine languages, as well as English/Unspecified and Other. Although "Primary Language" is a valuable data point, it does not actually measure if the individual is limited English proficient, as an individual may have a non-English primary language and still be fluent in English. That said, the variable represents an appropriate stand-in for LEP individuals receiving services from DCF as DCF should, in most cases, be providing services in an individuals' primary language. The "Other" category is more problematic given that it represents the second largest language group for each quarter. It is unclear if all of these speakers are from a hodgepodge of different language groups, if most of them speak one language not covered in the other categories, or if some of them actually speak one of the nine languages counted (and were subsequently misclassified as "Other"). Even with these limitations in mind, the language data published by DCF still provides a useful sense of scale and frequency of the number of LEP clients at DCF.

From July 2013 until June 2018, an average of 9.82% of DCF's clients spoke a primary language other than English. The highest proportion was 11.59% in the third quarter of fiscal year 2016 (January 2016 through March 2016) while the lowest proportion was 9.10% in the first quarter of fiscal year 2015 (July 2014 through September 2014). In terms of the number of clients speaking a language other than English, the average was 9,181 individuals during the same time range with a peak of 11,652 in the third quarter of fiscal year 2016 and a low of 6,808 in the first quarter of 2014. As FIGURE 5 indicates, a higher number of adults involved in DCF cases spoke a primary language other than English compared to children

76 Anonymous Attorney, interviewed on 6/29/19; Anonymous Attorney, interviewed on 9/13/19; Anonymous Attorney, interviewed on 11/21/19.

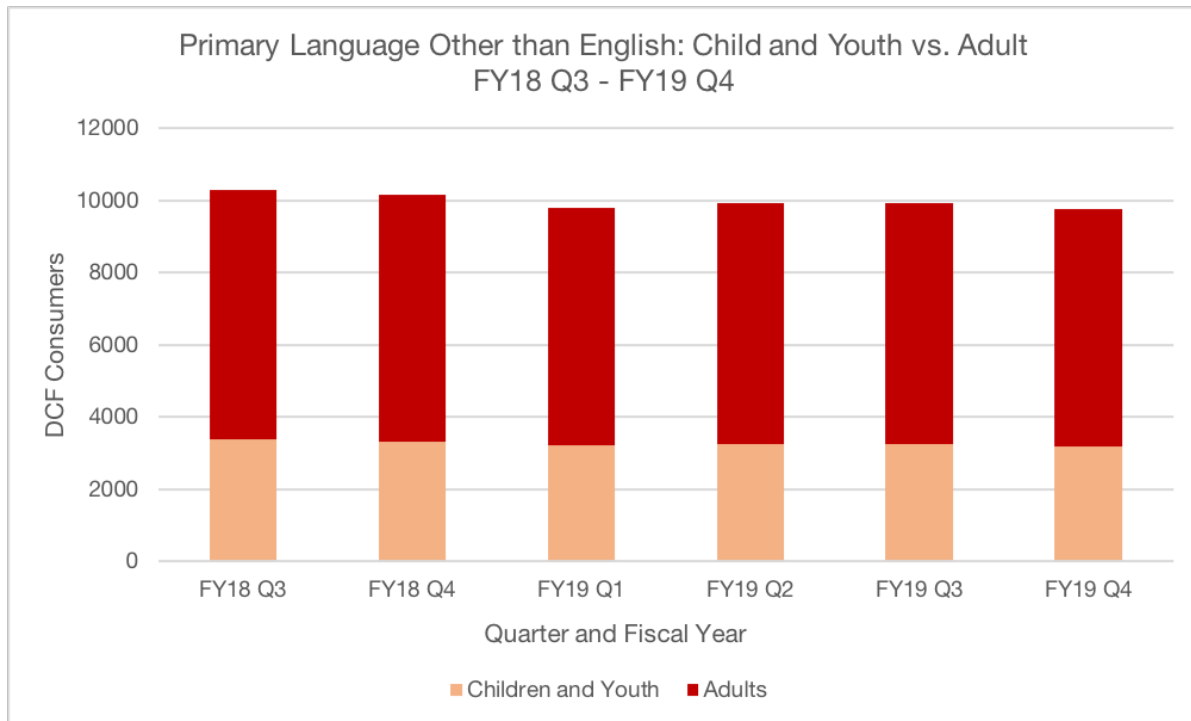
77 Anonymous Attorney, interviewed on 6/29/19; Anonymous CPCS Social Worker, interviewed on 9/17/19.

78 Anonymous Attorney, interviewed on 6/29/19.

79 Elizabeth McIntyre, GBLS Senior Attorney, interviewed on 6/25/19; Anonymous CPCS Attorney, interviewed on 7/11/19; Anonymous CLCM Attorney, interviewed on 7/19/19; Anonymous CPCS Attorney, interviewed on 8/19/19; Anonymous CPCS Attorney, interviewed on 9/3/19; Anonymous Attorney, interviewed on 9/13/19; Thomas Roy, Attorney, interviewed on 10/18/19; Anonymous Attorney, interviewed on 11/21/19.

and youth involved in cases. These numbers indicate that individuals who speak a language other than English make up a significant portion of DCF's client base with approximately one out of every ten clients speaking a language other than English.

FIGURE 5: Primary Language Other than English, Child and Youth vs Adult, FY18 Q3-FY19 Q4



As for the languages spoken, as mentioned previously, the most common primary language other than English was Spanish, followed by the undefined "Other" category. DCF's data include eight other languages (Khmer, Portuguese, Haitian Creole, Cape Verdean Creole, Vietnamese, Chinese, Lao, and American Sign Language⁸⁰). Of these languages, Portuguese, Haitian Creole, and Cape Verdean Creole represented the next largest categories. FIGURE 6 and FIGURE 7 display the numbers of speakers of primary languages other than English and speakers of primary languages other than English, Spanish, and Other, respectively. A complete table detailing the number of speakers of each primary language by each quarter can be found in *Appendix A* of this report.

80 Clients who are deaf and hard of hearing also appear to have significant struggles receiving adequate services in ASL from DCF. DCF's Language Access Plan from 2019-2021 acknowledges that "The Department has a handful of direct service employees who are proficient in ASL. As a result, the ability to meet the needs of the deaf and hard of hearing community is a challenge. The Department has executed a Memorandum of Understanding ("MOU") with the MA Commission for the Deaf and Hard of Hearing (MCDHH) for referral services during business hours to provide ASL interpreters for these families." Massachusetts Department of Children and Families Language Access Plan 2019-2021, p.7, <https://www.mass.gov/doc/language-access-plan-7/download>. See *Appendix B*

FIGURE 6: Primary Languages Other than English for DCF Consumers, FY14-FY19

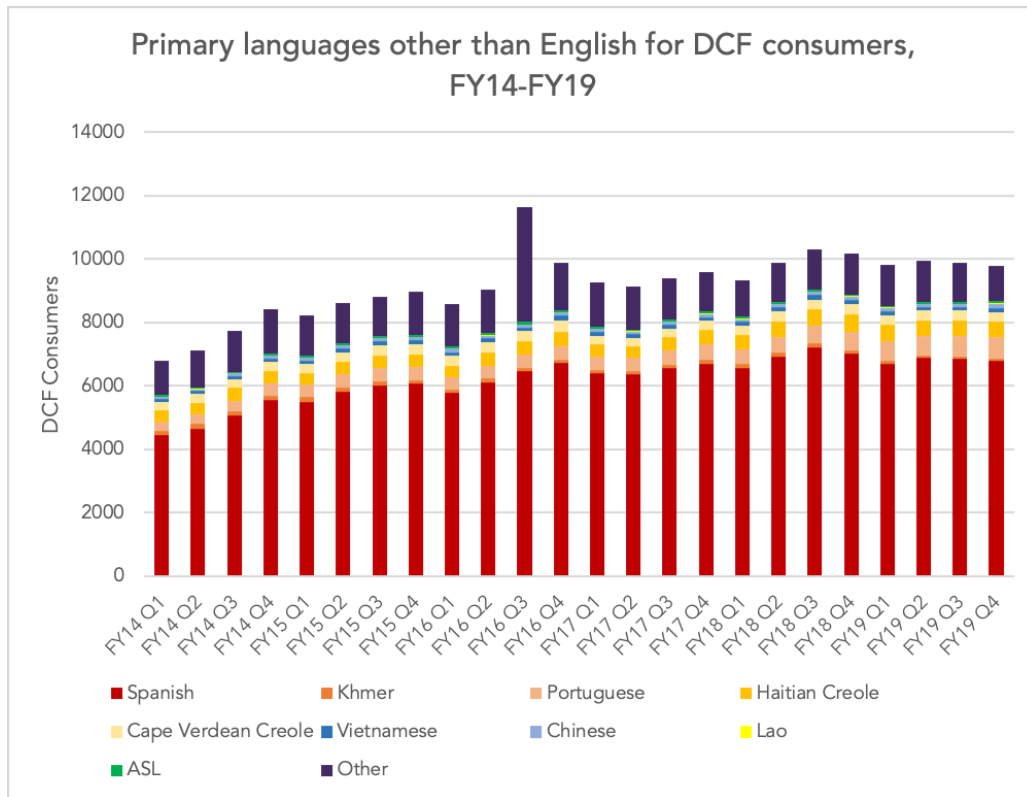
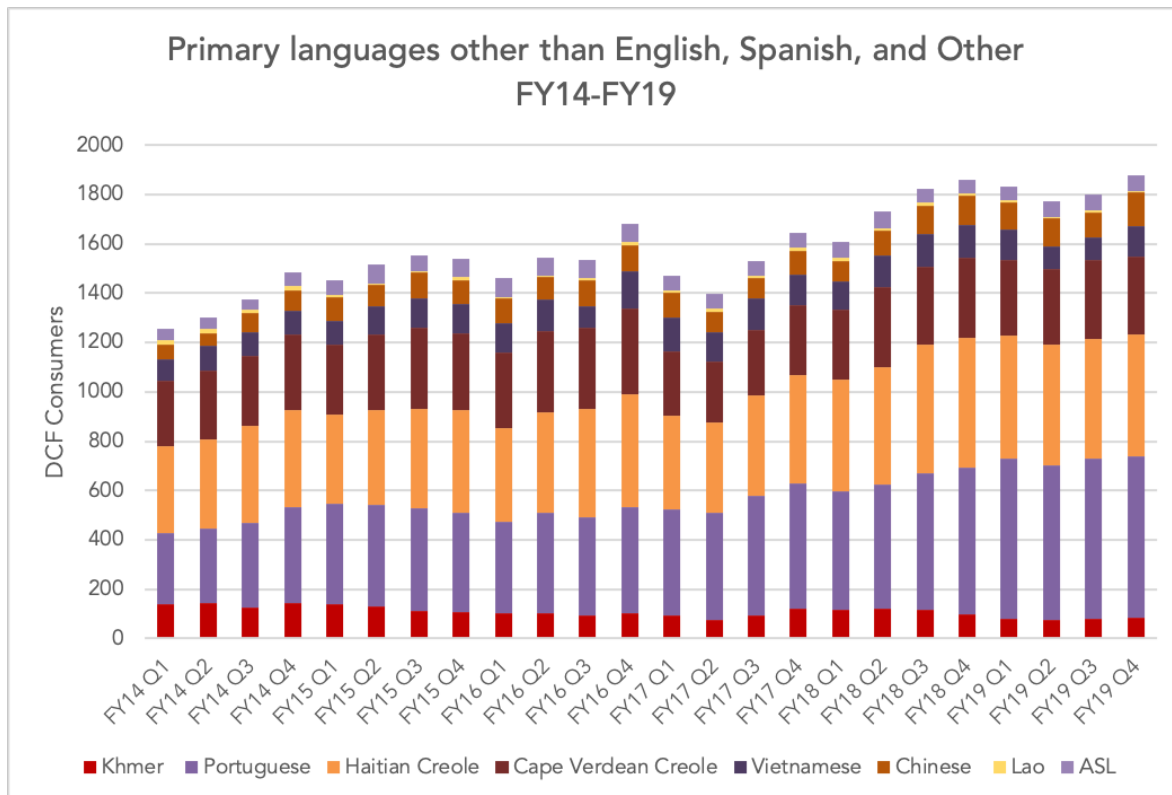


FIGURE 7: Primary Languages Other than English, Spanish, and "Other" for DCF Consumers, FY14-FY19



These language needs are not entirely random or unexpected. Those interviewed for this project indicate that in some cases DCF struggles to provide interpretation services, translation services, and social services to linguistic groups that the Department should expect to encounter in specific geographic areas.⁸¹ Examples cited include Khmer-speakers in Lowell and Arabic-speakers in Springfield, both of which are fairly large language groups in specific regions DCF serves.⁸² Despite this common knowledge, a significant element of DCF's struggle for language accessibility is due to a lack of bilingual staff for languages other than Spanish. The next few sections identify the ways in which this struggle is borne out in practice.

C. LEP Clients Lack Essential Information, Lack Understanding

While DCF prioritizes bilingual caseworkers as its primary vehicle for the provision of language access services, the data above reveals that for many LEP parents it is improbable they will be assigned a bilingual caseworker. In these common situations, LEP parents are then forced to navigate DCF's complicated processes without sufficient interpretation services, document translation services, or accessible social services – leaving LEP parents lacking essential information about their cases (timelines, expectations, requirements, etc.) that will undoubtedly impact whether or not a child is removed from their home.

1. Lack of Quality Interpretation

DCF is failing to consistently provide quality in-person interpretation for LEP clients across Massachusetts, most notably in cases where the social worker assigned to an LEP family is not bilingual. Although DCF's policies and guidelines create an expectation of interpretation (or the use of bilingual social workers) for all interactions, our findings indicate that this expectation is often unmet. Furthermore, whenever DCF does use professional interpreters, they often lack competency and impartiality, and many DCF workers are untrained on how to properly work with them.

Unfortunately, subpar professional interpretation is often the best-case scenario for many DCF-involved LEP families. In many cases, an English-speaking caseworker will attempt to meet with an LEP client without a professional interpreter – relying on family members to interpret, or otherwise speaking in English and gesturing to communicate. All of these problems create a situation in which parents regularly do not understand how DCF's investigations and evaluations work, what DCF's expectations are, and what they must do to maintain or regain custody of their children. The following paragraphs examine DCF's insufficient interpretation practices in more detail.

When it comes to in-person interpretation services, DCF regulations "ensure that the [Departmental] investigation includes the linguistic and cultural knowledge needed to perform a fair and comprehensive investigation of the reported child and family."⁸³ Furthermore, DCF's regulations state the Department will "ensure that its social work activities are conducted by a social worker fluent in a language understood by the client. If such a person is unavailable, then the Department shall utilize an interpreter who can effectively communicate with the client."⁸⁴ These regulations set a standard under which all

81 Elizabeth McIntyre, GBLs Senior Attorney, interviewed on 6/25/19; Anonymous CPCS Attorney, interviewed on 8/20/19.

82 Anonymous CPCS Attorney, interviewed on 8/19/19; Thomas Roy, Attorney, interviewed on 10/18/19.

83 110 Mass. Code Regs. 4.27 p.38 (West through 2020) <https://www.mass.gov/doc/110-cmr-4-intake/download>.

84 110 Mass. Code Regs. 1.06 (West through 2020), <https://www.mass.gov/doc/110-cmr-1-principles-and-responsibilities-of-the-department-of-social-services/download>.

interactions between LEP clients and DCF staff should be conducted either through a bilingual staff person or an interpreter.

In practice, these regulations apply to a broad number of interactions between DCF and the families they are involved with. DCF caseworkers may meet face-to-face with families and parents in a variety of formats including the family's home, DCF offices, courts, schools, medical facilities, service providers' offices, and the wider community. In addition, DCF workers may also meet with children and youth involved in child welfare cases at their foster homes and pre-adoptive homes, as well as congregate care facilities.⁸⁵ Through all of these in-person interactions with LEP clients, and over the phone, DCF workers should be using professional interpreters, assuming the worker does not speak the language of the parent or child fluently.

In the best interactions with the most effective interpreters, attorneys and advocates interviewed for this report regularly cited interpreters as important supports for clients, filling an essential role both as cultural mediators and neutral conduits for communication.⁸⁶ However, this does not represent the majority of experiences for many of DCF's LEP clients. Interviewees often cited instances of interpreters not following best practices, or not being as well-trained or competent as interpreters used in court settings.⁸⁷

"I don't know what qualifications people have, but I've done some very basic training on how interpretation is supposed to happen, and I've seen those basic principles not being followed by interpreters. For example, it is not proper to use third person when interpreting. I've also just seen incompetent interpretation. Not only are interpreters not following the principles of interpretation, they are also not fluent in the language."

- Anonymous CPCS Attorney, interviewed on 8/20/19

A lack of professionalism from the interpreters contracted by DCF is often present not only with respect to interpreter competency, but also with respect to interpreter impartiality. In one egregious case, an attorney reported that a Mandarin interpreter was actively hostile to the client, refusing to act as a neutral conduit while directly criticizing and lecturing the client in Mandarin. When DCF caseworkers were made aware of the issue, they refused to address it, commenting that they had "gone above and beyond" in ensuring an interpreter was present for the client.⁸⁸

The complexity of DCF's process in conjunction with a lack of specialized interpreters can also negatively impact the quality of interpretation provided to LEP clients. Unlike bilingual DCF caseworkers, interpreters may not be fully versed in how DCF processes work or how to properly interpret the specialized terminology of a case. As a result, interpreters may not provide accurate information or may be unable to convey the gravity of specific meetings or documents.⁸⁹ In one particularly troubling incident during a fair hearing process, DCF provided an interpreter for a Russian-speaking client who told

⁸⁵ Massachusetts Department of Children and Families Language Access Plan February 2013-2015, February 2015, p. 6, https://www.migrationpolicy.org/sites/default/files/language_portal/LAP-Dept%20of%20Children%20and%20Families_0.pdf. See *Appendix C*

⁸⁶ Anonymous CPCS CAFL Trial Attorney and Mentor, interviewed on 9/17/19.

⁸⁷ Jessica Salinas-Thomas, CPCS Attorney, interviewed on 5/3/19; Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous CPCS Attorney, interviewed on 9/3/19; Anonymous CPCS Social Worker, interviewed on 9/17/19.

⁸⁸ Anonymous CPCS Attorney, interviewed on 8/20/19*.

⁸⁹ Anonymous Attorney, interviewed on 6/29/19; Anonymous CPCS Attorney, interviewed on 8/20/19*. At the same time, the complexity of DCF's processes and procedures can be confusing to many individuals involved with the department, including English speakers, so this challenge is not solely one of ensuring language access.

the client damaging information such as, “This hearing is not that important.”⁹⁰

Access to interpretation can also be denied by a DCF caseworker themselves, given that many staff lack significant training on when interpreters are necessary.

⁹¹ Many caseworkers believe that if a client speaks even a basic level of English, they are not entitled to receiving services in their primary language. In addition, some DCF caseworkers are not sensitive to the fact that many LEP individuals will continue speaking English even if not fully appropriate for them due to pride, or not understanding they are entitled to services in their own language.⁹² However, as the “limited” in limited English proficiency implies, LEP individuals may speak some English but still “have a limited ability to read, speak, write, or understand English.”⁹³

In one case involving a Haitian Creole-speaking parent who spoke some English, an attorney recounted that DCF pushed back against using an interpreter because the parent spoke “enough English.” DCF argued that since the client had posted a Facebook video where he spoke English, that meant he spoke English “fully.” Due to the delays in the case as a result of insufficient language services, the child in question was eventually adopted, though a neutral court investigator appointed for the case asserted that if DCF would have provided appropriate language services from the start that reunification rather than separation would have been possible.⁹⁴ Such examples reveal that not providing an interpreter is not just a question of convenience and understanding, but can also directly affect a child’s ability to remain in the custody of their parent.

“If a person who is translating doesn’t understand the context of the document or the meeting itself, I just don’t understand how that could be communicated effectively to [another] person, especially the direness of needing to comply with those services.”

- Anonymous CPCS Attorney, interviewed on 8/20/19*

“I’ve noticed a lot with workers that are not bilingual, they don’t really understand speaking more than one language...They think if they can communicate with a parent at all in English then they’re fully fluent and they can just go on in English at full speed and whenever they want.”

- Anonymous CPCS Attorney, interviewed on 8/19/19

In addition to a lack of understanding among DCF staff on when an interpreter may be required, many DCF caseworkers do not understand how to work with interpreters, often believing that any bilingual or fluent individual will be an effective interpreter.⁹⁵ DCF staff may also not allow interpreters to fully interpret the entirety of a conversation, or a caseworker may speak too quickly, thus not allowing the interpreter to convey all the information to the LEP client.

⁹⁰ Briana Cummings, Attorney interviewed by email 10/30/20.

⁹¹ Anonymous CPCS Attorney, interviewed on 8/19/19; Anonymous CPCS Attorney, interviewed on 8/20/19; Thomas Roy, Attorney, interviewed on 10/18/19; Anonymous Attorney, interviewed on 11/21/19; Anonymous CPCS Attorney, interviewed on 1/24/20.

⁹² Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous Attorney, interviewed on 11/21/19.

⁹³ “Commonly Asked Questions and Answers Regarding Limited English Proficient (LEP) Individuals,” April 2011, https://www.lep.gov/sites/lep/files/media/document/2020-03/042511_QA_LEP_General_O.pdf.

⁹⁴ Anonymous CPCS Attorney, interviewed on 8/19/19.

⁹⁵ Jessica Salinas-Thomas, CPCS Attorney, interviewed on 5/3/19; Anonymous CPCS Attorney, interviewed on 9/3/19.

"A lot of [DCF] workers don't understand that interpretation is a skill. They think that if one person is present at the meeting that speaks both languages, even if that person has an additional role in the case, that's sufficient for interpretation. Even if that person isn't completely fluent in both of the languages they'll think 'oh they'll muddle along.'"

- Anonymous CPCS Attorney, interviewed on 9/3/19

Despite the insufficient way in which many DCF workers utilize professional interpreters, a larger problem is that DCF does not regularly use professional interpreters for monthly home visits and other informal interactions.⁹⁶ Non-bilingual DCF caseworkers also rarely use telephonic interpretation. In fact, attorneys and service providers estimate that DCF may use an interpreter at best in approximately 25% of the LEP home visits the agency conducts.⁹⁷ This is likely because interpreters, especially for rare languages, may be difficult to find; however, this burden does not relieve DCF of its federal obligation to provide interpretation.⁹⁸

"One of their requirements is to visit clients once a month in the home, and I'm sure that they're not taking an interpreter with them."

- Anonymous CPCS Social Worker, interviewed on 9/17/19

DCF's own policies acknowledge the agency's failure to ensure that interpreters are present at in-person encounters between non-bilingual staff and LEP clients. In its most recent Language Access Plan, DCF admits that it "does not have much difficulty" finding interpreters for common foreign languages like Spanish or Portuguese, but that for rarer languages, "it becomes more difficult to obtain an interpreter in the catchment area or one who is willing to travel."⁹⁹ HHS' OCR findings from 2018

confirm that despite these policies, DCF is systemically not providing interpretation services: "DCF policy does not require an interpreter at all supervised visits...DCF social worker procedure is to not cancel an appointment where an interpreter is not readily available for an appointment."¹⁰⁰ This finding further demonstrates that DCF is failing to provide interpreter services as promised in its regulations and mandated by federal law.

"If there's a more blended family and only some of the household speaks English, I've seen conversations where DCF just talks to the adults who speak English and they kind of feel like it's trickling through, so to speak."

- Anonymous CPCS Attorney, interviewed on 9/3/19

When DCF caseworkers do not speak a family's language and do not bring along a professional interpreter – as is frequently the case – the Department's staff may use family members or relatives to interpret during their interactions with LEP clients. The use of family members, relatives, and even neighbors who are fluent in English appears to be a fairly regular practice by English-speaking DCF

⁹⁶ Professional interpreters seem to be more commonly used in more formal meetings such as Foster Care Reviews.

⁹⁷ Elizabeth McIntyre, GBLS Senior Attorney, interviewed on 6/25/19; Anonymous Attorney, interviewed on 6/29/19.

⁹⁸ Anonymous CPCS Attorney, interviewed on 8/20/19.

⁹⁹ Massachusetts Department of Children and Families Language Access Plan 2019-2021, p.9 <https://www.mass.gov/doc/language-access-plan-7/download>. See Appendix B

¹⁰⁰ Department of Health and Human Services, OCR DCF Language Access Complaint Decision 2018. See Appendix E

workers assigned to LEP families or parents.¹⁰¹ Family members are most often used for home visits and unplanned encounters rather than for formal meetings. This practice is even more common when one family member (such as one parent) speaks English well enough to converse with the DCF caseworker, even if the other parent is LEP. In some cases, family members may be continually used as interpreters even over the objection of the family involved and their attorney, if they have one.¹⁰²

Although DCF caseworkers seem less prone to use children involved in cases as interpreters for their parents, the practice still occurs, especially for logistical or less sensitive information.¹⁰³ In other instances, children or family members may act as de facto interpreters when DCF workers speak to them in English, and their LEP relatives ask them to explain what was said.

"I think DCF workers understand that you are not supposed to tell a child to interpret for a parent nor are you supposed to tell a child 'Can you go get your grandma to interpret?' I think it's more that DCF workers do not always bring their own interpreters, and families are just trying to understand what is going on. So, if there is an English-speaking family member, they may understandably lean on the English-speaking family member."

- Elizabeth McIntyre, GBLS Senior Attorney, interviewed on 6/25/19

Yet the use of family members as interpreters is problematic on several levels. First, there is no guarantee that relatives or family members understand the DCF process and can accurately explain to their families what is going on. In addition, asking children or relatives to interpret for parents can violate the privacy of those involved in the case or cause parents to withhold potentially sensitive information that they might provide to a neutral, professional interpreter. Finally, DCF caseworkers do not always refrain from using relatives, family members, or even children for interpreting sensitive and traumatic information. In one particular case, described anonymously to the researchers of this report, DCF caseworkers requested that a father who was being accused of violently abusing his partner act as the interpreter for the same partner.¹⁰⁴ Such practices are not only psychologically harmful, but also have the potential to provide DCF investigators with biased and inaccurate information.

Despite the clear issues with utilizing a family member as an interpreter, detailed above, many LEP families do not even have such a family member that could serve as an interpreter. Thus, in many cases with LEP families, a DCF caseworker may simply speak English, leave forms, and communicate with their hands during home visits and assessments.¹⁰⁵ These practices, which run contrary to DCF's stated policies, mean that LEP clients may have no way to fully understand what is going on with their case or what a caseworker is doing in their home.

101 Anonymous Attorney, interviewed on 6/29/19; Anonymous CPCS Attorney, interviewed on 7/11/19; Anonymous CPCS Attorney, interviewed on 8/19/19; Anonymous Attorney, interviewed on 9/13/19; Anonymous CPCS Social Worker, interviewed on 9/17/19.

102 Anonymous CPCS Attorney, interviewed on 7/11/19.

103 Elizabeth McIntyre, GBLS Senior Attorney, interviewed on 6/25/19; Anonymous Attorney, interviewed on 6/29/19; Thomas Roy, Attorney, interviewed on 10/18/19.

104 Thomas Roy, Attorney, interviewed on 10/18/19.

105 Anonymous CPCS Attorney, interviewed on 7/11/19; Anonymous CLCM Attorney, interviewed on 7/19/19; Anonymous CPCS Attorney, interviewed on 9/3/19; Anonymous CPCS Social Worker, interviewed on 9/17/19.

"My understanding is that in the past [DCF has] gone [on home visits], sometimes just speaking English, and leaving forms. They try to just communicate with their hands by pointing to things or speaking very little at all."

- Anonymous CPCS Attorney, interviewed on 7/11/19

The end result of such strained communication between non-bilingual caseworkers and LEP families often leads to less contact between the two parties, as the challenging process of requesting and scheduling an interpreter may lead caseworkers to postpone or cancel monthly home visits or visitation services (if their child has been placed outside of the home).¹⁰⁶ Limited visitation services are particularly harmful, as research has shown a strong association between consistent, high-quality parent-child time, and ultimate reunification.¹⁰⁷ Fundamentally, less contact between a DCF caseworker and parents – through canceled home visits or visitation services – automatically means less information communicated to a parent about the requirements of their case, or the status of their child.

"Without a quality interpreter, DCF may not understand the child or caregiver's perspective. If you cannot have a conversation with a professional interpreter, then DCF does not understand what is going on with a particular family. If a child truly is being abused and neglected, then you are unlikely to be able to figure that out without a professional interpreter."

- Elizabeth McIntyre, GBLS Senior Attorney, interviewed on 6/25/19

All of these issues with language interpretation – including a lack of competent and impartial interpretation, DCF caseworkers who lack training on when and how to work with interpreters, reliance on family members to interpret, DCF caseworkers muddling through with hand gestures, and less contact between DCF caseworkers and families – create an environment in which LEP families are left to fend for themselves, sorting through DCF's policies without any clear guidance or understanding about how to fix their actions or maintain custody of their children.

However, this is not only problematic from the perspective of an LEP parent. All of the issues with quality interpretation detailed above that lead to a lack of understanding on the part of LEP families extend to DCF

caseworkers as well. Without a bilingual worker or quality interpreter present, DCF staff may be unable to properly investigate cases involving LEP parents. Issues communicating with LEP parents and families may lead the Department to not recognize positive changes in the family's situation or negative changes that need to be quickly addressed.¹⁰⁸ In this sense, the lack of interpreters or bilingual staff present for home visits represents a safety issue, as DCF staff will be unable to truly evaluate if a child is being neglected or abused because they cannot fully communicate with the family.¹⁰⁹

2. Lack of Adequate Translation

The Department of Children and Families is not consistently providing LEP clients with documents translated into their primary languages. Despite DCF regulations that require all documents delivered to LEP clients to be translated, LEP clients are regularly not receiving these letters, notices, and agreements in their primary languages. Although the individuals interviewed for this study report that documents

¹⁰⁶ Anonymous CPCS Attorney, interviewed on 7/11/19.

¹⁰⁷ U.S. Department of Health and Human Services Administration on Children, Youth, and Families, Family Time and visitation for children and youth in out-of-home care, February 5, 2020. <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2002.pdf>

¹⁰⁸ Anonymous CPCS Attorney, interviewed on 7/11/19.

¹⁰⁹ Elizabeth McIntyre, GBLS Senior Attorney, interviewed on 6/25/19.

are sometimes translated, especially into Spanish, these instances depend heavily on the particular office or the specific social worker assigned to a case. Action Plans – written agreements that outline what behavioral changes DCF needs parents to make, what tasks must be completed, and what services DCF must provide – are often only partially translated or explained orally by an interpreter, if they are translated at all.

DCF regulations explicitly state that all written communication to LEP clients must be translated or interpreted into the client’s primary language. In the Department’s regulations, DCF commits to ensuring “that any written communications from the Department to a client are in a language or manner of communication that is understood by the client.”¹¹⁰ Furthermore, in DCF’s 2019-2021 Language Access Plan, the Department promises to “make every effort to provide application forms, notices, letters, service plans, and other documents intended for consumers and family resources, in the individual’s preferred language if possible.”¹¹¹ Although the “if possible” note appears to add doubt, as noted above, DCF is legally required to translate vital documents such as Action Plans into an LEP family’s primary language.

“I had one [case] where the DCF worker actually was Cambodian and my Khmer-speaking client had very limited English and didn’t read English at all. The Action Plan was only provided in English. I had to raise it in court and the judge had to order [DCF] to translate it. Then [DCF] did the bare minimum of just translating the list of tasks and not all of the other information on there. And they said, ‘Oh well that’s the important part. She can figure the rest of it out.’”

- Anonymous CPCS Attorney,
interviewed on 8/19/19

Action Plans are key documents for DCF cases that describe what behaviors a parent will need to change and what tasks a parent will need to complete to maintain or regain custody of their children, such as attending counseling, anger management classes, substance use disorder classes, or parenting classes.¹¹² In addition, Action Plans also establish the ways in which DCF will assess the parent’s progress towards reaching the goals set by the document.¹¹³ In this sense, Action Plans represent agreements between family members and DCF, listing what DCF needs to do and what the family members need to do to reach a favorable conclusion to the case.

Despite the importance of Action Plans, these documents are rarely translated completely into the language an LEP client speaks.¹¹⁴ Action Plans are most commonly translated when the social worker assigned to the case is bilingual and the LEP family is Spanish-speaking; however, those interviewed for this project note that for Spanish-speaking DCF clients, while portions of Action Plans are often translated, it is not always the entire document.¹¹⁵ In many cases, DCF only translates the tasks a parent

110 110 Mass. Code Regs. 1.06 (West through 2020), <https://www.mass.gov/doc/110-cmr-1-principles-and-responsibilities-of-the-department-of-social-services/download>

111 Massachusetts Department of Children and Families Language Access Plan 2019-2021, p.3, <https://www.mass.gov/doc/language-access-plan-7/download>. See *Appendix B*

112 110 Mass. Code Regs. 6.01 p.59 (West through 2020), <https://www.mass.gov/doc/110-cmr-6-case-reviews/download>; 110 Mass. Code Regs. 6.03 p.64, (West through 2020), <https://www.mass.gov/doc/110-cmr-6-case-reviews/download> 110 CRM6: The Department of Children and Families, Section 6.03 “Permanency Hearings” p.64.

113 Mass. Code Regs. 6.01 p.59 (West through 2020), <https://www.mass.gov/doc/110-cmr-6-case-reviews/download>; 110 Mass. Code Regs. 6.03 p.64, (West through 2020), <https://www.mass.gov/doc/110-cmr-6-case-reviews/download>

114 Anonymous Attorney, interviewed on 6/29/19; Jessica Salinas-Thomas, CPCS Attorney, interviewed on 5/3/19; Anonymous CPCS Social Worker, interviewed on 9/17/19; Anonymous CPCS CAFL Trial Attorney and Mentor, interviewed on 9/17/19.

115 Anonymous CPCS Attorney, interviewed on 7/11/19; Anonymous CLCM Attorney, interviewed on 7/19/19; Anonymous CPCS Attorney, interviewed on 8/19/19; Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous CPCS Social Worker, interviewed on 9/17/19; Thomas Roy, Attorney, interviewed on 10/18/19.

needs to complete into their preferred language, often leaving the rest of the document, which includes the case history and DCF's obligations, in English.¹¹⁶

"For the most part, I just see [DCF] provide the documents in English, and they'll say 'get someone to translate it for you.' Very occasionally, I might have seen documents, especially shorter documents, in Spanish. Definitely never any other language and rarely in Spanish."

- Anonymous CPCS Attorney, interviewed on 9/3/19

In order to explain Action Plans to clients, bilingual DCF staff or contracted interpreters – if attending the relevant meeting or home visit – regularly “orally translate” Action Plans. In these instances, DCF caseworkers or interpreters will sit down with a client and explain the Action Plan's contents in the client's language.¹¹⁷ In other cases, bilingual caseworkers may informally translate an Action Plan, making notes on important parts of the document in a client's language.¹¹⁸ This incomplete translation process is not subject to professional review or marked in the official record of a case.¹¹⁹ If a DCF-involved client who faces this type of situation is lucky enough to have an attorney, they often only obtain translated Action Plans by convincing the judge overseeing the case to order the plans translated, a time-consuming process that many of DCF's LEP clients will never have access to.¹²⁰

However, leaving an LEP parent to figure out the specifics of their action plan alone is exceedingly problematic given the fact that these Action Plans are “treated like contracts,” and parents who are unable to complete the required tasks within them are seen as non-compliant or uninterested in maintaining or regaining custody of their children.¹²¹ The parallel to a contractual agreement is intensified by the fact that parents are expected to sign the Action Plan. However, there are many situations in which Action Plans are regularly “shoved in front of” LEP clients to sign, without them fully understanding what they are signing or agreeing to.¹²²

"The service plan is the key to reunification...Without a document that [clients] can ground themselves in, it's an even more chaotic situation for them. Because the service plan can really act as a contract of sorts. That's the only tool we have to try and say 'No, [the parents are] doing what they need to, and DCF is supposed to do these certain things.' I think parents can feel pretty lost without that."

- Anonymous CPCS Attorney, interviewed on 8/20/19*

In addition to DCF's failure to provide translated Action Plans to DCF clients, DCF also regularly fails to translate additional case documents for LEP clients. DCF clients receive a significant amount of written correspondence from the Department, including notices on hearings and updates on the progression of their case. These documents include letters with deadlines for clients to complete tasks, dates for meetings, and other key concerns related to a client's case. All of these additional documents are

¹¹⁶ Jessica Salinas-Thomas, CPCS Attorney, interviewed on 5/3/19; Anonymous CPCS Attorney, interviewed on 8/20/19*.

¹¹⁷ Anonymous Attorney, interviewed on 6/29/19; Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous CPCS Attorney, interviewed on 9/3/19; Anonymous CPCS CAFL Trial Attorney and Mentor, interviewed on 9/17/19.

¹¹⁸ Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous CPCS Attorney, interviewed on 9/3/19.

¹¹⁹ Anonymous CPCS Attorney, interviewed on 8/20/19.

¹²⁰ Anonymous Attorney, interviewed on 6/29/19; Anonymous CLCM Attorney, interviewed on 7/19/19; Anonymous CPCS Attorney, interviewed on 8/19/19; Anonymous CPCS Attorney, interviewed on 8/20/19.

¹²¹ Thomas Roy, Attorney, interviewed on 10/18/19.

¹²² Ibid.

essential for an LEP parent to understand if they are to stay on top of their case.

DCF itself acknowledges the importance of translating additional written documents for LEP clients. The Department's Language Access Plan from January 2011 noted that the Department has identified 76 letters and forms that need to be translated into Spanish, Portuguese, Haitian Creole, Khmer, and Russian. The LAP states that 22 forms had already been translated into Spanish, Portuguese, and Haitian Creole, with the rest of the forms set for translation within the next 2-3 months. The plan further stated that the Department's goal was to have all the forms translated within the next 12-18 months.¹²³

However, three years later, DCF's February 2014 Language Access plan reiterated that 76 forms had been identified for translation, however "due to budget constraints the Department has not been able to have all forms translated into languages regularly encountered." By the 2019-2021 LAP, DCF abandoned numerically identifying the number of documents awaiting translation, yet did note that many forms already translated "may need updating due to recent policy changes. Documents continue to be translated and several more documents are slated to be translated into the 6 most requested languages within the next few months. The plan is to have all forms and letters translated over the next 12-24 months, depending on Bargaining Unit negotiations and funding availability."¹²⁴ Over a period of ten years DCF has thus continually pushed off these translation services to the next year, or the year after that, without legitimately serving the majority of their LEP families.

Our interviews indicate that DCF does have a repository of saved forms in other languages that are sometimes provided to clients – usually Spanish-speaking clients – but that they are often insufficiently translated, or never even get to LEP families, as DCF staff are not consistently utilizing this resource.¹²⁵ Even when form letters and notices are provided to Spanish-speaking families, the Spanish translation may not be sufficient. One social service advocate interviewed for this project explained that a client reached out to them because their Spanish form letter was incomprehensible.¹²⁶

Yet these forms often never even get to LEP families in the first place. One attorney noted that in several cases, DCF caseworkers had translated forms for LEP clients, but did not bring them on home visits.¹²⁷ In addition, reports on foster care and letters providing case updates are also not regularly translated, and several attorneys interviewed for this study noted that they had never or almost never seen such forms and letters translated into other languages for clients.¹²⁸

The impact of not sufficiently translating notices, updates, and other written correspondence into clients' languages mirrors the negative consequences of not translating Action Plans. Without regular updates in their preferred language, clients may feel like they are "on an island," disconnected from

"It's a system issue. You made the form letter, the form letter exists, you sent it out, and all is well. You're in compliance. But actually, are you really in compliance?"

- Darlene A. Spencer, Child Welfare/Family Support Advocate and Leader, interviewed on 10/22/20

¹²³ Massachusetts Department of Children and Families Language Access Plan, January 10, 2011, p.12, <https://www.masslegalservices.org/system/files/library/DCF%20LAP.pdf>. See Appendix D

¹²⁴ Massachusetts Department of Children and Families Language Access Plan 2019-2021, p.11, <https://www.mass.gov/doc/language-access-plan-7/download>. See Appendix B

¹²⁵ Anonymous CPCS Attorney, interviewed on 8/20/19; Thomas Roy, Attorney, interviewed on 10/18/19.

¹²⁶ Darlene A. Spencer, Child Welfare/Family Support Advocate and Leader, interviewed on 10/22/20

¹²⁷ Anonymous CPCS Attorney, interviewed on 8/20/19.

¹²⁸ Anonymous Attorney, interviewed on 6/29/19; Anonymous CPCS Attorney, interviewed on 8/19/19; Anonymous CPCS Attorney, interviewed on 8/20/19*; Anonymous CPCS Social Worker, interviewed on 9/17/19; Anonymous Attorney, interviewed on 11/21/19.

DCF as well as the process they are engaged in with the Department.¹²⁹ More practically, parents cannot see when they are being given credit for moving towards reunification or, conversely, when they are not completing their obligations under the Action Plan.¹³⁰

The consequences many LEP clients face without translated documents can be immense. In one extreme case, an attorney reported that her client was required to sign an untranslated Open Adoption Agreement in which he gave up rights to custody over his child in exchange for limited visitation rights. The agreement was never translated for him and was not provided to the attorney by DCF until the court date at which the client was to sign the agreement. With no time to provide a professionally translated version, a court interpreter read and translated the agreement orally, depriving the individual of the opportunity to review the document to his or her satisfaction in written form. The client then signed away rights to custody of his child without ever having had the chance to individually review the written agreement.¹³¹ This instance not only represents a serious violation of the law, but also indicates how a failure to translate key documents can exclude LEP clients from making fully informed decisions in their own cases and result in family separation.¹³²

Within the OCR report from 2018, DCF does offer some explanation as to why it often engages in the practice of providing documents in English to LEP clients:

“DCF responded that to the extent a LEP client has, himself, access to an English speaker who can translate, whether a family-member, friend, or, in the Complainant’s case, his attorney, the parent benefits from receiving the English-language portions of the report first, and not having to wait until the portions can be translated in order to determine what it says.”

- Department of Health and Human Services, OCR DCF Language Access Complaint Decision 2018.
See Appendix E of this report.

However, this response proves unsatisfactory on several accounts. DCF is federally mandated to provide important case documents in a client’s preferred language in a timely manner. Furthermore, requiring LEP clients to get their documents translated by family members or friends would require that clients share sensitive information about their involvement within the child welfare system to individuals who may not be aware of the case or the specific allegations involved in the case. Beyond privacy concerns, DCF should have serious doubts that relatives of LEP clients can adequately translate and explain complex forms into the clients’ preferred language. Due to these negative consequences, DCF cannot rely on this practice as an alternative to providing professionally translated documents to LEP clients.

3. Lack of Available Social Services

Social services and community programs that many LEP clients are required to attend based on their Action Plans are regularly not available or accessible in languages other than English. Parents are often required to attend therapy, substance use disorder meetings, or parenting classes to maintain or regain custody of their children. Completion of these services is intended to address whatever behavior or practice DCF has found to constitute or lead to the alleged neglect or abuse of a child.

¹²⁹ Anonymous CPCS Attorney, interviewed on 7/11/19.

¹³⁰ Anonymous CPCS Attorney, interviewed on 8/19/19.

¹³¹ Anonymous CPCS Attorney, interviewed on 9/3/19.

¹³² Ibid.

In its regulations, DCF promises nondiscrimination and access to services for LEP clients: “No applicant for or recipient of Department services shall on the ground of...language...be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in connection with any service, programs, or activity administered by the Department.”¹³³ Similarly, in its 2019-2021 Language Access Plan, the Department also states that it is “committed to ensuring equal access for all DCF consumers to programs and services regardless of preferred language spoken or English proficiency.”¹³⁴

Despite DCF’s regulations regarding the importance of accessibility within these services, attorneys and advocates interviewed for this project note that in many cases there are simply no services available in a non-Spanish-speaking LEP client’s language,¹³⁵ despite DCF having mandated the completion of those services in an Action Plan.¹³⁶ In particular, therapy is often not available for LEP clients, with there being few licensed psychologists who are willing and able to provide services in languages other than English.¹³⁷ The lack of bilingual therapists can mean that LEP clients either cannot receive mental health services, must wait several months for therapy, or are unable to find a therapist who is the best fit for them.¹³⁸ For classes and meetings such as substance use disorder meetings, LEP clients often must attend English sessions that they cannot fully understand for the sake of adhering to DCF’s Action Plan.¹³⁹

However, even when required services are offered in a language other than English, they are often inaccessible to LEP clients. Classes, meetings, and therapists’ offices that DCF refers clients to are frequently too far away or not practically accessible to LEP clients for other reasons, such as when services are only available in areas accessible by car or at times when clients have work.¹⁴⁰ Since the number of these services are so limited, this situation leaves little flexibility for LEP clients.

“There are some services offered in languages besides English. Those are far and few between and will have limited start dates, limited locations, limited times, and limited openings. All limitations that could mean that an LEP parent is unable to access them or unable to access them as quickly as an English-speaking parent could access that service.”

- Anonymous CPCS Attorney, interviewed on 7/11/19

Waitlists also present a serious challenge to parents, with some providers requiring parents to wait over six months to receive services. Wait times may be double those for non-English speakers, stretching

133 110 Mass. Code Regs. 1.09 p.13, (West through 2020), <https://www.mass.gov/doc/110-cmr-1-principles-and-responsibilities-of-the-department-of-social-services/download>.

134 Massachusetts Department of Children and Families Language Access Plan 2019-2021, p.3 <https://www.mass.gov/doc/language-access-plan-7/download>. See Appendix B

135 Anonymous CLCM Attorney, interviewed on 7/19/19; Anonymous CPCS Attorney, interviewed on 8/19/19; Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous CPCS Attorney, interviewed on 8/20/19*; Anonymous Attorney, interviewed on 9/13/19; Anonymous CPCS Social Worker, interviewed on 9/17/19; Thomas Roy, Attorney, interviewed on 10/18/19. Interviewees report that Spanish services are usually available, especially in urban centers such as Worcester, Springfield, Lowell, Lawrence, and the Boston area.

136 Elizabeth McIntyre, GBLS Senior Attorney, interviewed on 6/25/19; Anonymous Attorney, interviewed on 6/29/19; Anonymous CPCS Attorney, interviewed on 8/20/19*; Anonymous Attorney, interviewed on 9/13/19; Anonymous Attorney, interviewed on 11/21/19; Anonymous Attorney, interviewed on 1/15/20.

137 Anonymous Attorney, interviewed on 6/29/19; Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous Attorney, interviewed on 1/15/20; Darlene A. Spencer, Child Welfare/Family Support Advocate and Leader, interviewed on 10/22/20.

138 Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous Attorney, interviewed on 9/13/19.

139 Anonymous Attorney, interviewed on 11/21/19.

140 Anonymous CPCS Attorney, interviewed on 7/11/19, Anonymous CPCS Attorney, interviewed on 9/3/19; Anonymous Attorney, interviewed on 1/15/20.

anywhere from six to twelve months.¹⁴¹ These delays in receiving services in a client's primary language can thus lead to parents completing tasks on the Action Plan later than DCF prescribed or expected. Unlike English-speaking families who can make calls to service providers and more effectively advocate for themselves, many LEP parents are presented with an impossible challenge in which they have a deadline to complete services that are not in any way available or accessible to them.

It should be noted that DCF is not entirely responsible for the lack of available services in other languages. However, it is the Department's responsibility to take advantage of the resources at their disposal and respond to the situation in as equitable a manner as possible. As their own Language Access Plan states, "DCF has contracts with providers that have the capacity to provide counseling and other client services in the preferred language of the client, including community based and congregate care providers that serve particular linguistic communities. This is particularly true for community based providers that serve specific cultural and linguistic communities."¹⁴² Thus, DCF's own language access policies provide a clear solution – utilizing contracts with community providers – to meet the service needs of LEP clients.

Unfortunately, in practice DCF caseworkers regularly fail to make referrals to agencies that speak clients' languages.¹⁴³ In these situations, social workers, attorneys, or the clients themselves are often left to find appropriate services.¹⁴⁴ At the same time, DCF workers may be unwilling to change Action Plans, often refusing to adjust required tasks despite serious language access issues at service agencies.¹⁴⁵ In some egregious cases, DCF requires LEP clients to complete inappropriate classes for their situations.¹⁴⁶ One attorney described how her client with a fifteen year-old child had to attend a parenting class for parents with infants because it was the only referral DCF would make in her language.¹⁴⁷

"DCF says 'do a parenting class,' and they think their job is done, fully knowing that the client cannot participate in one done in English, which is the vast majority of [the classes]. Then DCF does nothing to try and find another option or think outside the box."

- Anonymous CPCS Attorney, interviewed on 8/19/19

These actions by DCF also run contrary to the Department's stated protocol when caseworkers are faced with limited social service options. In its Family Assessment and Action Planning Policy, DCF notes that in cases where "[s]ervices are not available that will meet the unique needs of a family or child with regard to language" then "**consultation with a manager is REQUIRED**" [emphasis in original document].¹⁴⁸ The policy continues to require a more in-depth meeting with supervisors to resolve this challenge, suggesting that many DCF caseworkers should be examining language issues with services more rigorously, and involve at least their immediate supervisors in making accommodations.

141 Anonymous Cfj Attorney, interviewed on 7/11/19; Anonymous CPCS Attorney, interviewed on 8/20/19*.

142 Massachusetts Department of Children and Families Language Access Plan 2019-2021, p.9, <https://www.mass.gov/doc/language-access-plan-7/download>. See Appendix B

143 Jessica Salinas-Thomas, CPCS Attorney, interviewed on 5/3/19; Anonymous CPCS Attorney, interviewed on 7/11/19; Anonymous CPCS Attorney, interviewed on 8/19/19; Thomas Roy, Attorney, interviewed on 10/18/19; Anonymous CPCS Attorney, interviewed on 1/24/20.

144 Anonymous Attorney, interviewed on 11/21/19.

145 Anonymous CPCS Attorney, interviewed on 7/11/19; Anonymous CLCM Attorney, interviewed on 7/19/19.

146 Anonymous CPCS Attorney, interviewed on 7/11/19; Anonymous CPCS Attorney, interviewed on 8/20/19; Darlene A. Spencer, Child Welfare/Family Support Advocate and Leader, interviewed on 10/22/20.

147 Anonymous CPCS Attorney, interviewed on 8/20/19.

148 Massachusetts Department of Children and Families, "Family Assessment and Action Planning Policy," effective Feb. 6, 2017, 18.

Even more seriously, DCF caseworkers may not accept the lack of available services in a client's language as a valid reason for a parent not completing the required tasks on their Action Plan. In these cases, DCF caseworkers may identify LEP parents as noncompliant or uninterested in maintaining or regaining custody of their children, holding their clients' failure to complete services against them even though these services may be unavailable or inaccessible.¹⁴⁹ An attorney interviewed for this project described one illustrative case in which young children were unable to attend trauma therapy for almost a year due to speaking a language other than English. The DCF caseworker involved in the case then blamed the parents for not ensuring their children received these psychological services, despite them not being available.¹⁵⁰ This type of reaction is particularly egregious as DCF has the discretion to adjust Action Plans and change expectations to allow for delays and challenges in LEP clients receiving services.¹⁵¹

"DCF often asks someone to do something that they do not have the ability or means to do, and then takes their kid(s) away or seeks to permanently sever their legal relationship with their child because of the parent's "failure" to complete the assigned tasks."

- Anonymous CPCS CAFL Trial Attorney and Mentor, interviewed on 9/17/19

In holding this situation unfairly against LEP parents, DCF caseworkers may decrease the chances children are able to ultimately reunite with their parents. This is because federal requirements state that DCF must change its goal for a family from reunification to adoption if a child remains in state custody for a specified length of time. Due to the extensive waitlists from many service providers and the lack of accommodations from DCF caseworkers, children may be put on track for termination of their parents' rights solely because their LEP parents could not complete non-existent services in an impossible timeframe.

"Because of the prescribed timelines for these cases it can mean that the goal gets changed to adoption or guardianship even though the parent may not have had the opportunity to engage in the services requested by the Department."

- Anonymous CPCS CAFL Trial Attorney and Mentor, interviewed on 9/17/19, interviewed on 9/17/19

Federal regulations from the Adoption and Safe Families Act of 1997 state that the goal for a child welfare case must be changed from reunification to adoption if a child is in foster or congregated care for 15 out of 22 months of a case.¹⁵² Although intended to reduce harm for children separated from their parents, this regulation can cause severe consequences for LEP parents. Due to long waitlists for language-appropriate services, LEP parents are regularly unable to receive the services they need by the time the goal of their cases must be changed from reunification to another placement option.¹⁵³ In these cases, a delay of three to six months can make the difference in whether or not a child is reunified with their parents.¹⁵⁴

149 Anonymous Attorney, interviewed on 6/29/19; Anonymous CPCS Attorney, interviewed on 7/11/19; Anonymous CPCS Attorney, interviewed on 9/3/19; Anonymous Attorney, interviewed on 11/21/19.

150 Anonymous CPCS Attorney, interviewed on 8/20/19.

151 Anonymous CPCS Attorney, interviewed on 7/11/19.

152 Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997).

153 Anonymous CPCS Attorney, interviewed on 8/20/19*; Anonymous CPCS Attorney, interviewed on 1/24/20.

154 Anonymous CPCS Attorney, interviewed on 8/20/19*; Anonymous CPCS Attorney, interviewed on 9/3/19; Anonymous CPCS CAFL Trial Attorney and Mentor, interviewed on 9/17/19.

A case in Central Massachusetts described by an attorney for this report illustrates the tragedy that long delays in DCF cases can create. In this case, DCF removed a child from the home of a speaker of an Asian language due to concerns over neglect. The client understood basic English but could not participate in DCF processes or advanced services without an interpreter. A year into the case, the DCF caseworker did find services for the client in his language in Boston, but it was impossible for the client, who was a small business owner, to commute back and forth.¹⁵⁵ In the end, the parent was unable to reunify with his child since they had been separated for over a year, and it was no longer in the best interest of the child to be removed from the foster home and reunified with the parent.¹⁵⁶

D. Lack of Understanding Leads to Lack of Engagement

The severe issues with DCF's provision of interpretation services, translation services, and social services combine to create an environment in which LEP parents are unlikely to understand DCF's investigative process, what type of social services they must attend, and how likely it is that they will be able to maintain or regain custody of their child. This Section reflects on how such a lack of understanding makes it practically impossible for many LEP parents to meet DCF's expectations in the timeframe allotted. This may lead to a lack of engagement – or the appearance of a lack of engagement – on an LEP parent's part, ultimately creating a troubling rapport between LEP parents and DCF caseworkers. Attorneys and advocates interviewed for this report emphasized how important a positive rapport between parents and caseworkers is, as that may directly correlate with DCF's filing of a petition to terminate parental rights.

1. Without All of the Information, How Can LEP Clients Meet DCF's Expectations?

DCF's provision of child welfare services is a complicated process to understand, even for those whose first language is English. However, LEP parents, especially recent immigrants, may not even understand what DCF is due to underdeveloped child welfare systems in their home countries. The type of cultural confusion that many LEP parents may experience when they first become involved with DCF is only exacerbated by DCF's inability to consistently provide quality interpretation, adequate translation, and accessible social services. On a basic level, without an interpreter to explain the intricacies of DCF's work, a translated Action Plan to follow through on DCF's requested tasks, or the ability to partake in social services due to limited availability and long waitlists, LEP parents often do not understand the process in which they are engaged in or how to meet the expectations DCF has of them.

¹⁵⁵ DCF also failed to translate documents for the client, and the interpreter they hired for the case was actively hostile towards the parent for cultural reasons. Despite this clear bias, DCF also refused to change the interpreter.

¹⁵⁶ Anonymous CPCS Attorney, interviewed on 8/20/19*.

In reference to interpretation in particular, one attorney interviewed noted that:

"DCF does not seem to understand that the system would work more smoothly if they consistently used professional interpreters. Without quality interpreters, families do not understand what is asked of them or why DCF is there. Sometimes [LEP parents] are less likely to do what DCF wants them to do because they don't understand who they are and what they want."

- Elizabeth McIntyre, GBLs Senior Attorney, interviewed on 6/25/19

Besides simply not knowing or understanding what their role or required tasks are in a case, LEP parents may misunderstand the gravity of their cases or how close they are to losing custody of their children.¹⁵⁷ Granted, if a DCF investigation gets to a point in which the court does become involved, a court-appointed attorney will have the responsibility of explaining these types of nuances to their LEP clients. However, for many LEP families without an attorney, parents may fail to recognize when it is "crunch time" and when their lack of action or engagement could result in removal of their child from their custody.¹⁵⁸

"If an [LEP] client doesn't have a lawyer with them and is also not understanding what's going on... then things get held against them that maybe shouldn't...It makes them less likely to get their kids back by making it look like they're not complying, when it may be that they're just not understanding."

- Anonymous CPCS Attorney, interviewed on 8/19/19

This exact issue occurs not only with improper interpretation services, but insufficient translation services as well. In some cases, clients may end up having to agree to important decisions and sign Action Plans or other agreements without being able to review the text in their primary language, and without fully understanding what their obligations and rights are.¹⁵⁹ In these cases, it is unclear how DCF expects LEP clients to engage with or adhere to agreements that the clients cannot understand or make reference to.

"[An LEP person] not understanding [an Action Plan]...It could be interpreted that the person is not compliant, which would set them off onto a trajectory of potentially not having their kid back, ever."

- Darlene A. Spencer, Child Welfare/Family Support Advocate and Leader, interviewed on 10/22/20

Similarly, if an LEP client is unable to follow through on elements of their Action Plan due to inaccessible or unavailable services in their native language, DCF workers may confuse an LEP parents' lack of action on the plan for a lack of engagement, which is a serious strike against parents being assessed by DCF. Despite all of these failures on DCF's part, LEP families – whose only issue in this instance is not speaking English – are punished by facing an increased likelihood of separation.

¹⁵⁷ Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous CPCS CAFL Trial Attorney and Mentor, interviewed on 9/17/19.

¹⁵⁸ Anonymous CPCS Attorney, interviewed on 8/19/19.

¹⁵⁹ Anonymous CPCS Attorney, interviewed on 8/19/19; Anonymous CPCS Attorney, interviewed on 8/20/19; Thomas Roy, Attorney, interviewed on 10/18/19.

2. The Importance of Rapport: When LEP Clients are Viewed as “Unworkable”

All of these issues detailed above can negatively affect an LEP parent’s chances at maintaining or regaining custody of their children, especially because the nature of the relationship between DCF clients and their caseworkers is intimately tied to case outcomes. Several attorneys described how important the “rapport” between a DCF caseworker and a client is, and how not having regular, positive contacts with DCF can decrease parents’ odds of maintaining or regaining custody of their children.¹⁶⁰

“You have to have a really good working relationship with your DCF social worker. They have to like you, they have to know you as a person in order for them to recommend you getting your kids back. I think the language barrier definitely affects that as well.”

- Anonymous CPCS Attorney, interviewed on 8/20/19*

Compounding an inability for LEP parents to truly establish a positive rapport with their caseworkers is an overall attitude at DCF of regularly mistrusting and excluding parents from the Department’s process. DCF’s regulations state that the “Department recognizes that it operates not in isolation but in partnership with families” and that it “seeks to assist parents in meeting their parental responsibilities.”¹⁶¹ Despite these regulations, attorneys and advocates report that DCF regularly treats parents with suspicion and hostility, excluding them from the process and instead presenting them with a list of

expectations.¹⁶² Regardless of the Department’s role as a social service agency, some advocates feel as though DCF instead often functions as a law enforcement agency that identifies suspects (parents) and then prosecutes or punishes those individuals.¹⁶³

“DCF views its staff’s roles as gatekeepers rather than service providers.”

- Anonymous CPCS Attorney, interviewed on 9/3/19

As a result of this attitude, DCF often fails to treat parents as partners in cases, depriving them of the opportunity to present realistic concerns or demonstrate positive changes.¹⁶⁴ This approach also creates a bias against parents in which DCF may view them as the problem within every case, a lens that leads to many parents being labeled as “unworkable” or not interested in reunifying with their children.¹⁶⁵ Both of these issues have an even greater impact on LEP clients who often lack the ability to directly advocate for themselves or to express realistic concerns to English-speaking DCF staff. If DCF staff regularly lack sensitivity towards language issues, the influence of the Department’s biased view can mean that LEP clients, who may not understand expectations or fail to engage with an unfamiliar process, are deemed unfit to reunify with their children.

¹⁶⁰ Anonymous CPCS Attorney, interviewed on 7/11/19; Anonymous CPCS Attorney, interviewed on 8/20/19*; Anonymous CPCS CAFL Trial Attorney and Mentor, interviewed on 9/17/19.

¹⁶¹ 110 Mass. Code Regs. 1.02 p.11, (West through 2020), <https://www.mass.gov/doc/110-cmr-1-principles-and-responsibilities-of-the-department-of-social-services/download>.

¹⁶² Anonymous CLCM Attorney, interviewed on 7/19/19; Anonymous CPCS Attorney, interviewed on 8/19/19; Anonymous CPCS Attorney, interviewed on 1/24/20.

¹⁶³ Anonymous CLCM Attorney, interviewed on 7/19/19.

¹⁶⁴ Anonymous CPCS Attorney, interviewed on 8/19/19.

¹⁶⁵ Anonymous CFJJ Attorney, interviewed on 7/11/19; Anonymous CLCM Attorney, interviewed on 7/19/19; Anonymous CPCS CAFL Trial Attorney and Mentor, interviewed on 9/17/19.

E. Impact on Children

While the majority of this report thus far has examined the way in which LEP parents are deprived of meaningful language access services, DCF's deprivation of language services greatly impacts the children of LEP parents as well. For example, in the course of many DCF investigations, children are removed from their homes and placed in temporary foster care. When children of LEP parents are placed in foster care – usually with an English-speaking family – they are deprived of frequent language practice, and in addition are often deprived of visitation rights with their parents. As a result, they may lose the ability to speak their own native language, or their parents' native language.

Furthermore, if an LEP parent does not understand the DCF process and is thus not able to meet DCF's expectations (due to inadequate interpretation, translation, or social services) the long-term health and safety of their child may be in serious jeopardy. All of the factors detailed in the previous sections, when taken together, make it increasingly likely that a child of an LEP parent could be taken away from their parent due to their parent's native language. Unfortunately, however, removing a child from their home could lead that child to experience severe long-term trauma, which will be discussed more below.

1. Loss of Language, Culture, and Familial Bond

Since this report emphasizes the consequences of language-based discrimination in situations where a child may be removed from their family during an investigation itself and placed in foster care or kinship care, it is necessary to examine the impact that failure to provide language access may have on children in relation to foster care and visitation.

The Massachusetts foster care system currently faces a number of larger challenges that reach beyond language access issues, such as a lack of oversight,¹⁶⁶ the increasing size of the foster care population, and a shortage of long-term homes, all leading to a reliance on temporary emergency foster homes – “way stations on the path to permanent placement” known as “hotline homes.”¹⁶⁷ These structural and capacity issues may be exacerbated by language access challenges in the foster care system. Minors from LEP families placed into foster homes are not always placed into homes with families that speak their native language.¹⁶⁸ Although results may be slightly better for Spanish and Portuguese speakers, broadly, DCF does not have enough foster homes that speak languages other than English.¹⁶⁹ On a basic level, these placements can leave many young children unable to communicate with their foster parents who may speak only English.¹⁷⁰ These instances add to the likely confusion and fear that young children may already be feeling after being removed from their homes and families.¹⁷¹

Some children and teenagers placed into English-speaking foster homes may also lose the ability to communicate with their LEP parents. In many cases, children in immigrant households are bilingual and

¹⁶⁶ Kay Lazar, “Mass. Foster Care Oversight Plagued by Conflict of Interest, Advocates Say” *The Boston Globe*. April 22, 2019. <https://www.bostonglobe.com/metro/2019/04/22/child-advocates-state-foster-care-oversight-plagued-conflict-interest/9HuzlZUfBMPvn54uzHSMpK/story.html>.

¹⁶⁷ Stan Rosenberg, “Being a foster child is traumatic enough. Let’s stop making it worse” *The Boston Globe*. May 1, 2019. <https://www.bostonglobe.com/opinion/2019/05/01/being-foster-child-traumatic-enough-let-stop-making-worse/6E7itLxKrM11qZhTPwjhzN/story.html>.

¹⁶⁸ Anonymous CPCS Attorney, interviewed on 7/11/19; Anonymous CPCS Attorney, interviewed on 8/19/19; Anonymous Attorney, interviewed on 11/21/19; Anonymous CPCS Attorney, interviewed on 1/24/20.

¹⁶⁹ Anonymous CPCS Attorney, interviewed on 1/24/20.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

consequently are placed into English-speaking foster homes. In addition, many foster homes are not culturally similar to the families children are removed from, leaving children disconnected not only from their parent's language, but their community, heritage, and traditions.¹⁷² All of these factors can further isolate children and teenagers in the foster care system while potentially hindering the ability of families to successfully reunify.

In one illustrative example, an attorney described how her client, who spoke an indigenous Central American language, allowed DCF to take custody of her child since the infant had complex medical needs that the mother could not address. The mother received services in both English and Spanish from DCF (despite her not speaking Spanish fluently and having a very limited ability to speak English). Meanwhile, DCF placed the child in an English-speaking foster home in which the child learned English. The child lost all of her ability to speak the mother's language, and when they had visitation and other interactions, they were unable to communicate with one another.¹⁷³ Thus, foster care services and visitation services are both closely tied to a DCF-involved child's potential loss of their parents' native language.

In particular, when it comes to visitation for children living in foster care, children and parents are usually guaranteed supervised visitation rights. DCF's overall inability to accommodate language concerns, however, often means that these rights are not observed in practice for children of LEP parents. Typically, visitation between children and parents is required to be supervised by a DCF caseworker.¹⁷⁴ When an LEP family does not have a bilingual social worker or interpreter, and one is not available to supervise a visit, DCF caseworkers may continuously reschedule or cancel parent-child visits, or insist that the parent and child speak English.¹⁷⁵ In some extreme cases, the child and their parent may not even be allowed to speak to one another if not in English. Although the full impact of language issues in visitation appears to largely depend on the DCF caseworker, these instances not only violate a child's right to see their parents, but also risk harming the parent-child bond which can be essential for successful reunification.

Within these situations in which children are separated from their parents, extensive delays can "kill a family structure."¹⁷⁶ Without consistent contact between parents and their children, relationships regularly deteriorate.¹⁷⁷ Teenagers may begin to resent parents or become more difficult to parent, while younger children may form strong bonds with foster parents.¹⁷⁸ Parents, feeling as if they are "trapped in a Kafka novel," may find reasons to give up on trying to regain custody of their children or return to destructive behaviors, such as substance usage.¹⁷⁹ This is why one attorney interviewed for this report emphasized that visitation was the most important service DCF provided, even above substance use disorder classes or other social services. If a child is placed outside the home during a DCF case, visitations are the primary mechanism by which the parent and child can maintain their familial bond. In addition, parents receive much-needed hope from these visits, which helps keep them engaged within the DCF process. If there is no bilingual staff member or interpreter to supervise such a visit, children of LEP parents may genuinely lose not only the ability to communicate with their family in their native language, but also the emotional and physical connection to their family.

172 Anonymous CPCS Attorney, interviewed on 8/20/19*; Anonymous Attorney, interviewed on 11/21/19.

173 Anonymous CPCS CAFL Trial Attorney and Mentor, interviewed on 9/17/19.

174 Elizabeth McIntyre, GBLS Senior Attorney, interviewed on 6/25/19.

175 Elizabeth McIntyre, GBLS Senior Attorney, interviewed on 6/25/19; Anonymous Attorney, interviewed on 6/29/19; Anonymous CLCM Attorney, interviewed on 7/19/19; Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous CPCS Attorney, interviewed on 9/3/19.

176 Anonymous CPCS Attorney, interviewed on 8/20/19*.

177 Anonymous CPCS Attorney, interviewed on 8/20/19*; Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous CPCS Attorney, interviewed on 9/3/19; Anonymous CPCS CAFL Trial Attorney and Mentor, interviewed on 9/17/19.

178 Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous CPCS CAFL Trial Attorney and Mentor, interviewed on 9/17/19.

179 Anonymous CPCS Attorney, interviewed on 9/3/19; Thomas Roy, Attorney, interviewed on 10/18/19.

2. Long-Term Trauma

While a DCF investigation may involve the short-term or long-term removal of a child from their parents, whether or not a child is removed from their home should in theory have nothing to do with the native language a parent speaks. Unfortunately, our findings within this report have shown that is not always the case. This is especially problematic as the process of removal leads children to experience complex trauma, feelings of loss, grief, and confusion, poor educational outcomes, an increased likelihood of developing behavioral problems, and an increased likelihood of engaging in delinquent activities. These outcomes serve as a baseline when understanding the significant impact removal may have on any child involved with the child welfare system.

However, DCF's failure to provide meaningful language access for LEP families means that at every stage of the removal process, children of LEP parents are more vulnerable to experiencing trauma compared to their English-speaking counterparts. As such, the following Section examines some of the vast literature concerning the consequences of child welfare removal, before discussing the exacerbated consequences the child of an LEP parent may suffer, given DCF's failure to provide language accessible services for their parents.

According to the National Traumatic Child Stress Network:

"Complex Trauma describes both children's exposure to multiple traumatic events—often of an invasive, interpersonal nature—and the wide-ranging, long-term effects of this exposure. These events are severe and pervasive, such as abuse or profound neglect. They usually occur early in life and can disrupt many aspects of the child's development and the formation of a sense of self. Since these events often occur with a caregiver, they interfere with the child's ability to form a secure attachment. Many aspects of a child's healthy physical and mental development rely on this primary source of safety and stability."¹⁸⁰

DCF's role is to intervene in the above scenario in an effort to stop the alleged neglect or abuse that has led to such a pervasive trauma. However, if DCF's investigation of neglect or abuse is tainted by their failure to provide meaningful language access to LEP parents, DCF may inflict greater trauma onto the children of LEP parents who are unnecessarily removed from their home.

In particular, whether this removal is temporary – even for just a few days – or permanent, studies show that many children who are removed from their parents experience significant loss, grief, and confusion due to the act of removal itself. Dr. Monique B. Mitchell, author of *The Neglected Transition: Building a Relational Home for Children Entering Foster Care* notes that while "from an adult's perspective, a child's removal from his or her home seems to be relatively quick, isolated, a one-time event lasting only a matter of hours, this event is a significant turning point in children's lives and one that many children will relive over and over in their minds."¹⁸¹

Confusion then occurs because children's questions are often left unanswered during this particular time of transition – likely because caseworkers themselves lack key information about where this child may

¹⁸⁰ "Complex Trauma," Trauma Types, The National Child Traumatic Stress Network, <https://www.nctsn.org/what-is-child-trauma/trauma-types/complex-trauma>.

¹⁸¹ Monique B. Mitchell *The Neglected Transition: Building a Relational Home for Children Entering Foster Care*. New York, NY: Oxford University Press, 2016, p.12.

end up.¹⁸² Loss and grief soon follow, as children are without their familial relationships, and without the familiarity and stability of home. Unfortunately, for many of these children experiencing the stress and confusion of removal, “their loss goes unnoticed as a loss (because no one has died) and thus their grief also goes unnoticed. They cannot grieve the loss of ‘living’ family members, or simply a home or their own bed, because society and the professional community have thus far not recognized that their losses are real.”¹⁸³ Without an outlet to process these emotions, many children who are temporarily or permanently removed from their homes experience not only short-term trauma, but the lasting effects of such trauma on their education, behavioral growth, and involvement with delinquency.

The trauma of home removal has a significant impact on a child’s education. One study from Washington state found that youth placed in foster care score 15-20 percentile points below non-foster care youth in statewide standardized tests, and that twice as many younger children in elementary and secondary school placed within foster care “repeated a grade, changed schools during the year, or enrolled in special education programs compared with non-foster youth.” These effects continue into late adolescence, as only 59% of foster youth enrolled in 11th grade went on to complete high school, compared to 86% of non-foster care youth.¹⁸⁴

In addition to poorer educational outcomes compared to their non-removed peers, many children removed from their home face an increased likelihood of suffering from serious behavioral problems, such as alcohol use and drug use later in life. According to one study, adults who had previously transitioned out of the foster care system experienced significantly higher rates of alcohol dependence during their lifetime (11.3% vs 7.1% among the general population) and drug dependence during their lifetime (21% vs 4.5% among the general population).¹⁸⁵

Lastly, children who experience removal from their families are three times more likely to become involved in the juvenile justice system.¹⁸⁶ Often referred to as dual-status youth or crossover youth, young people involved with both the child welfare system and the juvenile justice system are more likely to recidivate than their peers that are not involved with the child welfare system,¹⁸⁷ and face extremely poor employment prospects in adulthood.¹⁸⁸ With particular relation to Massachusetts dual-status youth, we know that 72% of the young people involved with the juvenile justice system were also involved with DCF, either previously or concurrently.¹⁸⁹

Taken together, current research on trauma and removal confirms that placing any child involved with welfare agencies such as DCF outside of the home – whether temporarily or permanently – will have a

182 Shanta Trivedi, “The Harm of Child Removal,” *N.Y.U. Review of Law and Social Change* 43, no. 523 (2019), p. 532.

183 Monique B. Mitchell, *The Neglected Transition: Building a Relational Home for Children Entering Foster Care*. New York, NY: Oxford University Press, 2016, p.x

184 Mason Burley and Mina Halpern, “Educational Attainment of Foster Youth: Achievement and Graduation Outcomes for Children in State Care,” Washington State University Institute for Public Policy, November 2001, p.1

185 Catherine Roller White et al., “Alcohol and Drug Use among Alumni of Foster Care: Decreasing Dependency through Improvement of Foster Care Experiences,” *The Journal of Behavioral Health Services & Research* 35, no. 4 (2008): 419-434, <https://doi.org/10.1007/s11414-007-9075-1>.

186 Joseph J Doyle, “Child Protection and Child Outcomes: Measuring the Effects of Foster Care,” *American Economic Review* 97, no. 5 (December 2007): 1583-1610, <https://doi.org/10.1257/aer.97.5.1583>.

187 Denise Herz et al. “Addressing the Needs of Multi-System Youth: Strengthening the Connection between Child Welfare and Juvenile Justice,” (Washington, DC: The Center for Juvenile Justice Reform and Robert F. Kennedy Children’s Action Corps, March 2012): 17.

188 Carolyn Dykema, et al., “Report of the Subcommittee on Dual Status Youth,” July 2017, p.8. <http://www.carolyndykema.com/wp-content/uploads/2017/07/Report-of-the-Subcommittee-on-Dual-Status-Youth-July-2017.pdf>

189 Citizens for Juvenile Justice, *Missed Opportunities: Preventing youth in the child welfare system from entering the juvenile justice system*. September 2015, p.i. <https://static1.squarespace.com/static/58ea378e414fb5fae5ba06c7/t/59020af046c3c44b405cb544/14933061111>

significant impact on the rest of that child's life. While in many cases these risks are necessary to take on in order to protect children from familial neglect and abuse, removing a child from their home should not be taken lightly given the clear trauma involved with such action.

Ultimately, DCF may be unwittingly inflicting even greater trauma on children of LEP parents for a number of reasons. First, as mentioned previously, LEP families are significantly more likely to be denied visitation rights when temporarily separated. This leaves children of LEP parents with even more fear and confusion compared to the general foster care population as they are thrust into new homes with unfamiliar cultural and linguistic practices. In addition, because LEP parents often experience severe delays in their cases due to a lack of accessible social services, children who would otherwise have had a shorter temporary stay in foster care are faced with a significantly longer and thus more traumatic separation period, simply because they have an LEP parent. Finally, as has been discussed throughout this report, an LEP family's chances at reunification are significantly lower compared to an English-speaking family, meaning that children of LEP parents are at increased risk of being separated from their parents permanently due to unnecessary and avoidable language access failures. Ultimately, at every stage of the removal process (from visitation, to temporary removal, and the potential for permanent removal) children of LEP parents are more vulnerable to experiencing increased trauma compared to their English-speaking counterparts.

F. Why is DCF Failing?

The previous sections of this report have focused on how the Massachusetts Department of Children and Families is failing to provide federally mandated language access to LEP clients, and the impact this has on both parents and children. The serious issues with interpretation, translation and mandated services discussed previously all beg the question of *why* DCF is failing in its legal obligation to provide meaningful language access to residents of Massachusetts who are limited English proficient. Attorneys and advocates interviewed for this project identified two primary areas that detract from DCF's ability to ensure meaningful language access: 1) the nature of DCF's mission, and 2) staffing and training challenges.

1. Nature of the Mission

DCF often fails to provide sufficient levels of language access to LEP clients due to the urgent nature of its mission and a high caseload among staff. These structural factors make ensuring an interpreter is present, a document is translated, or a social service is language-appropriate difficult due to time constraints on staff.

"Everybody has good intentions, and it gets put by the wayside because of the day-to-day work of child protection."

- Darlene A. Spencer, Child Welfare/Family Support Advocate and Leader, interviewed on 10/22/20

Due to the often urgent nature of DCF's work, staff may treat language access as a low priority. DCF caseworkers are regularly presented with pressing challenges such as finding emergency homes for children, conducting impromptu investigations, and dealing with a litany of other pressing concerns that

come up within the child welfare system.¹⁹⁰ As a result, language access can often be at the “bottom of the list” and even “become a nuisance” for staff.¹⁹¹

“DCF is like an emergency room, it’s good at triage, but the long-term management of cases and fixing problems is very difficult due to funding, turnover, and training.”

- Thomas Roy, Attorney, interviewed on 10/18/19

High caseloads for DCF staff also mean that many of the Department’s social workers do not put in the time or energy to ensure access for LEP clients. Scheduling an interpreter, finding non-English services, and coordinating the translation of documents are all time-consuming tasks for DCF workers that may be overwhelmed by the number of cases they are overseeing.¹⁹² However, as burdensome as caseloads may be, attorneys and advocates also note that DCF often has the capacity to provide language services but fails to do so because staff merely find it inconvenient in the face of their other responsibilities.¹⁹³ Compounding this issue is the fact that LEP clients may only represent a small percentage of an English-speaking social worker’s caseload, meaning that in practice they may have limited exposure when it comes to providing language access for LEP clients.¹⁹⁴ Due to all of these factors, DCF caseworkers who are already struggling with emergencies in their work may not have the tools or time to arrange language services for LEP clients.

“There’s the feeling that some corners are going to have to be cut no matter what and [language access] is an easy one to cut.”

- Anonymous CPCS Attorney, interviewed on 8/20/19

2. Staffing and Training

The time-sensitive nature of child welfare services presents serious frustrations to the delivery of language access at DCF that are largely outside of the Department’s institutional control. However, DCF is in control of their staffing and training practices which currently inhibit the widespread provision of meaningful language access at DCF.

As mentioned throughout this report, DCF, largely for reasons of practicality, tends to prioritize the appointment of bilingual staff over the use of contracted interpreters when working with LEP families. Unfortunately, current practices suggest that DCF does not have enough bilingual caseworkers to accommodate their significant percentage of LEP clients. While we lack updated records of DCF’s bilingual hiring practices over the past ten years, interviews conducted for this report within the last few months confirm that DCF does not currently have enough bilingual staff to meet the language needs for all of its Massachusetts residents, and furthermore that DCF’s hiring process doesn’t prioritize the

¹⁹⁰ Jessica Salinas-Thomas, CPCS Attorney, interviewed on 5/3/19; Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous CPCS Social Worker, interviewed on 9/17/19; Thomas Roy, Attorney, interviewed on 10/18/19.

¹⁹¹ Anonymous CPCS Attorney, interviewed on 8/19/19; Anonymous CPCS Attorney, interviewed on 8/20/19.

¹⁹² Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous CPCS Attorney, interviewed on 9/3/19; Anonymous CPCS Social Worker, interviewed on 9/17/19; Anonymous CPCS CAFL Trial Attorney and Mentor, interviewed on 9/17/19; Anonymous Attorney, interviewed on 11/21/19.

¹⁹³ Jessica Salinas-Thomas, CPCS Attorney, interviewed on 5/3/19; Anonymous CPCS Attorney, interviewed on 8/19/19; Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous Attorney, interviewed on 11/21/19.

¹⁹⁴ Anonymous CPCS Social Worker, interviewed on 9/17/19.

retention or recruitment of more diverse social workers.¹⁹⁵

“Having a total caseload of non-English speaking families will burn people out...There are not enough resources in the community, so you become that person, that everything to that [LEP] family.”

- Darlene A. Spencer, Child Welfare/Family Support Advocate and Leader, interviewed on 10/22/20

However, DCF’s staffing issues do not only stem from the Department’s reluctance to utilize contracted interpreters or their lack of bilingual staff. Currently, it appears that there are no staff members at DCF solely devoted to coordinating language access. DCF’s statewide Language Access Coordinator also serves as the Diversity Officer and the ADA (Americans with Disabilities) Coordinator, effectively placing that individual with three entirely separate jobs they must execute simultaneously.

Tracking down and scheduling interpreters, monitoring forms that need to be translated, maintaining lists of providers who offer social services in other languages, and addressing language access complaints are all essential tasks that must be prioritized by at least one individual within the Department. Yet based on Massachusetts Appleseed’s Public Records Requests and DCF’s responses (found in *Appendix G-J* of this report) the Department – and by extension the Language Access Coordinator – “does not have in its possession” any documents showing the number of language access complaints they have received within the last ten years, documents indicating which languages are most commonly represented within language access complaints, or documents describing what steps the Department will take should they receive future language access complaints. While monitoring and addressing language access complaints is only one element of the Language Access Coordinator’s position, the lack of attention within this area exemplifies the fact that without someone whose responsibilities primarily include such language-oriented tasks, these essential jobs continually get pushed onto the back burner.

As an organization, the Department has failed to make language access a priority in its staffing decisions, and similarly the Department has failed to make language access a priority in its training procedures. Attorneys and advocates report that DCF caseworkers are not trained on the importance of ensuring language access.¹⁹⁶ This finding has been confirmed through Massachusetts Appleseed’s second Public Records Request and DCF’s subsequent response, which can be found in this report’s *Appendix I* and *J*, respectively. DCF provided our researchers with 780 pages of training materials that new hires must review¹⁹⁷ – materials that ostensibly included “efforts the Department is making to include language access” and cultural competency in their training modules. Yet an in-depth review of these materials reflects that information on working with limited English proficient clients was never included. Fundamentally, it is clear that the Department lacks an infrastructure to train its staff on these topics.

More specifically, many caseworkers lack education on DCF’s legal obligation to provide language accessible services; they are not trained on what being limited English proficient truly means, when and how to work with an interpreter,¹⁹⁸ and how to creatively solve the practical challenges of working with

¹⁹⁵ Anonymous Attorney, interviewed on 6/29/19; Anonymous Attorney, interviewed on 11/21/19.

¹⁹⁶ Anonymous CPCS Social Worker, interviewed on 9/17/19.

¹⁹⁷ Due to the length of this document submitted to Massachusetts Appleseed, we have decided only to publish DCF’s explanatory response document to our request within *Appendix H* and *J*. If you are interested in reviewing the content of the documents that were turned over to us by DCF, Massachusetts Appleseed would be willing to share those with you upon request.

¹⁹⁸ The OCR’s report further reinforces this fact, finding that DCF workers have (at the time of drafting) no training in how to officially use interpreters.

LEP clients.¹⁹⁹

"They do need to train their supervisors and their frontline social workers on why [language access is] important. That simple. Why it's important, what can go wrong if you don't provide it, and the fact they are obligated to provide it under federal law."

- Anonymous CPCS Attorney, interviewed on 8/20/19

Without proper training on DCF's legal obligation to provide language access or what an LEP client actually needs, it is thus understandable why it is up to "superstar" caseworkers to go above and beyond in providing meaningful language access to LEP clients. If the Department itself does not emphasize Title VI and other federal regulations that must be upheld, why would most caseworkers go out of their way to engage in the process of providing language access – a process that takes away a significant amount of valuable time?

"A lot of the workers are not educated about [the Department's policies] and don't know how to implement them, or have incorrect beliefs about how language access works, and it results in clients' rights being disregarded."

- Anonymous CPCS Attorney, interviewed on 9/3/19

Ultimately, while the urgent nature of the child welfare system is outside of DCF's control, the Department does have the capacity to prioritize the hiring of bilingual caseworkers and outside interpreters, as well as the ability to hire coordinators solely devoted to language access. Similarly, the Department has the capacity to emphasize the importance of language access within the culture of their organization, and implement basic training on language access that could counteract the inconsistency with which DCF caseworkers currently provide these federally mandated services. The following Recommendations section will examine the practicality of these suggestions in more detail.

¹⁹⁹ Anonymous Attorney, interviewed on 6/29/19; Anonymous CPCS Attorney, interviewed on 7/11/19; Anonymous CPCS Attorney, interviewed on 8/20/19; Anonymous CPCS Attorney, interviewed on 9/3/19; Anonymous CPCS Social Worker, interviewed on 9/17/19; Anonymous Attorney, interviewed on 11/21/19.

IV. RECOMMENDATIONS AND CONCLUSION

DCF is currently failing to provide federally mandated “meaningful” language access to many of its limited English proficient (LEP) clients. Currently, there is a widespread inconsistency within the quality of DCF’s language access provision, as the Department itself does not prioritize language access. Many LEP clients are left without sufficient interpretation services, translation services, or social services and thus lack understanding about DCF’s internal procedures and expectations. In the end, without clear communication from DCF, our findings have shown that LEP families are significantly more likely to be torn apart for unnecessary and avoidable reasons, compared to their English-speaking counterparts.

While there is no one-size-fits-all model or magic solution that DCF can adopt to address their language access failures, there are a number of practical, actionable solutions that DCF can adopt in an effort to consistently provide quality language access services. The recommendations below – which largely focus on restructuring or reallocating existing language access resources – are meant to be concrete, achievable goals that DCF can feasibly adopt.

In addition, these recommendations also include external enforcement mechanisms by which the Massachusetts Legislature and legal community may be able to hold DCF responsible for engaging with and implementing improved language access practices.

A. Actionable Recommendations for DCF

There are five key practical and actionable recommendations that DCF may adopt to ensure it is providing “meaningful” language access to LEP families. These recommendations include: 1) implementing language access trainings, 2) developing step-by-step language access protocols, 3) hiring more bilingual staff and Regional Language Access Coordinators, 4) improving the Department’s language service contracting, and 5) more heavily monitoring the implementation of the Department’s language access policies overall.

1. Language Access Training

As has been discussed throughout this report, there is a lack of consistency among DCF caseworkers when it comes to their provision of language access services. This occurs largely because DCF does not emphasize the importance of language access, or how to successfully provide meaningful language access, in its current training practices. There are five key areas in which DCF should improve its language access trainings for supervisors, managers, and caseworkers:

◆ ***DCF should train its staff on the federal mandate (Title VI of the Civil Rights Act of 1964) that requires them to provide “meaningful” language access services.***

Title VI requires that all agencies receiving federal funds – such as DCF – provide limited English proficient clients with “meaningful” language access services. All DCF caseworkers, regardless of the frequency with which they work with LEP clients, should be trained on what language services they are federally required to uphold. Caseworkers need to be trained on what the definition of “meaningful” access truly means, and what the DOJ guidelines suggest is best practice to meet this requirement.

Without such necessary training, many caseworkers will be allowed to continue dictating DCF's quality of language access services based upon their personal preference and individual convictions, rather than based upon the law.

♦ DCF should train its staff on how to implement the detailed policies within their own Language Access Plan (LAP).

Having a Language Access Plan does not automatically translate to the provision of language access. DCF must train their staff members on the intricacies of the plan itself, if the Department wants the plan followed. DCF already has the essential language access building blocks within their LAP, such as how often interpreters should be used or what vital documents need to be translated. However, if DCF staff are not trained on how to implement these policies, the LAP will never be utilized by caseworkers when working with LEP clients.

♦ DCF should train its staff on who is considered a limited English proficient client.

DCF does not currently train its staff on the definition of who is considered LEP. As a result, many DCF clients whose primary language is not English, yet are able to communicate in English to a passable degree, are deprived of language access services and thus their civil rights. DCF staff must be trained on the definition of "limited" English proficient in order to truly comply with their Title VI federal mandate.

♦ DCF should train its staff on when and how to work with interpreters.

Currently, DCF staff lack sufficient training on how to actually work with an interpreter, if one is contracted or if a bilingual staff member is serving as an interpreter. For DCF to truly provide meaningful interpretation services, supervisors, managers, and caseworkers must understand how to collaborate with an interpreter. Staff must be trained on how to pause more frequently, speak slower, use first-person, correctly utilize eye-contact, and in general be more patient and flexible when working with an interpreter, so that all necessary information is provided to the LEP family they are working with.

♦ DCF should train its staff on the above practices and policies when staff are first hired, and annually throughout professional development trainings.

Right out of the gate, staff should understand that language access is a priority for DCF as an organization. This is easily accomplished by providing a comprehensive training of at least one hour on DCF's language access mandate, along with their language access policies and procedures, as soon as a staff member is onboarded. Yet this is still not enough. To ensure that DCF staff are able to become comfortable with implementing these practices in their everyday work, supervisors and caseworkers must receive at least two hours of interactive professional development trainings annually, specifically relating to language access. We acknowledge that the DCF organizational culture will not change overnight. However, implementing trainings not only when staff are hired, but throughout their time at DCF, will go a long way towards improving the culture around language access and ensuring that all staff are providing consistent language access services.

2. Development of Robust Language Access Protocols

While DCF already has a Language Access Plan that includes basic Language Service Protocols, there is a lack of detailed step-by-step instructions for caseworkers to follow when requesting interpretation services, translation services, or coordinating language accessible social services.²⁰⁰ Step-by-step instructions that caseworkers can follow to implement language access policies are especially necessary given that for many English-speaking caseworkers, LEP clients represent a fraction of their client base. Clear, easy to follow protocols that make plain not only what services DCF is required to provide, but more importantly the steps a caseworker can take to make those policies a reality, could greatly improve the chances that an LEP family receives quality language access from DCF.

♦ DCF should develop step-by-step, practical instructions, that a caseworker can follow for requesting/working with an interpreter, and for requesting the translation of vital documents.

Our findings have shown that many non-bilingual DCF staff will attend monthly home visits without an interpreter. The primary cause of this appears to be the cumbersome, confusing, and time-consuming process caseworkers must engage in to request and schedule an outside interpreter in the first place. By breaking down and streamlining the process into a clear list of instructions for each process, caseworkers should be able to significantly cut down on the unwieldy process they must go through to ensure “meaningful” language access. For example, these sets of instructions could include what numbers and emails are necessary to request an interpreter, and how far in advance that must be done. Similar instructions could lay out best practices when working with an interpreter, or who to contact to get an entire Action Plan translated. By having easy to follow instructions in one place, all DCF caseworkers, including bilingual staff and non-bilingual staff, should be able to stay on top of their caseloads and ensure LEP families receive language services, simultaneously.

♦ DCF should develop clear guidance on finding alternative social services for LEP families, and develop a more flexible protocol to acknowledge the extended wait-times many LEP families experience when attempting to receive non-English social services.

One of DCF’s most significant roles when attempting to reunify a family is providing parents with access to social services that address whatever conduct allegedly constitutes neglect or abuse and has led to DCF involvement. However, the services available to LEP families are significantly limited, and often are not available for extremely long periods of time. While DCF regulation currently requires that a caseworker consult a manager or supervisor in such a scenario, there is no other guidance for caseworkers on how to address this issue. DCF should develop a clearer protocol on how to find an LEP parent a suitable social service alternative – potentially by creating a database of all existing community partners, the languages they serve, and average wait-times for non-English services – and in addition create a more flexible protocol that does not blame parents when these alternatives take longer than expected to participate in. DCF must become more active in ensuring that LEP parents can attend essential social services, as attending these services often represents the ultimate key to family reunification.

²⁰⁰ Massachusetts Department of Children and Families Language Access Plan 2019-2021, p.9-10, <https://www.mass.gov/doc/language-access-plan-7/download>. See *Appendix B*

3. Hire More Language Access Coordinators and More Bilingual Staff

DCF has complete control over its staffing decisions. While obviously DCF works within the allotted funding they receive from the federal and state government, as an organization DCF has the ability to reevaluate and restructure its hiring practices. Since current staffing decisions have not created a conducive environment to ensure “meaningful” language access, there are two important hiring changes DCF could implement to address this.

♦ ***DCF should hire Regional Language Access Coordinators, ideally placing at least one Coordinator within each of its five regions.***

Taking into consideration how many individual responsibilities caseworkers currently have, it does not make sense to leave them to decipher the Department’s language access policies in addition to implementing them. As such, the Department’s Language Access Coordinator plays a key role in ensuring that caseworkers have the tools they need to consistently provide language access to their LEP families. Yet currently the individual within this position serves as the Language Access Coordinator, the Diversity Officer, and the ADA (Americans with Disabilities) Coordinator simultaneously. One solution to this problem comes from Guidance within the Civil Rights Division of the Department of Justice, explaining that “Federal agencies with multiple offices and divisions may find that each component or field office should designate an individual as a local language access coordinator.”²⁰¹ Hiring multiple Regional Language Access Coordinators – at the very least one within each of DCF’s five regions – would allow DCF to have a team of staff devoted to developing all of the trainings and protocols recommended above. Based upon their recent Settlement Agreement with the Department of Justice and the Department of Health and Human Services, DCF has agreed to implement a similar model for promoting disability access through the designation of Regional Disability Liaisons.²⁰²

♦ ***DCF should prioritize the hiring of more bilingual caseworkers, based upon language demographic data within each of its five regions.***

DCF protocol currently reflects the belief that utilizing bilingual caseworkers for in-person interpretation is preferable to contracting with outside interpreters. This is logical for a number of reasons: caseworkers do not lose valuable time finding and scheduling an interpreter, there will likely be fewer delays in the case overall, and caseworkers already understand the intricacies of the DCF process and may be able to convey complex terms and procedures in a more digestible manner than an interpreter unfamiliar with DCF. However, DCF currently does not have enough bilingual workers to serve their entire LEP population (who make up about one in ten of their clients). DCF should thus conduct a regional assessment examining the particular language needs of local communities – similar to analyses they have done in the past – and prioritize the hiring of bilingual workers to meet the needs of those local communities.

201 Federal Coordination and Compliance Section Civil Rights Division U.S. Department of Justice, “Common Language Access Questions, Technical Assistance, and Guidance for Federally Conducted and Federally Assisted Programs,” August 2011, https://www.lep.gov/sites/lep/files/resources/081511_Language_Access_CAQ_TA_Guidance.pdf

202 “Agreement Between United States Department of Justice, United States Department of Health and Human Services, and Massachusetts Department of Children and Families,” p.6 https://www.ada.gov/mass_dcf_sa.pdf.

4. Improved Language Service Contracting

Although bilingual caseworkers may be the preferred method to provide in-person interpretation to DCF's LEP clients, the hiring of more bilingual workers alone will not be sufficient to serve all of DCF's LEP families. As such, DCF should develop more robust relationships with in-person contracted interpreters, reinforce the use of their new Language Line contract, and expand their existing contracts with community-based service providers who provide non-English social services.

♦ ***DCF should make more use of their existing contracted interpreter service, and ensure that all professional interpreters are competent and impartial.***

When a bilingual caseworker is unavailable, DCF's current policies dictate that an outside interpreter should be contracted with, through their approved vendor service.²⁰³ However, interviews with attorneys and advocates suggest that in practice DCF staff are not taking advantage of these services, as caseworkers are estimated to attend 75% of their LEP home visits without an interpreter.²⁰⁴ To address this issue, DCF as an agency needs to encourage the use of contracted interpreters among its English-speaking caseworkers. Yet that alone is not enough. Many interviewed for this report noted that when an outside interpreter is utilized, they may not be providing high-quality services. Thus, in addition to an increased reliance on the interpreter services currently available to the organization, DCF should seriously examine the quality of interpreters they contract with, potentially encouraging re-certification of interpreters, another measure of quality control, or else changing the vendors they use altogether.

♦ ***DCF should ensure their staff is trained on the Department's newly established telephonic Language Line service, and ensure that this service is utilized widely by its non-bilingual staff.***

DCF recently adopted a telephonic Language Line. Language Lines – utilized by a number of Massachusetts state agencies – can provide effective interpretation for a wide array of languages without the need to find and schedule an interpreter in advance. By investing in a Language Line contract, non-bilingual caseworkers should now be able to attend monthly home visits or other in-person interactions with LEP families using only a speakerphone, yet will still be able to provide high-quality interpretation – creating a three-way conversation between the caseworker, the client, and the telephonic interpreter. To ensure that this technology is effectively used in this manner, DCF must train its staff on the essential nature of this technology, and reinforce its continual use. Almost all advocates and attorneys interviewed for this project were not aware that DCF used telephonic interpretation for home visits, which brings into question how successfully this new technology has been rolled out within the agency. Adopting a Language Line is an incredible step towards increasing language access for the Department as a whole; however, the Department must make an effort to physically implement the use of this technology as well.

²⁰³ Massachusetts Appleseed submitted public records requests asking for documents pertaining to, or copies of, such contracts from the Department of Children and Families and the Operational Services Division (OSD). Neither organization was able to provide us with copies of such contracts held by DCF. In addition, OSD's recommendation to search COMMBUYS for copies of these contracts yielded no results.

²⁰⁴ Elizabeth McIntyre, GBL Senior Attorney, interviewed on 6/25/19; Anonymous Attorney, interviewed on 6/29/19.

♦ ***DCF should require all community service providers they contract with to offer in-person interpretation services, or else allow providers access to DCF's Language Line service.***

For the past ten years, DCF's Language Access Plan has referenced the importance of utilizing contracts with social service providers to ensure LEP families receive language accessible social services such as parenting classes, substance use disorder classes, or individual therapy. In particular, the Department's Language Access Plan has continually stated that "The Department plans to review RFR (right of first refusal) language for new procurements to address the need for provider linguistic capacity for certain language populations. The Department is committed to ensuring our providers provide culturally competent and accessible services to families and children, and will leverage our purchasing power to do so."²⁰⁵ Yet our findings have shown little to no improvement in this area, as LEP families face significantly longer wait times than their English-speaking counterparts for these services, and are continually assigned to inaccessible service providers. Thus, it is clear that DCF should re-commit itself to utilizing contracts as a mechanism for guaranteeing language access within their referral services, and include language within these contracts that requires in-person interpretation for all face-to-face services. Should such an option be impractical for a particular social service agency, DCF should instead offer the use of their own Language Line services when community providers serve DCF's LEP clients.

5. Monitor Implementation of Language Access

DCF's most recent Language Access Plan acknowledges the importance of monitoring the implementation of their language access practice and policies. Yet this LAP explains that the Department's current monitoring plan consists of a mere four bullet-points, recommending a bi-annual evaluation of their data collection on the preferred language of their clients, analyzing whether the language needs of their clients are met, assessing whether staff are knowledgeable about the LAP, and investigating whether their language resources are "current and viable."²⁰⁶ While in theory these are valiant goals, without any detailed plan of action, such infrequent monitoring is not sufficient to ensure that the language needs of LEP families are being met by DCF. Furthermore, DCF's response to Massachusetts Appleseed's Public Records Request found in *Appendix I* reveals that the Department "does not have in its possession any responsive records" detailing, referencing, relating to or describing the implementation of the bi-annual agency monitoring practices that are supposed to occur at the statewide, regional, and office area levels per the Department's LAP. Thus, it is clear that DCF must engage with monitoring the implementation of their language access policies much more robustly than they currently are.

♦ ***DCF should establish a working group of key stakeholders tasked with monitoring the implementation of the above recommendations.***

Establishing a robust Language Access Plan, language access policies, and language access protocols

205 Massachusetts Department of Children and Families Language Access Plan, January 10, 2011, p.10, <https://www.masslegalservices.org/system/files/library/DCF%20LAP.pdf>. See *Appendix D*; Massachusetts Department of Children and Families Language Access Plan February 2013-2015, February 2015, p.8, https://www.migrationpolicy.org/sites/default/files/language_portal/LAP-Dept%20of%20Children%20and%20Families_0.pdf; Massachusetts Department of Children and Families Language Access Plan 2019-2021, p.9 <https://www.mass.gov/doc/language-access-plan-7/download>. See *Appendix B*

206 Massachusetts Department of Children and Families Language Access Plan 2019-2021, p.12 <https://www.mass.gov/doc/language-access-plan-7/download>. See *Appendix B*

are all necessary, but not sufficient, steps that DCF must take to provide consistent, quality language services. To change their organizational culture, DCF must invest in equally robust measures to monitor the practical implementation of these practices. To achieve this, the Civil Rights Division of the U.S. Department of Justice has produced guidance on the creation of a working group including key stakeholders – such as community partners, clients, and DCF staff – that could collaborate on the practical implementation of any given agency’s language access procedures.²⁰⁷ Hiring a team of Regional Language Access Coordinators, as recommended earlier, would be extremely beneficial for bringing together, and leading, such a working group.

♦ ***DCF should improve its centralized system for assessing inquiries and complaints relating to language access.***

DCF must improve its response to language access complaints. The attorneys interviewed for this report who had filed complaints with DCF’s Language Access Coordinator were met with little acknowledgment and limited change for their LEP clients’ cases. As such, DCF should more seriously engage with and address internal language access complaints as they receive them. Furthermore, DCF should implement greater analysis of the language access complaints they receive by looking for patterns, recording prevalent issues, and establishing areas for improvement. To do so, DCF’s Language Access Coordinator should be responsible for maintaining a centralized, electronic, searchable database that catalogs: all requests for language access services from DCF-involved parents, and the status of those requests; all language access complaints by or on behalf of a DCF-involved LEP parent, including complaints of language access discrimination; the status and progress of all such requests and complaints; the resolution of all such requests and complaints, including DCF decisions by the Area, Regional, and Central Offices; the reasons for full and partial denials of requests for language access services; and the Area and/or Regional Office(s) handling the DCF-involved parent’s case. Based upon their recent Settlement Agreement with the Department of Justice and the Department of Health and Human Services, DCF has agreed to implement a similar model for tracking disability-related complaints.²⁰⁸

♦ ***DCF should more greatly publicize the process for requesting language access accommodations and making language access complaints.***

Currently, DCF’s Language Access Plan does state that an LEP client may file a written claim to the Department’s Language Access Coordinator within six months of an alleged denial of language services. However, a number of attorneys interviewed for this project were wholly unaware that this process existed. If DCF is ever to sufficiently address their current failure to provide meaningful language access to LEP families, they must encourage open feedback and communication in order to identify the most prevalent language access problems. One mechanism to easily achieve this goal would be to send out a plain language notice to all individuals involved with DCF – written in their primary language – that clearly outlines: the process to make a request for language access services; the process to initiate language access complaints (including language access discrimination complaints); and the process for

207 Federal Coordination and Compliance Section Civil Rights Division U.S. Department of Justice, “Common Language Access Questions, Technical Assistance, and Guidance for Federally Conducted and Federally Assisted Programs,” August, 2011, p.19 https://www.lep.gov/sites/lep/files/resources/081511_Language_Access_CAQ_TA_Guidance.pdf

208 “Agreement Between United States Department of Justice, United States Department of Health and Human Services, and Massachusetts Department of Children and Families,” p.12 https://www.ada.gov/mass_dcf_sa.pdf.

informing service providers that work with DCF-involved LEP parents, including contractors, vendors, and other state agencies, when language access services may be necessary. Based upon their recent Settlement Agreement with the Department of Justice and the Department of Health and Human Services, DCF has agreed to implement a similar “Nondiscrimination Notice” for DCF-involved parents with disabilities.²⁰⁹

♦ ***DCF should engage in community outreach and ask for feedback from LEP families to ensure that their language needs are being met.***

While our report has attempted to synthesize the voice of the LEP community and their struggles with language access at DCF, there is no substitute for DCF receiving their LEP clients’ feedback firsthand. Whether DCF and their Language Access Coordinators attempt to design surveys for LEP families, convene focus groups, or reach out to community partners more generally, there must be more communication between DCF and the LEP families that they serve. LEP clients are the ones who can truly reveal where DCF needs to improve most, as well as what is already working. In addition, by creating stronger relationships with their LEP client base, DCF staff will be able to establish more empathy and trust between the Department and LEP communities, likely leading to an increase in the quality of the language services they provide.

B. External Language Access Enforcement Mechanisms

The recommendations above detail actions through which the Massachusetts Department of Children and Families can internally address their current failure to provide “meaningful” language access to LEP families. Yet the larger Massachusetts community should play an external role in the enforcement of language access rights as well. The four recommendations below detail how the Committee for Public Counsel Services (CPCS), the Massachusetts Legislature and the Massachusetts legal community may utilize the tools at their disposal to improve the provision of language access at the Department of Children and Families, and at other government agencies, services, and programs across the Commonwealth. These recommendations include the following: 1) CPCS should increase its training and engage in advocacy efforts on behalf of their LEP clients, 2) the Massachusetts Legislature should file and pass a language access statute, 3) the Massachusetts Legislature should file and pass legislation that creates a private right of action for disparate impact discrimination, and 4) civil rights organizations should explore bringing a language access discrimination lawsuit against DCF or bringing further OCR complaints against DCF.

²⁰⁹ “Agreement Between United States Department of Justice, United States Department of Health and Human Services, and Massachusetts Department of Children and Families,” p.9 https://www.ada.gov/mass_dcf_sa.pdf.

1. Massachusetts Committee for Public Counsel Services (CPSC): Increase Training and Advocacy Efforts

- ♦ *CPCS should increase the number and frequency of trainings it provides staff in meeting the needs of LEP clients, and CPCS attorneys should strongly advocate for their clients' meaningful access to DCF services through all means available, including the submission of complaints, if necessary.*

The Committee for Public Counsel Services should increase the number and frequency of trainings it provides for CPCS lawyers, legal services attorneys, and community providers on DCF's language access obligations. CPCS should also train its lawyers and other members of the community on the process for filing complaints with DCF and the Department of Justice (DOJ). While advocates have reported that some language access trainings have already been conducted, more frequent and robust trainings are necessary to encourage enforcement of language access at DCF, which remains exceedingly haphazard and difficult. Subsequently, CPCS attorneys must take all actions necessary to ensure that their LEP clients understand DCF's and the court's expectations. Attorneys for parents and children in Care and Protection cases should also use informal and formal means to advocate for LEP clients to receive meaningful language access services early and often, including through written correspondence to DCF, filing motions in court, and interlocutory appeals. Furthermore, CPCS attorneys should advocate for DCF to provide linguistically and culturally appropriate social services for their clients, and assist clients in finding such services themselves when needed. Finally, CPCS attorneys should file complaints with DCF and DOJ when consistent with their client's wishes.

2. Massachusetts Legislature: Enact a Language Access Statute

- ♦ *The Massachusetts Legislature should enact a language access statute that standardizes and strengthens language access requirements for government-funded programs across the state, and establishes enforcement mechanisms for compliance with such requirements.*

A language access statute would have wide-ranging implications for LEP people in Massachusetts. Currently, all Massachusetts state agencies, departments or programs receiving federal funds are bound to the language access requirements of Title VI, within the Civil Rights Act of 1964. However, on a state level, Massachusetts lacks any statutory mandate to specifically require these entities to provide language access services. Without explicit legislation mandating stronger language access requirements for agencies and entities receiving state funds, the Massachusetts government has a very limited ability to enforce the provision of language access services within its own state agencies. As a result, agencies such as DCF are consistently failing to provide equal access to the Massachusetts LEP population. By creating uniform standards that our state-level government has the ability to enforce, the Commonwealth would have the power to intervene if government-funded agencies, programs, or services continue to fail to meet the needs of the LEP people they serve.

3. Massachusetts Legislature: Enact a Private Right of Action for Disparate Impact Discrimination

♦ *The Massachusetts Legislature should enact legislation that provides a right for individuals to sue state-level government entities for disparate impact discrimination.*

At the federal level, the Supreme Court Case *Alexander v. Sandoval* prevents individuals from bringing claims of disparate impact discrimination under Title VI of the Civil Rights Act of 1964. “Disparate impact” refers to situations where laws, policies, and practices appear neutral on their face, but in reality adversely affect certain groups of people who are members of a legally protected class. The term “protected class” refers to groups of people who are legally protected from being harmed, harassed, or discriminated against because of a shared characteristic like race, gender, age, disability, or national origin. Since this remedy is foreclosed under federal law, the Massachusetts Legislature should pass legislation creating a private right of action for disparate impact discrimination under state law. Such a law would greatly benefit LEP residents of Massachusetts, as currently, individual LEP people have a very limited capacity to achieve redress if they are denied language access services from state-funded programs. This type of solution has already been proposed in past legislative sessions. Initially, this legislation was introduced by Representative Byron Rushing in the 2013-2014, 2015-2016, and 2017-2018 legislative sessions. More recently, Representative Adrian Madaro, Representative Joan Meschino, and Senator Sal DiDomenico have carried on the prior work of Representative Rushing by introducing similar disparate impact legislation in the 2019-2020 session. Similar legislation would have immense implications for civil rights in Massachusetts, creating a more viable avenue for redress relating to not only language access discrimination, but all sorts of disparate impact discrimination that occurs within the delivery of government services, and should be refiled and passed in the next legislative session.

4. Civil Rights Organizations and the Massachusetts Legal Community: Explore the Value of Impact Litigation or Further OCR Complaints Against DCF

♦ *The Massachusetts public interest and civil rights legal community should examine various legal theories and evaluate the potential for taking legal action against the Massachusetts Department of Children and Families or HHS’ Office for Civil Rights for a violation of LEP parents’ civil rights.*

The civil rights and public interest legal community should explore alternative legal strategies for enforcing the rights of LEP families to be free from language-based discrimination at DCF, including, but not limited to legal action against DCF or an action for declaratory and injunctive relief to challenge the failure of Health and Human Services’ Office for Civil Rights to enforce Title VI of the Civil Rights Act of 1964 and its implementing regulations.

C. Conclusion

This report has shown that the Massachusetts Department of Children and Families is failing to provide federally mandated “meaningful” language access to the limited English proficient families it serves. DCF is not currently providing LEP families with adequate interpretation services, sufficient translation services, or language accessible social services. Without access to such services, LEP families frequently do not understand what DCF expects of them, and thus face an increased likelihood of separation compared to their English-speaking counterparts.

Should DCF implement the recommendations detailed in this report – by investing in language access trainings, creating language access protocols, hiring more bilingual staff members and language access coordinators, improving their contracts with outside interpretation services, and committing to strictly monitoring the implementation of all such initiatives – the Department has the potential to create an organizational culture which truly prioritizes language access. The Department will have the opportunity to make it clear, from the top down, that language access is essential, and DCF staff will finally be equipped to follow through on such policies.

Yet the prioritization of language access falls not only upon the Department of Children and Families; this shift in priority needs to happen state-wide. We encourage the Committee for Public Counsel Services to tailor its services more directly towards the needs of the LEP clients it serves. Within the civil rights and public interest legal community, we encourage lawyers to think unconventionally and evaluate alternative legal theories or complaint processes that could protect the rights of LEP families involved with DCF. From a policy standpoint, we encourage the Massachusetts legislature to enact legislation that mandates, standardizes, and enforces language access requirements for all state-funded programs within the Commonwealth. Furthermore, we encourage the legislature to greatly expand the enforcement of individual civil rights with reference to disparate impact discrimination – an initiative that could protect not only LEP people, but members of multiple protected classes as well.

Taken together, this report recommends that an emphasis on the provision of language access within state-funded agencies, programs, and activities be tackled through internal work within state-level agencies such as DCF, through legislative policy within the Massachusetts Legislature, and through legal action within CPCS and the courts. By embracing a systemic plan for change, Massachusetts can prevent families from being torn apart unjustly due to failures of language access.

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APPENDIX A

Primary Language Data from the Department of Children and Families FY 2014-2019

Compiled by Massachusetts Appleseed from Quarterly DCF Reports

Languages Served

Language	FY19				FY18				FY17				FY16				FY15				FY14			
	Q4	Q3	Q2	Q1	Q4	Q3	Q2	Q1	Q4	Q3	Q2	Q1	Q4	Q3	Q2	Q1	Q4	Q3	Q2	Q1	Q4	Q3	Q2	Q1
SPANISH																								
Child <18	2204	2202	2218	2150	2257	2329																		
Youth ≥ 18	196	198	214	222	222	217																		
Adults	4385	4444	4449	4325	4545	4671																		
Total	6785	6844	6881	6697	7024	7217	6919	6568	6694	6557	6385	6394	6721	6482	6123	5789	6074	5830	5500	5542	5071	4651	4449	4449
KHMER (CAMBODIAN)																								
Child <18	15	20	12	15	18	37																		
Youth ≥ 18	2	2	4	4	5	6																		
Adults	67	60	60	63	77	73																		
Total	84	82	74	82	100	116	122	117	119	94	77	92	101	92	105	101	108	111	129	141	394	393	359	138
PORTUGUESE																								
Child <18	197	194	171	189	158	146																		
Youth ≥ 18	8	8	8	8	10	8																		
Adults	452	445	449	450	427	402																		
Total	657	647	628	647	595	556	503	480	510	483	431	430	434	398	405	373	402	419	415	406	386	342	302	292
HAITIAN CREOLE																								
Child <18	124	121	127	132	133	136																		
Youth ≥ 18	22	22	24	19	20	21																		
Adults	347	341	339	349	369	364																		
Total	493	484	490	500	522	521	473	453	437	407	367	382	454	440	408	378	418	403	384	360	309	283	281	350
CAPE VERDEAN CREOLE																								
Child <18	87	80	69	68	78	80																		
Youth ≥ 18	7	7	10	10	10	7																		
Adults	219	234	229	229	239	227																		
Total	313	321	308	307	327	314	327	282	285	266	249	260	350	330	329	308	308	329	306	287	145	126	146	87
VIETNAMESE																								
Child <18	29	21	20	39	39	33																		
Youth ≥ 18	2	4	4	4	3	4																		
Adults	96	69	66	78	90	97																		
Total	127	94	90	121	132	134	126	114	123	128	116	137	149	86	129	119	119	117	112	94	93	99	98	267
CHINESE																								
Child <18	35	20	29	29	27	25																		
Youth >=18	3	2	2	3	1	2																		
Adults	98	79	82	80	90	86																		
Total	136	101	113	112	118	113	101	84	98	84	85	102	108	106	88	99	96	104	89	96	85	75	52	59
LAO																								
Child <18	1	1	1	1	1	2																		
Youth >=18	0	0	0	0	0	0																		
Adults	5	7	7	7	9	11																		
Total	10	8	8	8	10	13	12	16	12	11	13	10	13	8	7	8	13	6	5	10	16	16	16	16
AMERICAN SIGN LANGUAGE																								
Child <18	25	21	17	13	13	15																		
Youth >=18	0	0	0	1	2	2																		
Adults	37	40	36	40	41	39																		
Total	62	61	53	54	56	56	68	63	60	56	61	56	72	73	75	74	76	66	75	58	55	43	46	48
OTHER																								
Child <18	175	214	243	258	258	233																		
Youth ≥ 18	69	68	73	70	67	65																		
Adults	870	953	983	948	953	957																		
TOTAL	1114	1235	1299	1276	1278	1255	1233	1161	1260	1310	1349	1409	1464	1372	1342	1360	1240	1274	1282	1391	1296	1168	1102	1102

Quarterly Profile Data

Year/Quarter	Total # of Consumers	Responses (how many reports investigated)	In-Placement	Not In-Placement	Non-English Primary Language # Total	Non-English Primary Language % Total	LEP Primary Language Child and Youth #	LEP Child and Youth %	LEP Primary Language Adult #	Adult %
FY14, Q1 (7/1/13-9/30/13)	71163	8900	9270	28167	6808	0.0957				
FY14, Q2 (10/1/13-12/31/13)	75390	9801	9442	30037	7119	0.0944				
FY14, Q3 (1/1/14-3/31/14)	83921	12307	10081	33502	7744	0.0923				
FY14, Q4 (4/1/14-6/30/14)	90611	13915	10414	36547	8416	0.0929				
FY15, Q1 (7/1/14-9/30/14)	90494	9630	8705	36257	8234	0.091				
FY15, Q2 (10/1/14-12/31/14)	93254	9845	8723	37427	8619	0.0924				
FY15, Q3 (1/1/15-3/31/15)	94573	8618	9032	37792	8814	0.0932				
FY15, Q4 (4/1/15-6/30/15)	94793	9483	9030	37972	8974	0.0947				
FY16, Q1 (7/1/15-9/30/15)	92460	8420	8891	36721	8591	0.0929				
FY16, Q2 (10/1/15-12/31/15)	96919	9608	8726	38437	9041	0.0933				
FY16, Q3 (1/1/16-3/31/16)	100503	10660	9595	39482	11652	0.1159				
FY16, Q4 (4/1/16-6/30/16)	102701	13007	9655	40447	9866	0.0961				
FY17, Q1 (7/1/16-9/30/16)	96739	10938	9427	37526	9272	0.0958				
FY17, Q2 (10/1/16-12/31/16)	95714	11759	9426	36973	9133	0.0954				
FY17, Q3 (1/1/17-3/31/17)	97103	11195	9625	37377	9396	0.0968				
FY17, Q4 (4/1/17-6/30/17)	98186	12433	9597	37817	9616	0.0979				
FY18, Q1 (7/1/17-9/30/17)	94672	10076	9598	35898	9338	0.0986				
FY18, Q2 (10/1/17-12/31/17)	98779	11807	9458	37959	9884	0.1001				
FY18, Q3 (1/1/18-3/31/18)	100282	10450	9714	38331	10295	0.1027	3368	0.0671	6927	0.1382
FY18, Q4 (4/1/18-6/30/18)	100173	12424	9631	38349	10162	0.1014	3322	0.0663	6840	0.1365
FY19, Q1 (7/1/18-9/30/18)	96292	9802	9371	36412	9804	0.1018	3235	0.0675	6569	0.1358
FY19, Q2 (10/1/18-12/31/18)	96360	11592	9183	36598	9944	0.1032	3244	0.0677	6700	0.1382
FY19, Q3 (1/1/19-3/31/19)	95993	11109	9204	36462	9877	0.1029	3206	0.0672	6672	0.1383
FY19, Q4 (4/1/18-6/30/18)	93363	11778	8809	36249	9777	0.1047	3201	0.0680	6576	0.1422

All LEP Data

Language	# of speakers	#LEP	% LEP	Notes
Spanish	591185	243539	0.412	
Portuguese	199802	90219	0.452	
Chinese (including Mandarin, Cantonese)	133689	67973	0.508	
Haitian	87844	40885	0.465	
French (including Cajun)	56693	11760	0.207	
Other Indo-European Languages	43616	14182	0.325	
Russian	41324	17051	0.413	
Vietnamese	39489	25137	0.637	
Arabic	29020	10308	0.355	
Hindi	26568	3203	0.121	
Italian	26351	6975	0.265	
Yoruba, Twi, Igbo, or Other Languages of Western Africa	22946	8220	0.358	Yoruba: spoken in Nigeria, Benin, and Togo. Twi: spoken in the southern 2/3 of Ghana. Igbo: spoken in southern Nigeria.
Khmer	21804	11724	0.538	
Korean	20021	7878	0.393	
Polish	19586	6503	0.332	
Swahili or Other Languages of Central, Eastern, and Southern Africa	18834	4704	0.25	
German	15728	1069	0.068	
Nepali, Marathi, or Other Indic Languages	15716	7463	0.475	
Other Slavic Languages	13814	4460	0.323	
Gujarati	13334	4546	0.341	
Other Languages of Asia	10689	4928	0.461	
Amharic, Somali, or Other Afro-Asiatic Languages	10362	5027	0.485	
Tamil	10109	1161	0.115	
Telugu	10000	2041	0.204	Spoken in southern India
Japanese	9712	5255	0.541	
Thai, Lao, or Other Tai-Kadai Languages	8786	5372	0.611	
Bengali	8024	1927	0.24	
Other and Unspecified Languages	7929	1903	0.24	
Tagalog (including Filipino)	7884	2233	0.283	
Hebrew	7086	899	0.127	
Armenian	6863	2180	0.318	
Malayalam, Kannada, or Other Dravidian Languages	6643	1505	0.227	Malayalam: spoken in the Indian state of Kerala and the Laccadive Islands in southern India. Kannada: spoken in southern India.
Urdu	5907	1808	0.306	
Persian (including Farsi, Dari)	3950	1108	0.281	
Yiddish, Pennsylvania Dutch, or Other West Germanic Languages	3850	450	0.117	
Punjabi	3792	1655	0.436	
Ilocano, Samoan, Hawaiian, or Other Austronesian Languages	2498	263	0.105	
Native Languages of North America	415	49	0.118	
Hmong	272	116	0.426	

APPENDIX B

Department of Children and Families Language Access Plan 2019 - 2021

Department of Children and Families
Language Access Plan
2019 - 2021

I. Introduction

The Massachusetts Department of Children and Families has prepared this Language Access Plan (“LAP” or “Plan”), which defines the actions to be taken by DCF to ensure meaningful access to agency services, programs, and activities on the part of persons who have Limited English Proficiency (“LEP”). The Department will review and update, on a bi-annual basis, this LAP in order to ensure continued responsiveness to community needs and compliance with the Executive Office of Administration and Finance (“ANF”) Administrative Bulletin #16.

II. Purpose

The purpose of this plan is to ensure that DCF clients, who are limited in their English language proficiency, have access to meaningful services, programs, and activities.

The Department views this Language Access Plan as an important response to ensure we meet our LEP clients’ service needs. The Plan is consistent with the requirements of Administrative Bulletin #16, as promulgated by the Executive Office of Administration and Finance.

Consistent with the guidance of ANF Administrative Bulletin #16, a Limited English Proficient person is someone who is not able to speak, read, write, or understand the English language at a level that allows him/her to interact effectively with DCF staff and/or service providers. The client maintains the right to self-identify as a LEP person.

III. Agency Description and Language Access Plan Vision

A. Mission, Vision, and Values

Mission and Vision Statement:

The Department of Children and Families is charged with protecting children from abuse and neglect and strengthening families in which child abuse and neglect have occurred. With the understanding that every child is entitled to a home that is free from abuse and neglect, DCF’s vision is to ensure the safety of children in a manner that holds the best hope for nurturing a sustained, resilient network of relationships to support the child’s growth and development into adulthood.

Agency Core Practice Values:

The Department’s Core Values are anchors that ground our practice. DCF is committed to making these values more than words on paper. By strengthening the links between the Department, families, and communities, DCF has moved closer to service delivery systems that reflect the core values listed below:

- Child-driven
- Family-centered
- Community- focused
- Strength-based
- Committed to diversity and cultural competence
- Committed to continuous learning/ continuous quality improvement (“CQI”)

B. DCF Diversity Vision and Goals

Agency Diversity Vision:

DCF recognizes that issues of identity and diversity are central to children’s welfare and that, to succeed, any comprehensive plan on identity and diversity must be grounded deeply in our work to protect children and support families. As a result, the agency’s diversity vision goes beyond workforce demographics to encompass our connections with families, communities, and providers. The uniquely personal and sensitive nature of our mission requires DCF to create working relationships wherein children and families feel safe and supported regardless of their cultural background or linguistic capabilities.

Agency Diversity Goals:

DCF seeks to heighten awareness of diversity issues in order to create a learning environment that respects and embraces cultural, racial, ethnic, language, religious, sexual orientation, gender, physical and other differences represented in both our workforce and the families we serve.

Priority Objectives:

Safely stabilizing and preserving families; safely reunifying families; and safely creating new families through kinship, guardianship and adoption.

Programs and Services

The Department provides a wide array of services through the following core programs:

- Adolescent Services
- Adoption/Guardianship
- Domestic Violence Services
- Housing Stabilization
- In-Home Supports
- Out of Home Placements

Activities to Support the Mission of the Department include:

- Case Management
- Investigations of Child Abuse Reports
- Initial Family Assessments
- Comprehensive Family Assessments
- Service Planning
- Service Referral

- Foster and Adoptive Parent Recruitment and License Studies
- Placement Support
- Continuous Monitoring and Evaluating of Access to Service and Service Delivery

There are currently more than 10,700 children in foster care across Massachusetts and more than 47,000 children in all served by the Department. As of December 31, 2018, a total of 96,360 individuals (adults and children) were being served by DCF. The Department is committed to safely maintaining children in their homes and has worked diligently over the past several years to reduce the number of children requiring placement.

IV. Language Access Plan

The DCF Language Access Plan shall be fully implemented subject to the availability of fiscal resources to implement said language access plan. This Language Access Plan has been developed to adhere to the Language Access Guidelines of ANF Administrative Bulletin #16. This Language Access Plan represents the DCF administrative blueprint to provide meaningful access to DCF services, programs, and activities on the part of LEP individuals. This Language Access Plan outlines the tasks DCF will undertake to meet this objective.

1. Agency Language Access Coordinator

Diane K. Chang, Esq.
 Diversity Officer/ADA Coordinator
 Department of Children and Families
 600 Washington Street, 6th floor, Boston, MA 02111
 Phone: (617) 748-2104 Fax: (617) 439-4482
diane.chang@state.ma.us

2. Agency Language Access Needs Assessment

- A. The Department is committed to ensuring equal access for all DCF consumers to programs and services regardless of preferred language spoken or English proficiency. The Department will make every effort to provide application forms, notices, letters, service plans, and other documents intended for consumers and family resources, in the individual's preferred language, if possible.

The Department uses numerous forms, notices, and letters to communicate with consumers, providers, and mandated reporters. The Department's Family Guide to Protective Services for Children, General and HIPPA Releases, Support/Unsupport letters, and many other documents have been translated into the six (6) most requested languages: Spanish, Portuguese, Haitian Creole, Cape Verdean Creole, Chinese, and Vietnamese. All versions are available on the DCF Intranet Diversity Page.

The Department is in the process of reviewing all forms and letters to consumers to bring them in line with current DCF policies.

B. Language Makeup of Client Population

The Department uses a child welfare information system called iFamilyNet. iFamilyNet is a statewide automated child welfare information system that was implemented in February 1998, and continuously upgraded. This management information system is used for virtually all DCF activities including intake, investigation, assessment, clinical/case management, foster care, adoption, financial, legal, and provider services. DCF staff enters case information directly into the central iFamilyNet database from their desktop computers and/or mobile devices. The aggregate and consumer-specific data available from this database via reports, extracts, and direct (on-line) access enables DCF to efficiently manage its resources to meet the needs of its clients.

The DCF Quarterly Reports contain statistical tables and graphs which provide a demographic description of DCF consumers and foster care providers as well as placement dynamics, case openings, adoption/guardianship subsidies, child maltreatment reporting, and District Attorney referrals.

For the FY 2019 second quarter, the Department reports the following findings regarding the preferred language of consumers:

Preferred Language of Consumers (DCF quarterly reports FY 2019, 2nd quarter)

- The Western, Northern, and Boston regions had the highest proportions (and numbers) of Spanish speaking consumers, 5% (1617 consumers), 6% (1799 consumers), and 8% (1376 consumers) respectively. Spanish was the preferred language of most LEP DCF consumers. Other languages and their regions of highest prevalence were Portuguese (Northern, Southern, and Central), Haitian Creole (Northern, Southern, Central, and Boston), Cape Verdean Creole (Southern and Boston), Vietnamese (Southern, Northern, Central, and Boston), Chinese (Southern, Northern, Western, and Boston).
- From 1987 to 1997, there were substantial increases in consumers whose preferred languages were Khmer, Lao, Haitian Creole, Vietnamese, and Spanish. In the following decade (1997 to 2007), there were declines in consumers from all of these language groups. From 2007 to 2014, there were substantial increases in consumers whose preferred languages were Spanish, Portuguese, Haitian Creole, Cape Verdean Creole, and Chinese. Although there are increases and decreases in consumers with these preferred languages, there was not a decline in DCF consumers from these ethnic groups. These trends are attributable to the fact that as clients from the new refugee/immigrant communities continue to increase the proficiency and fluency in English, those who are fluent only in their native language make up a smaller proportion of these communities. These shifts impact

the recruitment of bilingual staff and the procurement of language appropriate programs and services for clients.

The two tables below document the shift in languages spoken by DCF clients over time.

Primary Language	Consumers Jul. 1987 No.	Consumers Jul. 1997 No.	Consumers Jun. 2007 No.	Consumers Dec. 2014 No.	Consumer Dec. 2017 No.	Consumers Jun. 2019 No.	1987- 1997 Change %	1997- 2007 Change %	2007- 2014 Change %	2014- 2017 Change %	2017- 2019 Change %
English/Unspecified*	60,784	66,404	71,398	84,635	88895	83586	9%	8%	19%	5%	-6%
Spanish	3,664	6,334	4,516	5,830	6919	6785	73%	-29%	29%	19%	-2%
Portuguese	530	380	303	415	503	657	-28%	-20%	37%	21%	31%
Haitian Creole	175	360	260	384	473	493	106%	-28%	48%	23%	4%
Cape Verdean Creole	174	247	146	306	327	313	42%	-41%	110%	7%	-4%
Chinese	71	61	54	89	101	136	-14%	-11%	65%	13%	35%
Vietnamese	146	273	167	112	126	127	87%	-39%	-33%	13%	1%
Khmer Cambodian	253	851	356	129	122	84	236%	-58%	-64%	-5%	-31%
American Sign Language	47	23	41	75	68	62	-51%	78%	83%	-9%	-9%
Russian			37	53	62	56			43%	17%	-10%
Lao	30	74	20				147%	-73%			
Other	213	310	1,459	1,279	1245	1064	46%	371%	-12%	-3%	-15%
Total	66,087	75,317	78,757	93,307	98841	93363	14%	5%	18%	6%	-6%

Languages and percentages of languages of consumers in FamilyNet as of 12/31/19

Preferred Language	Actual Consumer Count 12/31/17	Percentage of Total Population	Actual Consumer Count 12/31/19	Percentage of Total Population
American Sign Language	68	0.07%	62	0.07%
Cape Verdean Creole	327	0.33%	313	0.34%
Chinese	101	0.10%	136	0.15%
English	78173	###	72199	###
French	61	0.06%	38	0.04%
Greek	4	0.00%	4	0.00%
Haitian Creole	473	0.48%	493	0.53%
Italian	7	0.01%	7	0.01%
Khmer (Cambodian)	122	0.12%	84	0.09%
Lao	12	0.01%	6	0.01%
Polish	13	0.01%	11	0.01%
Portuguese	503	0.51%	657	0.70%
Russian	62	0.06%	56	0.06%
Spanish	6919	7.00%	6785	7.27%
Thai	8	0.01%	4	0.00%
Vietnamese	126	0.13%	127	0.14%
Other	1078	1.09%	994	1.06%
Unknown	10722	###	11387	###
Total	98779	###	93363	###

The “unknown” category is the default when no language value is selected by the person entering the consumer data. Due to the fact that language is a required field in FamilyNet, if no language is selected, the language defaults to “unknown.” It is of concern that such a large percentage of consumers do not have their preferred language recorded in their profiles in FamilyNet. This is an area that has been identified as needing improvement.

The DCF Diversity Officer, who is currently also the Language Access Coordinator, will work with the Diversity Leadership Team to develop guidance for staff to reduce the number of “unknowns” in the consumer demographics on language. Offices that have a particularly high “unknown” rate will be targeted to address this issue and gather better demographic data for their consumers. DCF is already engaged in a similar effort to improve data collection on race, ethnicity and other protected categories.

C. Points of Contact between DCF and Clients

DCF direct service staff most often meet families in their homes, visit children in foster and adoptive homes and in residential and group home facilities. Other points of contact take place in the community, courts, schools, day care centers, medical facilities, service provider agencies and other locations in the community as appropriate.

In addition, there are business points of contact between DCF and our client population. These points of contact are listed below:

1. Central Office, 600 Washington Street, 6th floor, Boston, MA 02111
(617) 748-2000
2. 5 Regional Offices:
 - Western Regional Office, 140 High Street, 5th floor, Springfield, MA 01105
 - Central Regional Office, 13 Sudbury Street, Worcester, MA 01609
 - Northern Regional Office, 280 Merrimack Street, Lawrence, Ma 01843
 - Southern Regional Office, 110 Mulberry Street, Brockton, MA 02302
 - Boston Regional Office, 600 Washington Street, Boston, MA 02111
3. 29 Area Offices strategically located within the 5 regions. These locations are the main business points of contact with the client population.
4. Child-at-Risk Hotline 1-800-792-5200
5. Website address: www.mass.gov/DCF

3. Language Resources Assessment

a) Commitment to Diversified Staff and Management Team

It is a priority for the Department to recruit and hire bilingual, bicultural staff to work more effectively with families served by DCF. The DCF Diversity Plan includes a

goal to focus on all ethnic groups that often are not at the forefront of diversity discussions.

b) Aligning Resources to Meet Families' Cultural and Linguistic Needs

Another goal in the Diversity Plan is to increase DCF staff diversity at all levels through recruitment, improved retention, and promotional opportunities. To more effectively meet the needs of an area office, DCF management has successfully recruited bilingual social workers and supervisors based on the linguistic needs of the consumers in their local areas. DCF has recently acquired a "Language Line" vendor for telephonic interpreter services.

DCF cases are assigned and managed at the local area office. Local area management is constantly reviewing case assignments and is faced with many challenges in assigning bilingual cases to bilingual staff, while balancing case assignment to bilingual and non-bilingual workers. In order to ensure maximum alignment of resources to meet families' cultural and linguistic needs, DCF employees receive bilingual pay differential and represent preferred languages of consumers in their respective regions.

The bilingual employees receive differential pay for carrying a caseload/workload with a significant number of LEP consumers that speak the language in which the staff person has proficiency. This enables the Department to assign those cases/families to these workers who are able to provide case management services in the preferred language of the client. The Department acknowledges that working with LEP clients may be more complex than with English speaking consumers and thus, the provision of the pay differential to the employee per the SEIU Local 509 contract. The complexity is related to connecting the client with bilingual service providers, finding interpreters, translating documents for the consumers, and ensuring culturally competent services above and beyond the language capacity. Not all bilingual staff receive the differential pay.

The Department has a handful of direct service employees who are proficient in ASL. As a result, the ability to meet the needs of the deaf and hard of hearing community is a challenge. The Department has executed a Memorandum of Understanding ("MOU") with the MA Commission for the Deaf and Hard of Hearing (MCDHH) for referral services during business hours to provide ASL interpreters for these families.

c) Meeting the Linguistic Needs of Families After Business Hours

The Child-At-Risk Hotline provides after-hours access for the community to report suspected child abuse and neglect. The Hotline service is provided by a vendor whose employees take reports regarding allegations of child abuse or neglect by phone and make determinations on whether an emergency investigation is warranted. The Hotline vendor has some bilingual capacity among the staff (screeners and supervisors) to communicate with reporters in Spanish and Haitian Creole. Most often

when a person, who has limited English proficiency, calls the Hotline, they have someone with them to translate to hotline staff. The Hotline is staffed in shifts to cover nights, weekends, and holidays which make it a challenge to always have someone on shift that is bilingual in any language. The Hotline now has access to a Telephonic Language Line vendor at this time.

The deaf and hard of hearing consumers and reporters that call the Hotline use MA Relay Services or a TTY line. The call comes into the Hotline as a regular phone call. There is an operator that facilitates these calls.

The Department utilizes on-call DCF social work staff to conduct emergency child abuse investigations during hotline hours. We have a list of bilingual DCF employees who are willing to be contacted after hours for interpretation and translation, including staff with ASL ability. These employees are available to the Hotline investigators just for interpretation. Any DCF employee who responds during hotline hours, whether to investigate or interpret, is paid a hotline rate for reimbursement.

d) Meeting Language Access Needs via Service Request Protocols

1) Community –based Resources Available to Assist Agency in Meeting Language Access Needs

When a social worker requests services for a family with LEP, they request services in the family's language. The Department utilizes a Lead Agency model to match provider services with client needs. This model allows for services to be more accessible and appropriate for client needs. For consumers with Limited English Proficiency, the social worker would request the service through the Lead Agency to be provided in the preferred language of the client. The Lead Agency will then check provider resources within the geographic area to find and match a clinician or treatment provider that is bilingual in the language of the consumer. Providers do their best to have staffing capacity to meet the cultural and linguistic needs of the community they serve. Their capacity to provide linguistically appropriate services for clients is challenged by the difficulty to find highly trained and competent bilingual clinicians in the local community.

e) Meeting Language Access Needs via Interpreter and Translator Services

In the event that DCF, through its bilingual staff capacity and the matching to services through the Lead Agencies, is not able to meet the language needs of a client, our staff utilize the OSD approved Master Service Agreement vendors for interpreter and translation services.

For the deaf and hard of hearing consumers, DCF utilizes the interpreter services through the MCDHH. Countless requests were approved for ASL, CART (Communication Access Real-Time Translation) and/or CDI (Certified Deaf Interpreter) interpreter services for families statewide. Funding for MCDHH interpreter

services is managed centrally. One of the strategies to achieve this goal is to use the DCF-MCDHH Workgroup to ensure communication access for families involved with DCF and children in DCF custody who are deaf and/or hard of hearing.

f) Meeting Language Access Needs via Procurement and Contract Requirements

The Department plans to review RFR language for new procurements to address the need for provider linguistic capacity for certain language populations. The Department is committed to ensuring our providers provide culturally competent and accessible services to families and children, and will leverage our purchasing power to do so.

1) Language Service Protocols

a) Which language services are required to implement the Language Access Plan

In-person interpretation, phone interpretation, and community based resources are needed to implement our Language Access Plan.

In-person Interpretation

When a bilingual social worker or service provider is not available in the language of the client, the Department uses the OSD approved vendors for language interpretation and translation services.

Phone Interpretation

DCF utilizes the bilingual employees for phone interpretation as needed and the new telephonic language line.

Community-based Resources

DCF has contracts with providers who have the capacity to provide counseling and other client services in the preferred language of the client, including community based and congregate care providers that serve particular linguistic communities. This is particularly true for community based providers who serve specific cultural and linguistic communities.

b) Define and Describe the Agency's Language Access Protocols for Providing Interpretation Services

Administrative Procedures for Accessing In-Person Interpreter Services

Social workers access the in-person language interpreter services with their supervisor's approval. The process is as follows:

- The social worker or investigator identifies the need for language interpreter services based on the family's preferred language
- The social worker completes a request form provided by the approved vendor and has it approved by the supervisor
- The social worker faxes the form to the vendor
- The vendor identifies the appropriate interpreter
- The interpreter calls or emails the DCF social worker to set up an agreed upon meeting time with the family
- The meeting takes place
- The interpreter bills DCF for a minimum of 2 hours at the approved rate

The Department does not have much difficulty finding interpreter services for the most common non-English speaking languages such as Spanish or Portuguese. For less common languages, it becomes more difficult to obtain an interpreter in the catchment area or one who is willing to travel, but usually the vendor does its best to meet the needs of the requesting DCF staff. In most instances, the interpreter is available within one week or sooner depending on the situation.

Administrative Procedures for Accessing ASL Services

When a need for interpreter services is identified by DCF social workers, the following steps must be taken.

The social worker must contact the Central Office designee to request funding. This should be done via email. The email should contain the following information:

- Date(s) interpreter needed
- Time
- Duration (2 hour minimum)
- Address/location of assignment
- Names of deaf and/or hard of hearing person(s)
- Communication preference, if known (ASL, CART, etc)
- Requested interpreter (if consumer has a preference, MCDHH will try to accommodate where possible)
- Description of need/situation (51A investigation, foster care review, monthly home visit etc)
- Total number of participants
- The DCF designee will notify MCDHH via email to approve the funding. A copy of the email will be sent to the social worker who made the request
- Upon receipt of the email confirmation, the social worker will then call MCDHH at (617) 740-1600. MCDHH will request additional information from the social worker to determine the level of expertise needed by the Interpreter. MCDHH will contact the social worker when an assignment has been confirmed or if there is a need to negotiate another date/time.

- Upon completion of the services, the vendor/interpreter bills DCF directly
- Each session equals a two-hour minimum charge. MCDHH will determine if more than one interpreter is needed. MCDHH requires a two-day (48 business hours) notification of cancellation. Otherwise, full charges will be assessed to the account.

Vital Document Translation

Numerous forms and letters have already been translated into Spanish, Portuguese and Haitian Creole, Cape Verdean Creole, Chinese, and Vietnamese, but may need updating due to recent policy changes. Documents continue to be translated and several more documents are slated to be translated into the 6 most requested languages within the next few months. The plan is to have all forms and letters translated over the next 12-24 months, depending on Bargaining Unit negotiations and funding availability. Babel notices are also in use.

Agency website content: ANF and ITD are working toward streamlining website and communications for all agencies. The language for this section will be provided by ITD

Stakeholder Consultation

The DCF Diversity Leadership Workgroup, MCDHH, EOHHS, and the Office of Refugees and Immigrants were consulted during the development of this Plan. Due to time constraints, the Department was unable to consult with additional stakeholders. The plan is to identify stakeholders and provide opportunities for input on the LAP.

Staff Training

All newly hired employees are required to attend CORE, or New Worker Pre-Service, Training. The CORE Training includes a module involving cultural humility and a module in which a parent will speak to the class regarding their experience with DCF. The parent voice also provides first hand exposure to the diversity of our families' cultural and linguistic needs. The Department hopes to strengthen the CORE Training by adding a segment on the Language Access Protocols for new employees. In addition, we will post the Language Access Plan on the DCF Intranet for easy access for all staff. To reinforce learning and communication materials, the Language Access protocols will be presented at staff meetings across all area and regional offices, as well as Central Office.

In addition, our language access training priorities include:

- Communicating the importance of accurate demographic data in iFamilyNet
- Developing systemic and culturally sensitive methods of gathering racial, ethnic, and linguistic demographic information from our families
- Reduce or eliminate the numbers of “unknowns” in the languages listed for consumers

Notice to Public

New clients at DCF are informed of language assistance during the investigation or initial assessment process. Our staff is trained to access language preference during the first contact with the family. If the family's case is opened for services, the assigned social worker will provide language access to the family through resources available to DCF

Agency Monitoring

A key element to an effective Language Access Plan is to monitor the plan. To that end, on a bi-annual basis, DCF shall at a statewide, regional and area office level:

- Evaluate progress in improving data collection on the preferred language of consumers
- Review the language needs of DCF consumers and whether existing services are meeting the needs
- Assess whether staff is knowledgeable about the Language Access Plan, protocols and procedures and how to access services
- Assess whether the language resources are still current and viable

Complaints

Language Access Complaint Procedure:

Individuals may file a complaint with the Agency Language Access Coordinator or the Office of Access and Opportunity if they believe they have been denied the benefits of this plan. The complaint must be filed within 6 months of the alleged denial. The complaint must be in writing. To file a complaint with the Language Access Coordinator, individuals must submit the written complaint to:

Diane K. Chang, Esq.
Department of Children and Families
600 Washington Street, 6th floor
Boston, MA 02111
(617) 748-2104
diane.chang@state.ma.us

To file a complaint with the Office of Access and Opportunity, the written complaint must be submitted to the attention of:

Office of Access and Opportunity
Executive Office of Administration and Finance
State House, Room 373
Boston, MA 02111

Diane K. Chang
Diversity Officer/ADA Coordinator
Language Access Coordinator

Date

Linda S. Spears
Commissioner

Date

Secretary MaryLou Sudders
Executive Office of Health and Human
Services

Date

APPENDIX C

Department of Children and Families Language Access Plan February 2013 – February 2015

Department of Children and Families
Language Access Plan
February 2013 – February 2015

I. Introduction

The Massachusetts Department of Children and Families has prepared this Language Access Plan (“LAP” or “Plan”), which defines the actions to be taken by DCF to ensure meaningful access to agency services, programs and activities on the part of persons who have Limited English Proficiency (LEP). The Department will review and update, on a bi-annual basis, this LAP in order to ensure continued responsiveness to community needs and compliance with the Executive Office of Administration and Finance (“ANF”) Administrative Bulletin #16.

II. Purpose

The purpose of this plan is to ensure that DCF clients who are limited in their English language proficiency have access to meaningful services, programs and activities.

The Department views this Language Access Plan as an important response to ensure we meet out LEP clients’ service needs. The Plan is consistent with the requirements of Administrative Bulletin #16, as promulgated by the Executive Office of Administration and Finance.

Consistent with the guidance of ANF Administrative Bulletin #16, a Limited English Proficient person is someone who is not able to speak, read, write or understand the English language at a level that allows him/her to interact effectively with DCF staff and/or service providers. A client maintains the right to self-identify as a LEP person.

III. Agency Description and Language Access Plan Vision

A. Mission, Vision and Values

Mission and Vision Statement

The Department of Children and Families is charged with protecting children from abuse and neglect and strengthening families where child abuse or neglect has occurred. With the understanding that every child is entitled to a home that is free from abuse and neglect, DCF’s vision is to ensure the safety of children in a manner that holds the best hope for nurturing a sustained, resilient network of relationships to support the child’s growth and development into adulthood.

Agency Core Practice Values

The Department’s Core Values are anchors that ground our practice. DCF is committed to making these values more than words on paper. By strengthening the links between the Department, families and communities, DCF has moved closer to service delivery systems that reflect the core values listed below:

- Child-driven
- Family-centered
- Community-focused

- Strength-based
- Committed to diversity and cultural competence
- Committed to continuous learning/continuous quality improvement (CQI)

B. DCF Diversity Vision and Goals

Agency Diversity Vision

DCF recognizes that issues of identity and diversity are central to children's welfare and that, to succeed, any comprehensive plan on identity and diversity must be grounded deeply in our work to protect children and support families. As a result, the agency's diversity vision goes beyond workforce demographics to encompass our connections with families, communities, and providers. The uniquely personal and sensitive nature of our mission requires DCF to create working relationships where in children and families feel safe and supported regardless of their cultural background or linguistic capabilities.

Agency Diversity Goals

DCF seeks to heighten awareness of diversity issues in order to create a learning environment that respects and embraces cultural, racial, ethnic, language, religious, sexual orientation, gender, physical and other differences represented in both our workforce and the families we serve.

Priority Objectives

Safely stabilizing and preserving families; safely reunifying families; and safely creating new families (through kinship, guardianship and adoption).

IV. **Language Access Plan:**

The DCF Language Access Plan shall be fully implemented subject to the availability of fiscal resources to implement said language access plan. This Language Access Plan has been developed to adhere to the Language Access Guidelines of ANF Administrative Bulletin #16. This Language Access Plan represents the DCF administrative blueprint to provide meaningful access to DCF services, programs and activities on the part of LEP individuals. This Language Access Plan outlines the tasks DCF will undertake to meet this objective.

1) **Agency Language Access Coordinator**

Beryl Domingo
 Director of Field Support
 Department of Children and Families
 600 Washington Street, Boston, MA 02111
 Phone: 617-748-2345
 Fax: 617-748-2441
Beryl.Domingo@state.ma.us

2) **Action Steps**

A. Needs Assessment

As of December 31, 2011, a total of 68,337 individuals (adults and children) were being served by DCF. The Department is committed to safely maintaining children in their homes and has worked diligently over the past several years to reduce the number of children requiring placement. There are currently less than 7,000 children under age 18 in foster care across Massachusetts, and more than 35,000 children in all served by the Department.

1) Services and Programs

The Department provides a wide array of services through the following core programs:

- Adolescent Services
- Adoption/Guardianship
- Domestic Violence Services
- Housing Stabilization
- In-Home Supports
- Out-of-Home Placements
- Child-at-Risk Reporting Hotline
- Support and Stabilization Services

Activities to support the mission of the Department include:

- Clinical case management
- Intake and screening of child abuse reports
- Investigations of Child abuse reports
- Initial Family Assessments
- Short Term Stabilization services
- Comprehensive Family Assessments
- Service Planning
- Service referrals
- Foster and Adoptive Parent Recruitment and License Studies
- Placement support
- Continuous Monitoring and Evaluating of Access to Service and Service Delivery

2) Data on Language Makeup of Population Served

The Department is committed to ensuring equal access for all DCF consumers to programs and services regardless of preferred language spoken or English proficiency. The Department will make every effort to provide application forms, notices, letters, service plans and other documents intended for consumers and family resources, in the individual's preferred language if possible

The Department uses a statewide automated child welfare information system for virtually all case management activities, including intake, investigation, assessment, clinical/case management, foster care, adoption, financial, legal and provider services. DCF staff enters case information directly into the electronic case record. The aggregate and consumer-specific data available from this system via reports, extracts, and direct (on-line) access enables DCF to efficiently manage its resources to meet the needs of its clients.

The DCF Quarterly Reports contain statistical tables and graphs which provide a demographic description of DCF consumers and foster care providers as well as placement dynamics, case openings, adoption/guardianship subsidies, child maltreatment reporting, and referrals to District Attorneys.

For the FY'12 third quarter, the Department reports the following findings regarding the preferred language of consumers (Preferred Language of Consumers - DCF quarterly reports FY'12, 3rd. quarter):

The Western and Northern Regions had the highest numbers of Spanish-speaking consumers, 2,187 and 992 consumers, respectively. Haitian Creole was the preferred language of 354 DCF consumers (1% statewide). Khmer-speaking (Cambodian) consumers were mainly concentrated in the North. Other languages and their regions of highest prevalence were Haitian Creole (South/Boston/North), Portuguese (South/North), Cape Verdean Creole (South), Vietnamese (West/Boston), and Lao (North)

From 1987 to 1997, there were substantial increases in consumers whose preferred languages were Khmer, Lao, Haitian Creole, Vietnamese, and Spanish. In the following decade (1997-2007), there were declines in consumers from all of these language groups. Although there was a decline in consumers with these preferred/primary languages, there was not a decline in DCF consumers from these ethnic groups. As with all immigrant groups, their children become fluent in English. The new immigrant communities continue to grow, but as time passes those who are only fluent in their native language make up a smaller proportion of their community.

Comparing DCF consumers by preferred language on June 2007 and March 2012, showed an increase in some language groups and a decrease in others (table below). The most significant changes were: declines in Khmer (-47%) and Vietnamese (-28%); increases in Chinese (83%), Cape Verdean Creole (52%), and Haitian Creole (36%). During this period, the count of total consumers decreased 13%.

These shifts impact the recruitment of bilingual staff and the procurement of language appropriate programs and services for clients.

The two tables below document the shift in languages spoken by DCF clients over time.

STATEWIDE

Primary Language	Consumers Jul. 1987 No.	Consumers Jul. 1997 No.	Consumers Jun. 2007 No.	Consumers Mar. 2012 No.	1987-1997 Change %	1997-2007 Change %	2007- 2012 Change %
English/ Unspecified *	60,784	66,404	71,398	61,396	9%	8%	-14%
Spanish	3,664	6,334	4,516	4561	73%	-29%	1%
Khmer	253	851	356	189	236%	-58%	-47%
Portuguese	530	380	303	303	-28%	-20%	---
Haitian Creole	175	360	260	354	106%	-28%	36%
Cape Verdean Creole	174	247	146	222	42%	-41%	52%
Vietnamese	146	273	167	121	87%	-39%	-28%
Chinese	71	61	54	99	-14%	-11%	83%
American Sign Language	47	23	41	41	-51%	78%	---
Lao	30	74	20	21	147%	-73%	5%
Other	213	310	1,459	1,082	46%	371%	-26%
Total	66,087	75,317	78,720	77,200	14%	5%	

* When a preferred language was unspecified, it was presumed to be English.

The table below shows the current language make-up of the DCF consumer population

Languages and percentage of languages of consumers in DCF as of 2/2/2013

Preferred Language	Actual Consumer Count	Percentage of total population
American Sign Language	59	0.08%
Cape Verdean Creole	248	0.33%
Chinese	91	0.12%
English	58,498	76.86%
French	27	0.04%
German	1	0.00%
Greek	4	0.01%
Haitian Creole	344	0.45%
Italian	4	0.01%
Khmer (Cambodian)	145	0.19%
Lao	17	0.02%
Polish	14	0.02%
Portuguese	308	0.40%
Russian	30	0.04%
Spanish	4,921	6.47%
Thai	3	0.00%
Vietnamese	110	0.14%
Other	1132	1.49%
Unknown	10,153	13.34%
Total	76,109	100%

The “unknown” category is the default when no language value is selected by the person entering the consumer data. The Department is continuing efforts to reduce the number of consumers with a language value of “unknown” to more accurately reflect the language of these consumers

Offices that have a particularly high ‘unknown’ rate are targeted to address this issue and improve the demographic data for their consumers. DCF is already engaged in a similar effort to improve data collection on race and ethnicity.

The data in the table above reflects a point in time. The number of consumers listed as using ASL as their preferred communication is 59. During FY’12, DCF staff requested ASL interpreter services for approximately 81 families.

3) Points of Contact between DCF and Clients

DCF direct service staff most often meet families in their homes, visit children in foster and adoptive homes and in residential and group home facilities. Other points of contact take place in the community, courts, schools, day care centers, medical facilities, service provider agencies and other locations in the community as appropriate.

In addition, there are 36 business points of contact between DCF and our client population. These points of contact are listed below:

- 3.1. Central Office, 600 Washington Street, Boston, MA 02111 - 617-748-2000
- 3.2. Four Regional Offices:
 - Western Regional Office, 141 High Street, 5th Floor, Springfield, MA 01105
 - Northern Regional Office, Everett Mills, 15 Union Street, 2nd Floor, Lawrence, MA 01840
 - Southern Regional Office, 141 Main Street, Brockton, MA 02401
 - Boston Regional Office, 451 Blue Hill Avenue, 2nd Floor, Dorchester, MA 02121
- 3.3. Twenty nine Area Offices strategically located within the 4 regions. These locations are the main business point of contact with the client population.
- 3.4. New Chardon Street Shelter for Women and Children, 41 New Chardon Street, Boston, MA 02114
- 3.5. Child-At-Risk Hotline 1-800-792-5200
- 3.6. Website address: [Department of Children & Families](#)

Other points of contact:

- 3.7 Provider agencies
- 3.8 Foster homes, Adoptive homes, contracted group homes and residential facilities

B. Language Resources Assessment

1) Commitment to Diversified Staff and Management Team

It is a priority for the Department to recruit and hire bilingual, bicultural staff to work more effectively with families served by DCF.

A goal in the Diversity Plan is to increase DCF staff diversity at all levels through recruitment, improved retention, and promotional opportunities.

To more effectively meet the needs of an area office, the DCF management has successfully recruited bilingual social workers and supervisors based on the linguistic needs of the consumers in their local areas.

Cases in DCF are assigned and managed at the local area office. Local area management is constantly reviewing case assignments, and is faced with many challenges in assigning bilingual cases to bilingual staff, while balancing case assignment to bilingual and non-bilingual workers.

Authorized bilingual employees receive differential pay for carrying a caseload/workload with a significant number of LEP consumers that speak the language in which the staff person has proficiency. This enables the Department to assign those cases/families to these workers who are able to provide case management services in the preferred language of the client. The Department acknowledges that working with LEP clients may be more complex than with English speaking consumers, and thus the provision of the pay differential to the employee per the SEIU Local 509 contract. The complexity is related to connecting the client with bilingual service providers, finding interpreters, translating documents for the consumers, and ensuring culturally competent services above and beyond the language capacity. Not all bilingual staff receives the differential pay. As of June 2012, the Department had a total of 562 staff that are authorized to receive bilingual differential pay.

The Department has a small number of direct service employees who are proficient in ASL. As a result, the ability to meet the needs of the deaf and hard of hearing community is a challenge. The Department uses the MCDHH referral services during business hours to provide ASL interpreters for most of these families.

2) Meeting the Linguistic Needs of Families after Business Hours

The Child-at-Risk Hotline provides after-hours access for the community to report suspected child abuse and neglect. The Hotline service is provided by a vendor whose employees takes reports regarding allegations of child abuse or neglect by phone and make determinations on whether an emergency investigation is warranted. The Hotline vendor has some bilingual capacity among the staff (screeners and supervisors) to communicate with reporters in Spanish and Haitian Creole. Most often when a person who has limited English proficiency calls the Hotline, they have someone with them to translate to the hotline staff. The Hotline is staffed in shifts to cover nights, weekends and holidays, which makes it a challenge to always have someone on shift that is bilingual in any language. The Hotline does not have access to a Language vendor at this time.

The Deaf and Hard of Hearing consumers and reporters that call the Hotline use a TTY line. The call comes in to the Hotline as a regular phone call. There is a TTY operator that facilitates these calls.

The Department utilizes on-call DCF social work staff to conduct emergency child abuse investigations during hotline hours. We have a list of bilingual DCF employees who are willing to be contacted after hours for interpretation and translation, including staff with ASL ability. These employees are available to the Hotline investigators just to do the interpretation. Any DCF employee who responds during hotline hours, whether to investigate or interpret, is paid a hotline rate for reimbursement.

3) Community-based resources available to assist agency in meeting language access needs

When a social worker requests services for a family with LEP, they request services in the family's preferred language. The Department utilizes a Lead Agency model to match provider services with client needs. This model allows for services to be more accessible and appropriate for client needs. For consumers with Limited English Proficiency, the social worker would request the service through the Lead Agency, to be provided in the preferred language of the client. The Lead will then check provider resources within the geographic area to find and match a clinician or treatment provider that is bilingual in the language of the consumer. Providers do their best to have staffing capacity to meet the cultural and linguistic needs of the community they serve. Their capacity to provide linguistically appropriate services for clients is challenged by the difficulty to find highly trained and competent bilingual clinicians in the local communities.

4) Protocols to secure language services through existing state contracts

In the event that DCF, through its bilingual staff capacity and the matching to services through the Lead Agencies, is not able to meet the language need of a client, our staff utilizes the OSD approved Master Service Agreement vendors for interpreter and translation services.

For the deaf and hard of hearing consumers, DCF utilizes the interpreter services through the over 400 requests for ASL, CART (Communication Access Real-time Translation) and/or CDI (Certified Deaf Interpreter) interpreter services for approximately 81 families statewide. Funding for MCDHH interpreter services is managed centrally. One of the strategies to achieve this goal is to use the DCF-MCDHH Workgroup to ensure communication access for families involved with DCF and children in DCF custody who are deaf and/or hard of hearing.

5) Meeting Language Access Needs via Procurement and Contract Requirements

The Department plans to review RFR language for new procurements to address the need for provider linguistic capacity for certain language populations. The Department is committed to ensuring our providers provide culturally competent and accessible services to families and children, and will leverage our purchasing power to do so.

C. Language Service Protocols

In-person Interpretation

When a bilingual social worker or service provider is not available in the language of the client, the Department uses the OSD approved vendors for language interpretation and translation services.

Phone interpretation

DCF utilizes the bilingual employees for phone interpretation as needed.

Community-based resources

DCF has contracts with providers that have the capacity to provide counseling and other client services in the preferred language of the client, including community based and congregate care providers that serve particular linguistic communities. This is particularly true for community based providers that serve specific cultural and linguistic communities.

The Department's Language Access Protocols for Providing Interpretation Services

1) Administrative Procedures for Accessing In-Person Language Interpreter Services

Social workers access the in-person language interpreter services with their supervisor's approval. The process is as follows:

- The social worker or investigator identifies the need for language interpreter services, based on the family's preferred language
- The social worker completes a request form provided by the approved vendor and gets it approved by the supervisor.
- Social worker faxes the form to vendor
- The vendor identifies the appropriate interpreter
- The interpreter calls or emails the DCF social worker to set up an agreed upon meeting time with the family.
- The meeting takes place.
- The interpreter bills DCF for a minimum of 2 hours at the approved rate.

The Department does not have much difficulty finding interpreter services for the most common, non-English speaking languages such as Spanish or Portuguese. For less common languages it becomes more difficult to obtain an interpreter in the catchment area or one who is willing to travel, but usually the vendor does its best to meet the needs of the requesting DCF staff. In most instances, the interpreter is available within one week, or sooner depending on the situation.

2) Administrative Procedures for Accessing ASL Service

When a need for interpreter services is identified by DCF social workers, the following steps must be taken:

The social worker must contact the Central Office designee to request funding. This should be done via email. The email should contain the following information:

- Dates Interpreter Needed
- Time
- Duration (2 hr minimum)
- Address/location of assignment
- Names of deaf and hard of hearing persons
- Communication preference, if known (ASL, CDI etc)
- Requested Interpreter (if consumer has a preference MCDHH will try to accommodate where possible)
- Description of need/situation (51A investigation, foster care review, monthly home visit)
- Total number of participants
- The DCF designee will notify MCDHH via email to approve the funding. A copy of the email will be sent to the social worker who made the request.
- Upon receipt of email confirmation, the social worker would then call MCDHH @ 617-740-1600. MCDHH will request additional information from the social worker to determine the level of expertise needed by the Interpreter. MCDHH will contact the social worker when an assignment has been confirmed or if there is a need to negotiate another date.
- Upon completion of the services, the vendor/interpreter bills DCF directly.
- Each session equals a two-hour minimum charge. MCDHH will determine if more than one interpreter is needed.
- MCDHH requires a two day (48 business hours) notification of cancellation. Otherwise full charges will be assessed to this account.

D. Language Services

The client will access the resources through referrals by the social worker for in-person interpreter services, and through referrals to provider agencies with the specific language capacity, as identified by the Lead Agencies.

E. Document Translation

The Department has identified 76 DCF letters and forms that need to be translated into at least 5 languages: Spanish, Portuguese, Haitian-Creole, Khmer (Cambodian) and Russian, based on the percentage of consumers who use these languages as their preferred language.

The plan is to have all the required forms for the client population translated depending on Bargaining Unit policy negotiations and funding availability. Due to budget constraints the Department has not been able to have all forms translated into languages regularly encountered, however the Department remains committed to make every effort to provide translated forms to consumers as requested.

F. Interpretation (Oral Translation)

The Department has over 560 bilingual staff, the majority of whom are direct service social workers who assist clients in the oral translation of documents whenever possible. Our staff utilizes contracted interpreters whenever a client indicates a need for the services including to provide oral translation. The challenge is to meet the language interpretation needs of new

immigrant populations in certain areas of the Commonwealth of Massachusetts that may not have approved vendor resources for the languages spoken by that population.

G. Website content

ANF is working with ITD to streamline website and communications for all agencies.

H. The Massachusetts Office for Refugee and Immigrants

The Department will consult with ORI on developing a training program for DCF staff to meet the needs of non-English speakers and LEP populations.

I. Stakeholder Consultations

The Department's plan is to identify stakeholders and provide opportunities for input to the LAP.

J. Training

All newly hired employees are required to attend new worker training. The training includes a module in which a parent speaks to the class regarding their experience with DCF. The parent voice also provides first hand exposure to the diversity of our family's cultural and linguistic needs. The Department plans to strengthen the new worker training by adding a segment on the Language Access Protocols for new employees. DCF will consult with ORI on developing training for staff.

K. Notice

DCF staff is expected to inform clients of language assistance during the investigation or initial assessment process. If a family's case is opened for services, the assigned social worker will seek to provide language access to the family through resources available to DCF.

L. Monitoring

A key element to an effective Language Access Plan is to monitor the plan. To that end, on a bi-annual basis DCF shall at a statewide, regional and area office level:

- Evaluate progress in improving data collection on the preferred language of consumers.
- Review the language needs of DCF consumers and whether existing services are meeting the needs
- Assess whether staff is knowledgeable about the Language Access Plan, protocols and procedures and how to access services
- Assess whether the language resources are still current and viable.

M. Complaints

Language Access Complaint Procedure

Individuals may file a complaint with the Agency Language Access Coordinator or the Office of Access and Opportunity if they believe they have been denied the benefits of this Plan. The complaint must be filed within 6 months of the alleged denial. The complaint must be in writing. To file a complaint with the Language Access Coordinator, submit the written complaint to:

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Department of Children and Families
600 Washington Street
Boston, MA 02111
Email Address: Beryl.domingo@state.ma.us

To file a complaint with the Office of Access and Opportunity, please submit the written complaint to the attention of:

Office of Access and Opportunity
Executive Office for Administration and Finance
State House, Room 373
Boston, MA 02133
Email Address: Ronald.Marlow@state.ma.us

Angelo McClain, Commissioner
Department of Children and Families
February 2014

Secretary John W. Polanowicz
Executive Office of Health and Human Services
February 2014

APPENDIX D

**Department of Children and Families Language Access Plan
Monday, January 10, 2011**

Department of Children and Families
Language Access Plan
Monday, January 10, 2011

I. Introduction

The Massachusetts Department of Children and Families has prepared this Language Access Plan (“LAP” or “Plan”), which defines the actions to be taken by DCF to ensure meaningful access to agency services, programs and activities on the part of persons who have Limited English Proficiency (LEP). The Department will review and update, on a bi-annual basis, this LAP in order to ensure continued responsiveness to community needs and compliance with the Executive Office of Administration and Finance (“ANF”) Administrative Bulletin #16.

II. Purpose

The purpose of this plan is to ensure that DCF clients who are limited in their English language proficiency have access to meaningful services, programs and activities.

The Department views this Language Access Plan as an important response to ensure we meet out LEP clients’ service needs. The Plan is consistent with the requirements of Administrative Bulletin #16, as promulgated by the Executive Office of Administration and Finance.

Consistent with the guidance of ANF Administrative Bulletin #16, a Limited English Proficient person is someone who is not able to speak, read, write or understand the English language at a level that allows him/her to interact effectively with DCF staff and/or service providers. A client maintains the right to self-identify as a LEP person.

III. Agency Description and Language Access Plan Vision

A. Mission, Vision and Values

Mission and Vision Statement

The Department of Children and Families is charged with protecting children from abuse and neglect and strengthening families where child abuse or neglect has occurred. With the understanding that every child is entitled to a home that is free from abuse and neglect, DCF’s vision is to ensure the safety of children in a manner that holds the best hope for nurturing a sustained, resilient network of relationships to support the child’s growth and development into adulthood.

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DCF’s Core Values are anchors that ground our practice. DCF is committed to making these values more than words on paper. By strengthening the links between the Department, families and communities, DCF has moved closer to service delivery systems that reflect the core values listed below:

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- Family-centered
- Community-focused
- Strength-based
- Committed to diversity and cultural competence
- Committed to continuous learning/continuous quality improvement (CQI)

Department of Children and Families
Language Access Plan
Monday, January 10, 2011

B. DCF Diversity Vision and Goals

Agency Diversity Vision

DCF recognizes that issues of identity and diversity are central to children's welfare and that, to succeed, any comprehensive plan on identity and diversity must be grounded deeply in our work to protect children and support families. As a result, the agency's diversity vision goes beyond workforce demographics to encompass our connections with families, communities, and providers. The uniquely personal and sensitive nature of our mission requires DCF to create working relationships where in children and families feel safe and supported regardless of their cultural background or linguistic capabilities. .

Agency Diversity Goals

DCF seeks to heighten awareness of diversity issues in order to create a learning environment that respects and embraces cultural, racial, ethnic, language, religious, sexual orientation, gender, physical and other differences represented in both our workforce and the families we serve.

Priority Objectives

Safely stabilizing and preserving families; safely reunifying families; and safely creating new families (through kinship, guardianship and adoption).

Programs and Services

The Department provides a wide array of services through the following core programs:

- Adolescent Services
- Adoption/Guardianship
- Domestic Violence Services
- Housing Stabilization
- In-Home Supports
- Out of Home Placements

Activities to support the mission of the Department include:

- Case management
- Investigations of Child abuse reports
- Initial Family Assessments
- Comprehensive Family Assessments
- Service Planning
- Service referrals
- Foster and Adoptive Parent Recruitment and License Studies
- Placement support
- Continuous Monitoring and Evaluating of Access to Service and Service Delivery

There are currently more than 8,000 children in foster care across Massachusetts and more than 40,000 children in all served by the Department. As of October 2, 2010, a total of 79,637 individuals (adults and children) were being served by DCF. The Department is committed to safely

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maintaining children in their homes and has worked diligently over the past several years to reduce the number of children requiring placement.

IV. Language Access Plan:

The DCF Language Access Plan shall be fully implemented subject to the availability of fiscal resources to implement said language access plan. This Language Access Plan has been developed to adhere to the Language Access Guidelines of ANF Administrative Bulletin #16. This Language Access Plan represents the DCF administrative blueprint to provide meaningful access to DCF services, programs and activities on the part of LEP individuals. This Language Access Plan outlines the tasks DCF will undertake to meet this objective.

(1) Agency Language Access Coordinator:

Beryl Domingo
Director of Field Support
Department of Children and Families
24 Farnsworth Street, Boston, MA 02210
Phone: 617-748-2345
Fax: 617-748-2441
Beryl.Domingo@state.ma.us

(2) Agency Language Access Needs Assessment

- a. The Department is committed to ensuring equal access for all DCF consumers to programs and services regardless of preferred language spoken or English proficiency. The Department will make every effort to provide application forms, notices, letters, service plans and other documents intended for consumers and family resources, in the individual's preferred language, if possible.

In 2004, the Department translated 22 letters and notices required under various DCF policies, into Spanish, Portuguese and Haitian-Creole. These forms are currently posted on the DCF Intranet in Microsoft Word format for easy access. The Department is in the process of reviewing all forms and letters to consumers to bring them in line with the new integrated casework practice model implemented in July 2009. The Department has identified 76 letters and forms used to communicate with consumers, providers and mandated reporters. Once these have been approved in English, the forms will be translated into the following languages: Spanish, Portuguese, Haitian-Creole, Khmer and Russian, by December 2011.

The Department's Family Guide to Protective Services for Children has already been translated into the five languages listed above and all versions are available in PDF format on the Intranet.

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b. Language Makeup of Client Population

The Department uses a child welfare information system called FamilyNet. FamilyNet is a statewide automated child welfare information system that was implemented in February, 1998. This management information system is used for virtually all DCF activities, including intake, investigation, assessment, clinical/case management, foster care, adoption, financial, legal and provider services. DCF staff enters case information directly into the central FamilyNet database from their desktop computers. The aggregate and consumer-specific data available from this database via reports, extracts, and direct (on-line) access enables DCF to efficiently manage its resources to meet the needs of its clients.

The DCF Quarterly Reports contain statistical tables and graphs which provide a demographic description of DCF consumers and foster care providers as well as placement dynamics, case openings, adoption/guardianship subsidies, child maltreatment reporting, and District Attorney referrals.

For the FY'10 second quarter, the Department reports the following findings regarding the preferred language of consumers.

Preferred Language of Consumers (DCF quarterly reports FY'10, 2nd quarter)

- The Western, Northeastern, and Boston Regions had the highest proportions (and numbers) of Spanish-speaking consumers, 7% (1,163 consumers), 8% (924), and 10% (989), respectively. Khmer (Cambodian) was the preferred language of 251 DCF consumers (<1%). Khmer-speaking consumers were mainly concentrated in the Northeast. Other languages and their regions of highest prevalence were Portuguese (Southeast and Metro), Haitian Creole (Metro and Boston), Cape Verdean Creole (Southeast and Boston), Vietnamese (Boston), Chinese (Metro), and Lao (Northeast).
- From 1987 to 1997, there were substantial increases in consumers whose preferred languages were Khmer, Lao, Haitian Creole, Vietnamese, and Spanish. In the following decade (1997-2007), there were declines in consumers from all of these language groups. Although there was a decline in consumers with these preferred languages, there was not a decline in DCF consumers from these ethnic groups. These trends are attributable to the fact that as clients from the new immigrant communities continue to increase their proficiency and fluency in English those who are fluent only in their native language make up a smaller proportion of these communities. We are seeing a shift in our population as immigrants become fluent in the use of the English language.
- Comparing DCF consumers by preferred language on June 2007 and December 2009, showed an increase in some language groups and a decrease in others. The most significant changes were a 36% gain in Cape Verdean speakers and 29% drop in Khmer (Cambodian)

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speakers. The number of Laotian-speaking consumers rose from 20 to 32. During this period, the count of total consumers decreased 2%.

What is interesting about this report is the shifts in languages spoken in the DCF client population over time. These shifts impact the recruitment of bilingual staff and the procurement of language appropriate programs and services for clients.

The two tables below document the shift in languages spoken by DCF clients over time.

STATEWIDE

Primary Language	Consumers Jul. 1987 No.	Consumers Jul. 1997 No.	Consumers Jun. 2007 No.	Consumers Dec. 2009 No.	1987-1997 Change %	1997-2007 Change %
English/Unspecified*	60,784	66,404	71,398	70,095	9%	8%
Spanish	3,664	6,334	4,516	4,572	73%	-29%
Khmer Cambodian	253	851	356	251	236%	-58%
Portuguese	530	380	303	302	-28%	-20%
Haitian Creole	175	360	260	251	106%	-28%
Cape Verdean Creole	174	247	146	199	42%	-41%
Vietnamese	146	273	167	149	87%	-39%
Chinese	71	61	54	62	-14%	-11%
American Sign Language	47	23	41	43	-51%	78%
Lao	30	74	20	32	147%	-73%
Other	213	310	1,459	1,244	46%	371%
Total	66,087	75,317	78,720	77,200	14%	5%

* When a preferred language was unspecified, it was presumed to be English.

The table below shows the current language make-up of the DCF consumer population

Languages and percentage of languages of consumers in FamilyNet as of 10/2/10:

Preferred Language	Actual Consumer Count	Percentage of total population
American Sign Language	40	0.05%
Cape Verdean Creole	163	0.20%
Chinese	59	0.07%
English	57,661	72.40%
French	24	0.03%
German	1	0.00%
Greek	6	0.01%
Haitian Creole	258	0.32%
Italian	4	0.01%

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Khmer (Cambodian)	245	0.31%
Lao	26	0.03%
Polish	10	0.01%
Portuguese	263	0.33%
Russian	25	0.03%
Spanish	4,427	5.56%
Thai	5	0.01%
Vietnamese	118	0.15%
Other	1,201	1.51%
Unknown	15,101	18.96%
Total	79,637	100%

The “unknown” category is the default when no language value is selected by the person entering the consumer data. Due to the fact that language is a required field in FamilyNet if no language is selected the language defaults to “unknown”. It is of concern that such a large percentage of consumers do not have their preferred language recorded in their profiles in FamilyNet. This is an area that has been identified as needing improvement.

The DCF Diversity Officer and Language Access Coordinator will work with the Diversity Leadership Team to develop guidance for staff to reduce the number of “unknowns” in the consumer demographics on language. Offices that have a particularly high “unknown” rate will be targeted to address this issue and gather better demographic data for their consumers. DCF is already engaged in a similar effort to improve data collection on race and ethnicity.

As an example, according to the data in this table, the number of consumers listed as using ASL as their preferred communication is 40, but in FY’10, DCF staff requested ASL interpreter services for approximately 80 families. DCF will target this area as well to more accurately reflect the preferred communication for the deaf and hard of hearing consumers.

c. Points of Contact between DCF and Clients:

DCF direct service staff most often meet families in their homes, visit children in foster and adoptive homes and in residential and group home facilities. Other points of contact take place in the community, courts, schools, day care centers, medical facilities, service provider agencies and other locations in the community as appropriate.

In addition, there are 36 business points of contact between DCF and our client population. These points of contact are listed below:

1. Central Office, 24 Farnsworth Street, Boston, MA 02210
617-748-2000
2. 4 Regional Offices:
 - Western Regional Office, 141 High Street, 5th Floor, Springfield, MA 01105

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- Northern Regional Office, Everett Mills, 15 Union Street, 2nd Floor, Lawrence, MA 01840
 - Southern Regional Office, 141 Main Street, Brockton, MA 02401
 - Boston Regional Office, 451 Blue Hill Avenue, 2nd Floor, Dorchester, MA 02121
3. 29 Area Offices strategically located within the 4 regions. These locations are the main business point of contact with the client population.
 4. Child-At-Risk Hotline 1-800-792-5200
 5. Website address: www.mass.gov/DCF

Other points of contact:

1. Provider agencies
2. Foster homes, Adoptive homes, group homes and residential facilities

(3) Language Resources Assessment:

a. Commitment to Diversified Staff and Management Team

It is a priority for the Department to recruit and hire bilingual, bicultural staff to work more effectively with families served by DCF. The DCF Diversity Plan includes a goal to focus on all ethnic groups that often are not at the forefront of diversity discussions,

In developing the Language Access Plan, DCF was able to complete one of the strategies identified to meet this goal. We analyzed DCF data on staff who are fluent in Southeast Asian languages and who work with Southeast Asian families.

Aligning Resources to Meet Families Cultural and Linguistic Needs

Another goal in the Diversity Plan is to increase DCF staff diversity at all levels through recruitment, improved retention, and promotional opportunities. To more effectively meet the needs of an area office, the DCF management has successfully recruited bilingual social workers and supervisors based on the linguistic needs of the consumers in their local areas.

Cases in DCF are assigned and managed at the local area office. Local area management is constantly reviewing case assignments, and are faced with many challenges in assigning bilingual cases to bilingual staff, while balancing case assignment to bilingual and non-bilingual workers.

The bilingual employees receive differential pay for carrying a caseload/workload with a significant number of LEP consumers that speak the language in which the staff person has proficiency. This enables the Department to assign those cases/families to these workers who are able to provide case management services in the preferred language of the client. The Department acknowledges that working with LEP clients may be more complex than with English speaking consumers, and thus the provision of the pay differential to the employee per the SEIU Local 509 contract. The complexity is related to connecting the client with bilingual service providers, finding interpreters, translating documents for the consumers, and ensuring culturally competent services above and beyond the language capacity. Not all bilingual staff receive the differential pay.

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The Department has a handful of direct service employees who are proficient in ASL. As a result, the ability to meet the needs of the deaf and hard of hearing community is a challenge. The Department uses the MCDHH referral services during business hours to provide ASL interpreters for most of these families.

In order to ensure maximum alignment of resources to meet families cultural and linguistic needs we conducted an analysis which examined the number of consumers by language to determine if there was sufficient staff to meet the needs of the families. The table represents the DCF employees who receive bilingual pay differential, and the representation of preferred languages of consumers in their respective regions

***Bilingual staff and Preferred Languages of Consumers by DCF Region**

Boston Region	Spanish	Portuguese	Haitian Creole	Khmer	Cape Verdean Creole	Vietnamese	ASL	Other	Unknown
% of consumers	8.79%	0.20%	0.70%	0.14%	0.61%	0.65%	0.04 %	1.44 %	14.97%
# of consumers	804	18	64	13	56	59	4	132	1369
Bilingual staff	53	4	24	1	11	3	0	3	

Southern Region	Spanish	Portuguese	Haitian Creole	Khmer	Cape Verdean Creole	Vietnamese	ASL	Other	Unknown
% of consumers	2.32%	0.54%	0.28%	0.13%	0.48%	0.04%	0.04 %	1.35 %	21.27%
# of consumers	481	112	58	26	100	9	9	280	4406
Bilingual staff	32	36	11	2	15	0	0	8	

Northern Region	Spanish	Portuguese	Haitian Creole	Khmer	Cape Verdean Creole	Vietnamese	ASL	Other	Unknown
% of consumers by language	6.76%	0.66%	0.64%	1.12%	0.04%	0.10%	0.08 %	1.33 %	14.44%
# of consumers	1234	120	116	205	7	18	15	242	2635
Bilingual staff	99	7	9	17	0	0	1	6	

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Western Region	Spanish	Portuguese	Haitian Creole	Khmer	Cape Verdean Creole	Vietnamese	ASL	Other	Unknown
% of consumers	6.05%	0.04%	0.06%	0.00%	0.00%	0.10%	0.04 %	1.61 %	20.93%
# of consumers	1851	12	19	1	0	32	12	493	6397
Bilingual staff	174	3	3	0	0	5	0	11	

* The above chart includes only employees who receive a bilingual pay differential.

Meeting the Linguistic Needs of Families after Business Hours

The Child-at-Risk Hotline provides after-hours access for the community to report suspected child abuse and neglect. The Hotline service is provided by a vendor whose employees takes reports regarding allegations of child abuse or neglect by phone and make determinations on whether an emergency investigation is warranted. The Hotline vendor has some bilingual capacity among the staff (screeners and supervisors) to communicate with reporters in Spanish and Haitian Creole. Most often when a person who has limited English proficiency calls the Hotline, they have someone with them to translate to the hotline staff. The Hotline is staffed in shifts to cover nights, weekends and holidays, which makes it a challenge to always have someone on shift that is bilingual in any language. The Hotline does not have access to a Language vendor at this time.

The deaf and hard of hearing consumers and reporters that call the Hotline use a TTY line. The call comes in to the Hotline as a regular phone call. There is a TTY operator that facilitates these calls.

The Department utilizes on-call DCF social work staff to conduct emergency child abuse investigations during hotline hours. We have a list of bilingual DCF employees who are willing to be contacted after hours for interpretation and translation, including staff with ASL ability. These employees are available to the Hotline investigators just to do the interpretation. Any DCF employee who responds during hotline hours, whether to investigate or interpret, is paid a hotline rate for reimbursement.

Meeting Language Access Needs via Service Request Protocols

b. Community-based resources available to assist agency in meeting language access needs

When a social worker requests services for a family with LEP, they request services in the family's language. The Department utilizes a Lead Agency model to match provider services with client needs. This model allows for services to be more accessible and appropriate for client needs. For consumers with Limited English Proficiency, the social worker would request the service through the Lead Agency, to be provided in the preferred language of the client. The Lead will then check provider resources within the geographic area to find and match a clinician or treatment provider that is

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bilingual in the language of the consumer. Providers do their best to have staffing capacity to meet the cultural and linguistic needs of the community they serve. Their capacity to provide linguistically appropriate services for clients is challenged by the difficulty to find highly trained and competent bilingual clinicians in the local communities.

Meeting Language Access Needs via Interpreter and Translator Services

In the event that DCF, through its bilingual staff capacity and the matching to services through the Lead Agencies, is not able to meet the language need of a client, our staff utilize the OSD approved Master Service Agreement vendors for interpreter and translation services.. In FY'10, DCF utilized 7 vendors primarily to provide interpreter and translation services.

For the deaf and hard of hearing consumers, DCF utilizes the interpreter services through the Massachusetts Commission for the Deaf and Hard of Hearing (MCDHH). In FY'10, DCF approved over 400 requests for ASL, CART (Communication Access Real-time Translation) and/or CDI (Certified Deaf Interpreter) interpreter services for approximately 80 families statewide. Funding for MCDHH interpreter services is managed centrally. One of the strategies to achieve this goal is to use the DCF-MCDHH Workgroup to ensure communication access for families involved with DCF and children in DCF custody who are deaf and/or hard of hearing.

Meeting Language Access Needs via Procurement and Contract Requirements

The Department plans to review RFR language for new procurements to address the need for provider linguistic capacity for certain language populations. The Department is committed to ensuring our providers provide culturally competent and accessible services to families and children, and will leverage our purchasing power to do so.

(4) Language Service Protocols:

a. Which language services are required to implement the Language Access Plan.

In-person interpretation, phone interpretation and community based resources are needed to implement our Language Access Plan;

In-person Interpretation

When a bilingual social worker or service provider is not available in the language of the client, the Department uses the OSD approved vendors for language interpretation and translation services.

Phone interpretation

DCF utilizes the bilingual employees for phone interpretation as needed.

Community-based resources

DCF has contracts with providers who have the capacity to provide counseling and other client services in the preferred language of the client, including community based and congregate care providers that serve particular linguistic communities. This is

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particularly true for community based providers who serve specific cultural and linguistic communities.

b. Define and Describe Agency's Language Access Protocols for Providing Interpretation Services

Administrative Procedures for Accessing In-Person Language Interpreter Services

Social workers access the in-person language interpreter services with their supervisor's approval.

The Process is as follows:

- The social worker or investigator identifies the need for language interpreter services, based on the family's preferred language
- The social worker completes a request form provided by the approved vendor and gets it approved by the supervisor.
- Social worker faxes the form to vendor
- The vendor identifies the appropriate interpreter
- The interpreter calls or emails the DCF social worker to set up an agreed upon meeting time with the family.
- The meeting takes place.
- The interpreter bills DCF for a minimum of 2 hours at the approved rate.

The Department does not have much difficulty finding interpreter services for the most common, non-English speaking languages such as Spanish or Portuguese. For less common languages it becomes more difficult to obtain an interpreter in the catchment area or one who is willing to travel, but usually the vendor does its best to meet the needs of the requesting DCF staff. In most instances, the interpreter is available within one week, or sooner depending on the situation.

Administrative Procedures for Accessing ASL Service

When a need for interpreter services is identified by DCF social workers, the following steps must be taken.

The social worker must contact the Central Office designee to request funding. This should be done via email. The email should contain the following information:

- Dates Interpreter Needed
- Time
- Duration (2 hr minimum)
- Address/location of assignment
- Names of deaf and hard of hearing persons
- Communication preference, if known (ASL, CDI etc)

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- Requested Interpreter (if consumer has a preference MCDHH will try to accommodate where possible)
- Description of need/situation (51A investigation, foster care review, monthly home visit)
- Total number of participants
- The DCF designee will notify MCDHH via email to approve the funding.
A copy of the email will be sent to the social worker who made the request.
- **Upon receipt of email confirmation, the social worker would then call MCDHH @ 617-740-1600.** MCDHH will request additional information from the social worker to determine the level of expertise needed by the Interpreter. MCDHH will contact the social worker when an assignment has been confirmed or if there is a need to negotiate another date.
- Upon completion of the services, the vendor/interpreter bills DCF directly.

Each session equals a two-hour minimum charge. MCDHH will determine if more than one interpreter is needed.

MCDHH requires a two day (48 business hours) notification of cancellation. Otherwise full charges will be assessed to this account.

- c. Define how a client will be able to access and utilize the resources identified in paragraphs (a) and (b)

The client will access the resources through referrals by the social worker for in-person interpreter services, and through referrals to provider agencies with the specific language capacity, through the Lead Agencies.

(5) Vital Document Translation

- a. The Department has identified 76 DCF letters and forms that need to be translated into at least 5 languages: Spanish, Portuguese, Haitian-Creole, Khmer (Cambodian) and Russian, based on the percentage of consumers who use these languages as their preferred language.

Of the 76 letters and forms, 22 have already been translated into Spanish, Portuguese and Haitian-Creole, but may need updating due to policy changes. Of the rest of the forms 8 are targeted for translation in the next 2 - 3 months.

The plan is to have all the forms translated over the next 12 – 18 months, depending on Bargaining Unit negotiations and funding availability.

- b. Agency website content, by list, to translate including timeframe for translation
ANF is working with ITD to streamline website and communications for all agencies.
This language for this section will be provided by ITD.

(6) Stakeholder Consultations:

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The DCF Diversity Leadership Workgroup and the Office of Refugees and Immigrants were consulted during the development of this Plan. Due to time constraints the Department was unable to consult with additional stakeholders. The Department's plan is to identify stakeholders and provide opportunities for input to the LAP.

(7) Staff Training:

All newly hired employees are required to attend CORE training. The CORE training includes a module in which a parent will speak to the class regarding their experience with DCF. The parent voice also provides first hand exposure to the diversity of our family's cultural and linguistic needs. The Department plans to strengthen the CORE training by adding a segment on the Language Access Protocols for new employees. In addition, we will post the Language Access Plan on the DCF Intranet for easy access for all staff. To reinforce learning and communication materials, the Language Access protocols will be presented at staff meetings across all area and regional offices, as well as central office.

In addition, our language access training priorities include:

- Communicating the importance of accurate demographic data in FamilyNet
- Developing systemic and culturally sensitive methods for gathering racial, ethnic and linguistic demographic information from our families
- Reduce or eliminate the number of "unknowns" in the languages listed for consumers.

(8) Notice to Public.

New clients at DCF are informed of language assistance during the investigation or initial assessment process. Our staff is trained to access language preference during the first contact with the family. If a family's case is opened for services, the assigned social worker will provide language access to the family through resources available to DCF.

(9) Agency Monitoring:

A key element to an effective Language Access Plan is to monitor the plan. To that end, on a bi-annual basis DCF shall at a statewide, regional and area office level:

- Evaluate progress in improving data collection on the preferred language of consumers.
- Review the language needs of DCF consumers and whether existing services are meeting the needs
- Assess whether staff is knowledgeable about the Language Access Plan, protocols and procedures and how to access services
- Assess whether the language resources are still current and viable.

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(10) Complaints:

Language Access Complaint Procedure

Individuals may file a complaint with the Agency Language Access Coordinator or the Office of Access and Opportunity if they believe they have been denied the benefits of this Plan. The complaint must be filed within 6 months of the alleged denial. The complaint must be in writing. To file a complaint with the Language Access Coordinator, submit the written complaint to:

Beryl Domingo
Department of Children and Families
24 Farnsworth Street
Boston, MA 02210
Email Address: Beryl.domingo@state.ma.us

To file a complaint with the Office of Access and Opportunity, please submit the written complaint to the attention of:

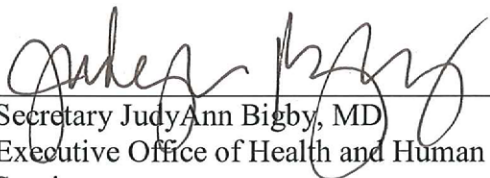
Office of Access and Opportunity
Executive Office of Administration and Finance
State House, Room 373
Boston, MA 02133
Email Address: Ronald.Marlow@state.ma.us

January 10, 2011



Angelo McClain, Commissioner
Department of Children and Families

Date



Secretary JudyAnn Bigby, MD
Executive Office of Health and Human
Services

1/18/11
Date

APPENDIX E

Department of Health and Human Services, OCR DCF Language Access Complaint Decision 2018



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Voice - (617) 565-1340, (800) 368-1019
TDD - (617) 565-1343, (800) 537-7697
Fax - (617) 565-3809
<http://www.hhs.gov/ocr>

Office for Civil Rights
New England Region
Government Center
J.F. Kennedy Federal Building,
Room 1875
Boston, MA 02203-0002

[REDACTED] Esq.

[REDACTED] Esq.

Deputy Division Chief
Government Bureau/Trial Division
Office of Attorney General Maura Healey
One Ashburton Place, 18th Floor
Boston, MA 02108

Re: OCR Transaction No.: [REDACTED]

Dear Ms. [REDACTED] and Ms. [REDACTED]:

This letter is to advise you that the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint, received on [REDACTED], 2015. The Complainant, Mr. [REDACTED] (Complainant), a [REDACTED] Spanish-speaking individual, alleges that the Massachusetts Department of Children and Families (DCF) discriminated against him based on his national origin by failing to provide him with an interpreter or written translations throughout his involvement with DCF, which began in [REDACTED] 2013, in trying to obtain custody of his biological son. The purpose of this letter is to outline OCR's concerns about DCF's practices, policies, and procedures and provide DCF with the opportunity to make changes to ensure that it complies with the applicable statutes and regulations.

LEGAL AUTHORITY:

OCR conducted this investigation pursuant to its authority to enforce Title VI of the Civil Rights Act of 1964 and its implementing regulation, 45 C.F.R. Part 80 (Title VI). Title VI prohibits discrimination on the basis of race, color or national origin in programs and activities receiving Federal financial assistance from HHS. DCF is a recipient of Federal financial assistance from HHS and therefore, must comply with Title VI. If DCF is not complying with Title VI and fails to correct the noncompliance by voluntary means, OCR has jurisdiction under Title VI to effect compliance by: (1) terminating Federal financial assistance; or (2) any other means authorized by law.¹

BACKGROUND:

¹ 42 U.S.C. § 2000d-1, 45 C.F.R. § 80.8(a).

The Complainant is the biological father of [REDACTED], a minor child. Complainant is limited English proficient (LEP) and his primary language is Spanish, spoken in the [REDACTED] his country of origin.

In [REDACTED] 2013 after [REDACTED] was placed in DCF care, Complainant was notified by [REDACTED]'s biological mother that he was the biological father of [REDACTED]. Upon receipt of this information, Complainant contacted DCF, who according to the Complainant, would not speak with him as he was not yet adjudicated the father of [REDACTED]. Complainant was subsequently adjudicated the father of [REDACTED] in [REDACTED] 2014. At that time, DCF had changed the permanency goal for [REDACTED] to adoption by the foster parents he was residing with.

On [REDACTED], 2014, after paternity was determined, the Complainant's attorney contacted DCF and provided DCF with evidence of the Complainant's paternity and additionally requested that DCF begin working with him immediately. The Complainant's attorney also requested that all communications with the Complainant be in both Spanish and English and that all documents provided to him be translated to Spanish. The Complainant's attorney alleges that she never received a response to this request from DCF.

On [REDACTED], 2014, on behalf of the Complaint, the Complainant's attorney requested a Spanish-speaking social worker, in-person interpreter services and a complete translation of documents from DCF. The Complainant's attorney did not receive a response to this request from DCF.

The Complainant alleges that during multiple home visits between the Complainant, DCF and the Complainant's son, a Spanish-speaking interpreter was not provided to the Complainant. The Complainant's attorney allegedly repeatedly requested an interpreter or bilingual social worker to be provided to the Complainant. On [REDACTED], 2014, DCF responded to this request by stating that an interpreter would be provided to the Complainant for all future home visits and that an interpreter would be present for all medical appointments other than with the pediatrician. However, Complainant alleges that at subsequent home visits an interpreter was not provided nor was an attempt to reschedule the visits made when there was no interpreter present.

DCF provided its first service plan for the Complainant in [REDACTED] 2015 and the only section interpreted from English to Spanish in this plan was the Complainant's tasks, despite his attorney's request for the entirety of the service plan to be translated.

The Complainant informed OCR that an interpreter was not provided to the Complainant during subsequent home visits with DCF and his son. The Complainant also stated that he was not notified that some visits were cancelled until he arrived at the visit. On [REDACTED] 2015, the Complainant's attorney sent a formal, written complaint to DCF's Language Access Coordinator. In this complaint, Complainant's attorney stated that some visits are still not attended by an interpreter.

DCF petitioned for a termination of the Complainant's parental rights in 2015, at which time, the termination of parental rights hearings were scheduled to begin in [REDACTED] 2016.

DCF's Foster Care Review Reports throughout 2014-2017 were not translated from English to Spanish. The reports sent to the Complainant were only provided in English.

DCF's POLICIES AND PROCEDURES:

DCF is an agency of the Commonwealth of Massachusetts, under the authority of the Executive Office of Health and Human Services, that administers and provides, through its Central, Regional, and Area Offices, a child welfare program for children and families in the Commonwealth, including, but not limited to, the following services, programs, and activities: receiving and responding to reports of child abuse and neglect; family services intended to prevent the need for foster care; casework and counseling; information and referral services; and training in parenthood and home management for parents, foster parents, and prospective parents. *See* Mass. Gen. Laws ch. 18B, §§ 2-3.

DCF provided OCR with a copy of its 2011 Language Access Plan as well as its updated 2015-2017 LAP (collectively referred to as "LAP"). DCF's LAP is designed to ensure that LEP individuals have meaningful access to DCF's services.

The LAP states that DCF will implement the plan "subject to the availability of fiscal resources to implement said language access plan." DCF "will make every effort to provide application forms, notices, letters, service plans, and other documents intended for consumers and family resources, in the individual's preferred language, if possible."

According to the LAP, in 2004, 22 letters and notices were translated into Spanish, Portuguese and Haitian Creole and are viewable on DCF's website. The revised LAP states that DCF is working toward translating numerous other letters used to communicate with consumers, providers and mandated reporters into Spanish, Portuguese, Haitian Creole, Khmer, and Russian by December 2016. Due to the fact that DCF has not yet implemented the technology system in which it will automatically translate documents as planned, OCR reached out to DCF and on December 14, 2017 received assurances from DCF that it will be implementing this system by 2018.

The LAP further states, "It is a priority for the Department to recruit and hire bilingual, bicultural staff to work more effectively with families served by DCF." Further, "to more effectively meet the needs of an area office, the DCF management has successfully recruited bilingual social workers and supervisors based on the linguistic needs of the consumers in their local areas." It also provides that "in the event that DCF, through its bilingual staff capacity and the matching to services through the Lead Agencies, is not able to meet the language need of a client, our staff utilize the OSD approved Master Service Agreement vendors for interpreter and translation services."

The LAP provide tables representing the preferred languages of LEP individuals in the different regions and the percentage of consumers and bilingual staff who communicate using those languages. The LAP additionally identifies the name and contact information for DCF's current Language Access Coordinator.

With regard to DCF's Child-at-Risk Hotline, which provides individuals the ability to report suspected abuse and neglect after-hours, "the Hotline vendor has some bilingual capacity among the staff (screeners and supervisors) to communicate with reporters in Spanish and Haitian Creole." Additionally, "the Hotline does not have access to a Language vendor at this time."

However, “the Department utilizes on-call DCF social work staff to conduct emergency child abuse investigations during hotline hours” and there is “a list of bilingual DCF employees who are willing to be contacted after hours for interpretation and translation, including staff with ASL ability.”

With regard to LEP individuals’ access to interpreters within the services provided by DCF, the LAP states that “the Department utilizes a Lead Agency model to match provider services with client needs. This model allows for services to be more accessible and appropriate for client needs. For consumers with Limited English Proficiency, the social worker would request the service through the Lead Agency, to be provided in the preferred language of the client. The Lead will then check provider resources within the geographic area to find and match a clinician or treatment provider that is bilingual in the language of the consumer. Providers do their best to have staffing capacity to meet the cultural and linguistic needs of the community they serve. Their capacity to provide linguistically appropriate services for clients is challenged by the difficulty to find highly trained and competent bilingual clinicians in the local communities.”

According to the LAP, where neither bilingual staff nor the services provided through Lead Agencies are able to meet the needs of an individual, DCF utilizes the state approved Master Service Agreement vendors for interpreter and translation services. DCF Language Protocols prioritize resources in the following order: In-person interpretation, phone interpretation and community based resources.

In terms of DCF’s ability to access in-person interpreter services, the LAP states that “the Department does not have much difficulty finding interpreter services for the most common, non-English speaking languages such as Spanish or Portuguese. For less common languages it becomes more difficult to obtain an interpreter in the catchment area or one who is willing to travel, but usually the vendor does its best to meet the needs of the requesting DCF staff. In most instances, the interpreter is available within one week, or sooner depending on the situation.”

DISCUSSION AND ANALYSIS:

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and its implementing regulations, 45 C.F.R. Part 80, prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance.

45 C.F.R. §80.3 (a) *General*. “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 otherwise subjected to discrimination under any program to which this part applies.”

(b) *Specific discriminatory actions prohibited*. (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

Title VI and Department of Health and Human Services regulations, 45 C.F.R. Section 80.3(b)(2), require recipients of Federal financial assistance from HHS to take reasonable steps to provide meaningful access to LEP individuals in their programs and activities.

In this investigation, OCR obtained policies and procedures related to the manner in which DCF administers its services through its offices, reviewed individual case data, and reviewed how and when the program staff utilizes language access services, which include oral interpreter services and translated materials. OCR also conducted numerous interviews with individuals who had knowledge and familiarity with the Complainant's case or DCF's language access policies and practices, including DCF officials and staff and third parties in DCF's service areas.

In June of 2016, OCR conducted interviews of DCF social workers. During these interviews OCR learned that social workers use an interpreter if there is no family member that can interpret on behalf of a parent. In addition, children will be used as interpreters unless the information being interpreted is too sensitive. Social workers have no training on using interpreters. DCF policy does not require an interpreter at all supervised visits and that DCF does not have a phone interpretation service for unscheduled encounters. DCF social worker procedure is to not cancel an appointment where an interpreter is not readily available for an appointment.

In regard to the non-translated Foster Care Review Reports, DCF responded that to the extent a LEP parent has, himself, access to an English speaker who can translate, whether a family-member, friend, or, in the Complainant's case, his attorney, the parent benefits from receiving the English-language portions of the report first, and not having to wait until the portions can be translated in order to determine what it says.

OCR's investigation revealed that DCF's policies and procedures for providing interpreter services to LEP individuals may lead to inconsistent provision of such services.

In order to resolve this matter, DCF provided OCR with assurances that while there may be a short delay between the provision of non-translated and translated documents to LEP individuals, DCF is regularly providing LEP individuals with translated documents. DCF also informed OCR that it is in the process of transitioning to a new information technology system that will allow for the automatic translation of all documents sent to LEP individuals. This transition is intended to be in effect by 2018.

In addition, DCF has provided documentation to OCR that it has voluntarily taken the following corrective actions:

CORRECTIVE ACTIONS TAKEN:

1. DCF has translated 22 letters and notices into frequently encountered languages: Spanish, Portuguese and Haitian-Creole and these forms are posted on the DCF intranet.
2. DCF prioritizes the recruitment and hiring of bicultural staff; particularly staff who are fluent in Southeast Asian languages, which are languages that DCF staff has encountered consistently more often.
3. Bilingual employees have been tasked with connecting DCF clients with bilingual service providers, finding interpreters and translating documents for the customers.
4. DCF utilizes the Child-at-Risk Hotline, which has some bilingual capacity among staff to communicate in Spanish and Haitian-Creole, for after-business- hour needs.
5. DCF utilizes a list of bilingual DCF employees who are willing to be contacted after hours for interpretation and translation.
6. DCF utilizes a Master Service Agreement with vendors for interpreter and translation services.
7. DCF's Language Access Policy requires providers to address language needs in the following order of availability: in-person interpretation, phone interpretation, Community-based resources.
8. DCF uses a Lead Agency model to match language provider services with clients. Here, where a bilingual social worker is not available, the social worker requests the service through the Lead Agency to be provided in the preferred language of the client and then the Lead Agency checks provider resources within the geographic area to find and match a clinician or treatment provider who is bilingual in the preferred language.
9. Where bilingual social workers and the Lead Agencies are not able to meet the language needs of individuals, DCF staff utilizes a Master Service Agreement with vendors for interpreter and translation services.
10. DCF utilizes bilingual employees for phone interpretation as needed.
11. DCF contracts with two outside interpreter service vendors to provide translation of documents and interpreter services.
12. DCF area office staff utilizes a designated Language Access Coordinator who is tasked with procuring interpreter and translation services where procurement is difficult due to the rarity of the language desired and/or other situational needs.
13. By 2018 DCF will implement an information technology system capable of automatically translating Foster Care notification letters into the most frequently encountered languages. This system will automatically generate documents into seven different frequently encountered languages total. Documents will be automatically translated based on area office tickler that indicates when an LEP family is up for a foster care review.

CONCLUSION AND REMEDY:

Our investigation of the above complaint has led OCR to conclude that the policies, procedures and practices DCF has employed and is in the process of implementing will result in meaningful access for LEP individuals. Due to OCR's effective provision of technical assistance to DCF

regarding its responsibility to provide meaningful access to LEP individuals and the assurances OCR received regarding the steps DCF has and will take to provide meaningful access to LEP individuals, OCR is affording DCF an opportunity to make changes that will help ensure compliance with the applicable regulations. We have therefore prepared a list of proposed voluntary compliance measures that DCF should take and a list of materials that OCR requests of DCF, indicating that these measures have been taken.

VOLUNTARY COMPLIANCE MEASURES:

The following is the list of compliance measures that OCR proposes DCF should take in order to help ensure compliance with Title VI and its implementing regulation.

A. General Nondiscrimination Obligations

1. Nondiscrimination on the Basis of Race, Color, or National Origin. Pursuant to Title VI, DCF shall ensure that no individual is excluded from participation in, denied the benefits of, or otherwise discriminated against on the basis of race, color, or national origin in any service, program, or activity.
2. Discrimination by Association. DCF shall not exclude from participation in or otherwise deny the benefits of its facilities, accommodations, services, programs, or activities to any individual on the basis of the disability, race, color, or national origin of an individual with whom the individual is known to have a relationship or association.
3. Retaliation and Coercion. DCF shall not retaliate against or coerce in any way any person who made, or is making, a complaint or exercised, or is exercising, his or her rights under Title VI.

B. Obligations to Provide Language Assistance Services to Individuals with Limited English Proficiency

1. Language Assistance Services for Individuals with Limited English Proficiency. DCF will take reasonable steps to provide meaningful access to individuals with limited English proficiency. DCF will provide language assistance services in an accurate and timely manner, in such a way so as to protect the privacy and independence of the individual with limited English proficiency; and at no cost to the individual.
2. Adoption of Revised Policies and Procedures. DCF shall review and revise its policies and procedures, as necessary, to ensure meaningful access to LEP individuals, consistent with the compliance measures listed in this letter.
 - a. DCF shall review and revise these policies and procedures to reflect that the use of family members and friends as interpreters is expressly prohibited.
 - b. DCF shall review and revise these policies and procedures to reflect that language interpreters must be present during visitations with LEP individuals.
 - c. DCF shall review and revise these policies and procedures to reflect that all DCF documentation provided to consumers must be translated to consumers' preferred languages.

OCR's conclusions are not intended, and should not be construed, to cover any other issues regarding DCF's compliance with Title VI which may exist and are not specifically discussed in this letter.

Please be advised the OCR's regulations prohibit an agency or institution from harassing, intimidating or retaliating against an individual who has filed a complaint or participated in the investigation of a complaint. Any such action may constitute a violation of 45 C.F.R. part §80.7(e), which applies to OCR investigations. We request that you take all necessary steps to assure that this prohibition is not violated in connection with this complaint.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

Thank you for your cooperation during this investigation. If this office can be of any assistance to you, please do not hesitate to contact Ms. Francesca Korbass, Investigator, at (617) 565-1355 or TDD (617) 565-1343.

Sincerely,



Susan M. Pezzullo Rhodes
Regional Manager

APPENDIX F

Service Provider Interview Guide

For interviewer use only

Name of interviewee:

Date:

Title:

Name of interviewer:

Organization:

Attributable (Y/N):

[The primary purpose of this interview is to learn more about the issue of language access at DCF. In this interview, we want to know more about your own experiences with this issue at DCF. This is an informal conversation where we just want to hear your opinions and experiences, so there are no right or wrong answers.]

Your participation in this interview is voluntary, and your responses and identity will remain confidential. If you wish your comments to be attributed to you in the final public report, we are happy to do so. You may refuse to answer any questions and you can stop your participation at any time by asking the interviewer to stop. Do I have your permission to conduct and record this interview?]

1. To start, please tell me a little about your work.
 - a. How long have you been in your position? Where did you work previously?
2. Tell me about your experience with the Department of Children and Families (DCF)?
 - a. How many years have you had contact with the agency?
 - b. How many cases or clients would you estimate you've had that were involved with DCF?
 - i. How many of those were Limited English Proficient (LEP)?
 - c. In what cities/parts of Massachusetts have you interacted with DCF?

[Thank you, now I'd like to talk about language access in particular. By language access I mean the quality of services provided to LEP clients, specifically language interpretation and translation.]

3. What's your opinion of language access at DCF?

- a. If you had to rate the quality of interpretation and translation services DCF is providing on a scale of low quality, medium quality, or high quality, how would you rate the agency? Please describe why you chose that rating.
- 4. How do you think availability of interpretation and translation at DCF differs across Massachusetts?
 - a. How does the particular language that a family speaks affect the quality of interpretation and translation services that they receive?
 - i. In your experience, which languages receive better services? Which ones have worse services?
 - ii. For DCF social workers who are bilingual, what languages do they usually speak?

[Okay, now I'd like to talk more about the specific parts of DCF's involvement with families.]

- 5. Tell me about how home visits work for LEP families.
 - a. If DCF staff are not bilingual, how do they communicate with families?
 - b. In your experience, when DCF staff first visit a home, how often do they bring an interpreter?
 - i. Do DCF staff use telephone or video interpreters?
 - ii. How often do DCF staff use family members as interpreters?
 - c. **[If "DCF staff do not always bring an interpreter"]** what are the effects of not having professional interpreters present?

[My next question is about the documents that LEP families and parents receive from DCF, especially notices, service plans, 51Bs, and other documents related to their cases.]

- 6. How does DCF provide documents and written notifications to families that are LEP?

- a. In your experience, how often are written notices to families translated into the family's preferred language?
 - b. **[If “not always”]** tell me which documents you've noticed that aren't consistently translated.
7. How does DCF create a written Action Plan if the family or parent is LEP?
- a. In your experience, how often does DCF translate the entire plan?
 - i. **[If “never”]** how often do they translate part of the plan?
 - b. **[If “DCF does not always translate service/action plans”]** what are the effects of not consistently translating the plans?
- [Now I'd like to ask you more about how DCF provides language access like interpretation in the services parents, children, and families are supposed to receive from the agency.]**
8. To what extent are required activities, such as parenting classes, offered in languages other than English?
- a. **[If “any are unavailable”]** why are these services not available in other languages?
 - b. **[If “any are unavailable”]** what impact does not providing services have on families involved with DCF?
9. For cases where DCF places a child in foster care, if the family is LEP, how does that impact the process?
- a. If a parent and/or child are LEP, how does that affect their visitation?
10. **[If DCF has issues with language access]** Why do you think these issues occur?
- a. How does an individual social worker or supervisor affect the quality of services provided to LEP families involved with DCF?
 - i. To what extent have you observed DCF fostering a professional culture that supports language access?

b. To what extent, have you witnessed DCF as an institution work to increase language access or foster?

11. Tell me how you think DCF could improve its language access policies **[ask for details]**.
12. Apart from what we've already discussed, is there anything else that you would like to talk about related to your experience with DCF?
13. Is there anything that I haven't asked that you would like to tell me?
14. Are there other organizations or individuals you would recommend I speak to?

APPENDIX G

Public Records Request Submitted to the Department of Children and Families by Massachusetts Appleseed on 10.5.20



Massachusetts **APPLESEED** | Center for Law & Justice

44 School Street, Suite 415 Boston, Massachusetts 02108
Tel: 617.482.8686 | www.massappleseed.org

October 5, 2020

Steven Treat
Assistant General Counsel, Records Access Officer
Department of Children and Families
Office of the General Counsel
600 Washington Street, 6th floor
Boston, MA 02111

Dear Mr. Treat,

This is a request under the Public Records Law, G.L. c. 66, § 10.

We are interested in learning more about the Massachusetts Department of Children and Families' ("DCF's") Language Access Complaint Procedure. We understand that internal complaints centering on language access are filed with your Agency Language Access Coordinator, and are interested in obtaining any documents relating to the procedure for addressing these complaints, any reports on the frequency with which DCF had received such complaints since 2011, and any information about what languages are most commonly at issue within these complaints.

Please provide us with the documents described below at your earliest convenience. Please note that unless otherwise noted we are asking for all documents related to the following created or dated between the year 2011 and the present.

1. Any documents regulating how the Language Access Coordinator should address or investigate a language access complaint, including but not limited to policies, procedures, reports, records, summaries, or notices;
2. Any documents including the timeline within which the Language Access Coordinator should address or investigate a language access complaint, including but not limited to policies, procedures, reports, records, summaries, or notices;
3. Any documents showing the number of language access complaints DCF has received between now and 2011; including but not limited to reports, records, summaries, or notices.
4. Any documents indicating which languages are most commonly represented within language access complaints, including but not limited to reports, records, summaries, or notices.

As of January 1, 2017, Records Access Officers must permit inspection or furnish a copy of a requested public record within **10 business days** following receipt of a public records request. If your office withholds portions of the requested documents on the grounds they are exempt from disclosure, please specify which exemptions and release any portions of the records for which you do not claim an exemption. I ask that you waive any assessed fees pursuant to 950 C.M.R. 32.07(k), which allows Records Access Officers to waive or reduce the amount of any fee upon a showing that (1) disclosure of a requested record is in the public interest; (2) the request for records is not primarily in the commercial interest of the requester; or (3) the requester lacks the financial ability to pay the full amount of the reasonable fee. Massachusetts Appleseed Center for Law and Justice is a nonprofit organization with no commercial interest in the records, and these matters are squarely within the public interest. Therefore, I am requesting that your office waive any fees related to DCF's response to this public records request.

Should you determine that some portion of the documents requested are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note the applicable statutory exemption and explain why it applies to the redacted portions.

Please reply to this request by contacting Melanie Rush at [REDACTED] or melanie@massappleseed.org. Thank you for your assistance. We look forward to your response.

Sincerely,

A handwritten signature in dark ink, appearing to read "Deborah Silva". The signature is fluid and cursive, with the first name "Deborah" being more prominent than the last name "Silva".

Deborah M. Silva,
Executive Director
Massachusetts Appleseed Center for Law & Justice

APPENDIX H

**Department of Children and Families Response to Public Records Request
Received on 10.5.20**



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Children and Families
Office of the General Counsel
600 Washington Street, 6th floor
Boston, MA 02111
Tel (617) 748-2065 Fax (617) 748-2061

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Governor



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Lieutenant Governor



MARYLOU SUDDERS

Secretary



LINDA S. SPEARS

Commissioner

ANDREW TODD ROME

General Counsel



PATRICIA CASEY

Deputy General Counsel



CRISTINA TEDSTONE

Deputy General Counsel



THOMAS WEIERMAN

Deputy General Counsel

October 21, 2020

Via Electronic Mail Only

Deborah M. Silva

Executive Director

Massachusetts Appleseed Center for Law & Justice

melanie@massappleseed.org

Re: Public Records Request Received on October 5, 2020

Dear Ms. Silva:

The Commonwealth of Massachusetts, Department of Children and Families (“DCF”), hereby responds to the above referenced public records request (“PRR” or “request”), wherein you specifically requested

1. Any documents regulating how the Language Access Coordinator should address or investigate a language access complaint, including but not limited to policies, procedures, reports, records, summaries, or notices;
2. Any documents including the timeline within which the Language Access Coordinator should address or investigate a language access complaint, including but not limited to policies, procedures, reports, records, summaries, or notices;
3. Any documents showing the number of language access complaints DCF has received between now and 2011; including but not limited to reports, records, summaries, or notices.
4. Any documents indicating which languages are most commonly represented within language access complaints, including but not limited to reports, records, summaries, or notices.

Regarding **Part 1 and Part 2 of your request**, DCF has identified the attached records (21 pages) as responsive to your request.

Regarding **Part 3 and Part 4 of your request**, DCF does not have in its possession any responsive records to your request.

October 21, 2020
Deborah M. Silva
Massachusetts Appleseed Center for Law & Justice
melanie@massappleseed.org
Page 2

DCF reserves the right to retrieve any exempted, privileged, or otherwise protected materials inadvertently included in this production. Any such production is not, and shall not be considered or deemed, a waiver of any applicable privileges or protections from disclosure.

DCF now considers your PRR closed.

If you believe the agency has violated G.L. c. 66, § 10, pursuant to G.L. c. 66, § 10A, you may submit an appeal to the Supervisor of Public Records in the Office of the Secretary of the Commonwealth or seek judicial review by commencing a civil action in Suffolk Superior Court.

Please contact me with any questions.

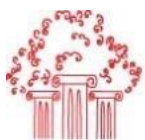
Sincerely,

/s/Steven Treat

Steven Treat, Records Access Officer
Assistant General Counsel

APPENDIX I

**Public Records Request Submitted to the Department of Children and
Families by Massachusetts Appleseed on 10.23.20**



Massachusetts APPLESEED | Center for Law & Justice

44 School Street, Suite 415 Boston, Massachusetts 02108
Tel: 617.482.8686 | www.massappleseed.org

October 23, 2020

Steven Treat
Assistant General Counsel, Records Access Officer
Department of Children and Families
Office of the General Counsel
600 Washington Street, 6th floor
Boston, MA 02111

Dear Mr. Treat,

This is a request under the Public Records Law, G.L. c. 66, § 10.

We are interested in learning more about the Massachusetts Department of Children and Families' ("DCF's") 2019-2021 Language Access Plan, and the policies and procedures that are in place to follow through on many of the provisions within that plan. We are interested in obtaining any documents relating to the contracts DCF enters with community service providers, information on stakeholders who were consulted when updating the most recent Language Access Plan, details on the CORE training for newly hired employees, specifics on how the agency engages in bi-annual monitoring of the Language Access Plan, and how the Department handles language access complaints.

Please provide us with the documents described below at your earliest convenience. Please note that unless otherwise noted we are asking for all documents related to the following created or dated between the year 2011 and the present.

1. Any documents detailing, referencing, relating to or describing contracts that the Department has entered into with outside service providers, as referenced in the "Meeting Language Access Needs via Procurement and Contract Requirements" section of the 2019-2021 Language Access Plan, including, but not limited to copies of the contracts themselves.
2. Any documents detailing, referencing, describing, or related to any efforts the Department has taken to identify "additional stakeholders" as referenced in the "Stakeholder Consultation" section of the 2019-2021 Language Access Plan, including but not limited to policies, procedures, reports, records, summaries, or notices.
3. Any documents detailing, referencing, relating to or describing the CORE training for newly hired workers, including but not limited to policies, procedures, reports, records, summaries, or notices.
4. Any documents detailing, referencing, describing or related to any efforts the Department is making to include language access within any of the CORE training modules, including but not limited to policies, procedures, reports, records, summaries, or notices.
5. Any documents detailing, referencing, relating to or describing the implementation of the bi-annual agency monitoring practices that occur at the statewide, regional, and office area levels, as referenced in the "Agency Monitoring" section of the 2019-2021 Language Access

- Plan, including but not limited to policies, procedures, reports, records, summaries, or notices.
6. Any documents detailing, referencing, relating to or describing any and all Language Access Complaints that Department has received within the last two years, including, but not limited to copies of the complaints themselves.
 7. Any documents detailing, referencing, relating to or describing what action the Department has taken in response to any and all Language Access Complaints in the past two years, including but not limited to policies, procedures, reports, records, summaries, or notices.
 8. Any documents detailing, referencing, relating to or describing what steps the Department plans to take, should they receive a future Language Access Complaint, including but not limited to policies, procedures, reports, records, summaries, or notices.

As of January 1, 2017, Records Access Officers must permit inspection or furnish a copy of a requested public record within **10 business days** following receipt of a public records request. If your office withholds portions of the requested documents on the grounds they are exempt from disclosure, please specify which exemptions and release any portions of the records for which you do not claim an exemption. I ask that you waive any assessed fees pursuant to 950 C.M.R. 32.07(k), which allows Records Access Officers to waive or reduce the amount of any fee upon a showing that (1) disclosure of a requested record is in the public interest; (2) the request for records is not primarily in the commercial interest of the requester; or (3) the requested lacks the financial ability to pay the full amount of the reasonable fee. Massachusetts Appleseed Center for Law and Justice is a nonprofit organization with no commercial interest in the records, and these matters are squarely within the public interest. Therefore, I am requesting that your office waive any fees related to DCF's response to this public records request.

Should you determine that some portion of the documents requested are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note the applicable statutory exemption and explain why it applies to the redacted portions.

Please reply to this request by contacting Melanie Rush at 617-482-8686 or melanie@massappleseed.org. Thank you for your assistance. We look forward to your response.

Sincerely,



Deborah M. Silva,
Executive Director
Massachusetts Appleseed Center for Law & Justice

APPENDIX J

**Department of Children and Families Response to Public Records Request
Received on 10.23.20**



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Children and Families
Office of the General Counsel
600 Washington Street, 6th floor
Boston, MA 02111
Tel (617) 748-2065 Fax (617) 748-2061

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LINDA S. SPEARS
Commissioner

ANDREW TODD ROME
General Counsel

◆
PATRICIA CASEY
Deputy General Counsel

◆
CRISTINA TEDSTONE
Deputy General Counsel

◆
THOMAS WEIERMAN
Deputy General Counsel

December 15, 2020

Via Electronic Mail Only

Deborah M. Silva
Executive Director
Massachusetts Appleseed Center for Law & Justice
melanie@massappleseed.org

Re: Public Records Request Received on October 23, 2020

Dear Ms. Silva:

The Commonwealth of Massachusetts, Department of Children and Families (“DCF”), hereby responds to the above referenced public records request (“PRR” or “request”), wherein you specifically requested

1. Any documents detailing, referencing, relating to or describing contracts that the Department has entered into with outside service providers, as referenced in the “Meeting Language Access Needs via Procurement and Contract Requirements” section of the 2019-2021 Language Access Plan, including, but not limited to copies of the contracts themselves.
2. Any documents detailing, referencing, describing, or related to any efforts the Department has taken to identify “additional stakeholders” as referenced in the “Stakeholder Consultation” section of the 2019-2021 Language Access Plan, including but not limited to policies, procedures, reports, records, summaries, or notices.
3. Any documents detailing, referencing, relating to or describing the CORE training for newly hired workers, including but not limited to policies, procedures, reports, records, summaries, or notices.
4. Any documents detailing, referencing, describing or related to any efforts the Department is making to include language access within any of the CORE training modules, including but not limited to policies, procedures, reports, records, summaries, or notices.
5. Any documents detailing, referencing, relating to or describing the implementation of the bi-annual agency monitoring practices that occur at the statewide, regional, and office area levels, as referenced

- in the “Agency Monitoring” section of the 2019-2021 Language Access Plan, including but not limited to policies, procedures, reports, records, summaries, or notices.
6. Any documents detailing, referencing, relating to or describing any and all Language Access Complaints that Department has received within the last two years, including, but not limited to copies of the complaints themselves.
 7. Any documents detailing, referencing, relating to or describing what action the Department has taken in response to any and all Language Access Complaints in the past two years, including but not limited to policies, procedures, reports, records, summaries, or notices.
 8. Any documents detailing, referencing, relating to or describing what steps the Department plans to take, should they receive a future Language Access Complaint, including but not limited to policies, procedures, reports, records, summaries, or notices.

On November 10, 2020, you agreed to extend DCF’s response time by 10 business days. I appreciate your understanding and patience.

Regarding **Part 1 of your request**, please be advised that DCF utilizes language service vendors contracted through the Operational Services Division (“OSD”) of Massachusetts. Information regarding DCF’s translation services can be downloaded at the following webpage: <https://www.mass.gov/doc/prf63/download>. For additional information, I suggest submitting your request to OSD. You may submit your request via email to OSD-DL-RAO@Mass.gov or through OSD’s online portal: <https://www.mass.gov/service-details/professional-services>.

Regarding **Part 2, 5, 6, 7, and 8 of your request**, after a comprehensive search, DCF does not have in its possession any responsive records to your requests.

Regarding **Part 3 to 4 of your request**, DCF has identified the enclosed records (780 pages) that may be responsive to your these requests. In addition, DCF regulations and policies are available to be downloaded online on the following website: <https://www.mass.gov/dcf-policies>.

DCF granted your request for a fee waiver in regards to these requests. Please note, due to the complexity and magnitude of your request, DCF has used approximate 10 hours of employee work time to complete this request, which exceeds the first four (4) hours of employee work that are provided free of charge consistent with Public Records Law. G.L. c. 66, § 10(d); 950 CMR 32.08(2).

DCF reserves the right to retrieve any exempted, privileged, or otherwise protected materials inadvertently included in this production. Any such production is not, and shall not be considered or deemed, a waiver of any applicable privileges or protections from disclosure.

DCF now considers your PRR closed.

If you believe the agency has violated G.L. c. 66, § 10, pursuant to G.L. c. 66, § 10A, you may submit an appeal to the Supervisor of Public Records in the Office of the Secretary of the Commonwealth or seek judicial review by commencing a civil action in Suffolk Superior Court.

December 15, 2020
Deborah M. Silva
Massachusetts Appleseed Center for Law & Justice
melanie@massappleseed.org
Page 3

Please contact me with any questions.

Sincerely,

/s/ Steven Treat

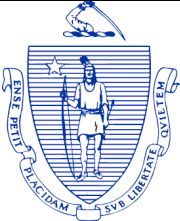
Steven Treat, Records Access Officer
Assistant General Counsel



**Massachusetts
Appleseed**
Center for Law & Justice

www.massappleseed.org

EXHIBIT B

	<p><i>The Commonwealth of Massachusetts</i> <i>Executive Office of Health and Human Services</i> <i>Department of Children and Families</i></p>	
	<p>600 Washington St, 6th Floor, Boston, MA 02111</p>	
	<p>Tel.: (617) 748-2000 Fax: (617) 261-7435 www.mass.gov/dcf</p>	
CHARLES D. BAKER Governor		MARYLOU SUDDERS Secretary
KARYN E. POLITO Lieutenant Governor		LINDA S. SPEARS Commissioner

March 3, 2021

[REDACTED]
[REDACTED]
[REDACTED]
Methuen, MA 01844

Dear [REDACTED]

As you know, the Department of Children and Families recently received a report alleging child abuse and/or neglect involving your family. Based on the information obtained, the Department has made the following determination(s) regarding the allegation(s):

Child's Name	Allegation	Decision
[REDACTED]	Neglect	Substantiated Concern

The Department has determined that further provision of services is not necessary at this time. However, if you believe having more formal supports would be beneficial to your family, we can work together to see if the Department can provide any assistance. For information about applying for voluntary services, please contact our Area Office and ask for the intake unit.

If the report came from a person mandated to make a report such as a teacher, doctor, nurse, police officer, or other professional, DCF is required by law to inform that person, in writing, of the outcome listed above. To respect your privacy, no other information will be shared with them.

You have the opportunity to have this decision reviewed through a grievance process. You may request a review within thirty (30) days of receipt of this letter by sending a request to the Area Director for the office listed below and attaching a copy of this letter.

If you have any questions about this letter or want to discuss other concerns, please call me at the number listed below.

Sincerely,

Lisa Sutton
Lawrence Area Office
280 Merrimack Street,

Lawrence, MA 01843

CC: Mandated Reporter