

North Dakota Department of  
Environmental Quality

# Limited English Proficiency Plan

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## I. INTRODUCTION

North Dakota is home to people of different cultures, ethnicities, races, and backgrounds. Language differences should not be a barrier to engagement and participation. Everyone in North Dakota deserves meaningful access and equitable opportunity to participate in the North Dakota Department of Environmental Quality's (NDDEQ) programs, activities, and services. The NDDEQ Limited English Proficiency (LEP) Plan was developed to ensure access for all.

The NDDEQ LEP Plan (Plan) establishes department-wide guidance to provide LEP individuals with meaningful access to NDDEQ programs, projects, services, or activities. The NDDEQ developed this plan to be consistent with:

1. The NDDEQ commitment to provide meaningful access to LEP individuals.
2. The NDDEQ mission to conserve and protect the quality of North Dakota's air, land, and water resources, following science and the law.
3. [Title VI of the Civil Rights Act of 1964](#).
4. [Guidance to EPA Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons](#).

## II. DEFINITIONS

**American Community Survey** - The American Community Survey (ACS) is an ongoing survey that provides data every year, giving communities the current information to plan investments and services. The ACS covers social, economic, demographic, and housing characteristics in the United States.

**American Community Survey (ACS) 5-year estimates** - Estimates from the ACS represent data collected over 5-year blocks of time. The primary advantage of using multiyear estimates is the increased statistical reliability of the data for less populated areas and small population subgroups.

**EJScreen** – U.S. Environmental Protection Agency (EPA) developed EJScreen, an environmental justice screening and mapping tool using nationally consistent data and approach that combines environmental and demographic indicators in maps and reports. It can be accessed online at <https://www.epa.gov/ejscreen>.

**Interpretation** – The act of listening to a communication in one language (source language) and orally converting it to another language (target language) while retaining the same meaning.

**Interpreter** – An individual who conveys meaning from one language (the source language) into another language (the target language).

**Limited English Proficient (LEP) individuals** – Individuals who do not speak English as their primary language and have a limited ability to read, write, speak, or understand English. LEP individuals may be competent in English for certain types of communication (e.g., speaking or

understanding) but still be considered LEP for other communication (e.g., reading or writing).

**Meaningful access** – Language assistance services that result in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes reasonable efforts to provide language assistance services to ensure that LEP individuals have substantially equal access to NDDEQ programs and activities.

**Primary language** – An individual’s primary language is the language that an individual more effectively communicates.

**Recipient** – Refers to a “recipient” of federal assistance, which in this instance is the North Dakota Department of Environmental Quality.

**Translation** – The replacement of written text from one language (source language) into an equivalent written text into another language (target language).

**Vital document** – Material that is critical for access to the NDDEQ programs, activities, and services or contains information about legal procedures or processes. Classifying a document as “vital” depends on the importance of the program, information, encounter, or service involved, and the consequence to the LEP individual if the information in question is not provided accurately in a timely manner. Vital documents are often related to a person or community’s health and safety, such as boil water orders or mold or debris removal after flooding, for example.

### **III. LEGAL AUTHORITY AND INTRODUCTION**

As a recipient of federal funding, the NDDEQ must implement federal regulations prohibiting discrimination, including [Title VI of the Civil Rights Act of 1964 \(Title VI\), 42 U.S.C. § 2000d](#). Title VI specifically prohibits recipients from discriminating based on race, color, or national origin. The U.S. Supreme Court held that language-based discrimination can constitute national origin discrimination in violation of Title VI. See [Lau v. Nichols, 414 U.S. 563 \(1974\)](#). Thus, recipients of federal financial assistance must reduce language barriers that can preclude meaningful access by LEP persons to government services. EPA interprets its Title VI regulations to require all recipients of EPA assistance to provide meaningful access to LEP individuals.

Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. By federal regulation, Title VI covers the recipient’s entire program or activity. This means all parts of a recipient’s operations are covered, even if only one part of the recipient’s organization receives federal assistance.

[Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency](#) (EO 13166) requires federal agencies to:

- a) Examine the services they provide; identify any need for services to those with LEP, and

develop and implement a system to provide those services so LEP persons can have meaningful access to them.

- b) Work to ensure that recipients of federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.

To facilitate understanding of [EO 13166](#) and entities' obligations under federal law, the Department of Justice, in coordination with other federal agencies, developed [www.lep.gov](http://www.lep.gov), which is a resource designed to help federal agencies and recipients of federal financial assistance provide meaningful access to LEP individuals.

The federal agencies from which financial assistance is provided, in this instance EPA, also have established LEP Guidance that provide a framework to help guide recipients' actions related to LEP individuals. In 2004, the EPA published the [Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Individuals](#) (EPA Guidance). EPA Guidance provides a general framework that EPA recipients may use to provide meaningful access to LEP individuals.

#### **IV. THE NDDEQ APPROACH**

The NDDEQ is dedicated to providing equitable services for all North Dakotans and is committed to taking reasonable steps to provide meaningful access to individuals with LEP. The EPA Guidance, "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" addresses and incorporates the main elements contained in the U.S. Department of Justice Guidance (DOJ Guidance) ([65 FR 50123](#)) for agencies to apply in developing guidelines for services to LEP individuals. The DOJ Guidance focuses on activities common to the NDDEQ, which include developing rules and policy, reviewing and issuing permits, enforcing environmental laws, conducting inspections, and responding to inquiries from citizens. To view the DOJ Guidance, "Enforcement of Title VI of the Civil Rights Act of 1964- National Origin Discrimination Against Persons With Limited English Proficiency; Policy Guidance", visit [federalregister.gov](http://federalregister.gov) and search for document number 00-20867.

The EPA Guidance makes clear that recipients "have considerable flexibility in determining how to comply with their Title VI legal obligation in the LEP setting ([69 FR 35613](#))." There is no prescriptive method for accomplishing this goal. Instead, recipients are encouraged to determine the extent of their Title VI LEP obligations by performing an individualized assessment in accordance with a four-factor analysis described in the DOJ Guidance. The ultimate purpose of the assessment is to achieve an appropriate balance of the four factors. To view the EPA Guidance, visit [federalregister.gov](http://federalregister.gov) and search for document number 04-14464.

## V. FOUR-FACTOR ANALYSIS

As set forth below, the NDDEQ performed a preliminary analysis following the four factors presented in the DOJ Guidance to develop the Plan. The Plan will help identify reasonable steps for providing language assistance to LEP persons who wish to access services provided. As defined in [69 FR 35606](#), LEP persons are those who do not speak English as their primary language and have limited ability to read, write, speak or understand English.

### 1. The number or proportion of LEP persons eligible to be served or likely to be encountered.

The DOJ Guidance indicates that determining reasonable steps for providing meaningful access depends on the number or proportion of people excluded due to language barriers. The greater the number or proportion of LEP persons in an area, the more likely language services are needed. The NDDEQ's service area extends across the state of North Dakota. Based on the U.S. Census Bureau's 2015-2020 American Community Survey, an estimated 1.86% of North Dakota's population is Limited English Proficient. They speak English "not well" or "not at all," together described as speaking English "less than very well." Within the statewide population of LEP individuals the most common primary languages are Spanish (3,873 LEP individuals) and German (1,040 LEP individuals). An additional 1,386 LEP individuals speak Nepali, Marathi, or other Indic languages as their primary language. Many additional LEP language groups are present throughout the state and can be identified in census survey data at [data.census.gov](https://data.census.gov). Search "B16001" and apply the preferred filter such as state/county (U.S. Census Bureau 2020).

Based on the survey data, LEP persons may interact with NDDEQ programs. Information related to site-specific LEP needs may be available from the NDDEQ employees with experience in the community, local government, community organizations, and census data.

### 2. The frequency of contact with LEP individuals.

The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for the NDDEQ programs that serve an LEP person on a one-time basis will be very different than those expected from NDDEQ programs that serve LEP persons daily. The NDDEQ programs that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if a LEP individual seeks services under the program in question. The EPA Guidance indicates that the NDDEQ can assess the frequency of LEP contact and the resulting need for agency assistance on a language-specific basis. The more frequently the NDDEQ connects with a particular language group, the more likely language services in that language are needed.

The NDDEQ will track how frequently the department connects with LEP individuals seeking assistance. Employees will base the need for enhanced language services on:

- The frequency of staff contact with a language group.
- How often LEP persons seek services from a program.
- The type of language services needed.

The NDDEQ's mission is carried out by programs within its five divisions. Given the different activities and services provided by the NDDEQ's divisions, the type and frequency of contact and interaction with the public and LEP individuals vary. In response to this, each of the NDDEQ's divisions will take reasonable steps to ensure LEP individuals have meaningful access to all programs and activities. The Office of the Director, Civil Rights Coordinator, will consult with divisions as needed.

3. The nature and importance of the program, activity, or service provided to people's lives.

The EPA Guidance indicates the need for language services is related to the importance a recipient places on the action. The NDDEQ shall consider the importance or urgency of the activity when providing LEP services. The more important or urgent the service, the greater the need to provide enhanced language services. The NDDEQ should determine whether denying or delaying access to programs, activities, services, or information could have immediate or severe impact on LEP individuals. For example, communicating to LEP individuals impacted by water contamination differs from the need to provide information on efforts to increase recycling. LEP services could vary significantly, as actions by NDDEQ programs cover a broad spectrum of potentially urgent consequences.

4. The resources available and costs.

The DOJ Guidance discusses the potential impact of agency resources in determining what would constitute reasonable steps to address LEP concerns. To summarize, DOJ Guidance states that agencies with larger budgets should expect to provide more language services than those with smaller budgets. In addition, the EPA Guidance states that "reasonable steps" may cease to be reasonable where the costs substantially exceed the benefits.

The NDDEQ will assess the level of resources required and costs involved when providing language assistance services and budget accordingly. When cost concerns limit the ability to provide services, the NDDEQ will explore other options such as coordinating with other government and non-governmental agencies, exploring new resources and emerging technology, and other mechanisms for ensuring meaningful access for LEP individuals.

After applying the four-factor analysis, the NDDEQ may realize different language assistance measures are sufficient for various programs or activities. The correct mix should address what is

both necessary and reasonable based on the four-factor analysis.

## **VI. LEP PLAN**

Based on the four-factor analysis, the NDDEQ has developed this initial implementation plan with reasonable steps to achieve its LEP goals. The NDDEQ anticipates the Plan will be subject to further evaluation and revision over time based on experiences and feedback from the public on this initiative. The NDDEQ's goal is to implement steps based on its best judgment, and then to refine those steps to advance the success of its LEP assistance program. This approach is consistent with the requirements of Title VI. The EPA Guidance states, "While all recipients should work toward building systems that will ensure access for LEP individuals, EPA acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated" ([69 FR 35612](#)).

The Plan outlines how to identify a person who may need language assistance, ways to provide assistance, staff training that may be required, and how to notify LEP persons that assistance is available.

### **1. Identifying an LEP Person Who Needs Language Assistance**

The analysis under the first and second factors above provides a preliminary view of individuals who may be eligible for language assistance. Because the NDDEQ's actions and public outreach are often community-based, the identification of LEP individuals will depend on the population in the specific community. Building on experience with numerous communities across the state, the NDDEQ plans to take reasonable steps to enhance its awareness of the LEP individuals within the potentially impacted communities. Achieving this often involves coordination between the community, NDDEQ program staff, the NDDEQ Office of the Director, NDDEQ Civil Rights Coordinator, and other Title VI coordinators. Resources utilized by NDDEQ staff to identify if a community has potential LEP populations or individuals who need language assistance include interactions with community members and community organizations, U.S. Census data, ACS data, and [EJScreen](#).

### **2. Language Assistance Measures**

The EPA Guidance states that the two principal methods of serving LEP individuals are providing oral and written language services. Oral language services consist of interpretation by listening to something in one language and orally translating it into another language. Written language services consist of translation by replacing written text from one language into equivalent text in another language. It may range from translation of an entire document to translation of a short descriptive summary.

Factor 3 (the nature and importance of the program) influences the identification of appropriate language assistance measures. For significant agency decisions, the NDDEQ will determine whether there are LEP communities and individuals who will be affected. If an affected community has a large percentage of LEP individuals (typically greater than 5%), the

NDDEQ will implement appropriate LEP measures.

NDDEQ uses third parties to provide language assistance services for:

A. Oral Language Services (Interpreters)

NDDEQ staff may be contacted directly by LEP individuals seeking assistance in-person, by phone, or by written communication. The NDDEQ intends to provide its administrative assistants language assistance flashcards and materials translated into the five most common needed languages to respond to in-person contact. When approached by an LEP person, NDDEQ staff can present the individual with a flashcard to facilitate the appropriate language choice. After the LEP person identifies their preferred language, the NDDEQ will attempt to provide translation assistance using a third-party service. The NDDEQ will also use materials previously translated. If onsite language assistance does not adequately address concerns, the NDDEQ will get the individual's contact information and staff will work to provide appropriate support.

B. Written Language Services (Translation)

It may be challenging to determine vital and non-vital documents, especially when information is designed to raise awareness of rights or services. Though meaningful access to a program requires an awareness of the program's existence, we recognize it would be nearly impossible to translate every piece of outreach material into every language. Title VI does not require this of recipients of federal financial assistance and [Executive Order 13166](#) does not require it of federal agencies.

In some circumstances, lack of awareness of the existence of a program may deny LEP individuals meaningful access. The NDDEQ should regularly assess the needs of eligible service populations to determine what critical materials programs should translate.

With respect to documents intended for public outreach or a broad audience, each program should translate "vital" documents for LEP individuals where a significant percentage of the population is served or affected by the office's actions. The EPA [LEP Guidance](#) provides a "safe harbor" standard. Compliance with the written-translation obligations under "safe harbor" includes providing written translations of vital documents for each eligible LEP language group constituting 5 percent or 1,000 people, whichever is less, of the population of individuals eligible to be served or likely to be affected or encountered.

If there are fewer than 50 persons in a language group that reaches the five percent trigger, the NDDEQ may not translate vital written materials. They may, however, provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written

materials, free of cost. NDDEQ's translation of other documents, if needed, can be provided orally. The "safe harbor" standard only applies to the translation of written documents. It does not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. The NDDEQ will use the safe harbor standard to guide when to provide written translation.

### 3. Staff Training

The NDDEQ will provide annual training to staff, focusing on employees likely to encounter LEP individuals. The training will address:

- Environmental justice principles.
- Federal nondiscrimination requirements.
- Department responsibilities to LEP individuals.
- Language assistance services available to the NDDEQ.
- Procedures for identifying language needs and providing language assistance.
- Documentation of requests for language assistance and services provided.
- Procedures for handling complaints regarding language assistance.

### 4. Providing Notice to LEP Individuals

Once the NDDEQ has decided, based on the four factors, that it will provide language services, the NDDEQ will let LEP persons know that those services are available and that they are free of charge.

The NDDEQ will provide notice to LEP individuals using the following:

- Post notice of the LEP Plan and the availability of interpretation or translation services free of charge in languages LEP persons would understand at initial points of contact.
- Display language identification "I speak" cards at office reception areas.
- State in outreach documents that language services are available.
- Work with community-based organizations and other stakeholders to inform LEP individuals of available language assistance services.

## **VII. LEP PLAN ACCESS**

The NDDEQ will post the LEP Plan on its website at <https://deq.nd.gov/>. The NDDEQ will provide interpretation and written translation upon request. Copies of the LEP Plan are provided upon request by contacting:

NDDEQ Civil Rights Coordinator  
4201 Normandy Street  
Bismarck, ND 58503-1324  
(701) 328-5210 | [deqEJ@nd.gov](mailto:deqEJ@nd.gov)

## VIII. MONITORING AND UPDATING THE LEP PLAN

The NDDEQ intends to periodically review the Plan to determine if language assistance measures and staff training are effective. Under EPA guidance that acknowledges that creating systems to serve LEP individuals is an evolving process, the NDDEQ commits to reviewing the Plan every three years or more frequently as needed. The Civil Rights Coordinator will be responsible for overseeing, monitoring, and updating the Plan. Public input will continue to be taken into consideration on an ongoing basis. The NDDEQ will review and update this Plan based on the following:

- Changes in demographics as reported by the American Community Survey and U.S. Census.
- The number of LEP individuals encountered by the NDDEQ.
- Ensuring the needs of LEP individuals can be addressed.
- An evaluation of NDDEQ's programs and services offered to meet the needs of LEP individuals.
- The receipt of complaints concerning the NDDEQ's failure to meet the needs of LEP individuals.
- Ongoing dialogue with stakeholders, communities, and LEP individuals.
- Best practices to further enhance language assistance services.

## IX. REFERENCES

Civil Rights Act of 1964 § 6, 42 U.S.C § 2000d et seq (1964).

<https://www.justice.gov/crt/fcs/TitleVI-Overview>

Exec. Order No. 13166. (2000). <https://www.justice.gov/crt/executive-order-13166>

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