



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

Juliana Chereji – Family Defense Practice

BROOKLYN DEFENDER SERVICES

Presented before

The New York City Council

Committee on Governmental Operations and Committee on Immigration

Oversight Hearing on

Local Law 30 of 2017: Language Access Implementation Plans.

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My name is Juliana Chereji and I am a supervising attorney in the Family Defense Practice (FDP) of Brooklyn Defender Services (BDS). Our organization provides multi-disciplinary and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy in nearly 35,000 cases involving indigent Brooklyn residents every year.

Since its inception, BDS' Family Defense Practice, has sought to bring the highest quality interdisciplinary representation to our clients, while helping them obtain the benefits and services they need out-of-court to keep their families safe and strong. I have represented primarily Spanish-speaking clients during my tenure at BDS since 2009 and have done advocacy surrounding language access issues since 2014.

I thank the New York City Council Committee on Governmental Operations and the Committee on Immigration, and in particular Chairpersons Fernando Cabrera and Carlos Menchaca, for the opportunity to testify about language access issues in the New York City Administration of Children's Services (ACS).

Background

With over 15% of our clients speaking a primary language other than English, FDP knows how important it is for our clients with limited English proficiency (LEP) to have attorneys and social workers who can communicate with them in their primary language. It enhances the attorney-client relationship and vastly improves the quality of representation that FDP provides our clients.¹

FDP recruits attorneys and social workers from different backgrounds who speak many languages because clients greatly benefit from working with attorneys and social workers who speak their primary language. Reflecting the diversity of Brooklyn, FDP staff speaks over ten different languages, including Spanish, Russian, Haitian Creole, Mandarin, Cantonese, Arabic, French, Korean, Urdu and Bengali. Over a third of FDP's staff is bilingual. Clients who do not speak English as their first language benefit from being paired with FDP staff attorneys who speak their language, and who, in many cases, have contacts with community-based agencies and familiarity with a client's cultural or religious background, a factor which is often relevant in an Article 10 case. FDP also uses telephonic interpretation services to translate for LEP clients that speak a language other than those spoken by our staff.

While having a legal advocate that speaks your language makes an enormous difference in the outcome of cases, it is equally important for our clients to have access to services in their native language as they navigate all aspects of the child welfare system in Family Court, in meetings with their ACS caseworker, or when engaging in programs and other services. Our clients' ability to communicate with ACS staff is critical to keeping their families stable and together, yet for years, our clients have experienced problems with communicating with ACS staff who do not speak their language.

FDP regularly raises language access issues with ACS officials, both by email and in-person meetings with managerial staff. In November 2015, BDS submitted a letter to then-Commission Gladys Carrión about language access issues that we encountered on a regular basis. Three years later, many of these same problems continue to have a negative impact on our clients. In the spring of 2018, BDS, along with other family defense providers citywide, met with staff for Councilmembers Stephen Levin and Margaret Chin of the New York City Council to discuss language access issues in the child welfare system.

Despite ACS' administrative efforts and policies enacted through its Language Access Implementation Plan required by Local Law 30, our LEP clients still regularly encounter problems, especially when assigned caseworkers who do not speak the same primary language as they do.

Lack of Quality Interpretation Services

¹ See, e.g., Jayesh M. Rathod, *The Transformative Potential of Attorney Bilingualism*, 46 U. MICHIGAN J. LAW REFORM 863-920 (2013).

ACS' Language Access Implementation Plan entitles LEP families to have "full access to in-person and telephonic interpretation services in over 200 languages (including sign language) through ACS language services vendors," interpretation services through bilingual ACS staff, or services from ACS staff in their primary language.²

While the New York State Office of Court Administration is responsible for providing interpretation services at court hearings, ACS policy requires these services to be available 24 hours per day, 7 days per week, and to be provided in "all interactions between ACS staff and clients who are LEP, deaf, or hearing impaired" for all other interactions with ACS.³

Nevertheless, BDS often witnesses and hears from our clients that either inappropriate interpretation services are being used or that no interpretation services are being used at all:

- Case workers often incorrectly assume and assert that our clients understand English even when BDS has clarified to them that our clients do not meaningfully understand English enough to communicate regarding their child welfare case.
- Instead of calling interpreter services, ACS case workers may use our clients' children (including children that are subjects in their cases), other family members, and even the other respondents in their case to interpret complex and sensitive information.
- Rather than providing an interpreter, ACS caseworkers may force families to converse in English during supervised visits, even if their household language is a language other than English, so the caseworker can monitor what is being said.
- Our LEP clients are often not made aware of interpretation or translation services that ACS offers or may feel reluctant to assert their right to interpretation services.
- In some cases where interpretation services are utilized, case workers have used an interpreter who speaks a different specific dialect from the one our client speaks or even an entirely different language, diminishing the quality of the conversation and the accuracy of the information that is being relayed. ACS often does not make a sufficient effort to ensure that culturally competent interpretation services are offered.
- Case workers often express concerns about what our clients are saying to their children during supervised visits when the case workers do not understand their language. The case workers then have additional people observe the visit to monitor their language which greatly reduces the quality of the visits.

² The Mayor's Office of Immigrant Affairs and the Mayor's Office of Operations, *Local Law 30 Report* (June 30, 2018), available at <https://www1.nyc.gov/assets/immigrants/downloads/pdf/moia-report-LL30-june-2018.pdf>.

³ *Ibid.*

- BDS attorneys often witness ACS caseworkers using telephonic interpretation services on speaker phone in public areas of family court to discuss sensitive information in front of other people not involved in our clients' case. Forcing clients to discuss sensitive information in public diminishes the effectiveness of case work contact and erodes trust between parents and caseworkers.

Client Stories

In August, 2018, BDS arraigned **Mr. H.**, a native Uzbek speaker. Mr. H. speaks a little Russian and very little English, but enough of both to muster basic conversation. Two BDS attorneys, including one supervisor, attempted to speak with him in English but were not able to have a full and complete conversation with an acceptable level of understanding for a legal proceeding. BDS requested at multiple points that the court provide an Uzbek-language interpreter but the court apparently could not find one. Instead, a Russian interpreter was provided. Mr. H. said multiple times that he did not speak Russian well and that he needed an Uzbek interpreter. However, he had been in court all day waiting for an Uzbek interpreter. He later told his attorney that under the circumstances he felt pressured to use the Russian interpreter. He was arraigned without understanding many substantive portions of the court hearing, what was being asked of him, or what his rights were.

Since the arraignment, from at least August 9 until October 12, he did not see his child even though he desperately wanted to see them. Though OCA was responsible for interpretation in court, based on our understanding of his interactions with ACS, his Child Protective Special (CPS) almost always contacts Ms. S without a translator and expects him to be able to communicate in English. While he can discuss logistical and other mundane issues in English, Mr. H. and counsel have been adamant that he needs an Uzbek interpreter when he is discussing anything of substance.

Finally, ACS and FLCS have requested that Mr. H. engage in various parenting/ DV courses and alcohol treatment. Mr. H. has told his counsel on multiple occasions that he is happy to engage in these services. Counsel for Mr. H. has told FCLS that they should find a language-appropriate referral. On at least four occasions, counsel for Mr. H. told the FCLS attorney assigned to this case that Mr. H. needs Uzbek-language accommodations for his services and for communication with the CPS. FCLS insisted each time either that FCLS had seen the client speak English with the CPS or that the client spoke Russian, or both. None of the attorneys working on this case speak Russian, but BDS produced a Russian-speaking attorney before an October Preliminary Conference. The Russian-speaking attorney attempted to speak with Mr. H. in Russian in front of the FCLS attorney. The Russian-speaking attorney they certified to the FCLS attorney that Mr. H. indeed spoke "very bad Russian." Despite the ACS Language Access Implementation Plan requiring interpretation services for interactions, ACS staff continued to fail to provide Mr. H. with appropriate translation in his native Uzbek language.

BDS arraigned **Mr. B.**, a native Uzbek speaker, in September, 2018. He arrived in court around 9:30 AM and was forced to wait for an Uzbek interpreter to arrive. Before BDS was assigned,

his BDS attorney witnessed Mr. B. attempting to ask his ACS caseworker many questions, partially using a translation app on his phone. His caseworker kept telling him that an interpreter was coming and he should wait and talk to his attorney. Around 12:30 PM, his caseworker, at the urging of a court officer, suggested he work with a Russian interpreter. Mr. B. refused. The Uzbek interpreter arrived around 4:15 PM and he was able to have counsel assigned.

After intake, FCLS asked Mr. B.'s BDS attorney if he knew of any Uzbek-speaking providers to whom Mr. B. could be referred for a domestic violence accountability program. Shortly thereafter, Mr. B. allegedly told his caseworker that he would not be doing services unless ordered by the court, which led FCLS to believe they had no further responsibility to find an appropriate provider. However, through appropriate translation services, Mr. B. expressed a different position to his BDS attorney. FCLS's position may be based, at least in part, on the caseworker's inability or unwillingness to communicate with him using a translator, as well as their inability to actually find an appropriate provider.

Recommendations

While the goals and policies outlined in ACS' Language Access Implementation Plan should ensure LEP families are receiving the interpretation and translation services they need, our experience shows that public-facing staff often do not follow the policies, which can confuse our clients and exclude them from full participation in their cases.

- Because many respondents do not feel comfortable asking for interpretation services or may not know they have the right to ask, ACS staff must be trained to proactively offer interpretation and translation services in every case, even if there is an assumption that the client speaks English.
- Whenever possible, ACS should assign case workers that speak the same language as the parents.
- ACS should include language access protocol review in supervisory review between public-facing staff and their supervisors.
- ACS should make their best efforts to refer parents to outside programs and services that are culturally competent and offer interpretation services.

Conclusion

BDS thanks the Council for ensuring ACS and other city agencies create and implement language access policies through Local Law 30. It is crucial to all of our clients' cases and to their families that they are able to effectively communicate with their caseworkers and other ACS staff. When public-facing ACS staff members are not compliant with ACS' language access protocols, our LEP clients are unable to fully participate in their cases and risk further

instability in their families' lives. We urge the Council to use its power to hold ACS accountable in enforcing its implementation plan and ensure New York parents and families can effectively communicate with ACS.

Thank you for your time and consideration of this important issue. If you have any questions, please feel free to reach out to Daniel Ball, Communications & Development Coordinator, 718-254-0700 ext. 579 or dball@bds.org.