

Summary of MLRI/MIRA Settlement of EA Language Access Case

The Emergency Assistance (EA) Program, which is administered by the Department of Housing and Community Development (DHCD), provides shelter for low-income families with children under the age of 21 and pregnant women who have no feasible alternative housing.

A substantial number of EA applicants and participants do not speak or read English as their primary language. Despite the longstanding requirements of federal and state civil rights laws and DHCD's own policies, a number of these families do not receive the language services and assistance they are entitled to and may suffer serious consequences as a result. To address this situation, in March 2015 the Massachusetts Law Reform Institute (MLRI) and the Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA) filed a civil rights complaint against DHCD with the U.S. Department of Housing and Urban Development (HUD) on behalf of Limited English Proficient (LEP) EA applicants and participants.¹ HUD then referred the complaint to the Massachusetts Commission against Discrimination (MCAD). In August 2017, after protracted negotiations, the parties entered into a settlement agreement intended to improve language access services for LEP EA families.²

The settlement will be implemented in stages over the next several months. Some of the provisions and services are new, while others clarify and strengthen existing policies. Several language access problems are not addressed in the settlement and may require future advocacy.

1. Language Access Problems in the EA Program

Limited English Proficient (LEP) families, the largest group having Spanish as their primary language, often cannot navigate the EA program, may be shut out of benefits to which they are entitled, and risk sanctions or termination for failure to respond to or comply with documents, rules or instructions (written or oral) provided in English only. For example, at the time the complaint was filed:

¹ Attorney Ruth Bourquin, while at MLRI, developed the claims, filed the complaint and spearheaded the negotiations. She was joined by Tere Ramos, the MLAC Language Access Attorney. When Ruth moved to GBLS, Judith Liben, Senior Housing Attorney at MLRI joined Tere as counsel with assistance from Andrea Park, Housing and Homelessness Attorney at MLRI.

² This summary, the settlement, the Language Access Plan, and other relevant documents will soon be available on masslegalservices.org at www.masslegalservices.org/content/emergency-assistance-language-access-settlement-plan-and-summary or search for "language access". Many of the documents will be posted on the DHCD EA website.

- LEP families were often given important program documents (known as “vital” documents), in English only - even when DHCD had translated the documents into their primary languages.
- Many shelters, including those with no bilingual staff, did not use language interpretation phone services and thus failed to meaningfully communicate with LEP EA residents which could result in noncompliance or terminations.
- A multilingual (“Babel”) notice attached to many DHCD documents referred families to a language assistance phone number that often did not provide the necessary language services.
- There was no designated EA staff person to oversee language access issues, no clear complaint procedure, and no EA Language Access Plan setting out the basic features of EA language access policies.

2. Key Provisions of the Settlement

- **Language Access Plan.** The Department has adopted an EA Language Access Plan (LAP) which describes various aspects of EA language services.

Language Access Coordinator. The settlement creates the position of Language Access Coordinator to oversee EA language access services, receive language access complaints, and act as a point person for questions or concerns related to language access. The Coordinator will also monitor DHCD’s provision of oral interpretation services, oversee translation of vital documents, create a directory of bilingual and multilingual staff, compile data and reports, and train staff. The current Language Access Coordinator is Brenda O’Donnell (brenda.odonnell@state.ma.us, 617-573-1381)

- **Complaint Procedure.** DHCD will institute a standardized complaint procedure. LEP families who did not receive the language services they are entitled to may file a complaint with the Language Access Coordinator. This should be especially helpful for the many EA families who do not have advocates or lawyers. The complaint form will be posted on the DHCD EA website and attached to the Language Access Plan. Possible remedies for language access problems include, but are not limited to: delaying or rescinding a DHCD action, re-issuing vital documents in the family’s primary language, providing telephone or in-person interpretation services to the family, and tolling relevant deadlines. EA families may also raise lack of language access as a good cause defense in hearings and other situations that allow families to show good cause.
- **Vital Documents.** The vital documents are posted on the DHCD EA website. The standardized portions of these documents must be translated into the most common languages in the EA program: Spanish, Haitian Creole, Arabic, and Portuguese (also

understood by Cape Verdean Creole speakers in written form). Families whose primary language is one of these five languages have the right to receive the vital documents in their language from DHCD, shelters and hotels/motels. DHCD's contracts with shelter providers now require staff to provide EA families with vital documents in their primary language, if those documents have been translated. At least every two years, DHCD will update the list of the five most common primary languages among EA applicants and translate vital documents into any new languages on the list.

DHCD will translate only the standardized, form sections of these vital documents, not the individualized portions or narratives. However, EA families have a right to and may request oral interpretation of untranslated documents including narrative portions. Families may want to record those oral interpretations or take notes. EA families may also call the phone number on the multilingual notice (see below) to request interpretation of any untranslated text.

- **Required Oral Interpretation.** DHCD and shelter contractors must offer oral interpretation of communications, conversations and untranslated written information into the family's primary language. Oral interpretation must be provided in most circumstances no matter what the language is. Staff may act as interpreters if they are fluent in an LEP person's primary language. If no bilingual staff is available to interpret, DHCD and shelter staff will use a telephone interpreter service.

DHCD and contractors must avoid asking friends, family, or other untrained volunteers to act as interpreters. Children may never act as interpreters, except when there is an emergency, or, in non-emergency situations, if the family prefers to use a child over the age of 14 as an interpreter.

Most EA documents have an attached multilingual ("Babel") notice in 25 languages informing families they can call a DHCD phone number for free language assistance. Families may access interpretation services on their own by calling the number listed on the Babel notice. In order to improve this service which has had only limited success in the past, the Language Access Coordinator will train staff receiving the calls and monitor the operation of this phone system, including occasional testing of responses. Complaints about the effectiveness of the Babel notice telephone number should be referred to the Language Access Coordinator and reported to MLRI.

- **Identifying, Tracking, and Recording a Family's Primary Language.** At the first point of contact with EA applicants, DHCD employees must ask every applicant which language they prefer to communicate in and record this language in the department's computer system as the applicant's primary language. EA applicants have the right to self-identify as LEP speakers, choose their own primary language, and change that

designation at any time. By September 30, 2017 all DHCD offices and shelters should have “I speak” cards that allow an LEP speaker to point to their language. DHCD’s contracts with shelter providers now require shelter staff to check EA families’ primary language upon placement and before issuing documents or taking any action related to an LEP family.

DHCD will report to MLRI on their efforts to improve the software that tracks applicants’ primary language, so that it is easier for DHCD employees and contractors to look up a family’s primary language. If at any point they find that the primary language noted in this tracking system is incorrect, DHCD or shelter staff must change the field to indicate the correct primary language. There will be more work to do on this issue.

- **Staff and contractor training.** MLRI will work with DHCD to develop improved mandatory language access trainings and update the outdated language access protocols which contain detailed instructions to staff about how to handle language access issues.

3. Implementing the Settlement to Help LEP EA Families

MLRI will work with DHCD and EA advocates to fulfill and improve terms of the settlement, and work for better policies and practices including those that may not be addressed in this settlement. The EA program is administered in scores of locations around the state by hundreds of staffers. It will take time and vigilance to improve the experiences of LEP families in all these settings and there will undoubtedly be many gaps and problems along the way that we need to hear about. **Please email or call Judith Liben, Tere Ramos or Andrea Park at MLRI to report on the experiences of LEP applicants and participants to guide future advocacy and we will report back to advocates periodically.**³

³ **For example, please report to us about your experiences with:**

- the Language Access Coordinator;
- the complaint process;
- the Babel phone line at DHCD (listed on the multilingual notice);
- shelters’ use of the telephone interpretation services;
- LEP families whose primary language is one of the five listed above receiving or not receiving vital documents in those languages;
- LEP families receiving noncompliance or termination notices, or sanctioned in some other way without required language resources and assistance.

Thank you so much for your work with EA families. We look forward to hearing from you to make sure that EA families are receiving the language services they are entitled to.

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