

October 5, 2022

VIA EMAIL (senkouchi@capitol.hawaii.gov) **VIA EMAIL** (repsaiki@capitol.hawaii.gov)

The Honorable Ronald D. Kouchi
Senate President
415 South Beretania Street
Hawaii State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki
Speaker, House of Representatives
415 South Beretania Street
Hawaii State Capitol, Room 431
Honolulu, Hawaii 96813

Re: Audit of the Office of Language Access, Report No. 22-10

Dear President Kouchi and Speaker Saiki:

Please find attached a copy of Report No. 22-10, *Audit of the Office of Language Access*, along with a copy of the Auditor's Summary. The audit was performed pursuant to Article VII, Section 10 of the Hawaii State Constitution and Section 23-4, Hawaii Revised Statutes, which authorizes the Auditor to conduct post-audits of transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions.

The report is accessible through the Office of the Auditor's website at:
<https://files.hawaii.gov/auditor/Reports/2022/22-10.pdf>.

The summary is also accessible through the Office of the Auditor's website at:
<https://files.hawaii.gov/auditor/Overviews/2022/22-10AuditorSummary.pdf>.

If you have any questions about the report, please contact me.

Very truly yours,

Leslie H. Kondo
State Auditor

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Attachments

cc/attach: Members of the Senate
Members of the House of Representatives
Carol Taniguchi, Senate Chief Clerk
Brian Takeshita, House Chief Clerk

Auditor's Summary

Audit of the Office of Language Access

Report No. 22-10

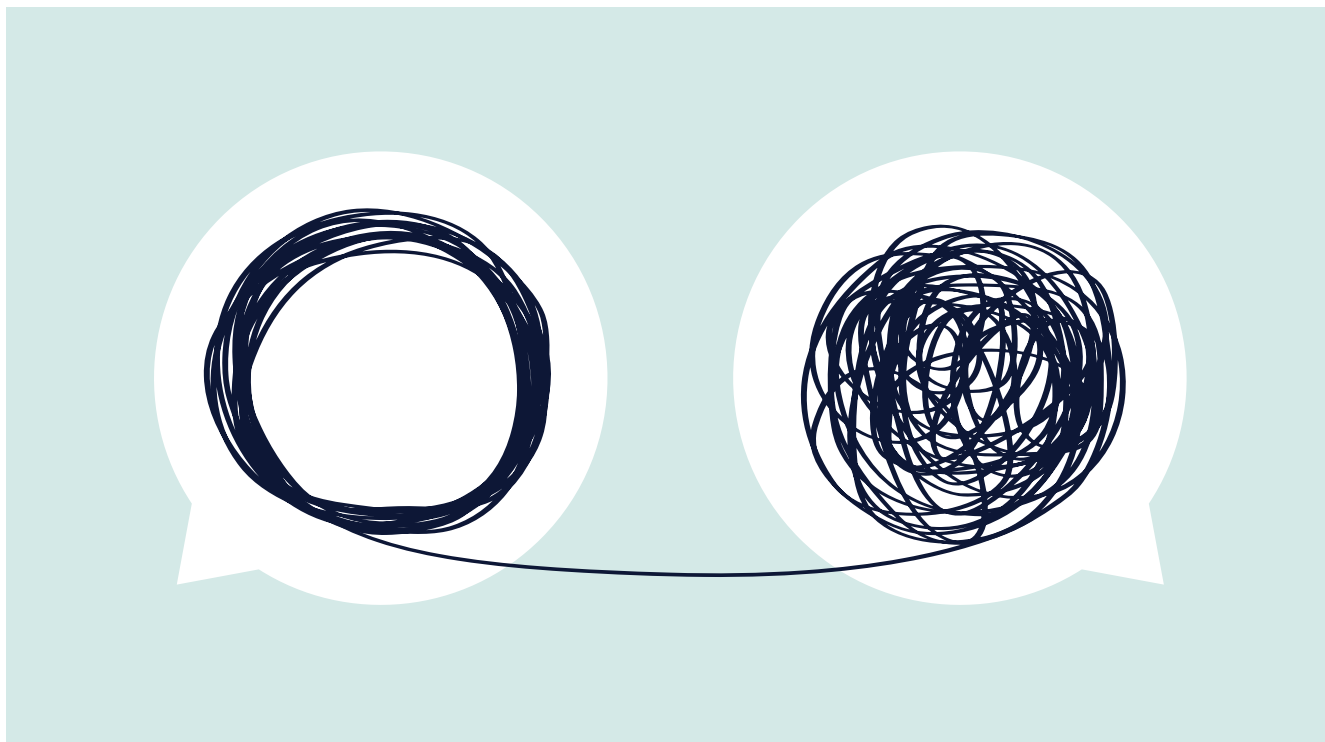


ILLUSTRATION: ISTOCK.COM

ACCORDING TO THE 2020 State of Hawaii Data Book, more than 158,000 individuals residing in Hawai'i are limited English proficient. For this population, interpreters, translators, and other language access-related services may be needed to help navigate government activities such as court proceedings, as well as to understand rights and responsibilities related to public housing, driver's license examinations, voting procedures, unemployment benefits, and public health services associated with the COVID-19 pandemic.

In 2006, the Legislature established the Office of Language Access (OLA) to address the needs of limited English proficient individuals in Hawai'i and to ensure they have meaningful access to state services, programs, and activities. OLA is responsible for, among other things, ensuring compliance with language access laws by all state offices, including those attached to the legislative and judicial branches of state government, and organizations that receive state funding, which the law refers to as "covered entities."

OLA is responsible for providing training and technical assistance to agencies in developing and implementing language access plans; educating the public about their language access rights; coordinating language access efforts

Of the 26 plans on the website as of October 2021, we found only one (Department of Budget and Finance) included a memo indicating that the plan had been reviewed and approved by OLA; however, the memo was nearly 15 years old.

among various organizations and stakeholders; and administering a language access resource center to address the need for qualified language interpreters and translators. OLA is also required to review and monitor each agency's language access plan to ensure it provides reasonable assurance that limited English proficient persons will have meaningful access to the services provided by the state agency.

What we found

We found that OLA has done little of consequence to address the language access needs of limited English proficient persons or to ensure meaningful access to services, programs, and activities offered by state agencies and covered entities. OLA is not performing obligations required by its enabling statute, Chapter 321C, Hawai'i Revised Statutes (HRS), that the Legislature clearly believed were necessary to address the language access needs of the state's limited English proficient population. For example, OLA does not "provide oversight and central coordination to state agencies in their implementation of language access requirements" or "provide technical assistance to covered entities in their implementation" of the law.

Instead, we found an agency whose efforts to review and monitor language access plans, which should ensure that agencies have a process through which they will provide people who are limited English proficient meaningful access to services, programs, and activities, is nothing more than a paper exercise. When it created OLA, the Legislature delegated its policymaking authority to OLA, requiring the agency to promulgate administrative rules to provide the specific direction necessary to ensure meaningful access. Because OLA has not adopted administrative rules to, among other things, empower itself with the authority to approve or reject an agency's language access plan, agencies can ignore OLA's comments and recommendations about their respective plans – which our audit found is what agencies generally do. As a result, OLA characterizes its reviews of language access plans as "feedback" that it "hopes" agencies will take into account in the next update of their language access plans.

More akin to comments, these "reviews" do little – if anything – to ensure plans comply with the law. And, we found OLA has posted agencies' language access plans that often are nothing more than a verbatim recitation of the factors listed in the statute that agencies must consider in developing their respective plans. Moreover, OLA posts language access plans "as is," without any accompanying information. Posting these plans without any indication that they are current or have been approved by OLA provides little, if any, assurance that an agency has a reasonable plan to address the language access needs of limited English proficient persons who seek access to the agency's services, programs, or activities.

In addition, OLA's Language Access Resource Center (LARC) is required by statute to maintain a publicly available roster of language interpreters and translators that includes each individual's qualifications and credentials based on OLA guidelines and in consultation with the Language Access Advisory Council.

While OLA does maintain a roster of language interpreters and translators on its website, that roster does not include any OLA-approved qualifications and credentials as the statute directs. In fact, we found that applicants are not required to show proof of their qualifications and competency before they are added to the roster.

Why did these problems occur?

OLA's Executive Director describes Chapter 321C, HRS, as a "law without teeth." He points out that the law does not specifically authorize OLA to approve or reject agencies' language access plans and does not require agencies to address recommendations that may arise from OLA's review of those plans. However, Chapter 321C requires OLA to establish and adopt administrative rules, a power the Legislature conferred to OLA to provide the specific direction to agencies and covered entities about their language access plans as well as the processes by which OLA intended to ensure limited English proficient persons have meaningful access to services. OLA had started the rulemaking process sometime in 2016 – a decade after it was created – but the effort ground to a halt in 2018.

Through administrative rules, OLA could give the language access law "teeth." For instance, OLA should, among other things, establish its expectation with respect to the language access plans agencies must submit, including the requirement that those plans be approved by OLA; OLA should establish requirements that must be met for an agency's language access plan to be posted on OLA or agency websites; OLA should create a process through which persons who are limited English proficient can obtain OLA's help to obtain language assistance, as contemplated by the statute; and OLA should establish the criteria interpreters and translators must meet to be included on LARC's roster.

Why do these problems matter?

Almost 16 years after it was established, OLA remains a partially formed organization, conducting its day-to-day operations without having first established and clarified the organization's direction, duties, and authority. The result: many activities that are nothing more than paper exercises, with questionable purpose and effectiveness and little connection to OLA's statutory role. In addition, we found LARC has not become the "centralized resource" that the Legislature determined was needed to grow the pool of language interpreters and translators and address the needs of the state's limited English proficient population. OLA has done little to verify that the self-described interpreters and translators on its roster are qualified to provide competent and accurate services. It has not even defined the terms "qualified," "competent," and "certified" as they relate to the language interpreters and translators it hopes to recruit and retain.

In short, OLA is not the agency that the Legislature intended to address the language access needs of Hawai'i's limited English proficient population.

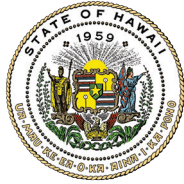
Audit of the Office of Language Access

A Report to the Governor
and the Legislature of the
State of Hawai'i

Report No. 22-10
October 2022



OFFICE OF THE AUDITOR
STATE OF HAWAII



OFFICE OF THE AUDITOR STATE OF HAWAI'I

Constitutional Mandate

Pursuant to Article VII, Section 10 of the Hawai'i State Constitution, the Office of the Auditor shall conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions.

The Auditor's position was established to help eliminate waste and inefficiency in government, provide the Legislature with a check against the powers of the executive branch, and ensure that public funds are expended according to legislative intent.

Hawai'i Revised Statutes, Chapter 23, gives the Auditor broad powers to examine all books, records, files, papers, documents, and financial affairs of every agency. The Auditor also has the authority to summon people to produce records and answer questions under oath.

Our Mission

To improve government through independent and objective analyses.

We provide independent, objective, and meaningful answers to questions about government performance. Our aim is to hold agencies accountable for their policy implementation, program management, and expenditure of public funds.

Our Work

We conduct performance audits (also called management or operations audits), which examine the efficiency and effectiveness of government programs or agencies, as well as financial audits, which attest to the fairness of financial statements of the State and its agencies.

Additionally, we perform procurement audits, sunrise analyses and sunset evaluations of proposed regulatory programs, analyses of proposals to mandate health insurance benefits, analyses of proposed special and revolving funds, analyses of existing special, revolving and trust funds, and special studies requested by the Legislature.

We report our findings and make recommendations to the governor and the Legislature to help them make informed decisions.

For more information on the Office of the Auditor, visit our website:
<https://auditor.hawaii.gov>

Foreword

Our audit of the Office of Language Access was conducted pursuant to Article VII, Section 10 of the Hawai‘i State Constitution and Section 23-4, Hawai‘i Revised Statutes, which authorizes the Auditor to conduct post-audits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions.

We express our sincere appreciation to the Executive Director and staff of the Office of Language Access, and to the Language Access Advisory Council.

Leslie H. Kondo
State Auditor

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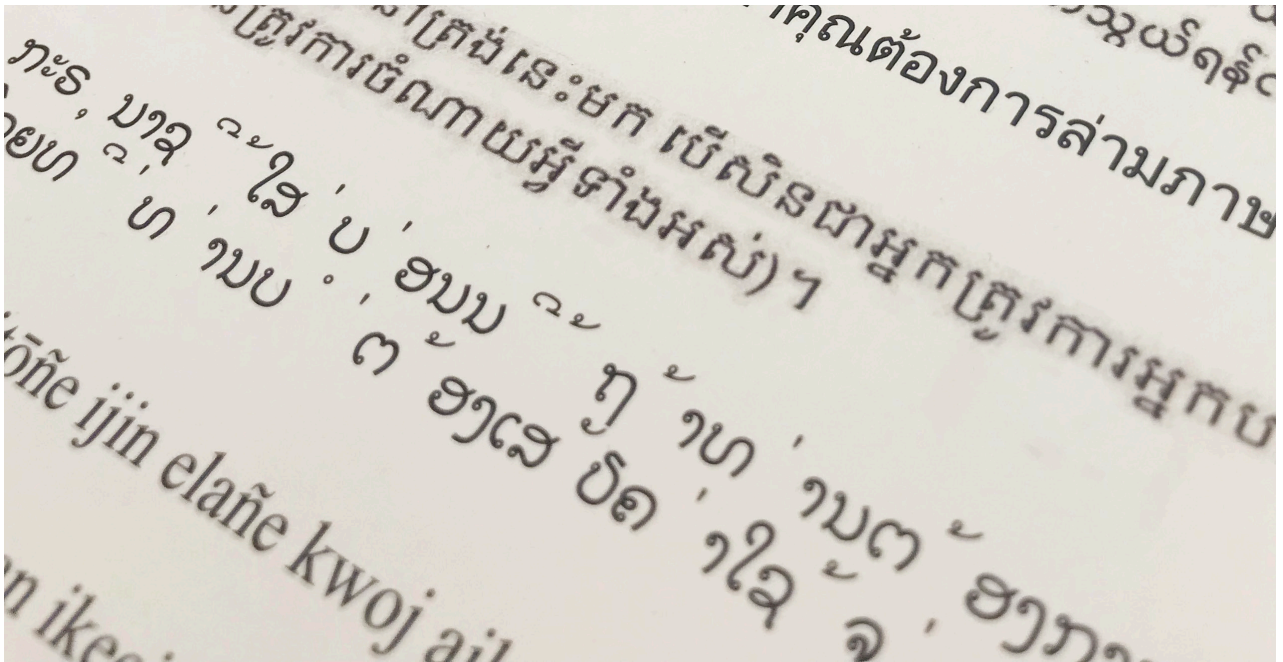
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Audit of the Office of Language Access

Introduction

MORE THAN 158,000 INDIVIDUALS residing in Hawai‘i are limited English proficient¹ according to the 2020 State of Hawaii Data Book. For this population, interpreters, translators, and other language access-related services may be needed to help navigate government activities such as court proceedings,² as well as to understand rights and responsibilities related to public housing,³ driver’s license examinations,⁴ voting procedures,⁵ unemployment benefits,⁶ and public health services associated with the COVID-19 pandemic.⁷

According to the 2020 State of Hawaii Data Book, the estimated total of limited English proficient people in Hawai‘i is about 158,000 – which represents roughly 11.9 percent of the total population of people 5-years-old and older in Hawai‘i.

¹ Hawai‘i’s language access law, Chapter 321C, Hawai‘i Revised Statutes, defines “limited English proficient person” as “an individual who, on account of national origin, does not speak English as the person’s primary language and self identifies as having a limited ability to read, write, speak, or understand the English language.”

² *Case highlights shortage of court interpreters in Hawaii*, Honolulu Star-Advertiser, July 25, 2015.

³ *When Not Speaking Fluent English Can Get You Evicted*, Honolulu Civil Beat, August 9, 2016.

⁴ *Hawaii DOT Settles Driver’s License Exam Lawsuit*, Honolulu Civil Beat, May 31, 2015.

⁵ *Provide language aid for Hawaii voters, groups demand*, Honolulu Star-Advertiser, August 5, 2020.

⁶ *Advocates: Lack of Interpreter Services at Unemployment Office Is Illegal*, Honolulu Civil Beat, July 7, 2020.

⁷ *Kupuna advocacy group threatens Health Department with legal action over Hawaii contact tracing*, Honolulu Star-Advertiser, September 3, 2020.

Providing meaningful access to government services to those who need language assistance is an official priority at both the federal and state levels. On August 11, 2000, United States President Bill Clinton signed Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency.” The executive order requires federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency, and develop and implement a system to provide those services so limited English proficient persons can have meaningful access to them. The executive order also requires federal agencies to work to ensure that recipients of federal financial assistance, which include state agencies, provide meaningful access to their limited English proficient applicants and beneficiaries.

In 2006, the Legislature established the Office of Language Access (OLA) to address the needs of limited English proficient individuals in Hawai‘i and to ensure they have meaningful access to state services, programs, and activities. OLA is responsible for, among other things, ensuring compliance with language access laws by all state offices, including those attached to the legislative and judicial branches of state government, and organizations that receive state funding, which the law refers to as “covered entities.”

Under the State’s language access law, Chapter 321C, Hawai‘i Revised Statutes (HRS), each state agency and covered entity is required to establish a plan for language access. Every state agency must also designate a language access coordinator who is responsible for establishing and implementing their respective agency’s plan in consultation with the OLA Executive Director and OLA’s Language Access Advisory Council. OLA is required to review and monitor each of these plans to ensure they comply with the law.⁸ In 2013, recognizing a need for a comprehensive and centralized system or structure in Hawai‘i to identify qualified language interpreters and translators, the Legislature passed Act 217, Session Laws of Hawai‘i (SLH) 2013, which created a statewide Language Access Resource Center (LARC). The OLA Executive Director is responsible for administering LARC.

In Report No. 22-10, *Audit of the Office of Language Access*, we found a partially formed organization that has yet to formally define the respective roles and responsibilities for itself and the agencies under its purview. As a result, OLA’s day-to-day activities are disconnected from its larger purpose – to address the needs of limited English proficient

⁸ Chapter 321C, HRS, established the Office of Language Access, headed by an Executive Director. The statute, as worded, requires the OLA Executive Director to review and monitor language access plans to ensure they comply with the law along with the other specific duties of the office. Throughout the report, for ease of reading, we sometimes refer to OLA as being responsible for certain duties rather than, more precisely, OLA’s Executive Director.



Hawai'i's Languages, By the Numbers

Not surprisingly, Hawai'i's multi-cultural population speaks a multitude of languages.



130+

The number of languages spoken in the State of Hawai'i.*



354,344

(26.6% of total population)

The percentage and number of people who speak a language other than English in Hawai'i.**



158,101

Of those who speak a language other than English, the number of those who are limited English proficient.**

*Department of Business, Economic Development and Tourism "Non-English Speaking Population in Hawai'i" report issued in 2016.

**U.S. Census Bureau, 2015-2019 American Community Survey 5-Year Estimates, and reported in 2020 State of Hawaii Data Book.

individuals in Hawai‘i and to ensure that limited English proficient persons have meaningful access to state-provided services, programs, and activities. For instance, we found that OLA’s language access plan reviews – characterized by OLA as “feedback” – do little, if anything, to ensure agencies’ plans are in compliance with the law and, more importantly, meaningfully address the language access needs of limited English proficient individuals seeking access to agency services or programs.

In addition, OLA has reviewed only a small fraction of agencies’ language access plans and the format and content of these reviews vary widely, as does the guidance OLA provides to the agencies to assist them in proper preparation of their language access plans. Moreover, during the period of our audit, we found that OLA had posted the language access plans agencies submitted to its website “as is,” nearly all without any indication from the office that it had reviewed them. One plan did contain a memo from OLA acknowledging that it had reviewed and approved the plan. The memo, to the Department of Budget and Finance, is dated November 29, 2007. There is no indication whether the 15-year-old plan has been updated by the department and subsequently reviewed by OLA. Posting plans without any indication that they are current, have been reviewed by OLA, or even comply with the language access law’s requirements is a pointless exercise.

We also found that LARC falls short of being the centralized resource envisioned by the Legislature. For example, instead of maintaining an online roster of interpreters and translators that includes their qualifications and credentials, as required by statute, OLA posts a list of self-certified language service providers and does not verify the competency of applicants before adding their self-reported information to the roster. OLA has no process to prevent those on the list from overstating or even fabricating their qualifications. As a result, OLA’s roster, designed to be used by state-funded agencies, private businesses and the public, features a disclaimer that warns users that inclusion on the listing is not evidence of being a certified interpreter or translator. Therefore, before hiring, OLA recommends that users should consider verifying the reported qualifications themselves.

Furthermore, OLA has no process to test or certify language service providers, a fact that one state agency believes conveys an incorrect message to the limited English proficient population. That same agency also stated that the lack of certification might lead to sanctions by the Office of Civil Rights. Without certifying or otherwise verifying that the language interpreters and translators on its roster can provide competent and accurate services, agencies that use interpreters and translators on OLA’s list may be misled to believe that they are providing limited English proficient persons meaningful access to their programs and services, as required by the statute.

No rules, no direction

OLA's Executive Director describes Chapter 321C, HRS, as a "law without teeth." He points out that the law does not specifically authorize OLA to approve or reject agencies' language access plans and does not require agencies to address recommendations that may arise from OLA's review of those plans. However, Chapter 321C requires OLA to establish and adopt administrative rules, a power the Legislature conferred to provide the specific direction to agencies and covered entities about their language access plans as well as the processes by which OLA intended to ensure limited English proficient persons have meaningful access to services. OLA had started the rulemaking process sometime in 2016, but the effort ground to a halt in 2018.

Through administrative rules, OLA could give the language access law "teeth." For instance, OLA could, among other things, establish its expectation with respect to the language access plans agencies submit, including the requirement that those plans be approved by OLA; OLA could establish requirements that must be met for an agency's language access plan to be posted on OLA or agency websites; OLA could create the process through which persons who are limited English proficient can obtain OLA's help to obtain language assistance, as contemplated by the statute; and OLA could establish the qualifications for interpreters and translators included on LARC's roster.

Instead, almost 16 years after it was established, OLA remains a partially formed organization, conducting its day-to-day operations without having first established and clarified the organization's direction, duties, and authority. The result: many activities that are nothing more than paper exercises, with questionable purpose and effectiveness and little connection to OLA's statutory role. In other words, OLA is not the agency that the Legislature intended to address the language access needs of Hawai'i's limited English proficient population.

Lost in Translation

Recent Language Access Issues Reported in Hawai'i

ACCORDING TO MEDIA REPORTS, various state agencies have been criticized for not providing limited English proficient individuals adequate access to government programs and services in recent years. In 2016, the Legal Aid Society of Hawai'i represented a Chuukese couple who were evicted by the Hawai'i Public Housing Authority. The couple reportedly received an eviction notice written in English and later, another document in English explaining their right to have an interpreter at a grievance hearing. The couple claimed they did not understand the notices and signed a form waiving their right to an interpreter because they believed they would have to pay for the service.



Hawaii

When Not Speaking Fluent English Can Get You Evicted

After a family was almost kicked out, the Hawaii Public Housing Authority agrees to adopt new translation and interpreter procedures.

By Anita Hofschneider / August 9, 2016
Reading time: 10 minutes.

In August 2020, three non-profit groups sent a letter to the State Attorney General and election officials requesting translated ballots and election materials for non-English speakers. The letter also noted that translated materials were available upon request at the Honolulu City Clerk's Office, but only in Ilocano and Chinese. All other materials in the voting packet, including ballots, instructions, and information, were exclusively in English.



HAWAII NEWS

Provide language aid for Hawaii voters, groups demand

By Cassie Ordonio / Aug. 5, 2020



Hawaii

Immigrants And Others Struggle Applying For Hawaii Jobless Benefits

Those who don't speak English, don't have computers or lack bank accounts hit barriers using the swamped system.



U.S. DEPARTMENT OF LABOR

News Release

US DEPARTMENT OF LABOR REACHES VOLUNTARY CONCILIATION AGREEMENT WITH HAWAII TO IMPROVE LANGUAGE ACCESS TO UNEMPLOYMENT INSURANCE

WASHINGTON – The U.S. Department of Labor and the Hawaii Department of Labor and Industrial Relations have entered into a voluntary conciliation agreement to ensure those with limited English proficiency and eligible non-U.S. citizens seeking to file claims for unemployment insurance benefits have better access to services.

The COVID-19 pandemic presented new difficulties for the limited English proficient population. An April 2020 Honolulu Civil Beat article reported on the challenges of applying for unemployment benefits during the COVID-19 pandemic, especially for those facing language barriers. Advocacy groups also alleged that no vital documents had been translated into Hawai'i's most frequently encountered languages in violation of state and federal laws. Complaints led to a federal investigation by the U.S. Department of Labor's Civil Rights Center. Nearly a year-and-a-half after the Honolulu Civil Beat article, in September 2021, the U.S. Department of Labor announced it had reached a voluntary conciliation agreement with the Hawai'i Department of Labor and Industrial Relations to ensure better language access for limited English proficient persons and eligible non-U.S. citizens seeking to file unemployment claims.

TOP NEWS

Kupuna advocacy group threatens Health Department with legal action over Hawaii contact tracing

By Allison Schaeffers · Sept. 3, 2020



In September 2020, the Kokua Council for Senior Citizens threatened legal action against the Department of Health for not meeting the department's legal obligation to provide contact tracing for limited English proficient persons during the pandemic. The Kokua Council alleged that this issue was alarming since it appeared that immigrant communities with limited English proficient individuals from the Pacific and Asia have been disproportionately impacted by COVID-19 infections.

Background

History and Importance of Language Access

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of national origin. On August 11, 2000, United States President Bill Clinton signed Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” reinforcing Title VI’s prohibition by requiring that federal agencies ensure the programs and services they provide to English speakers can also be accessed by limited English proficient persons. The order, accompanied by United States Department of Justice policy guidance, requires federal agencies and recipients of federal financial assistance to identify any need for services to limited English proficient individuals, then to develop and implement a system to deliver those services so limited English proficient persons can have meaningful access to them.

In 2006, the Legislature sought “to affirmatively address, on account of national origin, the language access needs of limited English proficient persons” in Hawai‘i and expressed its intent that the State’s delivery of language access services “be guided by Executive Order No. 13166 and succeeding provisions of federal law, regulation, or guidance.” The Legislature established OLA “[to] ensure meaningful access to services, programs, and activities offered [for limited English proficient persons] by the executive, legislative, and judicial branches of state government, including departments, offices, commissions, boards, or other agencies, and all covered entities.” Administratively attached to the Department of Health,⁹ OLA’s purpose, as clearly stated by the Legislature, is “to address the language access needs of limited English proficient persons” by ensuring state agencies and state-funded entities comply with language access laws; providing training and technical assistance to agencies when developing and implementing language access plans; educating the public about language access rights; and coordinating language access efforts among various organizations and stakeholders; as well as administering a statewide language access resource center that the Legislature intended to help agencies identify qualified language interpreters and translators.



Recent English Speakers

ACCORDING TO the non-profit Immigration Policy Center, the research policy arm of the American Immigration Council, about 14 percent of Hawai‘i’s children with immigrant parents were limited English proficient.

⁹ The Office of Language Access was attached for administrative purposes to the Department of Labor and Industrial Relations from its creation until 2012, when Act 201 (SLH 2012) transferred the office, along with all its functions and duties, to the Department of Health.

Hawai‘i’s Limited English Proficient Population

We compiled the total limited English proficient population for Hawai‘i using U.S. Census Bureau statistics that account for all people 5-years-old or older who self-identify as speaking English less than “very well.” Those numbers were based on the State of Hawai‘i’s Data Books, which relied on data collected, compiled, and provided by the U.S. Census Bureau and the American Community Survey’s (ACS) five-year estimate.

According to the 2020 State of Hawaii Data Book, the estimated total of limited English proficient people in Hawai‘i, approximately 158,000, represented approximately 11.9 percent of the total population of people 5-years-old and older in Hawai‘i.

Obligations of state agencies and covered entities under Chapter 321C, HRS

Section 321C-3, HRS, requires each state agency and all covered entities to take reasonable steps to ensure meaningful access to services, programs, and activities by limited English proficient persons. This includes identifying the number of limited English proficient persons served or encountered in the eligible service population; providing competent, timely, and free oral language services to limited English proficient persons seeking access to services, programs, or activities; written translation of vital documents; and hiring qualified bilingual personnel to fill existing, budgeted vacancies to the extent additional personnel are required to provide language services.

Section 321C-4, HRS, further requires each agency and covered entity to establish, in consultation with the OLA Executive Director and the state agency’s coordinator for language access, a language access plan to be filed with the OLA Executive Director and to designate a language access coordinator who is responsible for implementing the agency’s plan for language access in consultation with the OLA Executive Director.

Office of Language Access

The office is headed by the OLA Executive Director and supported by a Language Access Advisory Council whose members are appointed by the governor and include representatives who have shown interest in language access. The OLA Executive Director is responsible for overseeing OLA’s work, activities, and programs; receiving, investigating, and resolving language access complaints; working with public and private agencies, including community organizations, to address language access needs; providing professional leadership,



Not Quite Covered

COVERED ENTITIES

are those persons or organizations that receive state financial assistance.¹ These include a variety of charitable and non-profit social service organizations, community health centers, county departments, and an emergency homeless shelter. While OLA does have a list of 54 covered entities that fall under Chapter 321C, HRS, it has not updated it since 2009. In addition, OLA's Executive Director believes that the statute does not require covered entities to submit language access plans to OLA. However, OLA does offer technical assistance to covered entities. According to OLA's Executive Director, this has been a long-standing practice of the office.

¹ Under Chapter 321C, HRS, a covered entity is a person or organization that receives state financial assistance, including grants, purchase-of-service contracts, or any other arrangement by which the state provides or makes available assistance in the form of funds to the person or organization for the purpose of providing services to the public.

positive direction, and oversight of staff to ensure OLA successfully carries out the functions of the agency and achieves planned objectives and goals; and administering a language access resource center. Chapter 321C, HRS, also makes the OLA Executive Director responsible for providing oversight, central coordination, and technical assistance to state agencies in their implementation of the language access requirements; providing technical assistance to covered entities in their implementation of the statute; reviewing and monitoring each agency's language access plan for compliance with the statute; eliminating barriers to language access through informal methods; and creating and distributing multilingual signage in the more frequently encountered languages in the state.

In 2013, the Legislature created a statewide Language Access Resource Center (LARC), which is administered by the OLA Executive Director, to serve as a comprehensive and centralized system to identify qualified language interpreters and translators and to address the need for competent interpreters and translators.

In 2019, OLA reorganized itself into two sections:

Monitoring and Compliance

According to OLA's Executive Director, the Monitoring and Compliance section provides technical assistance to state and state-funded agencies in the development of their language access plans and on matters related to the provision of language access assistance to persons with limited English proficiency. Under the 2019 reorganization, the primary functions of the Monitoring and Compliance section include conducting research and analysis on questions regarding the application and implementation of state and federal laws governing limited English proficient persons; formulating and implementing compliance monitoring strategies; conducting on-site/off-site visits; reviewing and evaluating plans, data, reports, and other related information; providing feedback on implementation of language access plans; and investigating, making recommendations, and tracking the resolutions of language access complaints.

Language Access Resource Center

According to OLA's Executive Director, LARC was formed to address the need for a centralized resource to meet the specific language service needs of government agencies and state-funded entities. Under the 2019 reorganization, LARC's major tasks are to maintain and update an online roster of interpreters and translators with their qualifications and credentials; conduct outreach activities to encourage interested individuals to become interpreters and translators; produce and translate outreach and other educational

materials; establish a training program for state and state-funded agencies on how to utilize and work with interpreters; establish a training program for interpreters and translators to improve their skills; identify a process to test and certify interpreters and translators and promote use of the process to ensure the quality and accuracy of their services; and establish an online library of resources on language access.

OLA was created in 2006 (Act 290) but did not begin operations until it received funding for its six authorized staff positions in April 2007. The office lost five positions in 2009 due to a reduction-in-force and from 2009 to 2012 operated with one authorized position. In 2012, two of the five positions were restored. Act 217, SLH 2013, which established the Language Access Resource Center, also authorized five positions; however, funds were not released and efforts to secure additional appropriations starting in 2015 failed. In 2018, the Legislature authorized and funded two additional full-time positions, bringing OLA's total staff complement to five; however, a LARC Program Specialist was not hired until 2020. From 2013, the OLA Executive Director and the Monitoring and Compliance Program Specialist V had assumed the additional responsibilities of running LARC.

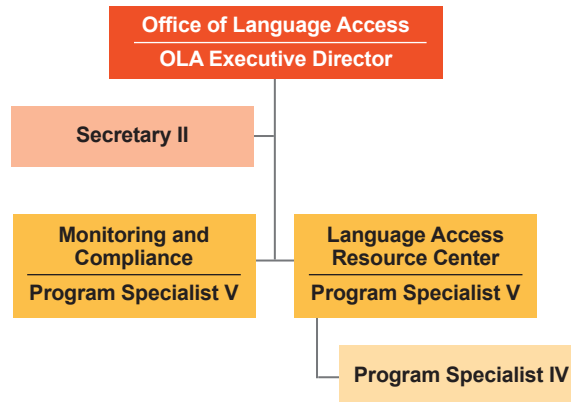
Language Access Advisory Council

Section 321C-7, HRS, established the Language Access Advisory Council, which consists of 17 members appointed by the governor to 4-year terms. Members include representatives from the Disability and Communications Access Board, the Executive Director of the Hawai'i Civil Rights Commission, and people who have shown interest in language access. The Council serves in an advisory capacity to the OLA Executive Director by providing input on the implementation and compliance with Hawai'i's language access law; the quality of oral and written language services provided under the law; and the adequacy of a state agency or covered entity's dissemination and training of its employees likely to have contact with limited English proficient persons, its policies and procedures for language services, its competency in working effectively with in-person and telephone interpreters, and its understanding of the dynamics of interpretation between clients, providers, and interpreters.

Prior Audits

This is our first audit of the Office of Language Access.

Exhibit 1: Office of Language Access Organizational Chart



Source: Office of Language Access

Scope and Methodology

We conducted this audit pursuant to Section 23-4, HRS, which requires the Auditor to conduct post audits of the transactions, accounts, programs and performance of all departments, offices, and agencies of the State and its political subdivisions.

Our audit was performed from July 2021 to December 2021. To achieve our audit objectives, we reviewed and assessed efforts made by OLA to address the language access needs of limited English proficient persons and ensure access to state services, programs, and activities in accordance with Chapter 321C, HRS, and applicable federal laws, and regulations. Our primary focus was on OLA’s review and monitoring of the various state agencies’ language access plans and the current operations of the Language Access Resource Center, specifically, the availability of qualified interpreters and translators. We conducted interviews with OLA staff and the chair of the Language Access Advisory Council. We sent surveys to the designated Language Access Coordinators for seven executive branch departments selected on a judgmental basis. However, we did not audit compliance with language access requirements by other state agencies or by covered entities. To identify best practices, we researched federal guidance documents and reviewed audit reports issued by other states and the U.S. Government Accountability Office.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on

our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Objectives

1. Review and assess efforts made by the Office of Language Access to address the language access needs of limited English proficient persons and ensure access to state services, programs, and activities in accordance with Chapter 321C, Hawai‘i Revised Statutes;
2. Make recommendations as appropriate.

**Finding No. 1:
Without administrative rules, OLA is
ill-equipped to ensure that state agencies
are providing limited English proficient persons
meaningful access to services, programs, and
activities.**

In 2006, recognizing that language for residents who are limited English proficient “can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding information provided by state-funded programs and activities,” the Legislature enacted a language access law to “affirmatively address, on account of national origin, the language access needs of limited English proficient persons.” The statute requires each state agency and covered entity to provide “competent, timely oral language services” to limited English proficient persons and, in certain circumstances, written translation of those documents that provide important information necessary to access or participate in the agency or covered entity’s services, programs, or activities. Each agency and covered entity is required by law to establish a plan for language access.

The Legislature also created the Office of Language Access (OLA) whose purpose is to address those language access needs and to ensure meaningful access for limited English proficient persons to services, programs, and activities offered by the executive, legislative, and judicial branches of state government and all covered entities. Among other things, OLA is responsible for providing training and technical assistance to agencies in developing and implementing language access plans; educating the public about their language access rights; coordinating language access efforts among various organizations and stakeholders; and administering a language access resource center to address the need for qualified language interpreters and translators. OLA is also required to review and monitor each agency’s language access plan to ensure it provides reasonable assurance that limited English proficient persons will have meaningful access to the services provided by the state agency.

We found that OLA is doing little of consequence to address the language access needs of limited English proficient persons or to ensure meaningful access to services, programs, and activities offered by state agencies and covered entities. OLA is not performing obligations required by its enabling statute, Chapter 321C, HRS, that the Legislature clearly believed were necessary to address the language access needs of the state’s limited English proficient population. For instance, OLA

does not “provide oversight and central coordination to state agencies in their implementation of language access requirements” or “provide technical assistance to covered entities in their implementation” of the law.

Instead, we found an agency whose efforts to review and monitor language access plans, which should ensure that agencies have a process through which they will provide meaningful access to services, programs, and activities, is nothing more than a paper exercise. Because OLA has not adopted administrative rules to, among other things, empower itself with the authority to approve or reject an agency’s language access plan, agencies are not required to address any of the comments or incorporate any of the recommendations that may arise from OLA’s review. As a result, OLA characterizes its reviews as “feedback” that it “hopes” agencies will take into account in the *next* update of their language access plans. More akin to comments, these “reviews” do little – if anything – to ensure plans comply with the law. And, we found agencies have generally ignored those comments and OLA has posted those language access plans that often are nothing more than a verbatim recitation of the factors listed in the statute that agencies must consider in developing their respective plans. Moreover, OLA posts language access plans “as is,” without any accompanying information. Posting these plans without any indication that they are current or have been approved by OLA provides little, if any, assurance that an agency has a reasonable plan to address the language access needs of limited English proficient persons who seek access to the agency’s services, programs, or activities.

OLA’s reviews of language access plans are administrative exercises that provide no assurance that plans comply with the law.

According to OLA’s Executive Director, prior to his appointment in May 2017, OLA had not conducted reviews of agency language access plans since approximately 2009. The office’s review of agency plans was restarted in September 2019 but was discontinued in March 2020 because of the COVID-19 pandemic.

In our review of the plans provided to us by OLA and those posted to their website, we found that during the five-month period from September 2019 to January 2020, OLA reviewed five language access plans – Department of Defense (October 2019), Hawai‘i Health Systems Corporation (October 2019), Department of Health (October 2019), Department of the Attorney General (January 2020), and Department of Accounting and General Services (June 2021). The reviews vary widely in both format and content.

“Language for limited English proficient persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by state-funded programs and activities.”

–Section 321C-1, Hawai‘i Revised Statutes



What is a Language Access Plan?

ACCORDING TO the federal Interagency Working Group on Limited English Proficiency, a language access plan is a management tool that provides an administrative blueprint for bringing an agency into compliance with language access requirements. The plan is a roadmap that helps an agency navigate the process of setting deadlines, establishing priorities, and identifying responsible personnel to develop policy and procedures; to hire, contract, assess, and ensure quality control of oral and written language assistance services; provide notice of language assistance services; provide training of staff; and conduct ongoing monitoring and evaluation.

In our examination of these five reviews of agency language access plans, we found a paper exercise without purpose. As previously noted, OLA’s Executive Director’s stated position is that the law does not specifically authorize OLA to reject or approve any submitted language access plan and does not require agencies to address any of OLA’s comments that arise from its review. As a result, OLA’s review is more akin to a series of suggestions it “hopes” agencies will take into account when they update their language access plans in the future.

This despite the fact that the reviews identify numerous deficiencies and oversights in the plans. For instance, in its review of the Department of the Attorney General’s language access plan, OLA stated that the department had been non-compliant with the language access law since 2016, four years prior, and that the department’s plan repeatedly cites a repealed version of Hawai‘i’s language access law, Chapter 371, HRS.¹⁰ OLA pointed out that this law had been repealed and replaced by Chapter 321C in 2012: “It is important that the most current law is cited. If members of the public or other pertinent agency consults your plan and looks up the old citation, they may discover that the law has been repealed but not understand that it has been re-codified, and assume Hawaii’s language access law is no longer enforced. The consequences of improper citations are magnified when the LAP is drafted and adopted by the state attorney general’s office.”

In addition, the department claimed that it had used OLA’s language reporting tool to determine that the proportion of limited English proficient persons “served or encountered is less than 1 percent.” In response, OLA questioned whether the Department of the Attorney General was properly using the reporting tool, if the tool had been submitted to OLA, and if so, when was it last submitted. In addition, OLA asked the department for further clarification of what the department meant by “less than 1 percent.” OLA pointed out that it was not clear as to whether this meant 1 percent of all members of the public that are served or the percentage of all those “eligible” to be served. OLA also pointed out that the language access plan did not include any data that supported this claim.

In regard to the actual language services offered by the department, OLA noted that the Department of the Attorney General’s homepage in 2019 did not have a notice regarding language access, nor any type of multilingual link to indicate that limited English proficient persons can have the right to language assistance to access their services. Instead, OLA noted that the department’s process involved “several layers of administration” and as many as “4 layers of employees” to identify and

¹⁰ Chapter 371, HRS, was repealed in 2012 when the Legislature transferred OLA from the Department of Labor and Industrial Relations to the Department of Health. Chapter 371, HRS, was recodified as Chapter 321C, HRS.

locate agency or department staff who can communicate in the language in question or, if none are available, procure outside assistance.

OLA inquired if the Department of the Attorney General or its various divisions maintained a list of multilingual staff. If so, to save time, it recommended that the department include the list(s) in its language access plan for staff to reference. In addition, to replace the department's three-layered, four-person process, OLA recommended that the department consider procuring telephonic interpreter services via the State Procurement Office's Price List Contract by which interpreters' skills and qualifications are vetted.

In another language access plan, the Department of Accounting and General Services (DAGS) reported that in 2012 it conducted a survey to determine how much it had expended since 2006 for the written translation of vital documents. The survey found that the only department program that maintained vital documents was the Office of Elections, but the amount expended since 2006 was unavailable. In its review of the plan, OLA suggested that DAGS consider including the statutory language for a "vital document" and expressed surprise that the Office of Elections was the only agency within DAGS that maintained vital documents.¹¹ OLA's review also points out that it was not clear exactly what DAGS programs were surveyed in 2012, suggesting that since the last survey was done at least seven years earlier, it was "perhaps a good time" to conduct another survey, especially in light of recent operational changes. We note that, to ensure meaningful access by those with limited English proficiency, which is the law, a current survey of the department's programs should be a requirement imposed through an administrative rule, not a polite suggestion.

We reiterate that, since OLA's Executive Director's stated position is that the law does not specifically authorize OLA to reject or approve any submitted language access plan and does not require agencies to address any of OLA's comments that arise from its review, addressing deficiencies identified by OLA is left to the discretion of the agency. In addition, agencies are free to submit out of date and uncorrected language access plans, or not submit them at all, without repercussions.

We strongly disagree with OLA's position that allows agencies to, in essence, disregard OLA's comments about their language access plans. OLA's specific and unambiguous purpose, clearly articulated by the Legislature, is to address the language access needs of those residents

¹¹ Under Chapter 321C-2, HRS, "'Vital documents' means printed documents that provide important information necessary to access or participate in services, programs, and activities of a state agency or covered entity, including but not limited to applications, outreach materials, and written notices of rights, denials, losses, or decreases in benefits or services."

who are limited English proficient and to ensure meaningful access to services. Passively reading plans that agencies submit plainly is not consistent with or fulfilling the Legislature’s intent for the office.

OLA’s language access plan reviews vary widely in format and content.

As previously mentioned, OLA conducted reviews of five departments’ language access plans from September 2019 to January 2020. The five reviews vary in both format and content. Three of the reviews contained three components: a memorandum featuring general plan components and principles for the agency to consider when “re-approaching your next draft;” specific comments, recommendations and requests, which are directly referenced to the plan under review; and an evaluation sheet featuring a grid of 25 to 34 questions on the various features of a language access plan. The grid includes “Y” (yes), “N” (no), and “P” (pending) columns to indicate the presence, absence, or imminent adoption of the various features. OLA also provides comments in a larger, final column.

Two of OLA’s reviews did not include memoranda that specifically, or even generally, identified the components of a language access plan. One review featured a week-long email exchange between OLA’s Executive Director, the OLA Program Specialist, and agency language coordinators and an evaluation sheet. Another review included numerous handwritten edits and notes by the OLA Program Specialist on a copy of the agency’s language access plan. Many of the edits and notes addressed style and grammar issues; no evaluation sheet was included in the review package.

OLA’s “as is” website postings of agency language access plans may inaccurately suggest that the plans comply with the requirements of both state and federal law.

OLA’s Executive Director notes that each language access plan OLA receives has been reviewed and approved by the agency head or authorized agency personnel before being submitted to OLA; therefore, OLA’s Executive Director considers the language access plan to be an “official document” of the agency, and for that reason, OLA posts it on its website “as is” upon its receipt of the plan. However, OLA’s Executive Director’s position does not fully consider the weight of OLA’s statutory purpose – i.e., to ensure that those departments provide meaningful access to their respective services, programs, and activities for those who are limited English proficient. OLA is responsible for, among other things, ensuring that language access plans comply with the law.

We reviewed all 26 plans OLA had posted on its website as of October 2021 and found that a large majority were missing information such as the time period the language access plan covers, the date when the plan was submitted, and any indication of whether the plan had been reviewed by OLA or updated by the agency. We note that of the 26 plans on the website as of October 2021, only one (Department of Budget and Finance) included a memo indicating that the plan had been reviewed and approved by OLA; however, the memo was nearly 15 years old. Moreover, 22 of the 26 language access plans were dated more than 2 years ago, including 2 that were dated 2007, the year OLA began operations. Two plans were undated.

While we presume the plans posted on OLA’s website are the agencies’ *current* plans to provide language access, that is simply an assumption. In addition to OLA’s statutory responsibility to “review and monitor” each agency’s language access plan for compliance with Chapter 321C, HRS, agencies are legally required to file their respective plans with the OLA Executive Director *every two years*. Since agencies appear to be unaware of or noncompliant with that statutory requirement, there is much less certainty that the posted plans reflect the current requirements as well as the agency’s most current approach to provide language access. Among other things, an agency’s programs and services may have changed, as well as the number of limited English proficient people served by those programs and services. But, without current language access plans (i.e., plans filed within the past two years as the statute requires), there is no way to know whether the posted plans reflect the current conditions.

Meanwhile, the language access plans for the Office of the Governor, Office of the Lieutenant Governor, Department of Defense, and Department of Health read like “plans to make a plan,” featuring words like “will” and “should” to describe the expected features of a plan and not its actual contents.

We again reiterate that OLA’s specific purpose, clearly articulated by the Legislature, is to address the language access needs of limited English proficient residents and to ensure meaningful access to services. Posting these plans “as is,” without any indication that they are current, have been reviewed by OLA, or are sufficient to provide that access is not only inconsistent with the Legislature’s intent for the office, but may inaccurately suggest that the plans comply with the requirements of both state and federal law.

We note that of the 26 plans on the website as of October 2021, only one (Department of Budget and Finance) included a memo indicating that the plan had been reviewed and approved by OLA; however, the memo was nearly 15 years old.

Exhibit 2: Examples of “plans to make a plan.”

PLANNING DOCUMENTS.

DOH has several planning documents **to consider creating.**

A revised general directive, as well as background information and as many specifics as appropriate to DOH and its covered entities. This directive **will be** the overarching document from which we implement the Language Access Plan. Intra-departmental directive 80-50, Bilingual Services, and 81-55, Bilingual Services Referral and Notice Process **will be**

DEPARTMENT OF DEFENSE
3949 Diamond Head Road
Honolulu, Hawaii 96816-4495
July 1, 2007

ANNEX C TO DOD LANGUAGE ACCESS PLAN

OPERATIONS

1. **Overview.** The office of primary responsibility (OPR) **will coordinate** the development and implementation of the department’s language access plan. The plan **will include** the following major steps.

- a. Conduct a survey to identify the internal and external language access requirements to include what offices are affected, frequency of need, oral and/or written needs, and the languages requiring interpretation and/or translation.
- b. Conduct a survey of departmental employees who would volunteer to support language access when there is a requirement.
- c. Coordinate the notification and support process of interpretation and/or translation services to qualified LEP customers.
- d. Coordinate any language access training required for department members.
- e. Solicit feedback on the program from LEP customers and department members.
- f. Coordinate revisions or modifications to the program as necessary.

2. **Survey of internal and external requirements.** The OPR **will conduct** interviews with the division chiefs and office managers to determine the internal and external needs. A list of the most common languages encounters **will be created** based on these discussions. Currently, only the department’s personnel office offers services to job applicants when requested. These requests are infrequent but supported by personnel in the department or by language personnel paid by the department.

3. **Survey of departmental employees.** The department **will survey** employees for their language skills. The survey is Appendix 1 to this Annex. Appendix 2 is a listing of employees with language skills who have agreed to support LEP individuals. All employees who assist qualified LEP individuals will be volunteers.

4. **Notification and support process.**

- a. The OPR **will develop** a notice to the LEP individuals who may access Department of Defense services. **Notice will be in foreign languages**, notifying LEP individuals that translation services are available. Division chiefs and office managers will insure notices are posted in areas where there is public access and distribute notices internally to their employees.
- b. Division chiefs and office managers **will notify** the OPR of any LEP support requirements. The OPR will coordinate internally for LEP. If support is not available within the department, the OPR will coordinate with other translation sources, to include private interpreter services. Solicitation and payment of interpreter services will be within department’s fiscal

Office of the Lieutenant Governor's Language Access Plan

- *Utilize census data and assure consultation with stakeholders to help identify LEP persons who need assistance;*

Using latest census data, the Office of the Lieutenant Governor **will identify** the highest numbers of immigrant populations in the State of Hawaii and in consultation with stakeholders determine what documents provided by the Office of the Lieutenant Governor need to be translated and made available to those who need language assistance.

- *Identify how oral language assistance will be provided;*

The Office of the Lieutenant Governor **will utilize** its relationships with the various foreign consulates in residence in the State of Hawaii along with all the services provided from the State of Hawaii's Office of Language Access.

The Office of the Governor **will collect** data on services accessed by an LEP population by utilizing the attached form, (ATTACHMENT E). Information **will be collected on** languages spoken by LEP constituents, services accessed from the Office of the Governor by LEP constituents, and the frequency in which LEP persons use these services. Staff in public contact positions **shall complete** the data collection form and return it to the Director of Community Engagement.

Source: Office of Language Access (highlighting added).

A law without teeth.

We found OLA struggles with the purpose for which the Legislature created the office, and the power delegated to it by the Legislature to determine the policy details necessary to effectively address the language access needs of limited English proficient persons. For that reason, OLA is doing little of consequence to ensure that limited English proficient residents are able to meaningfully access state services and programs.

OLA's Executive Director describes Chapter 321C, HRS, as "a law without teeth." According to OLA's Executive Director, Chapter 321C does not grant OLA the authority to approve or reject any plan or require agencies to address comments from OLA's review of their language access plans. He also points out that, while Chapter 321C requires agencies to submit language access plans to OLA every two years, it does not specify that agencies are required to update their plans, just that they are supposed to submit plans.

OLA's Executive Director provided an example, recounting that in 2019, OLA sent a letter to an agency requesting that it designate a language coordinator but never received a response, and said OLA was powerless to do anything about the issue. However, the statute unambiguously requires every state agency to designate a language access coordinator who is responsible for establishing and implementing the agency's language access plan in consultation with the OLA Executive Director.

While OLA's Executive Director asserts the law, as written, is silent on the details about how OLA is to fulfill its statutory purpose, including, for example, the information that must be included in an agency's language access plan, we disagree that Chapter 321C, HRS, is a "law without teeth." Section 321C-6, HRS, provides that the OLA Executive Director *shall* "[a]dopt rules pursuant to chapter 91 to address the language needs of limited English proficient persons." The Legislature not only empowered the OLA Executive Director to develop policies to effectuate the language access law through administrative rules, but it unambiguously *required* him to do so. In other words, the Legislature expected the OLA Executive Director to create "the teeth" that he says the statute is lacking and, more importantly, that is preventing OLA from addressing the language access needs of Hawai'i's limited English proficient population.

Filling in the details.

According to the Legislative Reference Bureau's *Hawaii Administrative Rules Drafting Manual*, the purposes of administrative rulemaking are to implement legislation and to establish operating procedures for state agencies. Sometimes, a legislative act will provide the skeleton or superstructure for a program, and the Legislature will delegate its policymaking authority to the agency responsible for implementing the program by authorizing the agency to adopt administrative rules. In those cases, agencies are expected to "fill in the details" necessary to implement the program on a day-to-day basis through administrative rulemaking. Those rules often establish the agency's operating procedures and inform program users and the public about the organization, procedures, and practices that agency has adopted. Agencies are accorded a great deal of discretion as they determine and define these details, limited only by the specific language of the underlying law.

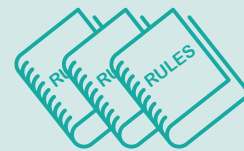
Chapter 321C, HRS, not only empowers the OLA Executive Director to define OLA's duties and authority, consistent with its governing statute, and provide direction to state agencies and covered entities that they need to comply with the law, it clearly expresses that the Legislature *intended* the OLA Executive Director to do so through administrative rules. And, determining the specific details of the language access law,

which the Legislature delegated to the OLA Executive Director, likely could address and eliminate the limitations in the statute that, according to OLA’s Executive Director, prevent the office from taking a more proactive and authoritative approach to its responsibilities.

Through administrative rules, OLA could define and clarify each of its statutory responsibilities as well as the responsibilities and obligations of the various affected agencies and covered entities. For instance, rules could:

- Describe and define the elements of an appropriate language access plan, i.e., what agencies and covered entities must include in their respective plans;
- Define its process to “[r]eview and monitor each state agency’s language access plan for compliance” with Chapter 321C, HRS, including requiring its approval of those plans;
- Create criteria for posting agencies’ plans on its website, including requiring agencies to address OLA’s comments and incorporate OLA’s recommendations before the plans are accepted by OLA;
- Describe the process by which it will “[p]rovide oversight, central coordination, and technical assistance to state agencies in their implementation of language access requirements;”
- Describe the process by which it will “[p]rovide technical assistance to covered entities in their implementation [of the law];”
- Define the process under which agencies are expected to consult with the OLA Executive Director and the Language Access Advisory Council on their language access plans;
- Direct agencies about the requirement that they submit language access plans every two years and OLA’s expectations as to the form and content of those plans;
- Create the process by which it will attempt to informally resolve language access issues; and
- Define the responsibilities of an agency or covered entity in responding to and offering evidence about action taken to implement the OLA Executive Director’s recommendations.

Instead, almost 16 years after it was established, OLA has yet to adopt administrative rules. And, without those rules, we found OLA to be operating without a complete, comprehensive structure to guide its operations; meanwhile, agencies and covered entities are left to figure out the requirements themselves, which has resulted in inconsistent and, in some cases, ineffectual plans.



The Rules on Rules

UNDER HAWAII’I LAW, a “rule” is defined to mean an agency’s “statement of general or particular applicability and future effect *that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency.* The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued pursuant to section 91-8, nor intra-agency memoranda.” See Section 91-1, HRS (Emphasis added).

OLA began the rulemaking process in 2016 but stopped in 2018. It has no timeline for when it plans to restart and complete the process.

According to OLA's Executive Director, the rulemaking process started sometime in 2016 during his predecessor's tenure. While OLA's Executive Director acknowledged that administrative rules can provide the specifics of the statutory obligations for state agencies and also establish requirements agencies and covered entities must follow, he stopped the rulemaking process in 2018 because of staffing issues.

We reviewed two drafts of OLA's administrative rules: a January 12, 2017, 17-page draft, which included a deputy attorney general's handwritten comments about the proposed rules and an April 4, 2017, 19-page "clean" draft. Both documents specify in extensive detail the direction, authority, and the respective roles and responsibilities of OLA and the agencies under its purview. For instance, OLA's draft administrative rules contain sections such as "State Agency Reporting Requirements," "Monitoring," as well as an extensive description of the "Procedures for Language Access Inquiries, Clarifications, and Resolution of Alleged Violations." The subsection "Scope of Language Access Plans" lists 24 elements required to be included in a language access plan. The last item in the list requires that the OLA Executive Director include in OLA's annual report to the Legislature "any determination that a state agency has failed to reasonably comply with this section." In the January 12, 2017 draft, OLA's deputy attorney general circled the words "report" and "comply" and wrote in the margin: "you can add more teeth to enforcement here as to the extent allowed by law." Neither draft contains rules relating to LARC.

We note it apparently took almost *10 years* for OLA to draft proposed administrative rules. While OLA's current Executive Director joined OLA just a month after the latest version of administrative rules was drafted, it appears nothing has been done to move them forward. And, now, almost 16 years since it was established, OLA still has no rules that the Legislature had directed the OLA Executive Director to adopt and, more importantly, are needed to effectuate the office's purpose.

As we have described throughout, without those rules to implement, interpret, and prescribe the language access law, OLA does little of consequence to address the language access needs of the state's limited English proficient population or to ensure meaningful access to state services, programs, and activities. Because OLA's Executive Director considers the law to be "without teeth," it is the agencies and covered entities that have unlimited power and discretion in how – or even

whether – they comply with the state’s language access law. And, in many cases, whether intentionally or simply because they know no better, many agencies’ language access plans are not plans at all; rather, as described above, some offer a “plan” about how the agency intends to create a language access plan and others simply repeat the factors listed in the statute that agencies are required to consider in developing their respective plans.

Without an actual plan to provide language access, we question whether limited English proficient individuals are able to meaningfully access agency services, programs, and activities. OLA has not fulfilled its statutory role and cannot do so until it develops the details of the language access law as the Legislature intended OLA to do.

According to OLA’s Executive Director, he intends to continue the rulemaking process as soon as possible and plans to hire a new program specialist to complete draft rules for public hearing. We agree that OLA should prioritize the adoption of administrative rules. It should have been a priority almost 16 years ago; it should have been a priority five years ago; and it should be a priority today.

While we acknowledge the office’s limited staff, we cannot emphasize enough the importance of developing the details of the language access law necessary to ensure that OLA, state agencies, and covered entities are providing meaningful language access to those who are limited English proficient. For many who are limited English proficient, that access to services and programs can be critical. We strongly recommend that OLA’s Executive Director immediately restart the rulemaking process and not delay adopting rules pending the hiring of a program specialist.



The Rulemaking Process in Brief

THE LAW THAT

CONTROLS administrative rulemaking is Chapter 91, Hawaii Revised Statutes (the Hawaii Administrative Procedure Act). Briefly, the law requires, among other things, that administrative agencies follow certain specified procedures in order to impose upon the public requirements which affect private rights. For a rule to become binding upon the public, an agency must (1) publish notice of public hearing; (2) hold a hearing in which all persons are allowed to submit data, views, or arguments orally or in writing; (3) have the rule approved by the governor; and (4) file the rule in the office of the lieutenant governor on a permanent basis for public inspection.

– *Hawaii Administrative Rules Drafting Manual, Third Edition*

**Finding No. 2:
The Language Access Resource Center does not provide the comprehensive and centralized system to identify qualified interpreters and translators as intended by the Legislature.**

By the end of 2007, 26 agencies and more than 60 state-funded entities completed language access plans. But efforts to implement these plans brought significant obstacles to light. For instance, legislation introduced in 2013 identified “a dearth of competent interpreters and translators,” as a critical issue “because a key element to the successful implementation of the language access plans is the availability of trained and competent interpreters and translators so limited English proficient individuals can receive competent, timely, and meaningful language access assistance to government and government-funded services.”

The legislation, which became Act 217, SLH 2013, further noted that the state lacked a comprehensive and centralized system to identify individuals qualified to provide language access assistance. Also absent were multilingual government websites that would allow limited English proficient individuals to access pertinent information in their own language about social service programs, job training and assistance, emergency assistance, and fair and impartial administrative hearings, among other topics.

Through Act 217, the Legislature established a new strategy for removing language barriers that inhibit meaningful participation in government and community. The Act created a statewide Language Access Resource Center (LARC), described as “a centralized resource that will meet the specific needs of government agencies and state-funded entities to comply with Hawaii’s language access laws and benefit the general public, including the limited English proficient population, and non-profit and for-profit organizations.” Specifically, LARC is required by law to:

1. Maintain a publicly available roster of language interpreters and translators, listing their qualifications and credentials based upon guidelines established by the office of language access in consultation with the language access advisory council;
2. Train state and state-funded agencies on how to effectively obtain and utilize the services of language interpreters and translators;
3. Support the recruitment and retention of language interpreters and translators providing services to state and state-funded agencies;
4. Provide, coordinate, and publicize training opportunities to increase the number and availability of qualified interpreters and

translators and further develop their language interpretation and translation skills; and

5. Work toward identifying or creating a process to test and certify language interpreters and translators and promote use of the process to ensure the quality and accuracy of the language interpretation and translation services.

The OLA Executive Director was given the responsibility to administer LARC and address certain of the other concerns noted by the Legislature in Act 217.

However, we found LARC has not become the “centralized resource” that the Legislature determined was needed to grow the pool of language interpreters and translators and address the needs of the state’s limited English proficient population. While OLA’s website contains links that provide information about language access, as well as video and documents in 14 languages, we note that including information for someone who is limited English proficient about how to request a free interpreter does not guarantee that agencies have the resources to locate an interpreter or that interpreters are qualified. More specifically, we found OLA has no process in place to verify that the self-described interpreters and translators on its roster are qualified to provide competent and accurate services; OLA has not adopted administrative rules to even define the terms “qualified,” “competent,” and “certified” as they relate to the language interpreters and translators OLA hopes to recruit and retain; and almost a decade after it was created, LARC has made no progress towards identifying a process to ensure the quality and accuracy of services provided by the interpreters and translators on its roster.

OLA does not verify the qualifications and credentials of interpreters and translators before adding them to the online roster.

Under Section 321C-6(8), HRS, OLA’s Language Access Resource Center must maintain a publicly available roster of language interpreters and translators that includes each individual’s qualifications and credentials based on OLA guidelines and in consultation with the Language Access Advisory Council. While OLA does maintain a roster of language interpreters and translators on its website, that roster does *not* include any OLA-approved qualifications and credentials as the statute directs. In fact, we found that applicants are not required to show proof of their qualifications and competency before they are added to the roster.

OLA’s Executive Director noted that the Interpreter/Translator Application form provides OLA’s guidelines relating to qualifications and credentials and includes a series of questions about credentials, certified training, and proof of proficiency (see “OLA Roster Application

Questions” below). But, OLA has no process to confirm the qualifications and credentials claimed by applicants; the roster is merely a list of individuals who self-attest that they are adequately fluent and knowledgeable to provide interpretation and translation services. Acknowledging this in a disclaimer, OLA recommends roster users “consider verifying the reported qualifications and determining whether the interpreter or translator adequately meets your needs.”

We reviewed six profiles for interpreter services, selected on a judgmental basis, using search parameters on the OLA roster webpage.

OLA Roster Application Questions

THE OLA INTERPRETER/TRANSLATOR APPLICATION FORM includes several questions for applicants, including the following:

- What U.S. federal court interpreters’ credential do you hold?
- What other national court interpreter credential do you hold?
- What state court interpreter credential do you hold?
- What national medical/health care interpreter credential do you hold?
- What state and other medical or health care interpreter credential do you hold?
- What other interpreter credentials do you hold?
- What certificates of attendance or completion for interpreter training do you have – including number hours?
- Have you passed the American Council on the Teaching of Foreign Languages (ACTFL) oral language proficiency test?
- Have you passed the Inter-Agency Roundtable (ILR) oral language proficiency test?
- Have you passed any other oral language proficiency tests (please specify)?

The OLA website also informs users that misrepresentation of an individual’s credentials is a violation of state law under Section 710-1063, HRS, regarding unsworn falsification to authorities, and requests applicants to make a declaration of the accuracy of the information that is provided. However, when asked why OLA does not monitor for compliance of this statutory provision, OLA’s Executive Director did not provide a response specific to the question.

Nevertheless, without listing the qualifications and credentials of all of the interpreters and translators on the online roster, OLA cannot comply with Section 321C-6(8)(A), HRS.

None of the six profiles included any attached documents that would independently support claims regarding the person’s self-described qualifications, such as certification forms, documents verifying completed examinations or training courses, or a copy of the completed OLA application form. We also found that, *in four of the six listed profiles*, the sections for certification and qualifications were blank. Stated differently, those language service providers who OLA included in its roster of interpreters and translators did not list *any* credentials or qualifications at all.

It is abundantly clear that the roster posted on OLA’s website is simply a voluntary list of people who self-attest that they are sufficiently fluent and knowledgeable to provide interpretation and translation services.

Disclaimer on OLA’s online roster highlights its failure to perform its work as the Legislature intended.

When considering the creation of LARC in 2013, the Legislature received testimony from the Hawai‘i Interpreter Action Network that cautioned against placing unscreened, untested bilingual individuals on OLA’s roster. The organization testified that self-reporting of ability and credentials is not credible, and that it is likely some people will provide falsified or non-existent credentials. However, according to the Language Access Advisory Council Chair (Council Chair), the importance of posting a public roster to help the limited English proficient community, coupled with a lack of staff resources, prompted OLA to move forward with posting an unvetted list of people who had applied to be included on OLA’s roster of interpreters and translators.

The Council Chair acknowledged it would have been preferable for OLA to verify applicant credentials, but said it was more important to make the information available to those who do not know where to search for interpretation and translation services. We disagree. While we recognize that OLA wanted to get the information out quickly, the quality of that information also needs to be considered. For instance, U.S. Health and Human Services policy guidance for Title VI of the Civil Rights Act of 1964 states that agencies and covered entities use individuals who are *competent* to provide interpreter services to effectively serve the limited English proficient population.¹² That guidance explains while competency does not necessarily mean formal certification as an interpreter, it does require more than self-identification as bilingual. At minimum, the competency requirement contemplates demonstrated proficiency in both English and the other language; orientation and training that includes the skills and ethics of interpreting (including

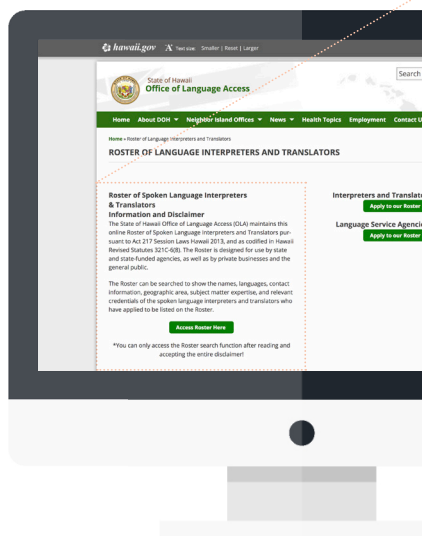
¹² *Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency*, Notice by the Health and Human Services Department, August 30, 2000.

confidentiality); fundamental knowledge in both languages of any specialized terms or concepts peculiar to the program or activity (i.e., legal or medical terminology or jargon); sensitivity to the limited English proficient person’s culture; and a demonstrated ability to accurately convey information in both languages.

Similarly, Hawai‘i law requires that interpreters and translators be qualified and competent. Furthermore, we note that many state agencies receive federal financial assistance, making them “covered entities” as that term is used in the federal law. As we have repeatedly noted, the express purpose of Chapter 321C, HRS, is to “affirmatively address” the language access needs of those who are limited English proficient and ensure “meaningful access” to important benefits and services, understanding and exercising important rights, complying with applicable responsibilities, and understanding other information provided by state-funded programs and activities. To fulfill that intent, the interpreters and translators who agencies and covered entities rely on to help limited English proficient persons access their programs and services *must be* sufficiently qualified and competent.

OLA, however, has shifted the statutory responsibility to address the language access needs of the state’s limited English proficient residents from itself to those seeking services, agencies, and others. Notably, in lieu of vetting the interpreters and translators on the roster, OLA requires users to acknowledge OLA’s disclaimer – written in English – before viewing the list.

OLA first warns users that they must accept a disclaimer to access the roster.



Roster of Spoken Language Interpreters & Translators Information and Disclaimer

The State of Hawaii Office of Language Access (OLA) maintains this online Roster of Spoken Language Interpreters and Translators pursuant to Act 217 Session Laws Hawaii 2013, and as codified in Hawaii Revised Statutes 321C-6(8). The Roster is designed for use by state and state-funded agencies, as well as by private businesses and the general public.

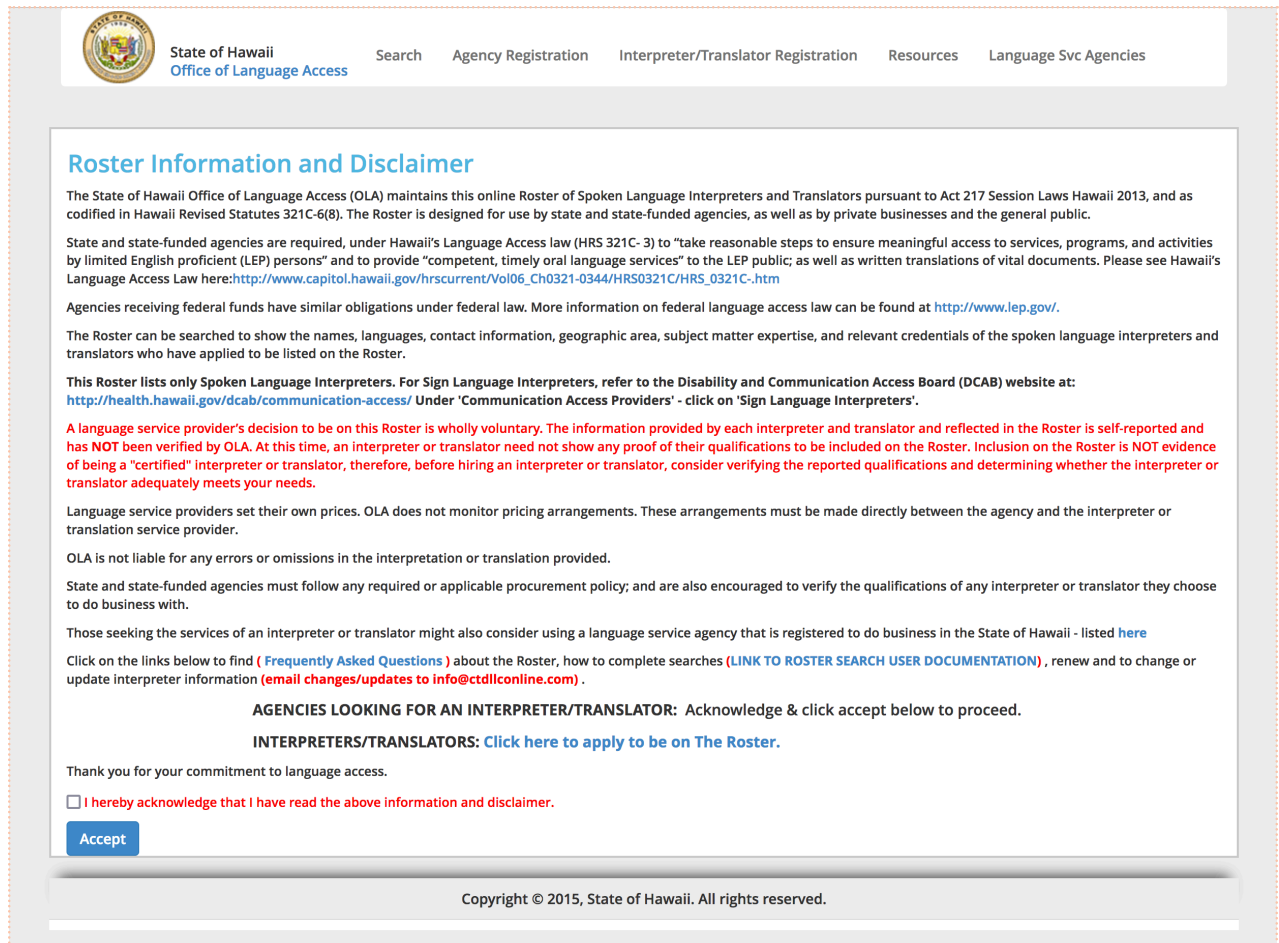
The Roster can be searched to show the names, languages, contact information, geographic area, subject matter expertise, and relevant credentials of the spoken language interpreters and translators who have applied to be listed on the Roster.

[Access Roster Here](#)

*You can only access the Roster search function after reading and accepting the entire disclaimer!

Source: Office of Language Access

Once users select the “Access Roster Here” button, they are presented with OLA’s disclaimer and must “acknowledge” that they have read the information and disclaimer:



The screenshot shows the website header with the State of Hawaii Office of Language Access logo and navigation links: Search, Agency Registration, Interpreter/Translator Registration, Resources, and Language Svc Agencies. The main content area is titled "Roster Information and Disclaimer" and contains the following text:

The State of Hawaii Office of Language Access (OLA) maintains this online Roster of Spoken Language Interpreters and Translators pursuant to Act 217 Session Laws Hawaii 2013, and as codified in Hawaii Revised Statutes 321C-6(8). The Roster is designed for use by state and state-funded agencies, as well as by private businesses and the general public.

State and state-funded agencies are required, under Hawaii's Language Access law (HRS 321C- 3) to “take reasonable steps to ensure meaningful access to services, programs, and activities by limited English proficient (LEP) persons” and to provide “competent, timely oral language services” to the LEP public; as well as written translations of vital documents. Please see Hawaii's Language Access Law here:http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0321C/HRS_0321C-.htm

Agencies receiving federal funds have similar obligations under federal law. More information on federal language access law can be found at <http://www.lep.gov/>.

The Roster can be searched to show the names, languages, contact information, geographic area, subject matter expertise, and relevant credentials of the spoken language interpreters and translators who have applied to be listed on the Roster.

This Roster lists only Spoken Language Interpreters. For Sign Language Interpreters, refer to the Disability and Communication Access Board (DCAB) website at: <http://health.hawaii.gov/dcab/communication-access/> Under 'Communication Access Providers' - click on 'Sign Language Interpreters'.

A language service provider's decision to be on this Roster is wholly voluntary. The information provided by each interpreter and translator and reflected in the Roster is self-reported and has NOT been verified by OLA. At this time, an interpreter or translator need not show any proof of their qualifications to be included on the Roster. Inclusion on the Roster is NOT evidence of being a "certified" interpreter or translator, therefore, before hiring an interpreter or translator, consider verifying the reported qualifications and determining whether the interpreter or translator adequately meets your needs.

Language service providers set their own prices. OLA does not monitor pricing arrangements. These arrangements must be made directly between the agency and the interpreter or translation service provider.

OLA is not liable for any errors or omissions in the interpretation or translation provided.

State and state-funded agencies must follow any required or applicable procurement policy; and are also encouraged to verify the qualifications of any interpreter or translator they choose to do business with.

Those seeking the services of an interpreter or translator might also consider using a language service agency that is registered to do business in the State of Hawaii - listed [here](#)

Click on the links below to find ([Frequently Asked Questions](#)) about the Roster, how to complete searches ([LINK TO ROSTER SEARCH USER DOCUMENTATION](#)), renew and to change or update interpreter information ([email changes/updates to info@ctdillconline.com](mailto:email_changes/updates_to_info@ctdillconline.com)).

AGENCIES LOOKING FOR AN INTERPRETER/TRANSLATOR: Acknowledge & click accept below to proceed.

INTERPRETERS/TRANSLATORS: [Click here to apply to be on The Roster.](#)

Thank you for your commitment to language access.

I hereby acknowledge that I have read the above information and disclaimer.

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Source: Office of Language Access

OLA waits until a paragraph in the middle of the disclaimer to mention that the roster has not been vetted:

A language service provider’s decision to be on this Roster is wholly voluntary. The information provided by each interpreter and translator and reflected in the Roster is self-reported and has **NOT** been verified by OLA. At this time, an interpreter or translator need not show any proof of their qualifications to be included on the Roster. Inclusion on the Roster is NOT evidence of being a ‘certified’ interpreter or translator, therefore, before hiring an interpreter or translator, consider verifying the reported qualifications and determining whether the interpreter or translator adequately meets your needs.

Although there may be a public expectation that individuals on the OLA roster are qualified to provide accurate and effective interpretation and translation services, the Council Chair states that the disclaimer makes clear that OLA has not vetted any qualification or certification claims and the responsibility to verify such claims rests with the hiring party. OLA's Executive Director also confirmed OLA's position that references and background checks of those on the roster are the responsibility of the person retaining the interpreter or translator. He explained that the process was already in place when he took the position in 2017 and he was unaware of the reason or rationale behind the decision to post unverified information to the roster.

We disagree that the disclaimer posted on OLA's website is either clear or effective, particularly to limited English proficient individuals who require interpreters and translators to access government services in the first place. The Legislature created LARC to address the lack of a comprehensive and centralized system *to identify individuals qualified to provide language access assistance*. By posting a roster of names, without verifying that those individuals on the roster are qualified to provide competent and accurate services, including in subject matters that require specialized knowledge, OLA is neither complying with the plain language of the statute nor the clear legislative intent. OLA cannot ensure that those on the roster are capable of providing language assistance to persons who are limited English proficient so that they can meaningfully access government programs and services. Even worse, OLA cannot guard against fraud by those who may intentionally overstate or invent their qualifications, which may harm those relying on the roster to access services and even expose the state to possible liability. Instead, OLA encourages the users themselves to verify the reported qualifications of interpreters and translators. The Legislature created the Language Access Resource Center precisely for that purpose. OLA's current practice of including any individual who asks to be on its roster of interpreters and translators without even confirming that the person has completed the section of the application about qualifications and certifications benefits only those offering to provide the services, not the agencies or limited English proficient persons who will use the services, which is the intent and purpose of the online roster.

OLA has not taken meaningful steps towards identifying a process to test or certify language service providers.

Another issue OLA faces moving forward is fulfilling the requirement under Section 321C-6(8)(E), HRS, to identify or create a process to test or certify language interpreters and translators. The Council Chair said the purpose of this mandate is to ensure interpreters and translators have the core competencies needed to provide such services and assures

Training Responsibilities

SECTION 321C-6(8), HRS, requires – among other things – OLA’s Language Access Resource Center to train state and state-funded agencies on how to effectively obtain services of language interpreters and translators; support the recruitment and retention of interpreters and translators providing services to state agencies and state-funded agencies; and provide, coordinate, and publicize training opportunities to increase the number and availability of qualified language interpreters and translators and develop their language skills. OLA’s outreach and training opportunities varied widely, everything from an interview on Hawai’i Public Radio to conducting workshops for new interpreters with the Judiciary to presentations to various state agencies and community groups and appearances at churches and community centers on various islands.

We found there were 20 outreach, training, or education events planned by OLA for FY2019 and 22 such events planned for FY2020. OLA slightly exceeded both planned totals with 21 outreach, training, or education events conducted in FY2019 and 24 events in FY2020.¹ In FY2021, OLA’s total jumped as the agency reported it had conducted 45 such events.²

As part of its training and recruitment efforts, OLA had an ongoing Memorandum of Agreement with the Hawai’i State Judiciary from 2017 to 2020 to conduct training workshops around the state. These workshops had a two-fold purpose – recruiting language interpreters who are interested in helping limited English proficient individuals do business with the state courts and other government agencies, and providing training to increase the number and availability of qualified language interpreters and develop their language interpretation skills.

OLA said a hiring freeze and the arrival of COVID-19 impacted the agency’s ability to conduct training and educational events – particularly outreach efforts. We found that the pandemic also prompted the cancellation of OLA’s annual conference with language access coordinators in 2020. According to OLA’s Executive Director, items on the agenda for the planned meetings with state agency language access coordinators included such discussion points as the requirements under Chapter 321C, HRS, roles and responsibilities of language access coordinators, the elements of a language access plan, and the technical assistance offered by OLA.

¹ State Variance reports for the Office of Language Access for FY2019 and FY2020.

² State Variance report for the Office of Language Access for FY2021.

the agencies and others that those who are listed on OLA's roster of interpreters and translators are, in fact, qualified.

However, OLA's Executive Director claims the statute intentionally requires LARC only to "work toward" identifying or creating a process because of the complexity of such an endeavor. While neither the statute itself nor Act 217 (SLH 2013) indicates what the Legislature intended by the phrase "work toward," nearly a decade since the requirement was enacted, OLA has not taken any meaningful steps toward identifying or creating a process. Moreover, OLA's Executive Director's reliance on the phrase "work toward" is unconvincing. The Legislature certainly did not intend LARC to "work toward" identifying or creating a testing and certification process *indefinitely*. LARC was created to be a comprehensive and centralized system that the Legislature determined was needed to identify individuals qualified to provide language access assistance, just one step toward ensuring meaningful access to programs and services offered by agencies and covered entities as required by Chapter 321C, HRS. Given that clear mandate, we suggest that a more reasonable and appropriate interpretation of that statutory section is that LARC is responsible for ultimately establishing a process by which those seeking to provide interpretation and translation services are certified, whether through testing that currently may exist or testing developed by LARC.

OLA's Executive Director also added that OLA is leading a working community group with the goal of increasing the number of interpreters and translators and identifying a possible credentialing body for interpreters. However, that group was convened by the Governor only last year. We did not assess the work being performed by the community group and do not know when the group expects to identify a process to ensure interpreters and translators on LARC's roster are qualified.

As with its ability to effectively provide oversight, central coordination, and technical assistance to agencies in implementing language access requirements, OLA needs to adopt administrative rules to effectuate the purpose of the Language Access Resource Center.

The Legislature created LARC for the express purpose of addressing specific obstacles agencies were encountering in their implementation of the language access law. That legislation specifically noted that trained and competent language interpreters and translators were in short supply and the state lacked a comprehensive and centralized system to identify individuals qualified to provide language access assistance. Act 217, SLH 2013, directed LARC to, among other things, create a roster of

language interpreters and translators, “listing their qualifications and credentials *based upon guidelines established by the office of language access*,” and to identify or create a testing and certification process for interpreters and translators. As reported above, we found LARC has done neither, relying instead on a disclaimer that information about interpreters and translators’ qualifications is self-reported.

To “affirmatively address” the language access needs of Hawai‘i’s limited English proficient population, LARC *must* establish guidelines about the qualifications and credentials needed to be on its list of interpreters and translators; LARC also must establish the process by which interpreters and translators can be certified to provide language access services for limited English proficient persons.

The Hawai‘i Administrative Procedure Act, Chapter 91, HRS, defines “rule” to mean “every agency statement of general or particular applicability and future effect *that implements, interprets, or prescribes law or policy*,” excluding regulations that concern only the internal management of the agency and do not affect people outside the agency. In our opinion, both the guidelines as well as the testing process by which LARC intends to certify interpreters and translators are statements of general applicability that implement, interpret, or prescribe law or policy. Stated differently, we believe that both must be done through administrative rules. However, as reported previously, OLA has not adopted any administrative rules, notwithstanding the Legislature’s clear intent that OLA do so to develop the details needed to ensure limited English proficient residents receive meaningful access to state services and programs.

To fulfill its statutory purpose, i.e., to ensure meaningful access to state services and programs, OLA must adopt administrative rules to provide the necessary details about the office’s authority as well as requirements for those providing interpretation and translation services. The Legislature purposefully left those details to OLA, *requiring* the OLA Executive Director to adopt administrative rules to do so.

Conclusion

Almost 16 years after it was established, OLA remains a partially formed organization, conducting its day-to-day operations without having first established and clarified the organization's direction, duties, and authority. The result: review and monitoring activities that are often nothing more than paper exercises, with questionable purpose and effectiveness, and little connection to OLA's statutory role. In other words, OLA is not the agency that the Legislature intended to address the language access needs of Hawai'i's limited English proficient population.

We also found LARC has not become the "centralized resource" that the Legislature determined was needed to grow the pool of language interpreters and translators and address the needs of the state's limited English proficient population. OLA's website contains information for someone who is limited English proficient about how to request a free interpreter but does not guarantee that agencies have the resources to locate an interpreter or that interpreters are qualified. Moreover, OLA has no process in place to verify that the self-described interpreters and translators on its roster are qualified to provide competent and accurate services, and the office has made no progress towards identifying a process to ensure the quality and accuracy of services provided by the interpreters and translators on its roster.

OLA's Executive Director contends that Chapter 321C, HRS, Hawai'i's language access law, is a "law without teeth." For example, he points out that the law does not specifically authorize OLA to approve or reject agencies' language access plans and does not require agencies to address recommendations that may arise from OLA's review of those plans. However, Chapter 321C *requires* the OLA Executive Director to establish and adopt administrative rules, a power the Legislature conferred to provide specific direction to agencies and covered entities about their language access plans as well as the processes by which OLA intended to ensure limited English proficient persons have meaningful access to state services, programs, and activities.

Through administrative rules, OLA could provide itself with the structure and authority it needs. For instance, OLA could, among other things, establish its expectation with respect to the language access plans agencies submit, including the requirement that those plans be approved by OLA; OLA could establish requirements that must be met for an agency language access plan to be posted on OLA or agency websites; OLA could create the process through which persons who are limited English proficient can obtain OLA's help to obtain language assistance, as contemplated by the statute; and OLA could establish the qualifications for interpreters and translators to be included on LARC's roster.

According to OLA's Executive Director, the administrative rulemaking process started sometime in 2016 during his predecessor's tenure, but he stopped the rulemaking process in 2018 because of staffing issues. We note that it apparently took almost *10 years* for OLA to draft proposed administrative rules. However, now, almost 16 years since it was established, OLA still has no rules that the Legislature had directed the OLA Executive Director to adopt and, more importantly, are needed to effectuate the office's purpose.

Recommendations

The Office of Language Access should:

1. Adopt administrative rules that implement and interpret the language access law, Chapter 321C, HRS, prescribing the procedures and requirements agencies and covered entities must follow to comply with the statute. Specifically, the administrative rules should include the following:
 - a. Language Access Plans
 - i. The specific information or types of information that state agencies and covered entities must include in their language access plans, including the language access plans required to be submitted every two years by Section 321C-4, HRS.
 - ii. The process and procedure state agencies must follow to consult with the Executive Director when establishing their language access plans as required under Section 321C-4, HRS.
 - iii. The process and procedure for submitting a language access plan for approval by the Executive Director.
 - iv. The criteria applied by the Executive Director in reviewing, approving, and monitoring an agency or covered entity's language access plan for compliance with Chapter 321C, HRS.
 - v. The requirement that the Executive Director must approve state agencies' language access plans.
 - vi. The requirement that the Executive Director must approve covered entities' language access plans.

- b. Language Access Coordinator
 - i. The process and procedure state agencies must follow to designate a language access coordinator, including the time by which the agency must inform the Executive Director when the agency designates a new coordinator.
- c. Implementation of Language Access Plans
 - i. The process and procedure by which OLA will “[p]rovide oversight, central coordination, and technical assistance to state agencies in their implementation of language access requirements,” as required under Section 321C-6(1), HRS.
 - ii. The process and procedure by which OLA will “[p]rovide technical assistance to covered entities in their implementation [of Chapter 321C, HRS],” as required under Section 321C-6(2), HRS.
 - iii. The time by which state agencies and covered entities must provide competent oral language services to limited English proficient persons who seek access to services, programs, or activities.
 - iv. The criteria state agencies and covered entities must apply in determining:
 - A. The number or proportion of limited English proficient persons served or encountered in the eligible service population;
 - B. The frequency with which limited English proficient persons come in contact with the services, programs, or activities;
 - C. The nature and importance of the services, programs, or activities; and
 - D. The resources available to the state agency or covered entity and the costs.
 - v. The time by which state agencies and covered entities must provide written translation of vital documents to limited English proficient persons who seek access to services, programs, or activities if required to provide translation of those documents under Section 321C-3(c), HRS.

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- vi. The process and procedure for agencies to inform OLA when they are unable to provide a person who is limited English proficient with reasonable access to the agency's programs, services, or activities.
 - vii. The information agencies must provide OLA about their efforts to eliminate barriers to language access when reasonable access to agency programs, services, or activities is not provided to a person who is limited English proficient.
 - viii. The process and procedure to be used by the Executive Director in attempting to eliminate language access barriers to the agency's programs, services, or activities for a person who is limited English proficient.
 - ix. The requirement that agencies address and implement recommendations offered by the Executive Director to eliminate barriers to language access or, if an agency disagrees with the Executive Director's opinion and/or recommendations, the process and procedure by which the agency must notify the Executive Director of its disagreement.
 - x. The process and procedure by which an agency must provide information about action taken to implement the Executive Director's recommendations.
- d. Language Access Resource Center
- i. The requirements to be included on LARC's roster of language interpreters and translators, including the necessary qualifications and credentials established by OLA.
 - ii. The process and procedure by which someone can request to be included on LARC's roster of language interpreters and translators, including the information that must be submitted to OLA.
 - iii. The process and procedure to test and certify language interpreters and translators.

2. Develop and document policies, procedures, and processes to provide direction and consistency in OLA's performance of the following responsibilities:
 - a. OLA's review and monitoring of language access plans for compliance with Chapter 321C, HRS, and administrative rules adopted by OLA, notification of non-compliance, and follow-up with agencies and covered entities on corrective measures.
 - b. Tracking and monitoring agency language access plans, including notification to agencies that they are not in compliance with filing requirements and the deadline for two-year updates.
 - c. Review of qualifications and credentials of interpreters and translators requesting to be included on the roster maintained by the Language Access Resource Center.

Office of the Auditor’s Comments on the Office of Language Access’s Response to the Audit Findings

WE TRANSMITTED a draft of this report to the Office of Language Access (OLA) on September 1, 2022 and met via video conference with OLA’s Executive Director on September 8, 2022 to discuss the draft. OLA provided us with its written response to the draft report on September 26, 2022. That response is included in its entirety as Attachment 1.

While OLA disagrees with certain statements in the draft report, OLA states that it agrees with our overall recommendations and reports already taking steps to address the recommendations. Based on our discussion with the Executive Director and OLA’s response, we do not believe any material changes to the draft report are warranted. We believe the statements in our report and the audit findings are accurate and supported by sufficient and appropriate evidence that we obtained in the course of the audit. However, we did clarify some language and deleted a paragraph from the draft report that in our judgment was unnecessary. We also refined and revised our recommendations following our exit meeting with the Executive Director and OLA’s response.

Below, we address certain of the points raised by OLA in its response. As a general statement, much of OLA’s response describes efforts undertaken by OLA since the completion of the audit, which, while commendable, do not affect the report. We expect to assess those efforts and other actions taken by OLA to address the audit findings when we follow up on OLA’s implementation of the recommendations in two to three years.

“Staffing Challenges”

OLA notes challenges with staffing that it has endured since it began operations in 2007. While we recognize the staffing challenges OLA has encountered, the Legislature delegated to OLA certain policy-making authority, explicitly requiring OLA to promulgate administrative rules to “fill in” the specific requirements necessary to fulfill its intended purpose. Yet, more than 15 years later, OLA has yet to adopt

administrative rules. And, as we reported, without those administrative rules, OLA is a partially formed organization, unable to ensure that people who are limited English proficient may access services and programs. Challenges with limited resources and staffing do not excuse OLA's extended delay in promulgating administrative rules, which the Legislature mandated.

“Obligations of State Agencies and Covered Entities Under Chapter 321C, HRS”

OLA claims that the language access statute “only” requires state agencies to develop a language access plan, to file their plans with OLA, and to designate a language access coordinator. OLA's statement confirms OLA's continued misunderstanding of its responsibilities, its statutory mission, and more importantly, the power conferred by the Legislature to provide the specific policies that OLA feels are needed to ensure people who are limited English proficient have reasonable access to state programs and service.

As we detail in our report, merely filing plans that do not include specific steps to provide language access is a meaningless exercise and contrary to OLA's purpose. OLA was created to ensure meaningful access, not simply whatever an agency submits. OLA should use the authority granted by the Legislature to develop policies and procedures consistent with the statute it believes are necessary to ensure agencies' plans provide reasonable assurance that limited English proficient people can access agency programs and services. That authority can, and should, empower OLA to do much more than simply accept and post whatever language access plans agencies submit.

Finding No. 1: Without administrative rules, OLA is ill-equipped to ensure that state agencies are providing limited English proficient persons meaningful access to services, programs, and activities.

Acknowledging the absence of administrative rules, OLA nonetheless detailed some of the “various materials, guidelines, tools, and samples” that they have provided to agencies, including the Executive Director Memos.

While OLA claims to understand the importance of administrative rules, saying rules are a “top priority,” OLA's actions belie those statements. Informal guidance is not a meaningful substitute for administrative rules. OLA was delegated the responsibility to complete itself – to make itself into that agency created by the Legislature to ensure reasonable access to state programs and services for limited English proficient

people – and it has yet to understand and embrace that responsibility. Contrary to OLA’s statement, we found OLA does not understand the importance of rules and has not prioritized those rules.

Administrative rules need to be OLA’s priority number one, not memoranda and other forms of informal guidance. As we reported, the informal guidance has been inconsistent and is subject to change at any moment, without notice. More importantly, agencies are not mandated to comply with that guidance. From our review of the plans that had been posted on OLA’s website, it appears agencies have disregarded OLA’s informal guidance.

OLA also disagrees that administrative rules would add “teeth” to OLA’s ability to fulfill its duties under the law.¹³ OLA apparently equates teeth with the authority to impose penalties or sanctions. That misses the mark, in our opinion. It is not our position that OLA needs the ability to assess fines or other sanctions against agencies for their failure to comply with the language access requirements.

However phrased, the administrative rules should provide OLA with the authority to require agencies and covered entities to comply with the specific procedures and other processes that are necessary to ensure adequate information is included in plans that will provide reasonable access to programs and services, as described in the rules. That authority is the teeth OLA needs to successfully fulfill its statutory purpose. Moreover, OLA can consider actions, such as reporting agency compliance and noncompliance to the Legislature, that “penalize” noncompliance, as proposed in its draft administrative rules.

As we repeatedly state in our report, the specific details and instruction, and the force of law contained in well-crafted administrative rules will go a long way towards providing OLA with the tools needed to fulfill its mission; well-crafted rules will “complete” OLA, establishing a comprehensive language access policy and procedures that the Legislature had delegated to OLA to develop. OLA was not created to be decorative. And, the pandemic has provided specific examples of the importance of language access.

¹³ It was the Executive Director who described the language access statute as a law without teeth; moreover, the Attorney General, in its review of OLA’s draft rules, suggested that OLA could “add more teeth to enforcement . . . to the extent allowed by law.”

Finding No. 2: The Language Access Resource Center does not provide the comprehensive and centralized system to identify qualified interpreters and translators as intended by the Legislature.

OLA explains that the “nature of the language service industry” impedes many interpreters and translators from having qualifications or credentials to list on a roster. OLA’s position is short-sighted and untrue. OLA appears to equate qualifications and credentials with certification by an official body or educational institution. However, we suggest that certain information can also help to establish whether someone is qualified to perform interpretation or translation services. For example, information about whether someone is a native speaker of the other language, the person’s educational background, past experience serving as an interpreter or translator, whether they have been certified by, for instance, the Judiciary to provide interpretation or translation services may be beneficial to someone searching for an interpreter or translator from the roster.

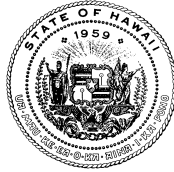
OLA disagrees with the statement in the draft report that OLA “has no process to test or certify language services providers.” We have slightly modified that statement in the final report. Although OLA provides some details as to their efforts to identify a process to test or certify interpreters and translators, we note that OLA did not provide most of this information during the audit or even at the exit conference. OLA asserts that it is working with subject matter experts, the community, and stakeholders for the first time in its written response to the draft audit report, which deprives us with any opportunity to obtain more information about OLA’s statement and to verify OLA’s representation of its efforts.

But, the bottom line is: OLA needs administrative rules. All of these efforts OLA describes do not provide sufficient information to the public, including those interested in serving as interpreters or translators, about how OLA intends interpreters and translators to be tested or certified. OLA is required to provide that type of information, i.e., the procedure and practice requirements to be included on OLA’s roster, through administrative rules.

While we recognize that OLA has a limited staff, we emphasize that the requirement to provide limited English proficient people with meaningful access to state programs and services is a requirement under both state and federal law. OLA was created to ensure that state agencies and covered entities comply with those requirements. And, given the diversity of Hawai‘i’s population, which includes a relatively high percentage of people who report being limited English proficient,

OLA's statutory role is important and impactful. When we assess OLA's implementation of the recommendations, we look forward to reviewing OLA's efforts to address Report No. 22-10's findings.

DAVID Y. IGE
GOVERNOR OF HAWAII



ELIZABETH A. CHAR, M.D.
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APHIRAK BAMRUNGRUAN
EXECUTIVE DIRECTOR

September 26, 2022

Leslie H. Kondo, State Auditor
Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawaii 96813

RE: Response to Draft Audit Report of the Office of Language Access

Dear Mr. Kondo:

Thank you for the opportunity to review and provide comment on the draft Audit of the Office of Language Access (OLA), dated September 1, 2022. This audit provides our office with valuable information to consider while moving forward.

Although there are areas of disagreement in the findings of the draft report, OLA agrees with the overall recommendations of the auditor. During the eight-month period between the initiation of the audit and the completion of the draft report, OLA has conducted a self-assessment of its internal operations and procedures and has taken proactive steps to address the recommendations. For the aforementioned reasons, OLA respectfully offers the following comments.

Staffing Challenges

OLA began operations in 2007 with six staff. The number of staff was reduced to one in 2009 due to a Reduction-In-Force. From 2009 to 2012, OLA was run single-handedly by the OLA Executive Director until 2012 when two positions were restored. It is important to note that, between June 2018 to March 2019, OLA was once again limited in its capacity when OLA's only Program Specialist was on an extended leave.

In November 2020, there was a legislative proposal to eliminate OLA. Consequently, many planned activities and recruitment for hiring were paused as OLA faced an uncertain future. Fortunately, with support from the legislative and executive branches, along with the community, OLA was saved and continues its mission as an agency administratively attached to the Department of Health.

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Obligations of State Agencies and Covered Entities Under Chapter 321C, HRS

OLA would like to reemphasize that while Section 321C-4(a) requires each state agency and covered entity to establish a Language Access Plan (LAP), Sections 321C-4(b) and 321C-4(c) only require state agencies to file their LAPs with OLA and designate a language access coordinator who is responsible for establishing and implementing the LAP in consultation with the OLA Executive Director and the Language Access Advisory Council.

OLA's responsibility to covered entities is mandated by statute 321C-6 (2) to "Provide technical assistance to covered entities in their implementation of this chapter". Providing technical assistance to covered entities on the development and implementation of LAPs is part of OLA's daily operations and does not require that covered entities submit Language Access Plans (LAPs) to OLA.

Finding No. 1: Without administrative rules, OLA is ill equipped to ensure that state agencies are providing limited English proficient persons meaningful access to services, programs, and activities.

Despite the absence of approved administrative rules, OLA had been providing agencies with various materials, guidelines, tools, and samples that contain elements of an effective LAP. Nevertheless, as identified by the draft report, it lacked clarity and uniformity in program implementation.

As stated in the draft report, OLA has drafted administrative rules, which are pending final review and approval. OLA understands the importance of promulgating the administrative rules and it is a top priority. In the interim, while the administrative rules are being revised to incorporate recommendations from the final report, OLA will continue to provide technical assistance and a system of support to ensure that state agencies are providing Limited English Proficient persons meaningful access to services, programs, and activities.

Frequent, clear communication is provided regarding the role of the language access coordinator; LAP elements; review and scoring criteria and implications; and an overarching review timeline milestones.

Since November 2021, OLA has issued seven Executive Director Memos as follows:

- Memo No. 2021-001 – "Office of Language Access (OLA)'s Functions"
- Memo No. 2021-002 – "The Role of the Language Access Coordinator"
- Memo No. 2021-003 – "Requirements of the Law and Elements of the Language Access Plan (LAP)"
- Memo No. 2021-004 – "The Top 14 Languages Spoken by Individuals with Limited English Proficiency (LEP) in the State of Hawaii"

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- Memo No. 2021-005 – “A Language Assistance Services Self-Assessment Tool”
- Memo No. 2022-001 – “Submission of Language Access Plans”
- Memo No. 2022-002 – “Language Access Plan (LAP) Review Requirements for State Agencies and Scoring Criteria”

OLA developed new LAP review criteria consisting of thirty-two elements encompassing the requirements of Sections 321C-4(a) and 321C-4(b), HRS and as detailed in Executive Director Memo No. 2021-003. The development of quantifiable and scorable LAP review criteria has made it possible to set a scoring threshold with implications for the agency and OLA when a satisfactory score is not met. The development of quantifiable LAP review criteria allows for more accessibility and encourages objective data sharing when viewed by interested parties.

Furthermore, biennial agency LAP reviews are part of an overall compliance review process that OLA is currently revising. Part of future compliance monitoring will include the reinstatement of announced and unannounced compliance site visits to begin in CY2023. The combination of LAP reviews and site visits will provide assurance that language assistance services to the Limited English Proficient community are being provided as described in an agency’s LAP.

In regards to the law being without “teeth”, while OLA agrees that the administrative rules can provide a clearer structure and clarification of LAPs and their elements, it respectfully disagrees that the promulgation of administrative rules will add “teeth” to the current law. Specifically, as a way to create “teeth,” the draft report suggests that OLA should have empowered itself with the authority, among other things, to approve or reject an agency’s LAP. The question remains as to what consequences an agency will face if OLA rejects an LAP. OLA cannot impose any penalties or sanctions. Thus, in our view and to expand on the metaphor, the power to approve or reject an agency’s LAP seems like mere dentures rather than real “teeth” as suggested in the draft report. It will not give real enforcement authority to OLA as intended. Nevertheless, OLA will explore any viable options that can enable OLA to better perform its functions.

Finding No. 2: The Language Access Resource Center does not provide the comprehensive and centralized system to identify qualified interpreters and translators as intended by the Legislature.

In reference to the statement that, “those language service providers who OLA included in its roster of interpreters and translators did not list any credentials or qualification at all”, it is important to understand the nature of the language service industry. There are limited opportunities for professional certification nationwide and a limited breadth of languages which can be certified. For example, languages frequently encountered in Hawaii such as Chuukese, Marshallese, Samoan, Visayan, and Thai, do not have a nationally-recognized certification program. Specifically, in the field of legal interpreting, there are only two certification programs: federal court interpreter certification and state court interpreter certification, while in the field of medical interpreting, there are only two recognized certification programs in the United States:

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the National Board of Certification for Medical Interpreter (NBCMI) and the Certification Commission for Healthcare Interpreters (CCHI). Therefore, many interpreters would not have credentials or qualifications to list on not only OLA's roster but any interpreter or translator roster nationwide.

Furthermore, with all due respect, OLA disagrees with the statement that it has "no process to test or certify language service providers". OLA, under the current executive director, recognized the need to develop skills, and test or certify local interpreters to ensure the quality of interpretation provided. In the absence of nationwide certification standards or assessment, OLA worked with subject matter experts, the community, and various stakeholders to identify a process to test and increase the number of qualified language interpreters.

OLA divided the capacity-building effort into three separate components: testing language proficiency, creating a local credentialing program, and interpreter skill building. OLA has partnered and collaborated with different entities to leverage their expertise and resources to reach our common goals through the following initiatives.

- Creating and offering a language proficiency testing program for both English and non-English languages, in collaboration with the University of Hawaii's Hawaii Language Roadmap Initiative as a way to assess the language skill of interpreters.
- Partnering with the Hawaii Judiciary's Court Interpreter Program to conduct statewide basic orientation workshops for new language interpreters. This initiative has a two-fold purpose of recruiting new language interpreters and providing training to increase the number and availability of qualified language interpreters.
- Providing a skill building workshop on a quarterly basis to local interpreters.
- Successfully working with Kapiolani Community College to establish a community interpreting program. Upon completion, participants will receive a certification of community medical interpreting that can be used as evidence of competency at the local level. The first class is being offered this month.

OLA strongly believes that through working collaboratively with our partners and community, it have developed a process to improve the quality of the interpretation being provided by local interpreters.

Furthermore, to improve the roster of interpreters and translators, OLA has developed a revised online enrollment procedure which includes verification of a person's education and credentials before inclusion. The new procedure will be presented to the Language Access Advisory Council in October 2022 for comment and approval prior to final implementation.

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Recommendations

OLA has accomplished much since its inception and continues to fulfill the statutory mandate of addressing the language access needs of Limited English Proficient persons to ensure meaningful access to services offered by the State.

Most aspects of the Auditor's recommendations are included in all seven Executive Director Memos that have been communicated and disseminated to all language access coordinators. With a renewed focus on finalizing administrative rules and formalizing and incorporating the recommendations in the draft audit, OLA will make necessary revisions to provide more structure and clarity. OLA recognizes that it can improve, and will continue to strive to do so. OLA thanks you for your efforts and for the opportunity to comment on this draft report. OLA will continue to incorporate recommendations, to the extent that is reasonable and practical in the language access framework, to ensure meaningful access to government services, programs, and activities for individuals with Limited English Proficiency.

Sincerely,



Aphirak Bamrungruan
OLA Executive Director

c: Elizabeth A. Char, M.D.
Director of Health

Terrina Wong
The Chair of the Language Access Advisory Council