

TITLE VI AND YOU

A walk through an anti-discrimination law and how it affects you.

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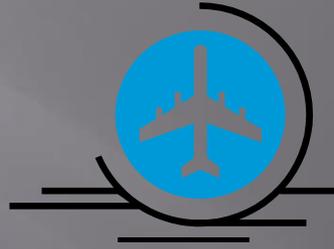
GOALS

- To not bore you to tears
- To give a general overview of Title VI and Limited English Proficiency
- To help you learn to spot issues and problems and stop small issues from becoming big problems.

PRESIDENT KENNEDY



“Simple justice requires that public funds, to which taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.”



TITLE VI OVERVIEW

“No persons in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Airports are required to ensure nondiscrimination for air passengers, tenants, LEP individuals and others affected by such things as environmental justice.

DOT's guidance states “transportation is considered an essential service to participation in modern society.”

RECIPIENT

Any State, political subdivision of any State, or instrumentality of any State or political subdivision;

Any public or private agency, institution, or organization, or other entity; or

Any individual, in any State to which Federal financial assistance is extended, directly or through another recipient



GOVERNING REGULATIONS

- **49 CFR § 21.5(b)(7)** requires that recipients take affirmative action to assure that no person is excluded from participation or denied benefits of the program based on race, color, or national origin.
- **49 CFR § 21.9(b)** states that recipients should make available racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.
- **49 CFR § 21.9(c)** requires recipients to permit access by FAA to books, records, accounts, other information and its facilities as necessary to determine compliance.
- **49 CFR § 21 Appendix C(b)(2)(i)** requires recipients to make a copy of 49 CFR 21 available at the airport operator's office during normal working hours for inspection by any person asking for it.
- **49 CFR Part 21 Appendix C(b)(3)** requires that recipients forward a copy of all written complaints of discrimination based on race, color or national origin to FAA within 15 days of receipt along with a statement describing all actions taken to resolve the matter and the results thereof.

THESE REGULATIONS CAN BE IMPLEMENTED IN VARIOUS WAYS DEPENDING UPON WHAT WORKS BEST IN YOUR ORGANIZATION. SOME AIRPORTS MAY FIND IT MOST EFFICIENT TO NAME A TITLE VI COORDINATOR WHO IS RESPONSIBLE FOR THE COORDINATION OF RESPONSES TO THE FAA IN COMPLIANCE REVIEWS, INVESTIGATIONS AND COMPLAINT PROCESSING. SINCE TITLE VI ISSUES CAN INVOLVE ALL FUNCTIONS OF A RECIPIENT, IT IS SUGGESTED THE TITLE VI COORDINATOR BE KNOWLEDGEABLE OF EACH FUNCTION AND WHO TO CONTACT TO GATHER THE INFORMATION.

Let's move on to complaint processing and compliance reviews.

COMPLAINT PROCESSING

49 CFR Part 21 Appendix C (b)(3) “Each airport owner subject to this part shall, within 15 days after he receives it, forward to the [FAA Regional Office] in which the airport is located a copy of each written complaint charging discrimination because of race, color, or national origin together with a statement describing all actions taken to resolve the matter and the results thereof. Each airport operator shall submit to the [FAA Regional Office] in which the airport is located a report for the preceding year on the date and in a form prescribed by the Federal Aviation Administrator.”

Upon receipt of a complaint, we highly recommend you immediately investigate and attempt an early resolution. Your Regional Civil Rights External Program Manager is available to provide guidance during your process.

COMPLAINTS

Early investigation and response may resolve the issue to the satisfaction of the complainant and avoid a formal complaint.

COMPLAINT PROCESS

- Only option for disparate impact/effect
- Filed by an individual or on their behalf
- Complainant protected from retaliation
- Do you provide complaint outreach?
- Accessible complaint forms and process?



TYPES OF DISCRIMINATION

Intentional Discrimination

Disparate Impact or Effect

Retaliation

INTENTIONAL DISCRIMINATION

- Prima Facie Case
- Motivated by intent to discriminate
- Decision maker not only aware but acted, because of a complainant's race, color, or national origin
- Do not need evidence of bad faith



PROVING INTENTIONAL

- What information sources could be used?
- A. statements of decision-makers
 - B. departure from standard procedure
 - C. legislative or administrative history
 - D. All of the above



DISPARATE IMPACT OR EFFECT

- Can only be enforced by a funding agency against a recipient (T/F)
- Did the recipient utilize a facially neutral practice that had a disproportionate impact on a protected group?
- Prima Facie Case: proof of a causal link between the policy and the impact

IMPACT

JUSTIFICATION OR ALTERNATIVE

- Can recipient articulate a "substantial legitimate justification"
- Determine whether an alternative practices exists that is comparably effective with less impact



Instead of



RETALIATION

For a claim of retaliation, you establish a prima facie case by showing that

- An individual engaged in a protected activity
- The alleged retaliator (through its employees) was aware of the activity
- The individual experienced different and adverse treatment, and
- The negative conditions followed the activity

Retaliation is just what it sounds like and is a big no-no.

Don't do it, ever.

TIPS FOR AIRPORTS DURING AN INVESTIGATION

1. Take the complaint seriously. Notify the Airport Director of the complaint.
2. Convey to the complainant (preferably by the Airport Director) that the complaint is being taken seriously and the desire to achieve resolution if warranted.
3. Notify the alleged discriminating party (preferably by the Airport Director) that the complaint is being investigated, that it is being taken seriously, that his or her cooperation is expected, and that judgment will be withheld until a determination is made.
4. Assign one person, usually your Title VI Coordinator, to investigate the complaint for the airport and to be a liaison with the FAA.
5. If the FAA begins an investigation, respond to the FAA investigator's inquiries within 30 days. If gathering the information will take longer, notify the investigator immediately. Identify the items that will take longer and provide a completion date.

BREAKOUT SESSION

A woman comes to you and says she has a complaint. She claims that the soda machine was not working in an airport lounge and she found a maintenance worker and told him that the machine was broken. The complainant said she also explained to the maintenance worker that she was diabetic and needed a soda to increase her sugar level. She claimed the maintenance worker ignored her initially and then said, “what do I look like, some kind of soda machine repair man?” Complainant said she told the maintenance worker that there was no need to be rude. She claimed the maintenance worker said, “Rude? Lady, you don’t know what rude is. You just take your problem elsewhere and get out of my face.” Complainant tells you she said, “how dare you talk to me that way. What’s your name? I’m going to file a complaint against you,” to which the maintenance man scoffed then responded, “you people are all alike. Always looking to cause trouble.”

What would you do? What additional facts might you need to determine whether there is a violation of Title VI? What are the things complainant could complain about in this scenario?



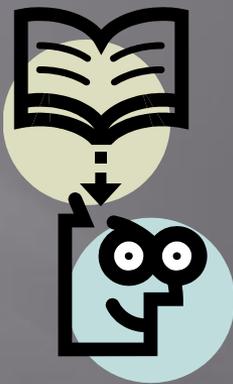
LIMITED ENGLISH PROFICIENCY (LEP)

A person who does not speak English as a primary language and has a limited ability to read, write, speak or understand English

IT'S THE LAW

National origin discrimination includes failing to provide LEP individuals “meaningful access” to recipient programs. *Lau v. Nichols*, 414 U.S. 563 (1974)





WHAT DO I HAVE TO DO???

- Translate vital documents
- Provide Interpreters



EXAMPLES OF VITAL DOCUMENTS

- Notices advising LEP persons of the availability of free language assistance;
- Applications, complaint, and consent forms;
- Letters or notices requiring the LEP person to respond.

COMPETENCY ISSUES WITH INTERPRETERS

- Proficiency in both languages (note difference between interpreter and bilingual person)
- Mode of interpreting
- Special vocabulary
- Confidentiality
- Role as interpreter



WHAT ARE OPTIONS FOR ORAL LANGUAGE SERVICES??

- Bilingual staff
- Staff interpreter
- Contract interpreter
- Telephonic interpretation service
- Formal agreements with community volunteers
- A note on using family members and friends

NOTICE OF LANGUAGE SERVICES

- Translated notices
- Telephone menus
- Outreach materials
- Non-English media

We can speak your language,
please ask us.

(Bengali)

আমরা আপনার ভাষায় কথা বলতে পারি,
অনুগ্রহ করে আমাদের জিজ্ঞাসা করুন

(Somali)

Waanu ku hadli karaa luqadaada,
fadlan na waydii.

(Polish)

Potrafimy mówić w Twoim języku,
poproś nas tylko.

(Arabic)

نحن نتكلم بلغتك، يرجى السؤال

(Turkish)

Türkçe çeviri için bizden
istekte bulunabilirsiniz.

(Chinese)

我們可以用中文與你交談，請向我們查詢。

(Vietnamese)

Chúng tôi có thể nói ngôn ngữ của quý vị,
xin hỏi chúng tôi.

FOUR FACTOR TEST

1. The number or proportion of LEP persons in the eligible service population
2. The frequency with which LEP individuals come into contact with the program
3. The importance of the program or activity to the LEP person (including the consequences of lack of language services or inadequate interpretation/translation); and
4. The resources available to the recipient and the costs.



MORE LANGUAGE ACCESS STUFF

- Self assessment using census and other data (private and community data).
- “I speak ...” posters
- “Know your rights” pamphlets
- Ensure quality, assessments and training

KEY TO LEP COMPLIANCE

To ensure **meaningful access** covered entities must provide language access that results in the LEP individual receiving accurate, timely, and effective communication at no cost.

BREAKOUT SESSION 2

Khan Noonien Singh comes to you with a complaint. Singh informs you that his English is “pretty good” but uses an interpreter to tell you that he is a Sikh, born in India but a United States citizen for the past six months. Singh claims that he has flown many times wearing his turban, which is a fundamental aspect of his religious expression. Singh tells you that his turban is critical to externally displaying who he is as a Sikh. Singh tells you that last week he was standing in line to board his plane when a woman said to a Starfleet Airlines official, “you better check that guy with the turban on his head. He looks like a terrorist to me, and I seen him talking earlier and he don’t even talk good English.” Singh claims that the Starfleet official said, “you got it lady. Nobody wearing one of those is getting on any airplane of mine too easily.” Singh, who had already gone through a security checkpoint, tells you that the Starfleet official told him to remove his turban before getting on the plane as an added security measure.

How do you handle this situation?