Reducing Language Access Barriers for LEP Individuals
San Francisco Department of Police Accountability
Prepared for the DGO 5.20 Working Group

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Key Points:

♦ SFPD's Draft DGO 5.20 does not provide officers with sufficient guidance to address well-known barriers when interacting with Limited English Proficient individuals.

♦ Officers need additional context and clear direction on identifying Limited English Proficient individuals and their primary language.

♦ This policy should apply lessons learned from U.S. Department of Justice investigations into national origin discrimination, along with the and guidelines established in the resulting Settlement Agreements.

The San Francisco Police Department's (SFPD) draft Language Access Department General Order (DGO) 5.20 moves away from United States Department of Justice (DOJ) identified best practices and increases the City of San Francisco's risk of DOJ intervention.

To address these risks, the San Francisco Department of Police Accountability recommends the working group draft detailed procedures that guide members in **identifying a limited English proficient (LEP) individual** and their **primary language**.

Background

DGO 5.20 is 17 years old and has been supplemented by five department bulletins over the past 12 years. The bulletins include detailed guidance on identifying LEP individuals, but the most recent bulletin is expired, and its guidance was not incorporated into SFPD's draft. DGO 5.20 has included procedures on identifying primary language using language identification cards since 2007, but that direction was removed from this pending draft. The draft has effectively reduced officer responsibilities without addressing well-known challenges faced by officers in the field or the language assistance needs of San Francisco's LEP population.

Effective LEP services are essential in San Francisco where nearly 20% of the population self-identifies as LEP.[1] Establishing timely and accurate communication protects officers and the public, enhances community trust, and ensures the reliability of witness accounts.

> **We have seen that a failure to provide meaningful access can chill reporting of crimes, leave victims and witnesses with LEP vulnerable to flawed investigations and even wrongful arrest, and threaten the safety of officers and the general public alike.**
>
> Assistant Attorney General Kristen Clarke, Dec. 12, 2023, Law Enforcement Language Access Initiative Letter

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[1] S.F. Admin Code Chapter 91.

Additionally, a condition of SFPD's federal financial assistance requires compliance with Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits national origin discrimination. The DOJ has exercised its jurisdiction under Title VI to investigate whether law enforcement agencies have engaged in national origin discrimination by failing to provide sufficient language assistance. To assist law enforcement agencies with compliance, the DOJ launched the Law Enforcement Language Access Initiative inform stakeholder conversations around language access principles.

By integrating SFPD's prior guidance into the draft DGO, and applying lessons learned from the DOJ Law Enforcement Language Access Initiative, we can ensure our policy is consistent with DOJ identified best practices and maintain our Collaborative Reform Initiative (CRI) commitments.

Clarifying Member Responsibilities to Provide Language Assistance

SFPD's **draft DGO** directs members to "provide free language assistance to LEP individuals **whom they encounter**," but lacks clear and concise direction on how to comply with the policy.

It is important to acknowledge the difficult position officers find themselves in during LEP encounters. Officers are often required to make quick judgments in complex, dynamic situations, and the process for ensuring effective communication is not always straightforward. Officers have also expressed a generalized fear that changes to the LEP policy will open members to liability and result in sustained DPA cases. To improve this DGO but also alleviate these concerns, the DPA recommends providing the officers with proactive and unambiguous direction they can follow to ensure they have complied with this policy.

> **Member's Duty to Provide Language Assistance:** When performing law enforcement functions, members shall provide free language assistance to LEP individuals they encounter. *A member's duty is satisfied by:* 1) asking if the person is more comfortable speaking in another language; and, 2) offering free language assistance services. *SFPD members should err on the side of providing language assistance when unsure of LEP status.*

Identifying LEP Individuals and Reducing Barriers to Language Assistance

This draft also lacks guidance on **how to identify an LEP individual** or **context about common barriers to communication**. This draft should follow the lead of DGO 5.24 *Disengagement Procedures* and DGO 5.25 *Foot Pursuits* to provide considerations, concerns, and advisements in the place of overly proscriptive and inflexible procedures of how an officer "shall" identify an LEP individual. No situation is the same, so officers should be provided with examples of how to identify an LEP individual.

Since 2012, SFPD has acknowledged several "factors that may hinder effective communication" in their series re-issued LEP Department Bulletins.[2] The bulletins describe situations where individuals

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[2] S*ee* Department Bulletin: *Providing Language Access Services for Limited English Proficient (LEP) Individuals*, DB12-132, DB 14-126, DB 16-107, DB 18-185, DB 21-072

"may state or act as if they understand more English than they actually do," or speak casual English but need language assistance during unfamiliar or stressful situations (like speaking with an officer). These challenges are exemplified by DPA cases where officers struggle to communicate with individuals who initially indicate they spoke English. **The working group should review the expired department bulletin and incorporate long recognized indicators that language assistance is necessary**.

> **Common Indicators That Language Assistance is Necessary:**
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> - The individual asks for an interpreter.
> - The individual switches from English to another language.
> - The individual speaks in incomplete or fragmented sentences.
> - The individual's response to open-ended questions indicates no understanding or a limited ability to understand the question or communicate in English.

The LEP bulletin also recognizes that LEP individuals may not ask for language services due to "cultural beliefs, deference, politeness, or unfamiliarity with SFPD's language access policy."[3] Given that SFPD has recognized these barriers, the draft DGO should remove the language "whenever an LEP person requests language services" from the Policy statement and place it in a section on "indicators". **By focusing the policy section on proactive policing, we remove the ambiguity that an LEP individual is responsible for identifying themselves**.

> **Proactive language assistance is critical when dealing with suspects because an officer's actions, or lack of action, will be scrutinized in court:** Officers received a tip about drug sales and approached two men drinking beer outside a residence. During the interaction, the officer asked Man #1 if he had any prior arrests. Man #1 appeared confused, so the officer asked Man #2 to translate for him. Man #2, who spoke limited English, opened a translation app on his phone, which the officer spoke into. Man #2 informed the officer that Man #1 had a previous arrest for drinking in a park.
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> The officer then conducted a pat search and asked "drugas (drugs)?" Man #1 responded "yep." The officer found the drugs and arrested him. At a preliminary hearing, the officer admitted he did not follow Department policy to request a Spanish-speaking officer or use translation services when engaging with a monolingual subject. The judge stated the officer had reasonable suspicion to engage in conversation, but suppressed the drugs and dismissed the case due to the officer conducting an invalid pat search.

Complying with COPS DOJ Collaborative Reform Recommendations

Thoughtfully integrating language from the expired LEP Department Bulletins into this draft will not only improve the DGO, but also ensure continued compliance with DOJ Collaborative Reform Initiative Recommendation 72.3, which advises SFPD to **limit the use of Department Bulletins to**

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[3] *Id.*

short-term direction and eliminate their continued re-issuance. The repeated issuance of the LEP Department Bulletin over twelve years indicates that it represents more than short-term direction and should therefore be incorporated into the DGO 5.20 revision.

Moving Away from Clear Procedures

Notably, one of the few changes in the draft policy is **the removal of SFPD's procedure for identifying primary languages**, which had been in DGO 5.20 since 2007. The policy instructed officers to use a language identification card to identify an individual's primary language. Identifying languages becomes particularly important during exigencies when timely connection to language services could alert officers to dangers or suspects. The importance of this practice is underscored by DPA investigations into allegations that Portuguese and Mayan speakers were improperly identified as Spanish speakers. Additional context from the expired bulletin could remind officers not to assume someone from Central and South America speak Spanish as their primary language, as these areas have many indigenous language speakers who may be limited Spanish proficient as well as LEP.

Incomplete Guidance for Field Contacts

Our case examples are not just about identifying shortcomings; they are about understanding the real-world challenges officers face and providing them with the tools and context needed to navigate to a successful outcome. To that end, the draft policy includes a section on "procedures for specific scenarios" and a sub-section on "field contacts, enforcement, and investigations," but it doesn't provide procedures. Given that 20% of our City's population is LEP, this policy needs to provide specific direction for common encounters, such as traffic stops, so officers can safely and effectively navigate these situations.

> **Review of Traffic Stop Sparks SFPD Expert Debate Over LEP Encounter**: During a traffic stop, an officer asked the driver for his license multiple times and the driver did not comply. The body-worn camera footage showed the driver say he was confused by the officer, did not speak English well, and requested an interpreter. The officer requested a Qualified Bilingual Member through dispatch as well as backup for an aggravated driver. Instead of waiting for a bilingual member, or contacting a telephonic interpreter, the officer ordered the driver to wait on the sidewalk. When the driver did not comply, the officer forcibly removed him from the vehicle.
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> One department expert who viewed the BWC footage opined that there was no LEP issue because the officer requested a bilingual member, the driver appeared to be speaking grammatical English, and the officer was within his right to move the driver to the sidewalk for scene safety. They added it appeared to be a tactic to prolong the citation.
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> A second department expert opined that the officer should have ceased all communication when the driver said he did not understand what was happening. They stated the officer violated the de-escalation provisions of DGO 5.01 *Use of Force* by failing to consider the language barrier with the driver.

The California Commission on Peace Officer Standards and Training (CA POST) provides guidance on "cross-cultural communication" in Learning Domain 42. The section on "verbal language skills" informs officers that "individuals who do not speak English may not understand why they are being stopped or approached by a peace officer." To help officers navigate these situations, **CA POST provides the following guidance**:

- Be patient
- Speak slowly and clearly
- Speak at a normal volume (Speaking louder will not help comprehension.)
- Face the person they are addressing (even when using a translator)
- Use short, simple sentences
- Pause frequently

- Allow enough time for the person to formulate responses
- Repeat statements or questions in different ways, if necessary
- Use gestures, actions, or written text to aid understanding
- Provide feedback and encouragement
- Summarize what the individual is saying to check comprehension

Our group should consider similar guidance for officers involved in routine field contacts which do not meet the threshold of an exigency. This should include references to de-escalation, establishing rapport, and vulnerable populations.

DOJ Law Enforcement Language Access Initiative: Practical Strategies and Principles

As part of the Law Enforcement Language Access Initiative, the DOJ published a veritable language access road map which includes: a model policy drafted with DOJ assistance, best practices steps, an LEP resource guide for Law Enforcement, a virtual training event, and recent Settlement Agreements from national origin discrimination investigations conducted under Title VI. **The DOJ welcomes stakeholders to use these resources, available through LEP.GOV, to further conversations around language access**.

The following case, which occurred in nearby Berkeley, was highlighted in the DOJ's virtual training. It serves as an extreme example of the consequences that have occurred when proper language assistance is not utilized, even in exigent situations.

> **DOJ Example[4]**: A bystander witnessed four men carrying a rolled-up rug to a van and saw a leg fall out. She intervened when the men dragged a young girl toward the vehicle. Arriving police were confronted with a dead body at the bottom of staircase and witnesses that only spoke Telugu, a language of south-central India. Due to the emergency, officers used one of the involved men as an interpreter and he convinced the police they were trying to rush the girls to the hospital. The death was later ruled an accidental carbon monoxide poisoning. A month later, an anonymous letter about the death led to an investigation which revealed the interpreter conducted a 15-year human trafficking scheme and had forced almost 100 women into slavery.

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[4] DOJ COPS Training Portal, Overcoming Language Barriers in Policing and Building an Effective Language Access Program, last accessed Aug. 26, 2024; Anita Chabria, His Own Private Berkeley, L.A. Times (Nov 25, 2001).

Learning from Denver: Why SFPD's Draft Language Access Policy Needs More Detail

In October 2018, the U.S. Attorney's Office and DOJ Civil Rights Division initiated an investigation to determine whether the Denver Police Department failed to provide language assistance service to LEP individuals from Burma.

In a 2022 Settlement Agreement with the DOJ, the City and County of Denver agreed to "Facilitate accurate identification of LEP individuals and the language spoken during contacts with DPD" in a new Language Access Policy and Plan.[5]

Ex. 1: Comparing Denver PD's Former Policy with SFPD's Draft Policy

2021 Denver Police Department Operations Manual 104.37 Persons with Limited English Proficiency	2024 SFPD Working Group Draft DGO 5.20 Language Access Services for LEP Persons
Personnel who encounter a person with limited English proficiency (LEP) skills will take all necessary and appropriate steps, consistent with their obligations, to establish and maintain timely and effective communication.	When performing law enforcement functions, members shall provide free language assistance to **LEP individuals whom they encounter** or whenever an LEP person requests language assistance services.

As shown above, **the former Denver PD policy and current SFPD Draft provide broad directives to offer language assistance but lack specific guidance on how to identify LEP individuals or assess their language needs**. This places significant reliance on officer discretion to determine when to provide language assistance and could lead to uneven results and increased liability for officers.

In a subsequent 2023 "Dear Law Enforcement Colleagues" letter, Assistant Attorney General Kristen Clarke highlighted DOJ's collaboration with the Denver PD and U.S. Attorney's Office as a successful example of incorporating LEP best practices to promote more seamless communication with LEP individuals. Assistant A.G. Clarke emphasized the importance of, "**ensuring there are detailed and comprehensive policies and procedures in place that provide personnel with guidance and direction on how to identify whether a member of the public is limited English proficient**."

Ex. 2: Excerpt from Denver PD's Updated Policy

C. **IDENTIFICATION OF LEP PERSONS.**

1. <u>Identification of LEP Persons</u>: When DPD personnel encounter a person who may be LEP, they must immediately determine whether that individual is LEP by using all necessary methods to ascertain LEP status. DPD personnel can determine if a person is LEP by asking open-ended questions requiring a narrative response. If the person is unable to provide a fluent narrative response in English, the person shall be deemed LEP and language assistance shall be provided. Other indicators that a person may be LEP include if the person: speaks in incomplete or fragmented sentences, uses words that suggest a request for language assistance, or switches from English into another language. DPD personnel should err on the side of providing language assistance when unsure of LEP status.

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[5] *MOU Between the U.S.A. and the City of Denver and Denver Police Department*, Department of Justice #171-16-55, at II. 2. b.

The Denver Police Department's 2022 LEP policy was drafted with DOJ assistance and submitted to U.S. DOJ for review and approval. **We should similarly challenge ourselves to draft a policy that meets DOJ best practices and submit the document for review and approval upon completion**.

About the San Francisco Department of Police Accountability's Policy Division

This report was prepared to fulfill DPA's mandate under San Francsico Charter Section 4.136(h) to provide recommendations concerning "policies or practices of the Police Department which could be changed or amended to avoid unnecessary tension with the public or a definable segment of the public while insuring effective police services."

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