

**Sixth Judicial Circuit  
South Dakota  
LANGUAGE ACCESS PLAN**

**1. Legal Basis and Purpose**

This document serves as the plan for the Sixth Judicial Circuit, Unified Judicial System of the State of South Dakota to ensure access to court services for persons with limited English language proficiency (LEP) and deaf/hard of hearing persons. It is designed to respond to Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and to the requirements imposed by Executive Order 13166, South Dakota state law and related guidance. This plan provides a framework for the provision of timely and effective language assistance to persons with LEP who come in contact with the courts of the Sixth Judicial Circuit.

Section 601 of title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et. seq., provides that “[n]o person in the United States shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Executive Order 13166 requires all agencies receiving federal funds to address the needs of persons who, due to LEP, cannot fully and equally participate in the agency’s programs without language assistance.

The US Department of Justice (USDOJ) has issued policy guidance on the responsibility of courts under this order to provide interpreting and translating services. The USDOJ has the right to investigate complaints against any agency that does not provide free language services when necessary to participate in the program. *See generally* <http://www.usdoj.gov/crt/cor/13166.htm>. An agency’s federal funding may be withheld until the complaint is resolved.

South Dakota state laws addressing court interpreting are found at SDCL Chap. 19-3 and SDCL Chap. 19-14, et al, and are reproduced in the Current South Dakota Laws Concerning court Interpreting section of the *2011 Report to the South Dakota Supreme court, Supreme Court’s Committee to Study the Use of Interpreters and Translators in the South Dakota Court System*.

**2. Needs Assessment**

The Sixth Judicial Circuit Court makes and will continue to make every effort to provide services to all persons with LEP. The following list shows the foreign languages that were used in the past five years in the Sixth Judicial Circuit:

| <u>INTERPRETERS</u>            | <u>2012</u> | <u>2013</u> | <u>2014</u> | <u>2015</u> | <u>2016</u> |
|--------------------------------|-------------|-------------|-------------|-------------|-------------|
| COMM SERVICE FOR DEAF<br>(CSD) | 0           | 0           | 1           | 3           | 3           |
| LANGUAGE LINE                  |             |             |             |             |             |
| SPANISH                        | 0           | 1           | 9           | 10          | 3           |
| KAREN                          | 0           | 0           | 2           | 0           | 0           |
| KUNAMA                         | 0           | 0           | 0           | 2           | 0           |
| RUSSIAN                        | 0           | 0           | 0           | 2           | 0           |
| CAMBODIAN                      | 0           | 0           | 0           | 0           | 1           |
| CANTONESE                      | 0           | 1           | 0           | 0           | 0           |
| TIGRINYA                       | 0           | 0           | 0           | 1           | 0           |
| SPANISH                        | 0           | 1           | 0           | 1           | 0           |

Review of the five year statistics reveals that Spanish interpreters were most frequently needed, however interpreter needs will vary based on particular needs of individuals involved in court proceedings. The Sixth Judicial Circuit Court currently determines those particular needs and provides interpreter services on a case-by-case basis in accordance with all applicable laws, and will continue to do so in compliance with any policies, rules or laws established that may pertain to the provision of interpreter services.

### 3. Language Assistance Resources

#### A. Determining the Need for an Interpreter in the Courtroom

“When a witness cannot communicate or understand the English language the court shall procure and appoint a disinterested interpreter or translator for him ....” SDCL 19-3-7. It is at the court’s discretion to make the determination when an interpreter is necessary. Among the factors taken into consideration by the court are whether a party or person whose presence is necessary or appropriate in a court proceeding:

1. Is unable to accurately describe persons, places and events related to the proceeding due to a non-English speaking background or hearing impairment;
2. Is unable to tell the court “what happened” over a period of time;
3. Is unable to request clarification when statements are vague or misleading, to defend or advocate a position, or otherwise meaningfully participate in a proceeding;
4. Is not on equal footing with an English speaking person with an equivalent education or background;
5. Is unable to speak or understand English and translation is necessary to allow for effective participation in a proceeding.

*See Supreme Court’s Committee to Study the Use of Interpreters and Translators in the South Dakota Court System, 2011 Report to the South Dakota Supreme Court, November 18, 2011, p. 23-24.*

The Court further determines who qualifies for an interpreter by undertaking the following analysis:

An individual who cannot speak English, or cannot otherwise understand a communication in English, qualifies for appointment of an interpreter if:

1. The individual is a party to a proceeding;
2. The individual's presence is necessary or desirable in a proceeding (i.e. the parent of a juvenile involved in a proceeding);
3. The individual is a person that would be directly affected by any action or decision in the proceeding;
4. The individual is a witness in a proceeding.

*Id.* at 24.

## **B. Providing Interpreters in the Courtroom**

The Sixth Circuit Court Administrator maintains a continually updated list of interpreters posted on the UJS website [www.ujs.sd.gov](http://www.ujs.sd.gov) who may be contacted when the Court determines that an interpreter is necessary. The list includes at least one Spanish interpreter within the circuit. In addition, an interpreter from Communication Services for the Deaf can be made available.

In situations where an interpreter of a language not listed is needed, the Sixth Circuit Court Administrator will consult with outside sources such as Lutheran Social Services in Sioux Falls, South Dakota, or other circuits within the state, to locate the needed interpreter. Telephonic interpreter services will also be used. Qualifications of interpreters are scrutinized by the judge presiding on the case to determine whether the interpreter will fit the court's needs. Considerations taken in scrutinizing potential interpreters' qualifications include those required by South Dakota Codified Law and may include:

1. What is the interpreters' native language and if language services needed is not the native language of the interpreter, the length of time speaking the language;
2. What formal schooling relating to the language and interpretation services was completed;
3. What certifications the interpreter possesses; and/or
4. What level of experience he/she possesses in interpretation services.

While this is the current procedure, the Sixth Judicial Circuit Court is willing to implement any policies, rules or laws to determine minimum qualifications of interpreters that may be established within the UJS or by the South Dakota Legislature.

#### 4. Training and Evaluation

The Sixth Judicial Circuit Court is committed to providing language access training opportunities for all judicial officers and staff members. While training currently is conducted in an informal manner throughout the circuit, additional policies, rules, and laws established will be implemented to further training and learning opportunities as they pertain to interpreter services.

The Sixth Judicial Circuit Court will routinely assess whether changes to the LAP are needed or mandated by policy, rule or law. The plan may be changed or updated at any time but reviewed not less frequently than once a year. Each year the Circuit Court Administrator, in consultation with the Presiding Judge, will review the effectiveness of the court's LAP and update it as deemed necessary. The evaluation will include identification of any problem areas and development of corrective action strategies. Elements of the evaluation will include:

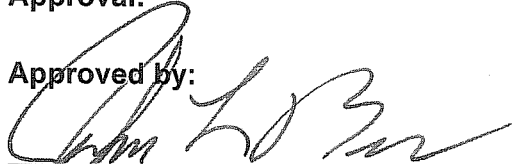
1. Number of LEP services requested;
2. Assessment of current language needs to determine if additional services or translated materials should be provided;
3. Review of feedback from court employee training sessions; and
4. Customer satisfaction feedback.

#### 5. LAP Effective Date:

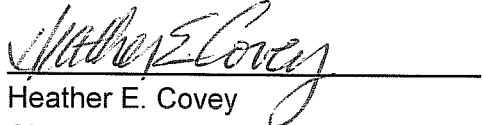
October 24, 2016

#### 6. Approval:

Approved by:

  
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Hon. John L. Brown  
Presiding Judge  
Sixth Judicial Circuit

Date: 10/24/16

  
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Heather E. Covey  
Circuit Court Administrator  
Sixth Judicial Circuit

Date: 10/24/16