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CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Patricia W. Griffin
State Court Administrator
Delaware Administrative Office of the Courts
500 North King Street
Suite 11600
Wilmington, DE 19801

Joseph R. "Beau" Biden, III
Attorney General
Delaware Department of Justice
Carvel State Office Building
820 North French Street
Wilmington, DE 19801

Brendan O'Neill
Public Defender
Delaware Office of the Public Defender
Carvel State Office Building
Third Floor
820 North French Street
Wilmington, DE 19801

Vivian Rapposelli
Cabinet Secretary
Delaware Department of Services for
Children, Youth and Their Families
1825 Faulkland Road
Wilmington, DE 19805-1195

Re: Compliance Review of the Del. Admin. Office of the Courts (09-OCR-0475);
Del. Dep't of Justice (09-OCR-0477); Del. Office of the Pub. Defender (09-OCR-
0476); and Del. Dep't of Servs. for Children, Youth and Their Families (09-OCR-
0193)

Dear Ms. Griffin, Mr. Biden, Mr. O'Neill, and Ms. Rapposelli:

I am writing to report the findings of the compliance review of language services within the juvenile justice system in New Castle County, Delaware, conducted by the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ), in accordance with federal regulations 28 C.F.R. §§ 42.107(a), .206. The OCR would like to thank your respective staffs for assisting the DOJ during its onsite visits.

In my letters to your respective agencies, dated April 24, 2009, I noted that the OCR had selected your agencies for a compliance review under Title VI of the Civil Rights Act of 1964 (Title VI) and the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act) and their implementing regulations. As I noted at that time, the OCR limited the scope of the compliance review to the provision of pre-adjudication juvenile justice services in New Castle County to juveniles and families who, as a result of their national origin, are limited English proficient (LEP).¹ An LEP person is an individual whose primary language is not English and who has a limited ability to read, write, speak, or understand English.

¹ Throughout this Compliance Review Report, the terms "family" and "families" include parents and/or legal

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Background

Title VI, the Safe Streets Act, and implementing regulations require that recipients of federal funds ensure meaningful access for LEP individuals.² To assist financial aid recipients in complying with these requirements, the DOJ published guidance in June of 2002 about taking reasonable steps to provide meaningful access to programs and activities for LEP persons.³ *See* Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002) (DOJ Guidance). Using the technical assistance standards in the DOJ Guidance, the OCR initiated this Compliance Review to determine the extent to which the Delaware Administrative Office of the Courts (AOC); the Family Court; the Justice of the Peace Court (JP Court); the Delaware Department of Justice (DDOJ); the Office of the Public Defender (OPD); and the Delaware Department of Services for Children, Youth and Their Families (DSCYF) provide language services to LEP persons involved with the pre-adjudication juvenile justice system in New Castle County.

In limiting the focus of the Compliance Review to New Castle County's pre-adjudication juvenile justice system, the OCR sought to evaluate how critical decisions, such as those related to a juvenile's initial placement and inclusion in a diversion program, are made with respect to LEP stakeholders.⁴ We selected the AOC, the Family Court, the JP Court, the DDOJ, the OPD, and the DSCYF because of their involvement in the pre-adjudication process governing juveniles and their families: the Family Court and the JP Court, with the administrative assistance of the AOC, make preliminary judicial decisions affecting juveniles; the DDOJ prosecutes juvenile cases and makes specific diversion recommendations to the Family Court; the OPD provides legal representation to eligible juveniles; and the DSCYF, through several divisions, provides various juvenile detention and diversion services.

guardians.

² In addition, while the OCR does not conduct this review under the Juvenile Justice Act of 2002, we note that the requirements under that Act to identify and mitigate disproportionate minority contact are also implicated by language access for national-origin-minority LEP juveniles and families of juveniles having contact with the system.

³ The Department issued the DOJ Guidance in response to Executive Order 13166, which directed every federal agency that provides financial assistance to publish guidance about how their recipients can ensure meaningful access to their programs and activities by individuals who, as a result of their national origin, are LEP.

⁴ The OCR was especially interested in assessing whether language barriers faced by parents affect these key decisions. *See* *If Parents Don't Speak English Well, Will Their Kids Get Locked Up? Language Barriers and Disproportionate Minority Contact in the Juvenile Justice System* (Vera Inst. of Justice, Concept Paper, Oct. 2007).

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After a thorough evaluation of these services provided by your respective agencies, including your responses to the OCR's data requests and the information the DOJ gathered in connection with its onsite visits, which included interviews with agency representatives and contracted service providers, we are issuing the following Compliance Review Report.

Executive Summary

As discussed above, a recipient is required to take reasonable steps to ensure meaningful access to its programs and activities for LEP persons.⁵ Given the wide range of recipients of federal funds and the even wider range of types of contacts those recipients may have with LEP individuals, the DOJ Guidance establishes a framework that balances four factors in determining what measures are reasonably required to ensure meaningful access: (1) the number or proportion of LEP persons that are the likely beneficiaries of a recipient's services; (2) the frequency with which LEP persons come into contact with the recipient's programs or activities; (3) the nature and importance of the program, activity, or service provided; and (4) the resources available to the recipient and related costs. 67 Fed. Reg. at 41,459-61. Under this analysis, and with respect to the limited scope of our Compliance Review, we conclude that the AOC, the Family Court, the JP Court, the DDOJ, the OPD, and the DSCYF are not fully in compliance with the requirements of Title VI and the Safe Streets Act, although they are taking steps to provide LEP persons with meaningful access to their juvenile justice services. The agencies should build on these steps and take further action to ensure they meet their obligations under Title VI and the Safe Streets Act.

This Compliance Review Report closely tracks the DOJ Guidance by (1) evaluating the performance of each agency under the four-element balancing test, and (2) making specific recommendations for improving agency outcomes under each prong. Through its recommendations, including the recommendation that each agency prepare or modify a written language assistance plan, the Report seeks to propose plans, policies, and procedures that the Recipients may find helpful in improving their services to LEP individuals. In considering the application of the DOJ Guidance's four factors to the Recipients, the OCR offers the following observations and recommendations about the language assistance provided to stakeholders in the juvenile justice system in New Castle County.

⁵ Given this broad requirement, while the OCR limited the instant Compliance Review to aspects of the juvenile justice system in New Castle County, we encourage the Recipients to implement the Compliance Review Report's recommendations on a statewide basis and to apply them to their other services and programs, such as those provided to adults.

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I. Assessing the Number or Proportion of LEP Individuals in the Service Population

One factor in determining what language services the Recipients should provide is the number or proportion of LEP persons from a particular language group served or eligible for service – the greater the number or proportion of these persons, the more language services that a recipient must provide.

A. AOC

In its response to the OCR's data request, the AOC cited U.S. Census Bureau data showing that, in 2007, there were 22,003 Hispanic youth in Delaware, accounting for 10 percent of Delaware's total population in the 0-17 age range. Within New Castle County, 14.3 percent (69,929 individuals) of the total population ages 5 and over speak a language other than English at home. Of that group, 37,223 individuals speak Spanish or Spanish Creole. This figure represents 7.6 percent of the New Castle County population and 53.2 percent of all LEP New Castle County residents.

The Delaware Department of Education (DDOE) also identifies English Language Learner (ELL)⁶ students through a home language survey and English proficiency assessment. The DDOE's 2007-2008 report includes enrollment information for ELL students by grade, county, school district, and proficiency level. Statewide, the top two identified languages spoken by ELL students were Spanish (77 percent of ELL students) and Creole (4 percent of ELL students). Within New Castle County, ELL students constituted 6.9 percent of total student enrollment. In evaluating demographic trends, the AOC also consults data from Kids Count in Delaware (Kids Count).

B. DDOJ and OPD

In its response to the OCR's data request, the DDOJ and the OPD also cited data from Kids Count. In those materials, Kids Count noted that, of Hispanic survey respondents living in a household with at least one child, 66.2 percent live in New Castle County and 54.8 percent are not proficient in English. Further, the number of ELL students in Delaware schools as a percentage of total enrollment increased from 1.7 percent (1,981 ELL students) in school year 1999-2000 to 5.5 percent (6,881 ELL students) in school year 2007-2008.

C. DSCYF

In its response to the OCR's data request, the DSCYF did not provide any information about the

⁶ The term ELL refers to national-origin-minority students considered to be LEP.

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national origin or language proficiency of juveniles in New Castle County.

Recommendations for the DSCYF

The DSCYF should analyze the latest data from the U.S. Census Bureau, the DDOE, and Kids Count to determine the language assistance needs of its service population.

General Recommendations

The available data demonstrate the existence of an LEP juvenile population in New Castle County, the majority of which speak Spanish. The data also suggest that the proportion of families of juveniles that are LEP is substantially higher than the rate among the juvenile population. Further, these data suggest that all of the involved entities need to be capable of delivering services in other languages on a regular basis.

The AOC, the DDOJ, the OPD, and the DSCYF should periodically review LEP population shifts to determine whether they need to revise certain aspects of their language assistance plans. It is important to note that the service population includes not only juveniles, but the LEP population in general, since it is often the families of juveniles who are LEP. In an effort to obtain more detailed information about possible LEP groups within New Castle County, these agencies should utilize general population data from the U.S. Census Bureau to monitor language-access-need trends among juveniles, families, witnesses, and victims. Such data can assist in numerous ways, including in determining the need to hire bilingual staff, identifying interpreter needs, and focusing translation efforts. Recipients may also benefit from reviewing the data collected by local school districts and the DDOE regarding the primary languages spoken by enrolled students and their families in a given area. These data provide additional information about the foreign language groups in a particular area and their relative size. The OCR also encourages each agency to share information about population shifts and other important statistics with other agencies providing services to the public in New Castle County and throughout the State of Delaware.

II. Frequency of Contacts with LEP Persons

A. AOC, Family Court, and JP Court Data Collection

The AOC and the individual courts do not collect data about the national origin or language proficiency of juveniles or their families to whom they provide services. The AOC also does not formally determine the language competency of juveniles or their families through forms,

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documents, or database fields.⁷ While the AOC has a contract with Language Line, Inc. (Language Line), a telephonic interpreter service, the AOC does not receive detailed information from individual courts about when they use that service. The AOC obtains some information about the provision of interpreters through its Delaware Court Interpreter Program (Court Interpreter Program). When Family Court or JP Court personnel use a court-certified interpreter, they send a request for payment form to the AOC's Coordinator of the Court Interpreter Program. The form includes information about the interpretation assistance provided, including the specific language spoken. Based in part on the payment request reports, the Coordinator maintains a log of every interpreting event in every Delaware court, for every language requested. While the data are not broken down by county, they provide a helpful overview of the court system's contacts with LEP persons, where interpreters were provided. For instance, in fiscal year 2008, the Family Court provided interpretation assistance to 1,374 defendants, which required 1,350 interpreter hours; during that same period, the JP Courts provided interpretation assistance to 4,828 defendants, which required 966 interpreter hours.

Recommendations for the AOC

The AOC and the individual courts should collect data about the national origin and language proficiency of juveniles, their families, victims, and witnesses; and note whether specific language assistance is provided. Specifically, the data fields regarding language needs should capture the following information: (1) the primary language spoken by the individual; (2) how the AOC provided language services; and (3) information that might assist in providing language assistance for future matters (*e.g.*, the name of the interpreter used and any concerns about the effectiveness of the communication). As examples of what the AOC may wish to do to obtain this information, it could (1) ensure that all bail and commitment forms include appropriate data fields, and/or (2) revise its request for payment form to elicit more detailed information about interpreter use. The OCR also recommends that the AOC incorporate similar fields in its new case management system. In addition, it should tabulate all of the data on an annual basis to determine the evolving language needs of its LEP service population.

B. DDOJ Data Collection

The DDOJ does not collect information about the national origin or language proficiency of juveniles or their families involved in the juvenile justice system. Instead, it relies on data

⁷ The Judicial Branch is updating its electronic case management system through an outside vendor; implementation of a final system may take an additional two years to complete. Now, the Family Court uses a legacy system with data fields that are difficult to modify. The JP Court uses the Delaware Criminal Justice Information System. *See infra* note 8 and accompanying text.

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obtained from the Delaware Criminal Justice Information System (DELJIS).⁸ When law enforcement officials arrest a juvenile, they enter information into the DELJIS about the encounter, such as the arrestee's criminal history and information about the victim. Based on the DDOJ's response to the OCR's data request, the DELJIS data field for national origin appears only to include information about whether an individual is White, Black, Asian, American Indian/Alaskan, or Unknown. Because the DDOJ does not exercise control over the DELJIS, it could not explain why the system appeared to lack information about whether, for instance, a person was Hispanic or considered to be LEP. The DDOJ also does not track or monitor how often it provides language assistance to victims or witnesses.

Recommendations for the DDOJ

The DDOJ should collect data about the national origin and language proficiency of *pro se* juvenile defendants, as well as victims and witnesses. The DDOJ also should attempt to collect data about the national origin and language proficiency from non-*pro se* juvenile defendants to the extent possible given the legal restrictions barring contact with represented parties. In terms of language proficiency data, the Department should obtain the following data: (1) identification of the individual(s) needing language services (juvenile, family, victim, or witness); (2) the primary language spoken by the individual; (3) how the DDOJ provided language services; and (4) information that might assist in providing language assistance for future matters (*e.g.*, the name of the interpreter used and any concerns about the effectiveness of the communication). Further, it should tabulate all of the data on an annual basis to determine the evolving language needs of its LEP service population.

C. OPD Data Collection

Like the DDOJ, the OPD has access to the DELJIS. While the OPD initially uses the DELJIS in connection with the client intake process, it also creates and maintains client profiles in its own records database. During intake, the OPD uses a standardized intake packet, which is created through an interface with the DELJIS and which contains a client interview worksheet. These intake materials include pedigree information, a copy of the warrant, and a copy of the affidavit of probable cause. During the initial intake interview with the juvenile client and his or her family, an OPD staff member evaluates whether language barriers exist. He or she also prepares notes documenting the need for an interpreter and the language spoken by the client. After the

⁸ The DELJIS is a database that supports Delaware's criminal justice community. It is managed by the Delaware Criminal Justice Information System Board of Managers (Board). The Board meets monthly and responds on an ongoing basis to requests to update or refine the system. Given the importance of the DELJIS to Delaware's criminal justice system and criminal proceedings, the OCR urges the AOC to explore with the DELJIS Board the feasibility of refining the DELJIS' data collection.

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intake interview, the employee uses the client interview worksheet to add client information, including data regarding pedigree and pending charges, to its separate, searchable database.⁹ The database contains specific data fields regarding a client's race and whether he or she needs interpretation assistance. The intake investigator also can type additional information into the database about a specific individual's need for language assistance.

Recommendations for the OPD

The OPD should refine its database by adding a field for the national origin of clients and their families. In addition, the OPD should ensure that its database contains the following data fields: (1) identification of the individual(s) needing language services (juvenile or family); (2) the primary language spoken by the individual; (3) how the OPD provided language services; and (4) information that might assist in providing language assistance for future matters (*e.g.*, the name of the interpreter used and any concerns about the effectiveness of the communication). In addition, it should tabulate the data about language services on an annual basis to determine the evolving language needs of its LEP service population.

D. Pertinent DSCYF Data Collection

The DSCYF does not have a standard process in place to collect information about a client's national origin or language needs. The Department uses a statewide case management database called Family and Child Tracking System (FACTS or System) to obtain basic background information about the juveniles encountered by the Divisions of Family Services (DFS), Child Mental Health Services (DCMHS), and Youth Rehabilitative Services (DYRS).¹⁰ The System does not contain data fields for national origin or language proficiency, although a DSCYF administrator noted that case managers might note in a juvenile's progress notes whether there is a language barrier.¹¹ Further, there is no uniform method for including information about New Castle County juveniles entering the juvenile justice system. Instead, a juvenile's initial placement determines how information is entered into the FACTS. For instance, if a juvenile enters the New Castle County Detention Center, intake staff members automatically obtain information about him or her and enter it into the System. The staff members rely on a juvenile

⁹ During the OCR's meeting with the OPD, OPD representatives noted that the Office's Information Technology staff can refine the database by adding or modifying specific data fields.

¹⁰ The DSCYF also includes the Division of Management Support Services, which delivers educational services to youth in the Department's care.

¹¹ The DSCYF performs biannual modifications of the FACTS to refine its data collection. During the OCR's onsite visit, Department representatives noted that the System could be modified to include information about the LEP status of juveniles and their families.

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to self-report his or her national origin, which the Department can corroborate by interviewing the family during intake. The Department may obtain additional information about a juvenile's national origin through school records. In contrast, contractors are not permitted to add data to the FACTS. As a result, when a juvenile enters a non-secure detention facility or diversion program operated by a third party, the contractor staff members record various information about the youth, which they forward to the DSCYF in the form of periodic census reports. The Department's Community Services Unit, which exists within the DYRS, then enters these data into the System.

Recommendations for the DSCYF

The OCR recommends that the DSCYF refine its FACTS database to include national origin information, as well as the following data fields regarding language needs: (1) identification of the individual(s) needing language services (juvenile or family); (2) the primary language spoken by the individual; (3) how the DSCYF provided language services; and (4) information that might assist in providing language assistance for future matters (*e.g.*, the name of the interpreter used and any concerns about the effectiveness of the communication). It is vital that the Department also develop uniform intake procedures for all youth entering a secure or non-secure detention environment, regardless of whether a facility is operated by the Department or a contractor, which would involve ensuring that information about each youth promptly is entered into the System. The DSCYF also should tabulate all of the data on an annual basis to determine the evolving language needs of its LEP service population.

III. Assessing Agency Obligations to Provide Specific Services to LEP Persons

A. AOC Court Interpreter Program and Language Access Plan

The AOC provides various language assistance services, free of charge, to LEP persons in connection with juvenile justice proceedings in Family Court and JP Court. For instance, it uses various formats, including informational documents, to provide LEP persons with general instructions about navigating the courthouse and communicating with court staff. It also provides proceedings interpreting, general assistance regarding scheduling and subsequent hearings, instructions regarding accessing ordered rehabilitation services, and language assistance during consultations with DDOJ prosecutors and the OPD or private counsel before or after court appearances.

The Court Interpreter Program and its Advisory Board developed an extensive Language Access Plan (LAP) regarding the provision of interpreters to those involved in the court system, including to LEP juveniles, families, victims, and witnesses in juvenile justice cases. The LAP details with an impressive degree of specificity (1) the AOC's interpretation of applicable legal

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requirements regarding providing language access services, (2) the historical background regarding the development of language access services within the Delaware courts, (3) its LEP population needs assessment, (4) the development and contours of the Court Interpreter Program, (5) the language services provided, (6) the program's resources and costs, (7) future goals and plans, and (8) a mechanism for further LAP review and refinement. The Advisory Board meets four times each year to evaluate the Court Interpreter Program.

The Court Interpreter Program provides foreign language assistance primarily through in-person court-certified contract interpreters. The AOC maintains a Court Interpreter Registry (Registry) of these interpreters, which consists of three interpreter tiers: (1) certified interpreter; (2) conditionally-approved interpreter; and (3) registered candidate.¹² The AOC has a qualification and registration document that describes the court interpreter credentialing process. During that process, a court-interpreter candidate must attend an orientation session;¹³ take a written English proficiency exam; and, if successful on that exam, take an oral certification exam in his or her particular language combination. Candidates must score within a defined range in order to be included in the Registry. An individual who satisfies these threshold requirements and becomes a member of the Registry also must comply with a Continuing Education Policy as part of his or her continued professional development.

The Court Interpreter Program and the LAP are designed to be used by the Family Court and the JP Court in connection with their provision of all oral language services to the public. In its response to the OCR's data request, the AOC noted that the Family Court and JP Court, as a matter of course, should assign an interpreter to any case involving an LEP juvenile or family member if there is a note in the juvenile's file documenting a language need. Absent a note, the court would make an interpreter available pursuant to established AOC procedure. Under that protocol, the calendar manager who needs an interpreter contacts the Family Court staff in charge of scheduling an interpreter, who in turn obtains an in-person interpreter from the Registry.¹⁴ If an in-person court-certified interpreter is not available, then the Family Court staff should make arrangements for a court-certified interpreter to provide telephonic interpretation assistance. However, if court personnel cannot secure an interpreter from the Registry, they are expected to contact the Coordinator of the Court Interpreter Program. The Coordinator would then try to locate a certified interpreter in Pennsylvania, Maryland, or New Jersey. If the

¹² In determining which interpreter type to use, a presiding judicial officer should weigh the type of judicial hearing, as well as the seriousness and consequences of potential penalties to the defendant.

¹³ In an effort to increase recruitment of interpreters, the Court Interpreter Program advertises the orientation sessions in local publications and sends informational flyers to community organizations and temples.

¹⁴ At that point, the court notes in the juvenile's file that language assistance is needed. Because of that notation, the court automatically secures an interpreter for subsequent hearings involving an LEP juvenile or family member.

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Coordinator still needs to locate a certified interpreter, she contacts a language service or interpreter contract agency, such as Language Line.¹⁵ Occasionally, if a court needs assistance with a language that cannot be interpreted by a local certified interpreter, the Coordinator may seek interpretation assistance through a listserv service provided by the National Center for State Courts Consortium for Language Access in the Courts.¹⁶

Under AOC policy, a judicial officer should err on the side of caution and assign an interpreter whenever there is any question about an individual's degree of English proficiency. The AOC, through its Court Interpreter Program, provides judges and court staff with standard procedures for assessing the need for an interpreter, addressing a request to waive the right to an interpreter, and assessing interpreter qualifications. These guidelines are available in the form of a Bench Card that is supposed to be available in every courtroom and on the judicial intranet. The AOC also has provided training and technical assistance to the JP Court about the LAP, and offered continuing legal education programming about court interpreter issues.

In responding to the OCR's data request, the AOC identified eight certified interpreters who provide language services in Spanish to juveniles in New Castle County. Within the county, and with respect to Spanish language services since 2007, a court-certified interpreter has provided language assistance services in 99 percent of the evidentiary hearings and proceedings where an interpreter was requested. In the remaining instances, a conditionally-approved interpreter from the Registry was provided. As for languages other than Spanish, the AOC has provided in-person language assistance services for Haitian Creole, Mandarin, Russian, and Ukrainian through a court-certified or conditionally-approved interpreter on the Registry, a court-certified interpreter from a neighboring jurisdiction, or a language services agency. Occasionally and after making several attempts to secure an in-person interpreter, a court has obtained telephonic interpretation assistance through Language Line. It should be noted that interpreters procured from a language services agency or telephone service are likely to lack the credentials of a certified or conditionally-approved interpreter.

Recommendations for the AOC

The OCR commends the AOC for developing a plan for providing language assistance in the juvenile justice arena in which interpreters are provided at no charge. The LAP helpfully outlines all of the AOC's language resources. However, the OCR recommends that the LAP also

¹⁵ Under AOC policy, a court should only use telephonic or videophonic interpreting for non-evidentiary hearings or in circumstances where the need for an interpreter was unknown.

¹⁶ The provision of language assistance to a juvenile in JP Court appears to be dependent on the presiding judicial officer assigned to the case, which may be a result of the JP Court's limited involvement in presiding over juvenile proceedings.

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detail the order in which presiding judicial officers, court staff, and attorneys should rely on certain types of interpretation assistance during various encounters with juveniles and their families, such as in proceedings and during less formal interactions both before and immediately following a proceeding. In addition, the actual implementation of the plan needs to be monitored more assertively, and the consequences for failure to comply need to be more specifically explained. The AOC also should consider issuing an enforceable, mandatory court rule on providing interpretation services. The OCR also recommends that the AOC continue to review its Court Interpreter Program and its LAP on a regular basis to ensure that the interpretation provided is in fact of the highest quality through its certified interpreters, conditionally-approved interpreters, and registered candidates.¹⁷

Further, the AOC should continue its efforts to provide training and technical assistance to court personnel who rely on the Court Interpreter Program and its LAP. The OCR recommends that courts utilize the Bench Cards and Notice to Parties on the Role of the Court Interpreter (Notice) in order to inform LEP juveniles and their families of the availability of interpreters at no cost during the duration of the judicial proceedings. It may be helpful to remind presiding judicial officers in both the Family Court and the JP Courts about the availability of the Bench Cards and Notice. In an effort to ensure that witnesses and the jury understand the use of interpreters in the courtroom, it also likely would be beneficial to highlight the importance of reading the Notice's specific instructions into the record. Court personnel should be trained that they should not obtain interpretation assistance from the friends or family of an LEP juvenile.

B. Initial Juvenile Appearance Before Family Court or JP Court in New Castle County

When a juvenile is arrested by a law enforcement agency in New Castle County, the arresting officer must seek to contact the youth's parent or legal guardian before taking him or her before a court. Sometimes, the officer brings the juvenile arrestee to court even though he or she was not successful in contacting a parent or legal guardian.¹⁸ If a juvenile is arrested during regular business hours during the workweek (8:30 a.m. – 4:00 p.m.), he or she is taken to Family Court; otherwise, he or she appears before a JP Court (after-hours or on weekends).

¹⁷ Although the OCR reviewed only juvenile justice pre-adjudication proceedings, the OCR learned during the course of its Compliance Review that the Delaware Rules of Civil Procedure allow for the costs of interpretation to be charged to the litigants, as the Court may direct. *See* Del. R. Civ. P. 43. While this does not appear to be the practice in juvenile justice proceedings, the OCR recommends that the AOC review its LAP and Rules more generally to bring them into compliance with the meaningful access requirements of Title VI, the Safe Streets Act, and implementing regulations in civil matters that fall outside the scope of this Compliance Review.

¹⁸ If contact is not made with a parent or legal guardian, then the juvenile is remanded to the State and the DSCYF's DFS stands in for the juvenile's parent or legal guardian before the court.

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1. Family Court Presentment Procedure

The Family Court does not attempt to contact family members when a law enforcement officer arrests a juvenile but has been unable to contact a parent or legal guardian.¹⁹ Instead, it relies on a DSCYF liaison, located at the court, to contact a family member. The DSCYF provides three liaisons at the Family Court who interface with the Department's DFS, DCMHS, and DYRS. The liaisons often are the first point of contact for families when youth become involved in the juvenile justice system. They help families navigate court and DSCYF processes and procedures. The liaisons also recommend a specific disposition to the court based on various factors. For instance, before recommending that a juvenile participate in a specific diversion program, the liaisons may consider the severity of the charge, evaluate the juvenile's history in the system, and communicate with a juvenile's probation officer, if the youth violated the terms of probation.

When a juvenile is taken to Family Court, a liaison, sometimes in collaboration with court intake personnel, completes a Risk Assessment Instrument (RAI) by interviewing the juvenile's parent or legal guardian in person or by telephone. The RAI, which the liaison uses to make a placement recommendation to the court, includes information about the severity of the charge, the juvenile's criminal history, the juvenile's prior contact with the DSCYF, and family involvement. However, the RAI does not address a juvenile's or family's national origin or language proficiency. The RAI is placed in each juvenile's file. Occasionally, a liaison needs Spanish language assistance to conduct the RAI interview, although the type of language assistance used appears to be inconsistent. For those interviews, the liaison may rely on a court-certified interpreter, seek assistance from a self-identified DSCYF employee who speaks Spanish, use another family member who accompanies the parent or legal guardian, or attempt to communicate with the LEP individual directly. While a liaison noted to the OCR that she is familiar with the DSCYF's contract interpreter services, she has not used them to communicate with an LEP parent or legal guardian.

Recommendations for the DSCYF and the Family Court

The DSCYF liaisons located at the court should be instructed on the use of the Court Interpreter Program and the LAP. The DSCYF should require the use of certified interpreters or demonstrably bilingual staff and prohibit the use of informal interpreters when liaisons conduct interviews or contact LEP parents or legal guardians. *See Compliance Review Report, infra Part VI.A.*, for additional guidance about relying on bilingual employees to provide language

¹⁹ Regardless of whether a parent or legal guardian attends the presentment hearing, the Family Court utilizes a certified court interpreter. It does not rely on friends or family members to provide language assistance.

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assistance. Training for DSCYF liaisons should include available language assistance options and the LAP procedures to follow when communicating with LEP juveniles and families. *See* Compliance Review Report, *infra* Part VIII., for additional guidance about employee training. The OCR also recommends that the Family Court formalize procedures to ensure that LEP families are adequately informed of a juvenile's placement and conditions of confinement or release.

2. JP Court Presentment Procedure

Under the Family Court Rules and JP Court policy, a JP Court must attempt to contact the custodian of a juvenile when a law enforcement agent presents him or her to the presiding judicial officer but has been unable to communicate with a parent or legal guardian. In its response to the OCR's data request, the JP Court suggested that, in seeking to contact LEP family members, individual JP Courts will endeavor to communicate in the following order of preference: (1) using Language Line (limited to in-court proceedings),²⁰ (2) securing an in-person interpreter from the Registry; (3) relying on a telephonic interpreter from the Registry; and (4) utilizing bilingual court staff, such as a court security officer.

Several JP Court employees interviewed by the OCR, however, appeared to be unfamiliar with this protocol. In fact, in practice, attempts to contact a parent or legal guardian vary depending on the judicial officer presiding over the presentment. For instance, despite the apparent requirements that a court endeavor to contact a juvenile's custodian if he or she is not present at the presentment hearing, the JP Court noted in its response to the OCR's data request that certain judges simply rely on police attempts to contact family members. An individual court's general handling of a juvenile presentment hearing, including efforts to contact family members, also appears to differ based on when the juvenile appears before the court. The DSCYF does not have a liaison located at any JP Court in New Castle County. Instead, on an intermittent basis during the workweek, the DSCYF makes available to the court, by telephone, an Evening Resource Officer (ERO). Generally, there is no ERO coverage after midnight or on weekends. There does not appear to be a general consensus among the individuals interviewed by the OCR about the precise role of the ERO. Representatives disagreed about whether the ERO or the presiding judicial officer contacts family members, prepares the RAI, or obtains information about bed availability at specific placement locations. When an ERO is not available, the judicial officer becomes more active in determining and evaluating pre-adjudication placement options.

Generally, JP Court employees appear to be aware of the AOC's policy for providing language assistance during court proceedings. For instance, one representative explained that the JP Court

²⁰ At one JP Court, there are instructions for court staff about using Language Line.

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in which she worked would seek interpretation assistance in the following order of preference: (1) securing an in-person interpreter from the Registry; (2) relying on a telephonic interpreter from the Registry; and (3) using Language Line. She also emphasized that she was more comfortable relying on an in-person interpreter than on telephonic interpretation assistance when obtaining information from an LEP juvenile or family member during a court proceeding. Other JP Court employees, however, seem to be less aware of how the AOC's protocol applies to specific circumstances. As an example, according to one individual, presiding judicial officers have used a juvenile or another family member, rather than a court-certified interpreter, to provide interpretation assistance during a hearing, which is not consistent with the AOC's LAP. In its response to the OCR's data request, the JP Court also noted that, before a court proceeding, JP Court staff members in New Castle County occasionally rely on English-speaking family members to explain to LEP juveniles what will occur during the court proceeding.²¹ Again, such an approach does not appear to be consistent with the AOC's LAP.

Recommendations for the JP Court

The JP Court staff and judicial officers should be instructed on the use of the Court Interpreter Program and the LAP. Training for judicial personnel and officers should cover available language assistance options and the LAP procedures to follow when communicating with LEP juveniles and families. This would make the use of in-person interpreters from the AOC Registry the first option for language assistance, whenever available. The second option for language assistance would be use of a telephonic interpreter from the Registry. The third option for language assistance would be using Language Line. Training for court staff should also highlight the LAP's procedures regarding securing language assistance for inquiries that are made at the lobby window of each court by LEP families of juveniles, victims, witnesses, or other LEP persons. See Compliance Review Report, *infra* Part VIII., for additional guidance about employee training. The OCR also recommends that the JP Courts formalize procedures to ensure that LEP families are adequately informed of a juvenile's placement and conditions of confinement or release.

3. General Presentment Procedures

After the liaison or the court prepares the RAI, the presiding judicial officer in Family Court or JP Court relies on the assessment and placement recommendation to approve a Bail Report. The Bail Report assesses whether (1) a parent or legal guardian was contacted; (2) there is sufficient parental or guardian supervision over the juvenile; and (3) there are available alternatives to secure detention, such as release to a parent or legal guardian, release to the DFS, or non-secure

²¹ The JP Court's response was corroborated by a court employee who noted to the OCR that JP Court personnel occasionally use family members for this purpose.

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detention. In each case, the court seeks the least restrictive placement for a juvenile. While a judicial officer can release a juvenile to the custody of a parent or legal guardian, the absence of family involvement makes that option less feasible and underscores the need to ensure that language is not a barrier to meaningful participation. However, the court still is charged with considering and, if appropriate, employing alternatives to secure detention, regardless of familial involvement.

At a male juvenile's presentment hearing before Family Court or the JP Court, the presiding judicial officer will determine the youth's pre-adjudication placement, which may include his (1) release to a parent or legal guardian, with conditions;²² (2) referral to the New Castle County Detention Center (NCCDC), a secure detention facility operated by the DYRS; (3) referral to Camelot, a non-secure detention facility operated by a DSCYF contractor; or (4) referral to People's Place II (People's Place), a non-secure detention facility operated by a DSCYF contractor.²³ For a female juvenile, the court may (1) release her to a parent or legal guardian, with conditions; (2) refer her to the NCCDC; or (3) refer her to People's Place.²⁴ The judicial officer will sign a commitment form, which documents whether language assistance was provided. For instance, in JP Court No. 10, court staff personnel use a stamp to note on court forms that an interpreter is needed in a specific case. The Family Court and the placement site each receives a copy of the form.

C. DDOJ Interaction with Juveniles

In its response to the OCR's data request, the DDOJ noted that it "does not provide language assistance services to LEP juveniles and their families." (DDOJ Resp. to Data Request at ¶ 10.) The DDOJ sought to explain this response by noting that it is prohibited from having direct contact with juveniles who are represented by private counsel or the OPD. Occasionally, however, a juvenile in certain misdemeanor cases may proceed *pro se*. In its data request response, the DDOJ asserted that, in such a misdemeanor matter involving an LEP juvenile or family member, deputy attorneys general are trained to refer the case to the Family Court and to rely on the court to provide a certified interpreter. Despite this procedure, a DDOJ representative appeared to suggest during the OCR's onsite visit that the Department would not proceed with any *pro se* case involving an LEP juvenile and instead would insist that the court appoint counsel for that youth.

²² For example, a court may order a pre-adjudicated juvenile to participate in the detention intervention services provided by Project Stay Free, a program designed for male and female juveniles residing in New Castle County.

²³ People's Place is located in Kent County, Delaware, but receives some juvenile residents of New Castle County.

²⁴ Occasionally, the court also may refer a juvenile to the William Marion Stevenson House Detention Center, a secure detention facility in Sussex County, Delaware, that is operated by the DYRS.

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Recommendations for the DDOJ

See Compliance Review Report, *infra* Parts VI.B., VI.C., VII.

D. OPD Intake and Representation Process for Juveniles Not Detained

If a juvenile is released to the care of a parent or legal guardian following a presentment hearing, the juvenile must appear at the OPD's intake office at the New Castle County Courthouse with his or her family at some point for an intake interview. Court notices from the JP Court and the Family Court include contact information for the OPD's intake unit and advise juvenile defendants to contact intake staff as soon as possible. If the juvenile is in the custody of the DFS, the Division case worker must bring the juvenile to the OPD for an intake interview.

Unless a juvenile is incarcerated, in which case he or she automatically is entitled to representation, an intake worker screens all potential clients by using a financial eligibility worksheet. If an individual is financially eligible to be represented by the OPD, the intake worker completes a conflict worksheet to ensure the OPD can in fact represent the juvenile. If a conflict is found, the intake worker only obtains and verifies pedigree information from the defendant, and the OPD files a request for appointment of conflict counsel with the Family Court. If the client meets the eligibility criteria and agrees to representation by the OPD, then an intake worker obtains a detailed statement of the client's version of the incident and contact information for any potential defense witnesses. The intake worker also asks the client to sign a form authorizing the disclosure of protected health information. In addition, the OPD completes a medical and psychological worksheet to identify the existence of any medical, substance abuse, mental health, or developmental disability issues that may affect the case.

After the case worker completes the intake interview, the OPD opens a file. It also sends a representation letter and case processing overview to the clients advising them of the assigned attorney and the general court process. The OPD may send additional correspondence, such as attorney reassignment letters, requests for appointment of conflict counsel letters, *capias* letters, and individualized letters, to juveniles and their families. At one point, the OPD translated its standardized form letters into Spanish but, because of technical difficulties and an asserted low number of Spanish-speaking juvenile clients and families, it has not implemented formal use of those letters. However, during the OCR's onsite visit, OPD representatives suggested that the OPD would be amenable to translating written materials frequently used in connection with its representation of juveniles.

An assistant public defender is available to meet with potential clients at arraignment. At the arraignment hearing in Family Court, juveniles occasionally appear without having participated

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in an intake interview with the OPD. If a defendant has not been interviewed and requests appointment of counsel in connection with a pending misdemeanor charge against him or her, the Family Court will direct the juvenile to the OPD for an intake interview. If a juvenile appears without an attorney in connection with a pending felony charge against him or her, the Family Court directs the juvenile to the OPD's intake office and continues the case in order to provide sufficient time for an assistant public defender to prepare the case.

If a client and his or her family prefer to speak with the intake worker in a language other than English, the OPD reschedules the intake interview to provide interpretation assistance. Every Thursday afternoon, from 1:00 – 3:00 p.m., the OPD secures a contracted Spanish interpreter to conduct intake interviews. The OPD posts Spanish language signage at the public entrance to the intake area that explains the availability of this service. If an interpreter is needed in a language other than Spanish, the OPD obtains interpretation assistance through the AOC's Registry. However, if there is insufficient time to obtain a formal interpreter to conduct the intake interview before the next scheduled court appearance, intake staff members sometimes rely on family or friends to provide informal interpretation assistance. In that case, the OPD would conduct a formal intake interview with interpretation assistance after the court proceeding.²⁵

Once the assistant public defender receives a juvenile's file, he or she reviews it and contacts the juvenile and his or her family to determine what additional action is required. If a juvenile has medical, mental health, developmental disabilities, or substance abuse issues, the OPD refers him or her to its psycho-forensic unit. The attorney and/or the psycho-forensic employee consult with DSCYF staff regarding current issues and treatment. The attorney also reviews how these issues may affect the outcome of the case, including the adoption of a treatment or sentencing plan. When warranted, the OPD consults with outside experts to advocate for an alternative resolution or sentencing and treatment plan. Once a file is opened, an assistant public defender attends all hearings for the juvenile and consults with the client and his or her parents before court. When available, the attorney also seeks input from the juvenile's assigned DSCYF case worker before the hearing.

The OPD relies on friends or family members of LEP individuals, or other informal interpreters, to provide language assistance only in urgent or non-crucial contexts. In its response to the OCR's data request, the OPD explained, as an example, that an LEP client or family member may arrive at the OPD's office and ask questions about when or where the next scheduled court event will occur. In that instance, OPD staff members may rely on individuals with the client or family members to ensure that they understand the information provided.

²⁵ The OPD has a one-page document entitled "Interpreter Policy" that offers limited guidance to Office employees about interpretation assistance provided in connection with Family Court matters.

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Recommendations for the OPD

See Compliance Review Report, *infra* Parts VI.B., VI.C., VII.

E. Secure and Non-Secure Detention

In an effort to assess the language services provided to juveniles and their families after intake, the Compliance Review Report next evaluates the specific services provided in connection with placement at the NCCDC, Camelot, People's Place, and Project Stay Free.

1. OPD Client Interviews and Preparation for Bail Hearings

Each morning, the NCCDC faxes a list of newly admitted juveniles to the OPD's intake office. Case workers at the NCCDC also alert the OPD when a juvenile is processed on additional warrants. Further, the facility notifies the OPD whether a juvenile requires language assistance. Later that day, and in preparation for a video bail hearing that the Family Court conducts each afternoon, an OPD intake worker interviews juveniles by phone or videophone. The OPD office also receives daily rosters from Camelot and People's Place, which intake workers review to identify newly admitted juveniles. The OPD expects these facilities to notify it if a juvenile is LEP. Intake workers interview newly admitted juveniles at these facilities by phone. The assistant public defender receives a copy of the standardized intake packet for each juvenile and can review the RAI that the Family Court uses as a guideline in setting bail. After reviewing these materials and before representing the juvenile at the bail hearing, the assistant public defender confers with each juvenile in person or by videophone.

If a detained juvenile requires language assistance in connection with the intake interview, the OPD may have an interpreter assist with interviewing the LEP juvenile at the detention facility, or may arrange for its contract interpreter to interview the client during his scheduled shift on Thursday, which may require the assistant public defender to seek a continuance. The OPD also provides a consultative interpreter for communications between the attorney, client, and his or her family in preparation for court proceedings and trial. This interpretation is provided through either the OPD's contracted Spanish interpreter or an outside interpreter retained from the AOC's Registry. The OPD includes a list of approved interpreters in its manual and on its intranet, which is available to all OPD staff.

2. New Castle County Secure Detention Center

The DYRS operates the NCCDC, a secure detention center for pre-adjudicated youth with the capacity for sixty-four male and female juveniles. Often, the facility exceeds this capacity; on

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July 7, 2009, for instance, the bed count was seventy-one. The average length of stay at the facility is two or three weeks, although a juvenile could remain at the facility for as long as a year. A juvenile can be sent to the NCCDC from the Family Court, one of several JP Courts, Camelot, or People's Place. Regardless of the source of the referral, the NCCDC may receive information about a juvenile's LEP status from his or her detention order, which accompanies the juvenile whenever he or she is sent to a new or different pre-adjudication placement. A Camelot or People's Place staff member also may notify NCCDC personnel by telephone that a juvenile being referred to the facility needs language assistance.

a. Orientation, Health, and Case Management Services

After a juvenile is referred to the NCCDC, designated staff members obtain basic background information about the resident, which does not include data about his or her national origin or proficiency in English. Personnel also administer a Massachusetts Youth Screening Instrument psychological assessment in English or Spanish on a computer. Next, personnel provide an orientation session for the juvenile that covers basic information about the facility and its educational programs. Residents also receive an inmate handbook and sign an orientation checklist, both of which are solely available in English.²⁶ In an effort to assist an LEP resident acclimate to the facility, staff members may assign him or her to a unit with a fellow resident who is bilingual in his or her language. Within a few days after a juvenile enters the facility, the NCCDC gives him or her a more detailed orientation session. The facility administrator sends a letter to a juvenile's parent or legal guardian that provides details about the juvenile's placement at the facility and encloses additional information about the juvenile's detention. These materials are only available in English. If a staff member places a juvenile under special observation, the facility notifies the resident's parent or legal guardian in a letter that is available in English and Spanish. Christiana Care, a contractor at the facility, conducts a medical interview with an incoming resident and provides onsite medical assistance. When these medical personnel interact with Spanish-speaking patients, they either rely on a sheet containing various translated statements and questions or contact a bilingual staff member at the facility.

The NCCDC does not have a written policy that addresses how its employees should provide language assistance to residents in connection with its services. However, a facility administrator explained that employees in certain staff positions receive training about how to communicate with an LEP resident. As a matter of past practice, if a juvenile cannot

²⁶ In its response to the OCR's data request, the Department provided a DYRS policy regarding the handling of certain public and client complaints; however, it is unclear whether this policy applies or is communicated to NCCDC residents and their families. The handbook reviews the complaint process and explains that a resident can file a written grievance, which is reviewed and responded to by a behavioral staff member. Notably, however, the facility's complaint form also is only available in English. One of the NCCDC's self-identified bilingual employees noted that she has written a complaint for an LEP resident in English and had him sign that version.

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communicate in English, the facility seeks to provide interpretation assistance through one of two Spanish-speaking employees, neither of whom is certified or trained as an interpreter or is demonstrably proficient in both languages.²⁷ For instance, one of the bilingual employees at the facility has explained video bail to a Spanish-speaking resident. Neither employee receives additional compensation for providing language assistance. If these individuals are unavailable, the NCCDC places the juvenile under close observation status and obtains language assistance through a contracted language service provider. The Department's DFS has contracts with four providers to provide interpretation assistance during emergency situations that arise at any time, as well as for routine appointments and interviews during business hours.²⁸ All of the contracts also require the vendors to provide translation assistance. While the NCCDC relies on family and friends to provide interpretation assistance during orientation and in various programs, it apparently does not use family or friends to provide language assistance when a communication involves legal or medical issues. Despite the availability of various language assistance resources, the facility personnel interviewed by the OCR did not provide consistent explanations regarding how they provide language services to residents and their families in specific situations. For instance, one staff member noted that he created his own sheet of translated Spanish statements, instructions, and questions in an effort to foster communications with Spanish-speaking juveniles. He apparently also uses various Web sites to provide interpretation assistance.

The NCCDC conducts several periodic meetings to assess the developmental and court status of each juvenile. The superintendent of the facility conducts weekly Collaborative Awareness Team meetings that are designed to prepare a plan for each resident for the following week. These meetings include staff representatives familiar with resident issues involving medical treatment, education, security, behavioral management, substance abuse, and case management. The NCCDC also has family services specialists that serve a probation officer function for residents within the facility. They conduct weekly meetings with OPD representatives, including the Family Court supervisor and psycho-forensic employees, to review the court status of each resident. They also communicate routinely with the residents' families, prosecutors, public defenders, and the court regarding an appropriate recommended disposition of each case. If they are working with an LEP resident in anticipation of a court hearing, they will notify the Family Court that it needs to provide interpretation assistance, which the court typically provides the same day.

²⁷ In response to the OCR's data request, the DYRS only identified one bilingual employee. While an administrator mentioned a second individual during the OCR's onsite visit, he also noted that the second employee may be less than proficient in providing interpretation assistance.

²⁸ Even though the DFS entered into the contracts with these providers, the DYRS can use these interpretation and translation services. In response to the OCR's data request, the DSCYF provided language services contracts for fiscal year 2009 between DFS and Si Senor; Para-Plus Translations, Inc.; Laurie Lane; and DITSC.

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b. Educational Programs

The NCCDC offers educational programming for residents in collaboration with the DDOE. According to a facility administrator, on average, a juvenile attending the facility's educational programs advances three grade levels in three months, primarily because they were sometimes not previously enrolled in any school. Within a resident's first or second day at the facility, he or she participates in an interview with a teacher's aide. He or she also takes a Basic Assessment Skills Inventory (BASI), which is an educational placement test administered on a computer. The facility uses the results of the verbal portion of the BASI test to place each resident in one of six skill levels. The facility only administers an English language BASI test. A resident also takes the Kaufman Test of Educational Achievement, which measures school achievement for grades kindergarten through twelve. In addition, the NCCDC requests the records from the last school attended by the resident. Pursuant to the draft ELL policy provided to the OCR by the DSCYF, the facility is expected to identify ELL residents; to provide those residents with formal instruction in English language development; to ensure that they can access the regular curriculum; and, to the extent practicable, to send translated ELL-related communications to LEP parents or legal guardians. During the OCR's onsite visit, an administrator at the facility noted that there was only one recent LEP resident who received educational programming. In that instance, the instructor taught the Spanish-speaking juvenile in English but paired him with an older, bilingual resident to serve as a mentor.

Each week, an educational planning team meets to evaluate the individualized education plan (IEP) for each resident and to discuss whether each resident should remain in his designated group. The educational staff members also hold monthly meetings with parents of residents to discuss each resident's IEP and to discuss educational and employment opportunities in the community. In two instances, the family brought interpreters to assist them during these meetings. The DDOE also may provide interpretation assistance. Otherwise, in accordance with past practice, if a parent or legal guardian needs language assistance, the facility will rely on the resident to interpret, depending on his or her level of language proficiency.

Recommendations for the DSCYF (as to the operations of the NCCDC)

See Compliance Review Report, *infra* Part III.F.

3. Camelot Non-Secure Detention Facility

The DSCYF contracts with Diamond State Youth to provide pre-adjudication services at Fiske Academy at Camelot (Camelot), a non-secure detention center in New Castle County with the capacity for twenty-nine male juveniles. Youth remain at the facility for an average of three to

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six weeks, although residents may stay at the site for a longer period of time based on the seriousness and complexity of their charges. At the pre-adjudication stage, a New Castle County juvenile can be referred to Camelot from the Family Court, one of several JP Courts, or the NCCDC. When the Family Court refers a juvenile to Camelot, it typically notes on the individual's disposition form that there is a language assistance need regarding the juvenile or his family. The DSCYF court liaison also may note the existence of a language issue. However, there is less uniformity among JP Courts regarding the amount of information shared with Camelot about a juvenile's LEP status. The NCCDC may send a juvenile to Camelot if the Family Court amends his bail agreement or other pre-adjudication special conditions. When that occurs, the NCCDC notifies Camelot whether the juvenile or his family has language assistance needs.

a. Intake, Health, and Case Management Services

When a juvenile is referred to Camelot, a staff member attempts to contact a parent or legal guardian to advise him or her of the placement and to schedule a time for an in-person intake interview. During the intake process, Camelot requires residents and their parents or legal guardians to sign several forms, all of which are in English. While the intake form elicits information about a resident's race and national origin, it does not request information about whether a resident or his family requires language assistance. Based on witness interviews conducted by the OCR during its onsite visit, it appears that most staff members, regardless of job title – including cooks, are presumed to be qualified to conduct intake, which may include communicating with LEP juveniles or families. After intake, staff members provide a brief orientation of the facility to the resident and his family. There is a grievance process that is explained in an information packet given to a parent or legal guardian; residents also receive written notice about the availability of the grievance process.²⁹ Within twenty-four hours of a resident's admission, a resident DYRS nurse completes a physical and mental health assessment of him. A case manager also works with the DYRS to assist residents and their families at the pre-adjudication stage.

Camelot does not have a formal language access plan, policy, or protocol; nor does Camelot provide training to staff members regarding LEP issues. While facility administrators noted that facility personnel can contact several third parties listed in the facility's daily log book for interpretation assistance, they have not used any of these services. Moreover, personnel do not appear to be familiar with the availability of these external interpreter resources. Instead, the facility primarily relies on two administrators who self-identify as having language abilities to interpret for certain LEP juveniles and their families. Neither employee receives additional

²⁹ A resident can appeal the imposition of discipline; however, the form detailing this procedure is only available in English.

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compensation for providing language assistance. The first administrator is purportedly bilingual in Spanish; the second is purportedly proficient in Spanish and French. The bilingual Spanish administrator noted that she is always on call if a staff member requires interpretation assistance. However, one staff member noted that he has never asked the administrator to provide language assistance, despite encountering language barriers with youth and their families. Staff members occasionally rely on family members to interpret for a juvenile and on self-identified bilingual youth to interpret for an LEP resident. While administrators suggested that such interpretation is limited to non-essential communications, the facility has not addressed this distinction with personnel.

b. Educational Program

To the extent possible, Camelot seeks to return juveniles to the school they most recently attended in an effort to provide uninterrupted educational services. Camelot also offers educational programming for residents. The facility works with the DSCYF to secure a teacher to provide onsite classroom supervision and instruction. While administrators suggested that the instructor enrolled LEP students in ESL classes at another location, they were unsure how she provided instruction to students who were LEP but not enrolled in a language program. Pursuant to the draft ELL policy provided to the OCR by the DSCYF, the facility is expected to identify ELL residents; to provide those residents with formal instruction in English language development; to ensure that they can access the regular curriculum; and, to the extent practicable, to send translated ELL-related communications to LEP parents or legal guardians.

Recommendations for the DSCYF and Camelot

See Compliance Review Report, *infra* Part III.F.

4. People's Place Non-Secure Detention Facility

The DSCYF contracts with People's Place II, Inc. to provide pre-adjudication services at People's Place, a non-secure detention center with the capacity for ten male and female juveniles. Youth remain at the facility for an average of fourteen days. A New Castle County juvenile can be referred to People's Place from the Family Court, one of several JP Courts, or the NCCDC. Court and NCCDC representatives may communicate the existence of a language assistance issue when speaking with People's Place staff about a referral or by documenting it in a referral or bail disposition form. According to a member of People's Place management staff, no LEP juvenile has been referred to People's Place; however, she also reported that family members of some of its juvenile referrals were LEP.

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a. Intake, Health, and Case Management Services

When a juvenile is referred to People's Place, a staff member provides an intake information packet to him or her and calls the youth's parent or legal guardian. If the parent or legal guardian cannot communicate in English, the staff member allows the juvenile to explain to the family member that he or she is at People's Place. During the intake process, a staff member provides basic information about the program, such as its services and activities, behavior management policies and procedures, operational rules, and client grievance procedures. Program personnel perform an initial health assessment of a referred juvenile within one day of his or her arrival and arrange for the administration of a more in-depth physical examination within three business days of arrival. The program also requires the juvenile and a parent or legal guardian to sign various consent and acknowledgment forms, all of which are available only in English. If a parent or legal guardian cannot understand the form because they are LEP, People's Place attempts to locate a non-LEP family member who can explain the forms to the parent or legal guardian. The DYRS continues to provide case management services to juveniles who are at People's Place.

People's Place II, Inc. employs several self-identified bilingual Spanish-speaking employees, although there is no list of such employees, there is no interpreter certification procedure, and none of those employees works at the People's Place facility. People's Place staff members can obtain language assistance from these employees or contact the DYRS if they need interpretation assistance for languages other than Spanish. During staff meetings, People's Place program staff members receive periodic information about how to use these language assistance resources to communicate with LEP persons. Despite the availability of these tools, People's Place staff members appear to rely primarily on juveniles and their family members to provide interpretation assistance.

b. Educational Programs

To the extent possible, People's Place seeks to return juveniles to the school they most recently attended in an effort to provide uninterrupted educational services. People's Place also offers educational programming for residents. The DSCYF provides a teacher at People's Place who is certified in special education and who provides year-round instruction to juveniles at the facility. Pursuant to the draft ELL policy provided to the OCR by the DSCYF, the facility is expected to identify ELL residents; to provide those residents with formal instruction in English language development; to ensure that they can access the regular curriculum; and, to the extent practicable, to send translated ELL-related communications to LEP parents or legal guardians. If a juvenile has a language assistance need in connection with People's Place's educational program, such as during meetings with the teacher, the DSCYF provides interpretation or translation assistance.

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compensation for providing language assistance. The first administrator is purportedly bilingual in Spanish; the second is purportedly proficient in Spanish and French. The bilingual Spanish administrator noted that she is always on call if a staff member requires interpretation assistance. However, one staff member noted that he has never asked the administrator to provide language assistance, despite encountering language barriers with youth and their families. Staff members occasionally rely on family members to interpret for a juvenile and on self-identified bilingual youth to interpret for an LEP resident. While administrators suggested that such interpretation is limited to non-essential communications, the facility has not addressed this distinction with personnel.

b. Educational Programs

To the extent possible, Camelot seeks to return juveniles to the school they most recently attended in an effort to provide uninterrupted educational services. Camelot also offers educational programming for residents. The facility works with the DSCYF to secure a teacher to provide onsite classroom supervision and instruction. While administrators suggested that the instructor enrolled LEP students in ESL classes at another location, they were unsure how she provided instruction to students who were LEP but not enrolled in a language program. Pursuant to the draft ELL policy provided to the OCR by the DSCYF, the facility is expected to identify ELL residents; to provide those residents with formal instruction in English language development; to ensure that they can access the regular curriculum; and, to the extent practicable, to send translated ELL-related communications to LEP parents or legal guardians.

Recommendations for the DSCYF and Camelot

See Compliance Review Report, *infra* Part III.F.

4. People's Place Non-Secure Detention Facility

The DSCYF contracts with People's Place II, Inc. to provide pre-adjudication services at People's Place, a non-secure detention center with the capacity for ten male and female juveniles. Youth remain at the facility for an average of fourteen days. A New Castle County juvenile can be referred to People's Place from the Family Court, one of several JP Courts, or the NCCDC. Court and NCCDC representatives may communicate the existence of a language assistance issue when speaking with People's Place staff about a referral or by documenting it in a referral or bail disposition form. According to a member of People's Place management staff, no LEP juvenile has been referred to People's Place; however, she also reported that family members of some of its juvenile referrals were LEP.

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on other family members to provide interpretation assistance for LEP juveniles, parents, or guardians. PSF does not provide training to staff members regarding LEP issues.

PSF primarily relies on a self-identified bilingual staff member to communicate with Spanish-speaking LEP juveniles and their families throughout their involvement with the program. She does not receive additional compensation for providing language assistance. The staff member provides pre-adjudication interpretation assistance to juveniles and their families during intake, home visits, and family counseling, although she provides more interpretation assistance to family members than to juveniles themselves. She documents in case notes when she provides language assistance. In addition to providing interpretation assistance, she acts as a participant during various counseling sessions involving LEP juveniles and families. She also attends court hearings involving LEP families of juveniles, acting as an informal interpreter for family members at the hearing; however, she relies on the court to provide interpretation assistance for individuals providing record testimony. When the bilingual staff member is not available, PSF obtains Spanish language assistance through the Latin American Community Center (LACC). These community interpreters are not on the AOC's Court Interpreter Registry and are not otherwise certified.

Recommendations for the DSCYF (as to the operations of the NCCDC), Camelot, People's Place, and PSF

The DSCYF is required by Title VI and the Safe Streets Act to provide meaningful access to the services it provides to juveniles in its own facilities and in its contracted services. To that end, the Department must monitor the NCCDC's compliance with these applicable legal requirements and exercise effective oversight over Camelot, People's Place, and PSF to ensure that they also provide meaningful access to LEP juveniles and their families.³⁰

With respect to each of the facilities reviewed, the Department, in conjunction with the NCCDC, Camelot, People's Place, and PSF, should develop formalized, comprehensive language assistance policies and protocols that include procedures for providing language assistance to LEP juveniles and their families. The policies should detail that personnel will not rely on bilingual residents or clients to interpret for their family members or other residents or clients. Further, they should identify and set forth procedures for the use of proper language access measures in the provision of or access to intake, orientation, health care or mental health treatment, visitation rules and schedules, educational programming, and other programming made available to juveniles. *See* Compliance Review Report, *infra* Part VII, for additional tips about developing an effective language assistance plan. These entities also should develop

³⁰ We have particular concerns about Camelot, which needs to implement these recommendations in full to meet its obligations under Title VI and the Safe Streets Act.

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written grievance policies that are communicated to all residents or clients, regardless of their LEP status.

The NCCDC, Camelot, People's Place, and PSF should have readily available lists of in-person interpreters, interpreters available via telephone, and contact information and instructions for use of a telephonic interpretation service. *See* Compliance Review Report, *infra* Part VI.A., for additional guidance about relying on bilingual employees to provide language assistance. These facilities also should translate into Spanish the various forms they require a parent or legal guardian to sign as well as other written materials distributed to juveniles and their parents or legal guardians, such as any handbooks or guides. *See* Compliance Review Report, *infra* Part VI.C., for additional guidance about written language services.

Regarding the educational programming, the facilities should work with the DDOE to ensure that assessment tests, such as the NCCDC's BASI exam, are administered in an LEP resident's native language and to determine the proper curriculum for the LEP juvenile. The NCCDC, Camelot, People's Place, and PSF also should ensure that LEP youth can participate meaningfully in available programming through the use of interpretation services or bilingual personnel. The facilities should not exclude LEP juveniles from certain programming due to a language barrier or rely on other youth to interpret. In addition, federal and state education rights frequently require that parents or legal guardians be notified and included in educational decision-making. When families are LEP, interpretation and/or translation would be necessary to ensure compliance with these requirements.

Finally, all staff should be trained about how to handle contact involving LEP juveniles, or an LEP family of a juvenile, in order to ensure meaningful access. The policies should detail the obligations of staff members to ensure language access. *See* Compliance Review Report, *infra* Part VIII., for additional guidance about employee training.

G. Diversion Programs

The DDOJ typically offers a diversion program as part of a plea agreement for certain first-time juvenile offenders. Under each program, once the juvenile successfully completes his or her court-ordered conditions, the charge(s) against him or her are dismissed. Generally, the DDOJ expects that there will be familial involvement for any diversion program to be successful and relies on the OPD to provide it with information about the potential involvement of a juvenile's parent or legal guardian in any recommended program. During the OCR's onsite visit, OPD representatives also noted that familial involvement is important because they do not want to set up a juvenile to fail in his or her diversion program. Several OPD attorneys explained that, in their experience, they have not represented any clients who were unable to participate in a diversion program due to a language issue. During a meeting with the OCR, the OPD

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representatives also commented that the available diversion programs accommodate LEP families, which is an observation that was reiterated to the OCR by various individuals involved in managing the various diversion programs. With respect to several of the programs, however, the precise protocols for providing language assistance were not well defined. In New Castle County, a juvenile may participate in the following diversion programs: (1) Family Court Arbitration; (2) Mental Health Court; (3) Drug Court; (4) School Diversion; or (5) Probation Before Judgment.

1. Family Court Arbitration

The Family Court Arbitration diversion program is an informal Family Court proceeding where a specially trained hearing officer seeks to resolve certain juvenile delinquency cases. The program is available for certain juveniles charged with a misdemeanor offense(s) who have no prior record and who have not gone through arbitration previously. The program is managed by the Family Court's Diversion Services Unit, which sends a notice to the juvenile, his or her parent or legal guardian, and his or her counsel. The notice explains the arbitration process and provides information about the arbitration conference. The complainant and victim also may receive information about the scheduled conference. The notice is in English. The arbitrator has the discretion to impose conditions on the juvenile, such as those relating to community service, payment of restitution, conflict resolution classes, and alcohol and/or drug evaluations.

Under the AOC's LAP, court-certified interpreters are available for participants in the arbitration proceeding. Before the conference, an arbitrator receives the juvenile's file, which would include information about whether he or she requires interpretation assistance. To the extent possible, the arbitrator would secure the same interpreter for the conference that provided language assistance during prior proceedings.

2. Mental Health Court

The Mental Health Court is a court-supervised diversion program that is available for certain juveniles who have mental health problems which appear to be related to their pending charges. The program is managed by the DSCYF's DCMHS, which consults with the DDOJ and the OPD about potential eligible participants. Once a juvenile enters the program, the DCMHS determines his or her appropriate level of care based on referral materials from the OPD's psycho-forensic evaluator. The DCMHS arranges for the juvenile to receive mental health services from contracted service providers, which the Division monitors. Juveniles and their families receive a program handbook, which is only available in English, and a DCMHS handbook, an older version of which was translated into Spanish. The average program length for a juvenile is four to six months. During the program, DCMHS staff members obtain monthly updates about the juvenile's progress, including from his or her parent or legal guardian, any

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assigned probation officer, and any assigned counselor; and provide these reports to the court at status hearings.

Under the AOC's LAP, interpreters are made available to the Mental Health Court diversion program solely for court proceedings. A DSCYF employee working with the program noted that there have been no LEP juveniles in the program; however, Spanish-speaking parents have participated. In those cases, the program relied on DCMHS staff members or therapists with self-identified Spanish language ability to communicate with the parents.

3. Drug Court

The Drug Court is a court-supervised diversion program that encourages collaboration among DDOJ, OPD, DSCYF, and DSCYF-contracted counseling personnel to resolve the substance abuse problems of participating juveniles. The DDOJ identifies juveniles who may be eligible to participate in the program, provides them with a program handbook (which is only available in English), and refers their names to the DSCYF's DCMHS. Next, the DCMHS coordinates with the OPD and further screens potentially eligible juveniles by administering a Global Appraisal of Individual Needs – Initial assessment test (which is available in English and Spanish) to determine whether a juvenile could benefit from specific services, all of which are offered by third-party providers. Once they enter the program, juveniles and their families receive a DCMHS handbook, an older version of which was translated into Spanish. The average program length for juveniles is six to eight months. During the program, the Family Court holds periodic status hearings, which include the juvenile, parent or legal guardian, treatment coordinator, and Family Court Drug Court case manager.

Under the AOC's LAP, interpreters are made available to the Drug Court diversion program solely for court proceedings. To the extent possible, DCMHS seeks to refer Spanish-speaking juveniles to a Spanish-speaking therapist. A DSCYF employee working with the program also noted that each service provider has the responsibility to provide language services to juvenile or family participants.

4. School Diversion

The School Diversion program is available for certain juveniles charged with committing misdemeanor offenses at school, and seeks to identify and address each student's unique rehabilitative needs. In order to enter the court-supervised program, the juvenile must sign a School Offense Diversion Program Petition, Waiver and Agreement, a version of which is available in Spanish. The program is managed through an agreement with the AOC by the Delaware Center for Justice (DCJ). When a juvenile enters the program, the DCJ program administrator administers separate surveys to the juvenile and his or her parent or legal guardian

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to develop a program that seeks to improve the individual's behavior. As part of a juvenile's participation in the program, the program manager also determines what assignments the individual needs to complete to satisfy the court's general conditions, such as performing community service, writing a letter of apology, writing a short report, submitting written proof of a drug and/or alcohol evaluation, submitting written proof of participation in counseling, participating in a mentoring program, obeying a curfew, and attending all scheduled classes. The average program length for juveniles is three months.

Under the AOC's LAP, interpreters are made available to the School Diversion program solely for court proceedings. While the DCJ has not provided services to LEP juveniles, it has communicated with several LEP parents who spoke Spanish. In those cases, it relied on family members and the LACC to provide interpretation assistance.

5. Probation Before Judgment

The Probation Before Judgment (also referred to as Probation Before Adjudication) program is available for certain juveniles charged with misdemeanor offense(s). The program is managed by the DSCYF's DYRS and consists of group and regular probation programs. The DYRS has discretion to determine which program is most appropriate for a juvenile.

a. Group Probation

The group probation program is designed for youth who are charged with a minor offense, and consists of classes and educational community service activities for juveniles. While a probation officer manages group probation, the DYRS contracts with the YMCA to provide services through the YMCA Resource Center Back on Track Program. The YMCA conducts intake, which includes meetings with a juvenile and his or her parent or legal guardian. The parent or legal guardian is required to sign several forms, all of which are in English. Occasionally, family members have provided interpretation assistance for an LEP parent or legal guardian during the intake process. During the program, juveniles receive educational instruction and complete a community service project. All of the programming is provided solely in English. According to the DSCYF, no LEP juveniles have participated in the program. If an LEP juvenile participated in the program, the YMCA could notify the supervising probation officer, who would obtain an interpreter through one of the DFS' contracted providers.

b. Regular Probation

The regular probation program is designed for juveniles who may already be in the DYRS system or are charged with a more serious offense. In this program, the juvenile remains at home and is visited periodically by a DYRS probation officer. The probation officer assists the

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juvenile complete his or her court-imposed conditions of probation, such as community service or payment of restitution. If a juvenile or family requires Spanish language assistance, the DYRS endeavors to assign a self-identified Spanish-speaking probation officer to that case. The DYRS also has worked with the LACC to communicate with LEP families who speak Spanish. If a juvenile or family requires assistance in another language, or if the Spanish-speaking probation officer is not available, the DYRS would secure an interpreter through one of the Department's contracted providers.

General Recommendations

These diversion programs should undertake immediate efforts to ensure that they gather appropriate language data about all juveniles enrolled in diversion programs and provide proper language assistance services to LEP juveniles. Each diversion program also should have a written language assistance plan, policy, and protocol in place to ensure that it provides meaningful access to program benefits to LEP juveniles and families. *See* Compliance Review Report, *infra* Part VII, for tips about developing an effective language assistance plan. Under the AOC's LAP, interpreters are made available to diversion programs for court proceedings. While diversion programs may continue to rely on the AOC to provide language assistance for communications that occur in a court setting, each program should develop its own plan and identify available resources based upon its particularized language assistance needs. Specifically, the programs should develop language assistance plans that comprehensively address how they provide interpretation and translation assistance in connection with all of their services, including those that occur in medical, social services, and community settings. Given its experience in developing and refining its LAP, the AOC noted to the OCR that it is amenable to providing general information to the diversion programs about language assistance resources that may assist them in developing their own appropriate plans. Each diversion program also should have readily available a list of in-person interpreters, interpreters available via telephone, and contact information and instructions for use of a telephonic interpretation service. *See* Compliance Review Report, *infra* Part VI.A., for additional guidance about relying on bilingual employees to provide language assistance. Once diversion programs prepare or refine their plans, they should train employees about the policy changes. *See* Compliance Review Report, *infra* Part VIII., for additional guidance about employee training.

Further, each diversion program should perform an inventory of the written materials it provides to juveniles and their families and, to the extent it has not already done so, translate these documents into Spanish. If programs begin to encounter juveniles or family members who speak languages other than Spanish, they should assess whether to translate written materials into those languages as well. *See* Compliance Review Report, *infra* Part VI.C., for additional guidance about written language services.

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The OCR also recommends that each program formalize procedures to ensure that LEP juveniles and families are adequately informed of the juvenile's conditions of complying with the diversion program in which they participate.

H. Complaints from the Public

Next, the Compliance Review Report evaluates the procedures that the Family Court, the JP Court, the DDOJ, and the OPD have in place to respond to potential complaints about language assistance.³¹ These entities stated that no members of the public filed complaints against them from January 1, 2007, to the time of the OCR's onsite visits alleging that representatives had difficulty communicating with LEP juveniles or families of juveniles.

1. Family Court

The Family Court does not have a written policy that describes the process for handling complaints from the public. Complaints received by staff members are handled by the supervisor or director of operations. Complaints received by the chief judge are handled by the director of legal affairs.

2. JP Court

The JP Court has a written policy that explains the process for handling complaints from the public, which is available on the JP Court's Web site. When the JP Court receives an external complaint, it generally refers the complaint to the supervisor of the person against whom the complaint is filed. The supervisor discusses the complaint with that person and provides a response to the complainant. If the complainant is not satisfied with the response, he or she is referred to the appropriate person at the next level in the chain of command for reporting complaints.

3. DDOJ

The DDOJ does not have a written policy that addresses how it handles complaints from the public, although the DDOJ will accept a complaint from an individual by telephone, e-mail, or letter. If a complainant calls regarding a concern, he or she initially may speak with a support staff member, who will obtain basic information about the complaint, as well as the complainant's contact information. The unit head or division director usually handles complaints, which involves investigating the allegations, reviewing the file, interviewing people

³¹ Because the AOC does not provide services to juveniles or their families, the OCR did not assess the extent to which a member of the public could file a language assistance complaint against this Recipient.

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involved in the complaint, and responding to the complainant.

4. OPD

The OPD does not have a written policy that explains how it responds to complaints from the public. As a matter of practice, when the OPD receives a complaint regarding its representation of a juvenile in the juvenile justice system, it refers the complaint to the Family Court supervisor. If the complaint is not resolved to the satisfaction of the juvenile and his or her family, the OPD directs it to the chief of legal services.

5. DSCYF

The DSCYF has a flowchart that describes the process for handling complaints from the public. The DYRS also has a written complaint policy that appears to govern complaints filed against it by members of the public. The Division has a designated complaint officer that receives complaints and directs them to the appropriate servicing program. The DYRS' deputy director monitors the status of each complaint and reviews the corrective action measures taken by the servicing program in response to it. The Division also maintains spreadsheets that include information about the status of specific complaints.

General Recommendations

The OCR recommends that the Family Court, the JP Court, the DDOJ, the OPD, and the DSCYF develop or refine existing written complaint procedures to address receiving, investigating, and resolving complaints involving LEP persons. In addition, the OCR recommends that these agencies develop a written complaint form, which will provide better documentation of the allegations and enhance the collection of basic information from complainants about their concerns. These agencies also should develop or refine procedures to ensure that translated complaint forms and related information are available to the public.

I. Juvenile Justice System Oversight: Child Placement Review Board

The OCR met with a representative from the Child Placement Review Board (CPRB or Board), an independent agency that makes recommendations to the Family Court and the DSCYF regarding how existing systems may be refined to improve services to non-adjudicated youth housed in supervised juvenile justice facilities, adjudicated youth, and youth in foster care.³² In discussing the CPRB's role within the juvenile justice system, the representative emphasized that

³² The CPRB is not a recipient of federal financial assistance over which the OCR has enforcement authority. Therefore, the Board has no obligation to implement the recommendations contained in the Report.

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the Board focuses on conducting status reviews of and making recommendations regarding adjudicated youth. However, the representative also noted that the CPRB has the authority to review and evaluate issues that may arise before a juvenile's adjudication.

Recommendations for the CPRB

The OCR urges the CPRB to evaluate more closely the language assistance needs of New Castle County juveniles and their families who receive pre-adjudication services from the DSCYF. By placing a greater emphasis on the Department's interactions with LEP persons, the Board could help to ensure that all language needs are handled effectively. While the focus of the OCR's Compliance Review is on LEP issues regarding New Castle County juveniles and their families, the Board also may wish to consider assessing and monitoring language access with respect to pre-adjudication in Kent and Sussex Counties.

IV. Community Outreach

It should be noted that, in addition to a review of each agency involved, the OCR held a community roundtable in Wilmington, Delaware, which included the following groups that are deeply involved in the juvenile justice system: Child, Inc.; the Governor's Advisory Council on Hispanic Affairs; the LACC; Voices Without Borders; and the West End Neighborhood House. This roundtable helped to inform the OCR's Compliance Review of the Wilmington Police Department, as well as this Compliance Review.

A. AOC, Family Court, and JP Court

The AOC has not done intensive outreach to groups serving or representing LEP juveniles or families of juveniles. However, the AOC is collaborating with the courts on a Task Force, titled *Delaware Courts: Fairness for All*, to seek additional ways in which the courts can assist self-represented litigants; and increase procedural fairness and the perception of fairness held by litigants within the court system. The AOC distributed Spanish language flyers for several public hearings to various organizations serving the LEP community. At each hearing, the AOC provided Spanish interpretation assistance and received suggestions from the Governor's Advisory Council on Hispanic Affairs and an immigration attorney. It also elicited feedback from organizations that provide legal services, including to LEP individuals, such as Community Legal Aid Society, Inc.; Legal Services Corporation of Delaware; and Delaware Volunteer Legal Services. The AOC anticipates that, as a result of the Task Force, it will engage in additional outreach efforts to the LEP community. In November 2008, the AOC also held a youth forum at a Wilmington, Delaware, middle school with a substantial number of Hispanic students. The forum, which included representatives from the DDOJ and the OPD, provided information about careers in the law and conducted a mock trial in which students participated. The AOC plans to

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continue its outreach efforts to schools.

Based on the information provided to the OCR in connection with its Compliance Review, neither the Family Court nor the JP Court appears to participate directly in any community outreach activities.

Recommendations for the AOC, the Family Court, and the JP Court

The AOC should continue its efforts to engage the community in a discussion about effective ways to improve participation in the justice system. Going forward, the OCR recommends that the AOC place an even greater emphasis on educating the community about its language assistance resources and soliciting feedback about the effectiveness of those tools. The AOC should monitor compliance with its LAP by continuing to compile data about the provision of language services, informing the public and community organizations about its policies, and seeking feedback from advocates and community groups. The OCR also encourages Family Court and JP Court representatives to become more involved in the AOC's outreach activities.

B. DDOJ

In its response to the OCR's data request, the DDOJ noted that the Family Division was represented at several community meetings regarding neighborhood crime. As mentioned above, the DDOJ also participated in the youth forum sponsored by the AOC.

C. OPD

The OPD is developing its community outreach efforts, in part through creation of a speaker's bureau that can send OPD speakers to meetings of local organizations. It also is exploring building a stronger relationship with the LACC. As mentioned above, the OPD also participated in the youth forum sponsored by the AOC.

D. DSCYF

In its response to the OCR's data request, the DSCYF did not provide information about the extent to which it engages in community outreach regarding its juvenile justice programs and services. During the OCR's onsite visit, the Department noted that it participates in bimonthly meetings of a Community Advisory Board (CAB), which is part of the DSCYF. The CAB consists of community members, parents, providers, and agency partners; and seeks to provide feedback to the DSCYF regarding its various programs. The DSCYF also explained that it has sought to develop partnerships with local community organizations, such as the LACC.

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General Recommendations for the DDOJ, the OPD, and the DSCYF

The DDOJ, the OPD, and the DSCYF should improve their ability to gather community feedback about their provision of services to LEP individuals. For example, they could develop a written survey of community groups serving LEP populations, or convene a focus group of LEP individuals, their advocates, and attorneys. These agencies also may consider holding their own meetings with LEP community stakeholders, advocates, and attorneys, perhaps in collaboration with community, business, legal, and religious leaders representing the LEP population, so that they can hear the LEP community's unique needs regarding outreach and the provision of language access within the juvenile justice system. The DDOJ, the OPD, and the DSCYF should monitor their compliance with their language assistance plan and policies; inform the public, and appropriate organizations and associations, of its plan and policies; and seek feedback from advocates and community organizations.

V. Resources Available to Recipients

Delaware's fiscal year, which applies to each Recipient, is from July 1 to June 30. Each of the reviewed entities operates with a substantial budget.

A. AOC

According to the AOC's data response, its fiscal year 2009 operational budget for the line items of personnel, travel, contractual, supplies, continuing education (judges), interpreter, and New Castle County Courthouse was \$3,629,800. For fiscal year 2009, the AOC budgeted \$409,100 for its statewide interpreter program. This amount included a budgetary allocation of \$172,984.73 for Family Court interpreter services and a similar allocation of \$115,323.15 for all JP Courts.

Recommendations for the AOC

The AOC should enhance its coordinating efforts with the Family Court and the JP Court, and ensure compliance with the meaningful access requirements. In addition, the AOC should emphasize collaboration with the DDOJ, the OPD, and the DSCYF in addressing the language assistance needs of those involved in the juvenile justice system.

B. OPD

According to the OPD's data response, its operational budget in fiscal year 2009 was \$15,151,200. During fiscal year 2008, it spent \$47,200 for interpreter services, which included \$33,000 for interpreter services through one contract.

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C. DDOJ

According to the DDOJ's data response, the Family Division's operational budget in fiscal year 2009 was \$2,400,000. During that same fiscal year, it budgeted \$1,000 for language assistance services.

D. DSCYF

According to the DSCYF's data response, its operational budget in fiscal year 2009 was \$176,956,700. During fiscal year 2009, it spent \$75,546 for language assistance services through its contract providers.

Recommendations for the DDOJ, the OPD, and the DSCYF

The DDOJ, the OPD, and the DSCYF should undertake a review of their human and capital resources in assessing how well they are responding to the needs of their LEP populations. The spending allocation by the DDOJ is low and raises questions about whether interpretation and translation costs are being accurately measured, and whether language assistance needs are being appropriately met. One part of this review should include gathering feedback from the local LEP service population, as well as appropriate organizations and associations, about how these agencies can provide more effective language assistance services. These agencies should also work with community groups serving LEP populations to determine what additional steps they can take to attract more bilingual employees who are qualified to interpret or translate and who can provide direct language services, particularly in Spanish, to LEP juveniles or families of juveniles. These agencies may also utilize community groups to identify all of the community resources that are available to provide cost-effective and reliable language assistance services, in appropriate circumstances, to LEP juveniles, families, witnesses, or victims in New Castle County.

VI. Providing Language Services

A. Reliance On Bilingual Employees to Provide Language Services

To increase the number of bilingual employees who are available to provide direct communication in the most common target language, Recipients should take active steps to recruit bilingual employees, particularly those who speak Spanish. A Recipient also may wish to consider providing additional compensation to employees who demonstrate proficiency in a foreign language. Regardless of whether an organization recruits bilingual employees or identifies existing personnel with language ability, a Recipient must ensure the accuracy of the

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direct communication and interpretation services provided by bilingual employees. To that end, the entity should implement an objective testing process for assessing employee language proficiency skills in English and the second language. Because the skill of communicating with another person in a foreign language is different from the skill of interpreting, which requires listening to speech in one language and orally conveying its meaning in another language, relying on employees' self-identification of bilingual competency is not an appropriate method of assessing that individual's ability to interpret. Similarly, if a recipient seeks to rely on staff members to translate materials, it should assess and confirm the ability of those employees to translate documents. Translation requires a separate set of skills, and any assumptions about staff ability in this area must be verified. If a recipient cannot rely on in-house translation, it should obtain professional translations of written documents with second-check reviews for accuracy. Recipients also should provide training to bilingual staff members about the skills, ethics, methods, and substance of interpretation and translation.

Once a recipient completes the testing process, it should maintain a list of qualified bilingual staff members, which should include the contact information for each employee, what language the employee speaks, the availability of the individual to provide language assistance services, and whether the employee has the ability to interpret or translate. The agency also should ensure that identified interpreters on these lists remain certified and qualified. Finally, the agency should periodically update and distribute the list to all employees.

B. Oral Language Services

In a recipient's language assistance policy, the entity should describe the procedures for providing oral language assistance. The policy should establish protocols that address the circumstances under which the agency may (1) use qualified bilingual staff members to provide direct services in the LEP person's primary language, (2) use qualified bilingual staff members to interpret between an English-speaking employee or another person and the LEP juvenile or family member, (3) use contracted, qualified in-person interpreters to provide interpretation assistance, and (4) use contracted, qualified telephonic interpreters to provide interpretation assistance.

1. AOC

See Compliance Review Report, *supra* Part III.A., for a discussion of the AOC's interpreter program.³³

³³ Delaware's employment application asks if an applicant is skilled in non-English languages. However, neither the Family Court nor the JP Court takes language skills into account in recruiting, hiring, assigning, or promoting employees that provide services to juveniles.

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2. DDOJ

The DDOJ asserts that it takes language skills into account when recruiting and hiring for certain positions within the Juvenile Delinquency and Truancy Unit, Family Division, such as deputy attorney general, social worker, victim service specialist, administrative specialist, and paralegal. However, in its response to the OCR's data request, the DDOJ suggested that no employee within the Family Division speaks a language other than English. Despite this formal response, during the OCR's onsite visit, representatives from the DDOJ identified at least seven Department employees with seemingly varying foreign language skills in Spanish, French, or German who assist their colleagues in communicating with LEP victims or witnesses.³⁴ The Department does not maintain a roster listing these employees who purport to have specific language abilities; nor is there a process to determine whether the individuals with self-identified language skills are proficient in those languages. The DDOJ has secured interpretation assistance from the Chinese American Community Center and the University of Delaware, although the Department's finance unit actively discourages employees from incurring expenses for language assistance services. Consequently, employees who need the services of an interpreter are left to rely on individuals who may not have the requisite interpreter skill level. This approach to providing language services is inconsistent with Title VI and Safe Streets Act requirements.

There does not appear to be any written guidance about providing oral language services to an LEP victim or witness, which could cause a mission critical failure within the juvenile justice system, adversely affecting LEP juveniles. For instance, a lack of diligence or care in providing language services may result in the inability to obtain or provide critical information about the underlying allegations of delinquency, or to provide victim or witness assistance.³⁵ As an example, the DDOJ may not discover that a victim or witness needs interpretation assistance within sufficient time before a hearing, which would require the assigned deputy attorney general to seek a continuance from the court. More importantly, DDOJ may make basic errors in charging decisions, recommending diversion or sentencing because it did not accurately confirm statements of LEP victims and witnesses. The lack of a policy also may lead to confusion about whether or when an employee may use a family member or friend as an interpreter for a juvenile. During the OCR's onsite visit, a Department representative noted the view that it may be acceptable for an employee to use a family member as an interpreter during a victim or witness

³⁴ This list includes two Spanish language interpreters (their qualifications were not verified by the OCR) within the Violent Crimes Assistance Program, which became part of the Department after the OCR's onsite visit.

³⁵ During the OCR's onsite visit, a DDOJ representative promised to notify the OCR whether the Department has any policy or procedure addressing language access issues; to date, the OCR has received no such update.

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interview, while at the same time appearing to suggest that concerns about protecting victims militate against using a family member as an interpreter for those individuals.

3. OPD

The OPD considers a job applicant's language ability to be an asset in making hiring decisions. There appear to be six employees with varying levels of Spanish language proficiency (four are deemed to be fluent (their qualifications were not verified by the OCR); one is deemed to be proficient; one is deemed to have limited language ability). However, the OPD does not maintain a list of employees with foreign language ability; nor does it have in place a policy or procedure to determine the language proficiency of an employee who self-identifies certain foreign language skills.

4. DSCYF

DSCYF bilingual employees serve as the Department's principal resource for communicating with LEP persons. The DSCYF has no process to identify bilingual staff and relies on staff members to self-identify themselves as bilingual. It also does not maintain a master list of staff interpreters. While the Department has recruited employees with special language skills, it does not provide additional compensation or benefits to employees with language ability. Staff members deemed to be bilingual are also permitted to act as interpreters for monolingual staff without any training or testing.

Recommendations for the DDOJ, the OPD, and the DSCYF

Each agency should have readily available a list of in-person interpreters, interpreters available via telephone, and contact information and instructions for use of a telephonic interpretation service. Each agency should also maintain accurate lists of all qualified bilingual employees. See Compliance Review Report, *supra* Part VI.A., for additional guidance about relying on bilingual employees to provide language assistance.

C. Written Language Services

1. AOC

The Judicial Branch Web site, <http://www.courts.delaware.gov/>, is in English; however, it includes Spanish language information for persons accused of an offense and about the juvenile arbitration program. The AOC also provides written notice to the public about the availability of interpreters. There is Spanish language signage at various locations within the New Castle County Courthouse, although there is no signage posted at any JP Court in New Castle County.

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2. DDOJ

The DDOJ did not identify any process for selecting which documents to translate and did not provide copies of any translated materials.³⁶ The DDOJ's Web site, <http://www.attorneygeneral.delaware.gov>, is in English; however, it includes limited Spanish language information, such as information about the Attorney General.

3. OPD

During the intake process, the OPD may require juvenile clients and their parents or legal guardians to sign forms regarding the juvenile's eligibility to be represented by the OPD and the disclosure of protected health information. Neither form has been translated into another language. The OPD has no protocol in place to require sight translation of English documents. The OPD's Web site, <http://publicdefender.delaware.gov>, is in English and does not contain any foreign language material.

4. DSCYF

The DSCYF has no system for deciding what documents to translate. The DSCYF's Web site, <http://kids.delaware.gov>, is in English.

General Recommendations

The AOC, the DDOJ, the OPD, and the DSCYF appear to have translated various documents into Spanish that relate to the juvenile justice system; however, these agencies may need to take further action to ensure compliance with Title VI and the Safe Streets Act. The DOJ encourages recipients to satisfy the "safe harbor" provision in its Guidance Document when determining which documents to translate. *See* DOJ Guidance, 67 Fed. Reg. at 41,464. This provision states that recipients should translate "vital documents" for LEP groups that comprise five percent or 1,000, whichever is less, of the eligible service population. *Id.* Whether a document is "vital" depends on the "importance of the program, information, encounter, or service involved, and consequence to the LEP person if the information in question is not provided accurately or in a timely manner." *Id.* at 41,463. In addition, oral interpretation and explanation are critical regardless of whether a particular population has met the numerical threshold. Frequently, translation would still be the better course of action. In the event a document is not translated

³⁶ During the OCR's onsite visit, a DDOJ representative asserted that several victim's assistance forms are available in Spanish. Despite the OCR's request for a copy of any such translated materials, to date the Department has not provided them.

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and must be presented to an LEP individual, a certified interpreter or qualified bilingual staff member should translate the document for the LEP person or, if that is not practicable, orally interpret the document for the individual.

In accordance with the DOJ Guidance, the AOC, the DDOJ, the OPD, and the DSCYF should take additional steps to ensure that various documents are available in Spanish.³⁷ They should perform an inventory of all pertinent written materials, identify the documents that may be "vital" to LEP groups, such as juveniles, families, witnesses, or victims, and, to the extent they have not already done so, translate these documents into the languages that meet the safe harbor threshold. These agencies should also develop a strategy for distributing their translated materials to those eligible to receive specific services, as appropriate, including through their Web sites. Specifically, they should take steps to ensure that important information available in English on its Web site is also available in Spanish. The agencies also should actively encourage employees to distribute translated documents in the field and at community meetings. Further, to ensure that LEP juveniles and families of juveniles are aware of the availability of free language services, the agencies should post a sign(s) in Spanish stating that, on request, free language assistance services are available. In addition, agencies that provide juvenile services through contractors must devise a system to require contractors to comply with the same requirements.

VII. Developing Effective Plans on Language Assistance for LEP Persons

An effective plan for providing language assistance to LEP persons includes a number of common strategies that can be divided into the following five basic elements: (1) Determining the agencies' language service needs based on a focus on the important contacts the agency has or should have with LEP persons; (2) Identifying language resources that will help meet those identified needs, and educating personnel and LEP individuals about how to access and effectively utilize those resources; (3) Training staff and managers on effective and innovative methods of communication with LEP individuals; (4) Implementing and enforcing quality control measures to ensure that the agency is communicating accurately and effectively with LEP community members, juveniles, families, victims, or witnesses; and (5) Conducting outreach to ensure that all community members, regardless of national origin or language, know that they can access the program and provide feedback to your agencies on the language services provided.

Each plan should include a blueprint for management action and effective implementation to ensure that each entity is weighing appropriate consideration of the issues, including, but not limited to, policy, budgeting, hiring, supervision, training, monitoring, public notice, and

³⁷ In its LAP, the AOC recognizes as an important goal that it should identify and translate important informational documents and forms for various courts, including the Family Court and JP Courts.

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outreach. Formal policies must be put into place governing the manner in which services will be delivered to LEP juveniles, families, witnesses or victims; and protocols must be devised to allow staff to implement those policies.

Recommendations for the DDOJ, the OPD, and the DSCYF

The DDOJ, the OPD, and the DSCYF should establish comprehensive, written language assistance plans on providing services to LEP juveniles, families, witnesses, victims, or other interested LEP parties, in a variety of contexts, that incorporate the five elements referenced above and address the concerns raised in this Compliance Review Report. In doing so, these Recipients may wish to consult the DOJ Guidance, along with the following documents: (1) Planning Tool for Creating a Language Assistance Policy and Plan in a Law Enforcement Agency and a Planning Tool for Creating a Language Assistance Policy and Plan in Corrections; (2) Limited English Proficiency Resource Document: Tips and Tools from the Field; and (3) a sample written language assistance plan. These documents are available at <http://www.lep.gov> and should assist the Recipients in preparing a language assistance plan regarding services to LEP persons. The OCR also suggests that each agency name one person on staff to be responsible for coordinating services to LEP persons. This individual's first task might be to review the Compliance Review Report and the OCR's recommendations to develop a formal language assistance plan that will become familiar to every employee.

These agencies should identify potential LEP juveniles that they encounter in the juvenile justice system; identify potential LEP families of juveniles they encounter; identify potential LEP victims or witnesses they encounter, or other potential LEP individuals they may come into contact with; instruct their employees about how to provide language assistance services in a variety of situations; clearly instruct employees when it is appropriate to obtain services from an in-person interpreter, when to use a qualified bilingual employee, or when it is appropriate to contact a telephonic interpretation vendor; set rules restricting the use of other interpreters; and include a section addressing how they will train employees on their policies and procedures. If an agency only makes an interpreter or bilingual staff member available at certain times to provide language assistance, it is important to ensure that juveniles or their families are not detrimentally affected in any way due to a delay in receiving language assistance services.

VIII. Employee Training

Recipients should immediately notify all employees about the need to ensure meaningful access for LEP persons encountered. In addition, employees should be trained not to use friends, family, youth, or other informal interpreters to provide language services. Once the Recipients have made pertinent policy changes, they should mandate training for staff to ensure they are aware of the proper procedures for providing language assistance services and can handle

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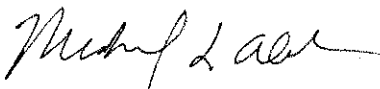
situations involving an LEP juvenile or family member. Following this initial training, the Recipients should establish periodic training sessions focused specifically on providing language assistance services to LEP individuals. As part of their training programs, the Recipients may wish to show the enclosed training DVD, *Breaking Down the Language Barrier: Translating Limited English Proficiency Into Practice*. Other agencies have found this DVD to be particularly helpful in training employees how to provide services effectively to LEP populations.

IX. Conclusion

This letter serves as notice that the OCR has made a preliminary determination that, although the AOC, the Family Court, the JP Court, the DDOJ, the OPD, and the DSCYF appear to be taking some steps to provide meaningful access to their programs and activities to LEP persons, they should build on these steps to ensure compliance with Title VI and the Safe Streets Act. It is clear further action is needed to ensure these entities adequately provide language assistance services to LEP juveniles, families, witnesses, and victims who are involved in the juvenile justice process.

On request, the OCR is available to provide technical assistance to the AOC, the Family Court, the JP Court, the DDOJ, the OPD, and the DSCYF in implementing its recommendations and formulating or refining written language assistance plans. **Immediately upon receipt of this letter, we ask that these agencies have responsible officials contact Attorney Advisor Christopher P. Zubowicz to develop timelines and goals for implementing specific recommendations in the Compliance Review Report. The OCR will review these responses, including the development of written language assistance plans, and provide feedback. We expect that this Compliance Review will be closed when satisfactory plans are in place and being appropriately implemented.** Thank you for your cooperation and the assistance of your staff throughout the Compliance Review process. If you have any questions, please contact Mr. Zubowicz at [REDACTED]

Sincerely,



Michael L. Alston
Director

Enclosure

cc: Julia Pearce, Executive Director, Child Placement Review Board