CIVIL RIGHTS DEPARTMENT




# LANGUAGE ACCESS GUIDE

For State Agencies and State-Funded and State-Supported Programs

CIVIL RIGHTS DEPARTMENT • STATE OF CALIFORNIA •

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# INTRODUCTION

California law protects people from discrimination in programs, services, and activities run by, funded, or supported by the state.[1] This is codified in Government Code sections 11135 through 11139 and their implementing regulations. For simplicity, this Guide uses "Section 11135 rules" to refer to both these statutes and the regulations. The goal of the Section 11135 rules is to ensure state funds do not subsidize or encourage discrimination based on protected characteristics.

This guide explains language access responsibilities under Section 11135 rules. It is written for state agencies, local governments, contractors, grantees, and other covered entities.

This guide is for general information only. It is intended to help covered entities understand existing language access obligations under Section 11135 rules. It does not create new policy, rights, or obligations, and it does not replace the governing statutes, regulations, or legal advice of your or your entity's counsel. This Guide does not constitute legal advice.

This Guide does not cover every requirement that may apply to a covered entity. Other state or federal laws may also apply. Compliance with one law does not necessarily mean a covered entity has complied with all other laws.

[1] Gov. Code § 11135; Cal. Code Regs., tit. 2, §§ 14020, subds. (m), (ww), (xx), 14025.

# WHO MUST FOLLOW SECTION 11135 RULES, AND WHAT ENTITIES AND PROGRAMS ARE COVERED?

Whether Section 11135 rules apply depends on the type of entity or institution involved, the program or activity at issue, and whether the entity or institution receives state funding or other state support. Some entities are "covered entities" for Section 11135 rules because of what they are, such as state agencies. Other entities may be covered because they carry out a covered program or activity, or because they receive state funding or other state support.

**State support** means help, resources, or benefits from the State of California or a state agency to an entity, program or activity.[2] State support can include money and other kinds of support, including:

- Funding
- Grants
- Entitlements (benefits, services, or protections that are legally guaranteed if an entity or person is eligible)
- Loans
- Donations
- Cooperative agreements
- Subsidies
- Contracts
- Transfers
- Allocations of state funds or property
- Benefits
- Arrangements through which the state or a state agency provides aid, services, or benefits, including state personnel, state materials or equipment, or use or transfer of real property

Examples of covered entities receiving state support include:

- State and local law enforcement and emergency response agencies
- Private colleges and universities that receive state funding
- Hospitals and healthcare providers that accept Medi-Cal or other state funds
- Nonprofit or private organizations which receive state grant money, assistance, or other property.[3]

[2] Cal. Code Regs., tit. 2, § 14020, subd. (ww).
[3] Cal. Code Regs., tit. 2, § 14020, subd. (m).

# WHO DOES SECTION 11135 PROTECT?

Section 11135 rules protect people from unfair or negative treatment by a covered entity based on the following protected characteristics:

- Sex
- Race
- Color
- Religion
- Ancestry
- National origin
- Ethnic group identification
- Age (40 and over)
- Disability, including mental disability and physical disability
- Medical condition
- Genetic information
- Marital status
- Sexual orientation[4]

These rules also protect people from unfair or negative treatment based on:

- A perception that a person has a protected characteristic
- A person's association with another person who has or is perceived to have a protected characteristic[5]

Unfair or negative treatment that violates Section 11135 rules includes: [6]

- Discriminating against a person[7]
- Denying a person full and equal access to state-funded or supported services[8]
- Harassment[9]
- Coercion[10]
- Intimidation[11]
- Retaliation based on a protected activity, such as requesting translation, interpretation, or reasonable accommodations[12]

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[4] Gov. Code, § 11135(a); Cal. Code Regs., tit. 2, § 14020, subd. (jj).
[5] Gov. Code, § 11135, subd. (d); Cal. Code Regs., tit. 2, § 14020, subds. (g), (ff), (jj).
[6] Gov. Code, § 11135; Cal. Code Regs., tit. 2, §§ 14025, 14026.
[7] Gov. Code, § 11135; Cal. Code Regs., tit 2, §§ 14025, 14026.
[8] Gov. Code, § 11135; Cal. Code Regs., tit. 2, § 14020, subd. (b), 14025, 14026.
[9] Cal. Code Regs., tit. 2, § 14000, subd. (e); 14070.
[10] Cal. Code Regs., tit. 2, §§ 14000, subd. (e); 14020, subd. (b); 14070, subd. (b)(3)(E); 14072.
[11] Cal. Code Regs., tit. 2, §§ 14000, subd. (e); 14020, subd. (b); 14070, subd. (b)(3)(E); 14072.
[12] Cal. Code Regs., tit. 2, §§ 14000, subd. (e); 14071.

- Other adverse action[13]

# HOW DO SECTION 11135 RULES APPLY TO LANGUAGE ACCESS?

Language access means ensuring a person has full and equal access to programs and services regardless of the language they use to communicate.

A covered entity must take reasonable steps to help **people with limited English proficiency** (LEP) access its programs and activities.[14] This is called meaningful access.[15]

Meaningful access can also include providing **alternative communication services**.

# WHO IS A PERSON WITH "LIMITED ENGLISH PROFICIENCY" (LEP) UNDER SECTION 11135 RULES?

A person has limited English proficiency (LEP) if they:

- Do not speak English;
- Do not use English as their primary language; or
- Have limited ability to read, write, speak, or understand English.[16]

Primary language means the language a person uses most often to communicate.[17] This can include sign language or tactile sign language.[18] An LEP person may be able to speak, read, write, or understand some English.[19] An LEP person may **require alternative communication services** to meaningfully access a covered entity's services or benefits.[20]

# WHAT ARE ALTERNATIVE COMMUNICATION SERVICES?

**Alternative communication services** help a covered entity communicate with people with limited English proficiency or people with disabilities.[21] Using alternative

[13] Cal. Code Regs., tit. 2, §§ 14000, subd. (b); 1071, subd. (a).
[14] Cal. Code Regs., tit. 2, § 14101, subd. (a)(4).
[15] Cal. Code Regs., tit. 2, § 14101, subd. (a)(4).
[16] Cal. Code Regs., tit. 2, §§ 14100(d),
[17] Cal. Code Regs., tit. 2, § 14100(e).
[18] *Id.* § 14100(b).
[19] Cal. Code Regs., tit. 2, § 14333(b) [§ 14333(b) explains that some persons with particular types of disabilities may have "limited ability to understand English" and/or "limited functional ability to read, write, or speak English presented in standard visual or oral formats].
[20] *Id.* § 14101(a)(4).
[21] *Id.* § 14101(a)(4).

communication services ensures meaningful access for LEP people under Section 11135.[22]

Alternative communication services[23] may include:

- A qualified interpreter[24]
- A **multilingual employee** who can communicate directly with LEP people as part of their regular job duties[25]
- Written materials in a language other than English
- Written materials in another or accessible format, such as
- Braille
- Large print
- Audio recordings
- Secondary auditory programs (SAP)
- Digital formats
- Auxiliary aids and services, which are tools or services that help make communication effective for people with disabilities, such as:
    - Qualified interpreters
- Notetakers
    - Captioning
    - Assistive listening devices
- Teletypewriter devices (TTYs)
    - Videophones
    - Braille materials
    - Screen reader software
    - Large print materials
    - Optical readers
    - Speech-to-speech relay services
    - Accessible electronic or information technology[26]
- **Notice that free, alternative communication services are available**, including interpretation (spoken) and translation (written) services
- **Notice of where to file a complaint** if appropriate services are not provided

[22] *Id.* § 14101(a)(4).
[23] *Id.* § 14100(b).
[24] *Id.* §§ 14020(h)(1), (ll).
[25] *Id.* § 14100(c).
[26] Cal. Code Regs., tit. 2, § 14020, subd. (h).

## *Who is a qualified interpreter?*

A **qualified interpreter** is a trained professional who can communicate between two languages effectively, accurately, and impartially. Speaking more than one language *does not* make someone a qualified interpreter.[27]

A qualified interpreter must:

- Communicate information accurately in both languages
- Understand and correctly communicate technical terms and concepts specifically used by the covered program
- Follow professional standards for ethics, confidentiality, and impartiality
- Understand and follow the role of an interpreter or translator
- Have adequate education and training in interpreter ethics, conduct, practices, and confidentiality[28]

Qualified interpreters must be able to use specialized words needed for the communication.[29] The type of specialized words needed to communicate effectively sometimes depends on the services provided by a covered entity. For example, qualified interpreters working for a covered entity providing healthcare services must be able to interpret and use specialized medical terms.

## *Can covered entities use their multilingual employees as interpreters?*

Yes, covered entities may use *qualified* multilingual employees[30] as interpreters.

A **multilingual employee** is qualified to communicate orally in English and in another language well enough to interpret accurately and readily. Multilingual employees must meet the same standards identified under "Who is a qualified interpreter?".

A multilingual employee does *not* need to be able to read or write in the second language in every situation. Those skills are only required if:

- The job requires them, *or*
- They are needed to interpret a written document orally[31]

## *What does interpretation include?*

**Interpretation** means simultaneous or consecutive communication and can include:

- Spoken language
- Signed language
- Visual or tactile manual language

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[27] Cal. Code Regs., tit. 2, § 14020, subd. (ll).
[28] *Id.* § 14020(*ll*).
[29] Cal. Code Regs., tit. 2, § 14020, subd. (ll).
[30] Cal. Code Regs., tit. 2, § 14020, subd. (c).
[31] Cal. Code Regs., tit. 2, § 14020, subd. (c).

- Reading something written in one language (source language) and orally expressing it into another language (target language)

In some situations, more than one qualified interpreter may be needed to ensure effective communication.[32] For example, a person who speaks Mixteco (an Indigenous Mexican language) may need two interpreters if there is no available qualified interpreter from Mixteco to English. In this situation, effective communication might mean that the LEP person communicates with a Mixteco-to-Spanish interpreter, who would then communicate the message to a Spanish-to-English interpreter.

Interpretation may be provided in person or through remote technology, such as video remote interpreting (VRI)[33], videophones, captioned telephones, or video relay services.[34] Covered entities in rural, remote, or geographically isolated areas, and covered entities serving LEP people who speak rare languages or indigenous languages, may find a greater need to explore VRI and/or telephonic interpretation services.[35]

# DO COVERED ENTITIES NEED TO INFORM LEP PERSONS THAT LANGUAGE ASSISTANCE IS AVAILABLE?

Yes. A covered entity must notify LEP persons that free alternative communication services are available. This includes:

1. Notice that interpreter and translation services are available *at no cost*, and
2. Notice of where to file a complaint if the covered entity does not provide appropriate services[36]

Section 11135 rules do not require a specific form or notice. Some covered entities may have other, or additional, obligations to notify LEP persons about the availability of interpretation or translation services.[37] For example, covered entities receiving funds for healthcare from the federal government may have language access obligations apart from Section 11135 rules, under section 1557 of the Affordable Care Act.

[32] Cal. Code Regs., tit. 2, § 14020, subd. (ll).
[33] Cal. Code Regs., tit. 2, § 14020, subd. (bbb).
[34] Cal. Code Regs., tit. 2, § 14020, subd. (h)(1).
[35] Covered entities may also utilize existing resources to identify languages spoken by LEP people who come into contact with the covered entity, like *I Speak* cards (see an example from the California Courts Language Access Services program).
[36] Cal. Code Regs., tit. 2, § 14100, subd. (b).

# HOW DO COVERED PROGRAMS ASSESS IF THEY ARE PROVIDING MEANINGFUL ACCESS TO LEP PERSONS?

Whether a covered entity has taken reasonable steps to ensure meaningful access to LEP persons depends on the facts of a specific case. The regulations identify five factors to help a covered entity assess if it provides meaningful access to its programs and services for LEP persons.[38]

**A covered entity may examine other factors but, at a minimum, it must consider these five factors.**

Those five factors are:

1. The number or proportion of LEP persons the covered entity may serve or is likely to encounter
2. How often LEP persons come in contact with the program or activity
3. How important the program or activity is to people's lives
4. How important the communication is to a person's ability to access or be served by the program or activity
5. What resources the covered entity has available

These factors work as a balancing test. That means no single factor decides the answer by itself. Some factors may matter more than others in a particular situation. So, a covered entity must consider all of them together, and any other factors at its discretion, when deciding what reasonable steps may be needed to ensure meaningful access for LEP persons in a particular situation.

More information on each of the five factors required by Section 11135 rules is below.

## *Factor 1: The number or proportion of LEP persons the covered entity may serve or is likely to encounter*

Covered entities must determine how many LEP persons are eligible for, or are likely to use, their services and benefits. This may include people who are potentially eligible for the program's services and benefits or people in the geographic area served.[39]

A covered entity should consider the *number or proportion of* LEP persons who are eligible to be served or are likely to be encountered by the entity.

This means the covered entity may examine:

- How many LEP persons are eligible for service
- How many LEP persons the entity is likely to encounter

[38] *Id.* § 14101(a)(4).
[39] *Id.* § 14101(a)(4)(A).

- What share of the people eligible for service are LEP persons or
- What share of the persons the entity is likely to encounter are LEP persons[40]

Covered entities may use various sources to determine how many LEP people they serve, are likely to serve, or who are in the geographic area served. This could include, but is not limited to:

- Data collected by the covered entity about who uses the program, service, or benefits, such as intake and program applications where people list their primary language, records of language access requests, previous language services contracts or language services invoices
- Data collected by local governments or agencies about the population in the geographic area served, such as Human Relations Commission reports, Council of Government data and reports, Continuums of Care data and reports
- Data collected by federal government agencies, such as:
- Annual Point-in-Time Count reports collected by the U.S. Department of Housing and Urban Development
- United States Census Data
- California Census Data
- American Community Survey
- California Government Operations Agency Open Data Portal
- Additional open data portals are maintained by some state agencies
- Social Services data
- Organizations serving or collecting information on people who are LEP, like Refugee Resettlement Agencies or the Migration Policy Institute Data Hub

## *Factor 2: How often LEP persons come in contact with the covered entity's program or activity*

A covered entity must consider how often LEP persons come in contact with the program or activity.[41]

If covered entities regularly and/or repeatedly interact with LEP individuals, they may need immediately available language services and resources. This can include:

- Entering into contracts with qualified interpreters for telephone and video interpretation
- Recruiting multilingual staff
- Translating frequently used materials

[40] Cal. Code Regs., tit. 2, § 14101, subd. (a)(4)(A).
[41] Cal. Code Regs., tit. 2, § 14101, subd. (a)(4)(B).

- Pre-recorded telephone messages in multiple languages and
- Translated directional signs where a covered entity serves people[42]

If contact is less frequent, the covered program may obtain alternative communication methods on an as-needed basis.

### *Factor 3: How important the covered program or activity is to people's lives*

A covered entity must consider the nature and importance of the program or activity to people's lives.

Helpful considerations may include:

- Mission and goals of the program or activity
- Impact on LEP persons if they cannot access programs or activities, including actual or potential harm or danger to the person
- Availability (or lack) of similar or comparable programs or activities in the geographic location(s) served by the covered entity

### *Factor 4: How important the communication is for someone to access the program or activity*

A covered entity must consider how important the communication is to a person's ability to access or be served by the program or activity.

Helpful considerations may include:

- Whether there are other local or regional entities serving LEP people.
  - For example, community organizations or networks, like *Promotoras* (community health workers serving Spanish-speakers).

### *Factor 5: What resources the covered entity has available*

A covered entity must consider the resources available to it. Limited resources do not remove the obligation to ensure meaningful access.

# WHAT DOES A COVERED ENTITY DO WHEN SOMEONE COMPLAINS ABOUT LANGUAGE ACCESS ISSUES OR OTHER DISCRIMINATION?

The California Civil Rights Department (CRD) has a specific intake form for individuals alleging a covered entity violated Section 11135 rules.

[42] *Id.* § 14101(a)(4)(B).

A covered entity may give the CRD intake form to a person who says they experienced discrimination or denial of full and equal access.

CRD accepts intakes by phone, email, mail, and through the California Civil Rights System online portal:

- People needing interpretive services can contact CRD's Language Access Coordinator at 844-821-3465 or language.access@calcivilrights.ca.gov
- People needing disability accommodations can contact CRD's Americans with Disabilities Act Coordinator at 844-541-2877 or accommodations@calcivilrights.ca.gov

# WHAT DOES A COVERED ENTITY DO IF THEIR CONTRACTOR, GRANTEE, OR A LOCAL AGENCY VIOLATES SECTION 11135 RULES?

State agencies have specific obligations when they believe a contractor, grantee, or local agency violated Section 11135 rules.[43]

When a state agency reasonably believes a contractor, grantee, or local agency receiving state funds violated Section 11135 rules, they must:

1. Notify the contractor, grantee, or local agency about the violation and
2. Submit a complaint to the California Civil Rights Department (CRD)

CRD provides a specific intake form for state agencies.

CRD accepts intake forms by phone, email, mail, and through the California Civil Rights System online portal.

[43] Gov. Code, § 11136.

# APPENDIX

## *Examples of ensuring meaningful access for LEP people under Section 11135 rules*

***Public Hospital – County A***

A public hospital emergency room in County A is considering its obligation to provide Vietnamese language services.

**Factor 1: The number or proportion of LEP persons the covered entity may serve or is likely to encounter**

County A has an LEP Vietnamese-speaking population of 9% according to census information. However, according to additional data from school systems, community organizations, religious institutions, and social services organizations, the estimated LEP Vietnamese-speaking population in County A is likely 15%.

**Factor 2: How often LEP persons come in contract with the program or activity**

The emergency room is the closest hospital facility to many neighborhoods with a high concentration of LEP Vietnamese speaking individuals. The emergency room comes in contact with LEP Vietnamese speaking individuals on a daily basis.

**Factor 3: How important the program or activity is to people's lives**

Emergency room services are vital to people's lives. Delaying access to emergency room services can have life or death consequences.

**Factor 4: How important the communication is to a person's ability to access or be served by the program or activity**

Effective communication is essential to access emergency room services. Effective communication is necessary to describe symptoms, understand treatment, and consent to medical procedures. Communication delays could have a serious or life-threatening impact on individuals' health.

**Factor 5: What resources the covered entity has available**

The hospital devotes some resources to language access services. The hospital is a nonprofit receiving federal and state funding, as well as private donations and grants. The hospital is part of a network where language assistance services and materials could be shared.

Based on a balance of the factors, it is very likely that the hospital needs to provide meaningful language access services in Vietnamese.

***Parks Department – City B***

The Parks Department in City B is considering its obligation to provide language access services in Ukrainian.

> **Factor 1: The number or proportion of LEP persons the covered entity may serve or is likely to encounter**
>
> City B has a population of roughly 3% of LEP Ukrainian speaking individuals according to census data, as well as additional data from school systems, community organizations, religious institutions, hospitals, and social services organizations.
>
> **Factor 2: How often LEP persons come in contract with the program or activity**
>
> City B Parks Department encounters very few people that speak Ukrainian.
>
> **Factor 3: How important the program or activity is to people's lives**
>
> City B is a small city with few parks, centers, and programs administered by its Parks Department. The main function of City B's Parks Department programs is to maintain parks that are accessible to the public.
>
> **Factor 4: How important the communication is to a person's ability to access or be served by the program or activity**
>
> Limited to no communication is necessary to access the public parks.
>
> **Factor 5: What resources the covered entity has available**
>
> The Parks Department has very limited funding and staff but is part of a network of local and state agencies that could share language assistance services and materials.

The Parks Department would likely need to provide minimal language access services to comply with Gov. Code section 11135. It is unlikely that the Parks Department would be required to provide qualified interpreter services, employ multilingual staff, or translate all written flyers and handouts into Ukrainian.

***Parks Department – City C***

The Parks Department in City C is considering its obligation to provide language access services in Ukrainian.

Factor 1: City C has a population of roughly 3% of LEP Ukrainian speaking individuals according to census data, as well as additional data from school systems, community organizations, religious institutions, hospitals, and social services organizations.

Factor 2: The main function of the Parks Department is to maintain the city's public parks as well as run youth recreational programs and camps. City C Parks Department has daily or weekly encounters with LEP Ukrainian speaking individuals, depending on the season. Approximately 12-15% of parents of youth attending the Parks Department's summer recreational camp are LEP Ukrainian speakers.

Factor 3: City C's youth recreational programs serve as an important source of seasonal affordable childcare for City C's population, and they are particularly relied upon by City C's low-income communities. LEP Ukrainian speakers make up a disproportionate percentage of City C's low-income community.

Factor 4: Written and verbal communication is necessary for parents to access the youth recreational programs, sign consent forms, and communicate with staff in the event of injuries or emergencies over the course of programs.

Factor 5: The Parks Department has very limited funding and staff but is part of a network of local and state agencies that could share language assistance services and materials. The Parks Department also receives private grants and assistance for its youth programs.

The Parks Department would likely need to provide language access services in Ukrainian, including, but possibly not limited to, occasional qualified interpreter services, translating written materials, and providing accessible formats.