



# Technical Assistance Bulletin

17-04

August 2017



## Division of Early Intervention and Special Education Services

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## NATIVE LANGUAGE

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The Individuals with Disabilities Education Act (IDEA) has specific provisions governing the evaluation of and services for students with limited English proficiency. It is important to be familiar with these provisions because nearly twenty percent (20%) of Marylanders speak a language other than English at home, and while some of these families also speak English well, others do not (2008-2012 American Community Survey). **If the Individualized Education Program (IEP) team is not cognizant of the native language of a student, it may not accurately assess what the student knows and can do.** The IEP team must consider the language needs of the student as those needs relate to development, review, and revision of the student's IEP. Moreover, if the IEP team is not cognizant of the native language of the parents, it may not fulfill its obligations to obtain informed consent because the parents may not fully understand the decisions being made and their impact on the student. This Technical Assistance Bulletin will outline the various areas in which native language adds a unique layer to the IEP process, not only with regard to oral communication but also the translation of certain documents.

### 1. How is “native language” defined?

When used with respect to an individual who is limited English proficient, “native language” means the following:

- **The language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student.**
- **In all direct contact with a student (including evaluation of the student), the language normally used by the student in the home or learning environment.**
- **For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).**

As this definition demonstrates, the term “native language” should be applied according to the norms of the person receiving the communication. **Generally, when a person's native language is something other than English, native language means the language normally used by that person, including for individuals with deafness, blindness, or no written language.** In the case of a student, however, it becomes relevant whether the communication is with the student directly or with the parents of the student. In all direct contact with a student, the term “native language”

means the language normally used by the student, which may be different than the language normally used by the parents.

[20 U.S.C. §1401(20); 34 C.F.R. § 300.29; COMAR 13A.05.01.03B(45)]

## **2. How is native language related to informed consent?**

Under the IDEA, consent means the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication. First, the parent must understand, and agree in writing, to the carrying out of the activity for which his or her consent is sought. Second, the written consent form must describe the activity and list any records that may be released and to whom. Finally, the parent also must understand that consent is voluntary and may be revoked at any time, although revocation is not retroactive.

According to the United States Department of Education, Office of Special Education and Rehabilitative Services (OSERS), the local school system must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. For parents who read in their native language, providing the parents with written translations of the IEP documents may be one way for a local school system to demonstrate that the parent has been fully informed of their student's educational program. If, however, the parents are unable to read in their native language, written translations may not show that the parent was fully informed. In those instances, the local school system should ensure that there is another mechanism in place to make certain that these parents are fully informed of all relevant information about the activity to which they are consenting.

[34 C.F.R. § 300.9; Letter to Boswell, 49 IDELR 196 (Sept. 4, 2007)]

## **3. Under the IDEA, what information must be provided in a parent's native language?**

Each local school system must ensure that the following information is provided to a parent in his or her native language, or other mode of communication, unless it is clearly not feasible to do so:

- Parental consent for evaluation or re-evaluation;
- Parental consent for initiation of special education services;
- Parental consent to excuse an IEP team member from an IEP team meeting when the team member's area is being modified or discussed;
- Prior written notice whenever a local school system proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student, or the provision of a free appropriate public education (FAPE) to the student;
- Notice that fully informs parents of the requirements regarding the confidentiality of personally identifiable information; and
- Notice of procedural safeguards.

Assessments and other evaluation materials used to assess a student, on the other hand, must be provided and administered (including directions) in the student's native language, or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do, unless it is clearly not feasible to do so.

[34 C.F.R. §§ 300.321(e)(2); 300.304(c)(ii); 300.503(c); 300.504(d); 300.612(a)(1)]

#### **4. Under Maryland law, what information must be provided in a parent's native language?**

Although there is no express requirement in the IDEA that all IEP documents must be translated, Maryland law outlines three additional sets of documents to be translated in certain circumstances: 1) completed Individualized Family Service Plan (IFSP) and completed Individualized Education Program (IEP); 2) information about mediation; and 3) information about early intervention and special education family support services. A "completed" IFSP or IEP is the final version that parents would receive to sign showing their agreement, and thus it is especially important at this juncture that parents understand the contents of the document.

First, parents may request that their child's completed IFSP or their student's completed IEP be translated into the parents' native language. If the native language spoken by the parents is spoken by more than one percent (1%) of the student population in the local school system, appropriate school personnel must provide the parents with the translated document within thirty (30) calendar days after the date of the request. Thus, there are three important triggers for the requirement to translate an IFSP or IEP: 1) the IFSP or IEP must be complete, not in draft form; 2) the parent must request the translation, although the request need not be in writing; and 3) the parent's native language must be above the one percent (1%) threshold. Any amendment to a completed IFSP or IEP would also be subject to these requirements, although only the amended part(s) would have to be translated again once completed.

Second, if during an IEP team meeting a parent disagrees with a child's IEP or the special education services provided to the child, the IEP team must provide the parent, in plain language:

- An oral and written explanation of the parent's right to request mediation;
- Contact information, including a telephone number, that a parent may use to receive more information about the mediation process; and
- Information regarding pro bono representation and other free or low-cost legal and related services available in the area.

As with a completed IFSP or completed IEP, parents may request that information about mediation be translated into the parents' native language. If the native language spoken by the parents is spoken by more than one percent (1%) of the student population in the local school system, the IEP team shall provide the parent with the translated document within thirty (30) calendar days after the date of the request. The notice of procedural safeguards, which is already required under the IDEA to be translated into the parents' native language, also includes information about mediation. Third, at the initial evaluation meeting and upon request at any subsequent meeting, the local school system must provide the parent with written information that the parents may use to contact early intervention and special education family support services staff members within the local school system and a brief description of the services provided by the staff members. If a parent's native language is not English, this information must be provided in the parent's native language, regardless of whether it is spoken by a particular percentage of the local school system population.

[Md. Code Ann., Education Article § 8-405]

#### **5. How does a parent request translation of an IEP document?**

Maryland law does not outline a particular procedure for requesting translation, nor does it expressly require that such a request be in writing. Thus, local school systems should be prepared

to respond to both oral and written requests, as well as take reasonable steps to independently ensure that a parent with limited English proficiency understands the proceedings of the IEP team meeting and is fully informed of IEP team decisions.

The Maryland State Department of Education (MSDE) recommends that a procedure like the following be adopted to comply with Maryland's translation requirements:

- Use an "IFSP/IEP Translation Request Form" that includes, at a minimum, the following data elements:
  - The parent's name;
  - The student's name;
  - The date of the parent's request;
  - The language requested for translation; and
  - The date of the completed IFSP or IEP to be translated.
- Make the request form generally available to the public (e.g. copies in the IEP team meeting room and posted online).
- Complete the request form even for oral requests, either by providing the form to the parent or having school staff fill out the information as the request is made.
- Date stamp each completed request form in order to monitor compliance with the 30-day timeline for providing the translated document.

In addition, the Maryland Online IFSP/IEP forms will include a check box to indicate whether or not a translation of the document was requested at the time of the meeting.

#### **6. Do local school systems collect data on the language spoken in a student's home?**

In accordance with the Maryland Student Records Manual (April 2016), each local school system is required to report the language(s) spoken in the student's home on Student Record Card 1 (SR1), on Side 1 under "Student's Personal Data."

It is critical that such data is captured on an annual basis so that the local school system can determine what languages exceed the one percent (1%) threshold described in Question 4, as this may trigger a requirement to translate certain documents into a parent's native language under Maryland law. Individual schools that are not incorporated into a local school system should utilize the population of the local school system in which they are located when applying the one percent (1%) threshold.

#### **7. What services are available to meet interpretation and translation needs?**

Statewide Foreign Language Interpretation and Translation Services. The Board of Public Works (BPW) has approved contracts for foreign language interpretation and translation services (FLITS) These contracts are available for use by any agency of the State of Maryland. In addition, all local governments and qualifying not-for-profit organizations in Maryland are permitted to use these contracts at the same prices and levels of service as for State agencies. The approved FLITS contractors for each service category (per the Maryland Department of Budget and Management, <http://www.dbm.maryland.gov/proc-contracts/Pages/statewide-contracts/LanguageContractHome.aspx>) are:

- **By Telephone:** Language Line Services, LLC, 800-752-6096
- **Onsite at a Specified Location:** Ad Astra, Inc., 301-408-4242
- **Written Document Translation:** Schreiber Translations, Inc., 301-424-2336

These services are available 24 hours per day, 7 days per week, and 365 days per year in the 29 core languages listed below. Services may also be available in other languages.

- |  |                   |              |              |
|--|-------------------|--------------|--------------|
| • Amharic  | • Creole          | • Korean     | • Tagalog    |
| • Arabic   | • Farsi (Afghani) | • Nepali     | • Tigrinya   |
| • Bengali  | • Farsi (Iranian) | • Portuguese | • Turkish    |
| • Burmese  | • Farsi (Persian) | • Romanian   | • Urdu       |
| • Chin   | • French          | • Russian    | • Vietnamese |
| • Chin Hahka   | • French Creole   | • Somali     |              |
| • Chinese, inclusive of<br>Mandarin and<br>Cantonese | • Gujarati        | • Spanish    |              |
|  | • Haitian Creole  | • Swahili    |              |
|  | • Hindi           |              |              |

If a vendor is on a State contract and is ready to take on an expanded role, the agency is to provide details of the role in writing to the vendor with a request for a price quote. If the price quote is consistent with the rates established in the State contract, the agency may issue a requisition to encumber funds to pay for the services. More information about contracts for foreign language interpretation and translation services may be found on the Department of Budget and Management website at <http://www.dbm.maryland.gov/proc-contracts/Pages/statewidecontracts/LanguageContractHome.aspx>.

**Visual communication services, including American Sign Language (ASL).** The Board of Public Works has approved contracts for visual communication services. These contracts are available for use by any agency of the State of Maryland. In addition, all local governments and qualifying not-for-profit organizations in Maryland are permitted to use these contracts at the same prices and levels of service as for State agencies. The approved visual communication contractors for each service category, (per the Maryland Department of Budget and Management, <http://www.dbm.maryland.gov/proc-contracts/Pages/statewidecontracts/VCSCContractHome.aspx>), are:

- **Onsite Visual Language Interpretation, including ASL- Regional**
  - Allegany, Frederick, Garrett, Washington: American Sign Language, Inc. 855-634-2754
  - Anne Arundel, Baltimore City, Baltimore, Carroll, Harford, Howard: TCS Interpreting, Inc., 240-478-6392
  - Caroline, Cecil, Dorchester, Kent, Queen Anne’s, Somerset, Talbot, Wicomico, Worcester: TCS Interpreting, Inc., 240-478-6392
  - Montgomery, Prince George’s, TCS: Interpreting, Inc., 240-478-6392
  - Calvert, Charles, St. Mary’s: American Sign Language, Inc. 855-634-2754
- **Onsite Communication Access Real-Time Translation (CART) - Regional**
  - Allegany, Frederick, Garrett, Washington: TCS Interpreting, Inc., 240-478-6392
  - Anne Arundel, Baltimore City, Baltimore, Carroll, Harford, Howard: Karash Enterprises, 800-621-5689 x114
  - Caroline, Cecil, Dorchester, Kent, Queen Anne’s, Somerset, Talbot, Wicomico, Worcester: TCS Interpreting, Inc., 240-478-6392
  - Montgomery, Prince George’s, TCS: Karash Enterprises, 800-621-5689 x114
  - Calvert, Charles, St. Mary’s: TCS Interpreting, Inc., 240-478-6392

- **Remote CART – Statewide:** Karash Enterprises, 800-621-5689 x114
- **Visual Remote Interpretation - Statewide:** Birnbaum Interpreting Services, 800-471-6441

More information about contracts for visual communication services may be found on the Department of Budget and Management website at <http://www.dbm.maryland.gov/procontracts/Pages/statewide-contracts/LanguageContractHome.aspx>.

### **8. How does the Maryland State Department of Education assist local school systems to support parents who speak a native language other than English?**

The Division of Early Intervention/Special Education Services (DEI/SES) assists local school systems by:

- Translating the blank IFSP and IEP forms into 20 languages
- Incorporating a check box for translation request in the IEP form
- Providing blank consent forms in 20 languages
- Providing the Prior Written Notice form in 15 languages
- Maintaining the Special Services Information System (SSIS) to annually collect data on the native language or other mode of communication used by parents of students with disabilities

The 20 languages translated by the DSE/EIS include most of the core languages identified above, as well as two additional languages, Hebrew and Polish.

- |           |                  |              |              |
|-----------|------------------|--------------|--------------|
| • Amharic | • French         | • Korean     | • Spanish    |
| • Arabic  | • Gujarati       | • Nepali     | • Tagalog    |
| • Bengali | • Haitian Creole | • Polish     | • Turkish    |
| • Burmese | • Hebrew         | • Portuguese | • Urdu       |
| • Chinese | • Hindi          | • Russian    | • Vietnamese |

For more information, call 410-767-0249  
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