



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

May 12, 2011

Washington, D.C. 20531

VIA CERTIFIED MAIL

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Re: Compliance Review of the San José Police Dep't (10-OCR-0109); Santa Clara County Probation Dep't (10-OCR-0110); Santa Clara County Office of the District Attorney (10-OCR-0111); Santa Clara County Office of the Pub. Defender (10-OCR-0112); Santa Clara County Super. Ct. of Cal. (10-OCR-0113); and Santa Clara County Dep't of Alcohol and Drug Servs. (10-OCR-0114)

Dear Chief Moore, Ms. Mitchell, Mr. Rosen, Ms. Greenwood, Honorable Loftus, and Mr. Garner:

I am writing to report the findings of the Compliance Review of language services within the juvenile justice system in Santa Clara County (County), California, 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 accommodating OCR Attorney Advisors Christopher Zubowicz and Michael Thomas during their February 22 – March 2, 2010, onsite visits.

Chris Moore, Chief of Police; Sheila E. Mitchell, Chief Probation Officer; Jeffrey F. Rosen, District Attorney; Mary J. Greenwood, Public Defender; Richard J. Loftus, Jr., Presiding Judge; and Robert Garner, Director

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In my letters to you, dated December 14, 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. The OCR's Compliance Review primarily evaluates the provision of pre-adjudication juvenile justice services in the 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.

I. Background

Title VI, the Safe Streets Act, and implementing regulations require that recipients of federal financial assistance ensure meaningful access to their programs and activities for LEP individuals.² To assist financial aid recipients comply 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 San José Police Department (Police Department), the County Probation Department (Probation Department), the County District Attorney's Office (District Attorney or District Attorney's Office), the County Public Defender's Office (Public Defender or Public Defender's Office), the County Superior Court of California (Superior Court), and the County Department of Alcohol and Drug Services (DADS) (also referred to as Recipient or Recipients) provide certain language services to LEP persons involved with the pre-adjudication juvenile justice system in the County.

In focusing the Compliance Review on the County's pre-adjudication juvenile justice system, the OCR sought to evaluate how the Recipients make critical decisions, such as those related to a minor's initial placement and inclusion in an early intervention or diversion program, with

¹ Throughout this Compliance Review Report, the terms "family" and "families" include parents and/or legal 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 LEP families of juveniles having contact with the juvenile justice system.

³ The DOJ issued its guidance in response to Executive Order 13166, which directs every federal agency that provides financial assistance to publish guidance about how their recipients can ensure compliance with Title VI.

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respect to LEP stakeholders.⁴ We selected the Police Department, the Probation Department, the District Attorney's Office, the Public Defender's Office, the Superior Court, and the DADS because of their involvement in the early stages of the juvenile justice process governing youth and their families: the Police Department arrests and processes juveniles;⁵ the Probation Department makes preliminary decisions affecting juveniles and provides various juvenile detention and early intervention services; the District Attorney's Office evaluates and prosecutes juvenile cases and interacts with victims and witnesses in connection with those matters; the Public Defender's Office provides legal representation to eligible juveniles; the Superior Court's Juvenile Justice Court presides over juvenile delinquency proceedings; and the DADS operates a Juvenile Treatment Court program for certain eligible juveniles.

After a thorough evaluation of these services provided by your respective agencies, including your Responses to the OCR's Data Requests and information the OCR gathered in connection with its onsite visits, which included a community meeting with constituents and interviews with Recipient representatives, we issue the following Compliance Review Report.

II. Executive Summary

As discussed above, a recipient of federal financial assistance is required to take reasonable steps to ensure meaningful access to its programs and activities for LEP persons.⁶ 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 an analytical 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 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 Police Department, the Probation Department, the District Attorney's

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).

⁵ In 2003, the OCR conducted a compliance review of the Police Department's provision of language services to members of the public and subsequently issued a report regarding its conclusions. Given the scope of that review and the Recipient's responses to the earlier report's recommendations, the instant Compliance Review Report limits its focus to the Police Department's provision of language services to youth and their families during minor-involved field encounters and arrests.

⁶ Given this broad requirement, while the OCR limits the instant Compliance Review to aspects of the juvenile justice system, we encourage the Recipients to apply the Compliance Review Report's recommendations to their other services and programs, such as those provided to juveniles after they are adjudicated and to adults.

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Office, the Public Defender’s Office, the Superior Court, and the DADS 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 these statutes.

This Compliance Review Report closely tracks the DOJ Guidance by evaluating the performance of each agency under the four-element balancing test, and makes specific recommendations for improving agency outcomes under each prong. Ultimately, through the OCR’s observations and recommendations, including the recommendation that each agency prepare or modify a written language assistance plan, the Report seeks to identify ways in which the Recipients can improve their services to LEP individuals.

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

One factor in determining what language services a recipient 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. County and San José Language Demographics

The County is a diverse, populous county featuring several large LEP groups. According to recent U.S. Census Bureau data,⁷ the County is home to an estimated 1,764,499 individuals (all figures are from the 2009 American Community Survey 1-Year Estimates, unless otherwise noted).

The County has an estimated 1,633,346 individuals ages five and older; of these persons, approximately fifty percent speak a language other than English at home. The following table illustrates the diversity of the County’s major language groups:

Santa Clara County Major Language Groups					
Language	Total Number of Speakers	Percent of County Population	Number of "Less than Very Well" English Speakers	Percent of Language's Speakers	Percent of County Population
English	832,775	50.4%	-	-	-
Spanish	309,495	18.7%	142,010	45.9%	8.6%
Chinese	114,061	6.9%	53,821	47.2%	3.3%
Vietnamese	104,862	6.4%	60,359	57.6%	3.7%
Tagalog	56,078	3.4%	20,224	36.1%	1.2%

⁷ U.S. Census Bureau, *American Community Survey 2009 1-Year Estimates*, http://www.factfinder.census.gov/servlet/DatasetMainPageServlet?_program=ACS&_submenuId=datasets_1&_lang=en&_ts= (last visited Mar. 3, 2011).

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In addition to these languages, there are large groups of Korean, Hindi, and Persian speakers in the County.

The County's largest city is the City of San José (San José or City), home to an estimated 916,715 individuals. The City possesses a similar set of language characteristics to the County as a whole. Approximately 842,957 individuals ages five and older live in San José; the majority of the City's citizens use a non-English language at home. The following table highlights the City's major language groups:

City of San José Major Language Groups					
Language	Total Number of Speakers	Percent of City Population	Number of "Less than Very Well" English Speakers	Percent of Language's Speakers	Percent of City Population
English	400,225	45.0%	-	-	-
Spanish	209,840	23.6%	96,875	46.2%	10.9%
Vietnamese	86,626	9.7%	50,673	58.5%	5.7%
Chinese	49,169	5.5%	25,957	52.8%	2.9%
Tagalog	35,802	4.0%	13,291	37.1%	1.5%
Persian	11,695	1.3%	5,289	45.2%	0.6%
Korean	11,134	1.3%	5,360	48.1%	0.6%

The juvenile populations of the County and San José also reflect the linguistic diversity of the region. In 2009, 261,945 students were enrolled in County Schools.⁸ Of these students, 67,837, or 25.9%, were classified as English Learners. Most of these students (45,381, 17.3% of total students/67.6% of English Learners) are Spanish speakers. The second largest group of English Learners speaks Vietnamese (7919 students, 3.0% of total students/11.7% of English Learners). Cantonese and Mandarin speakers account for 3200 English Learner students (1.2% of total students/4.7% of English Learners). In addition to these languages, there are substantial numbers of Filipino-, Punjabi-, and Korean-speaking students in the County's schools.

B. Recipient Demographic Analysis

In their Responses to the OCR's Data Requests, the Probation Department, the Public Defender's Office, and the DADS provided various data about juvenile language minorities in the County. See Probation Dep't Resp. to Data Req. No. 5 (citing California Department of Education data about English Learners); Office of Pub. Defender Resp. to Data Req. No. 5 (same); Dep't of Alcohol and Drug Servs. Resp. to Data Req. No. 3 (same). The Police Department, the District Attorney's Office, and the Superior Court did not provide any information about the language

⁸ School enrollment data are available at <http://www.kidsdata.org>. The OCR uses school enrollment data as a proxy for the County's juvenile population.

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proficiency of juveniles in the County.⁹

Recommendations for Police Department, Probation Department, District Attorney's Office, Public Defender's Office, Superior Court, and DADS

It is important to note that the relevant service population includes not only juveniles, but the LEP population in general, because it is often the families of juveniles who are LEP. The available data demonstrate the existence of several LEP juvenile and adult populations in the County. To obtain additional information about these LEP groups and to monitor language-access-need trends among LEP persons, such as juveniles, families, victims, and witnesses, the Recipients should evaluate demographic data from the U.S. Census Bureau and the California Department of Education. Such data can assist in numerous ways, including in determining the need to hire additional bilingual staff, identifying interpreter needs, and focusing translation efforts. The Recipients may also benefit from reviewing the data collected by local school districts regarding the primary languages spoken by enrolled students and their families in a given area. These data provide specific information about the foreign-language groups in a particular area and their relative size. The Recipients should also periodically review LEP population shifts to determine whether they should deploy different or additional language resources to specific locations. Further, the OCR encourages each agency to share information about population shifts and other important statistics with other agencies providing services to language minorities in the County.

IV. Frequency of Contacts with LEP Persons

Under the DOJ Guidance, a recipient should evaluate how often LEP persons come into contact with its personnel.

A. Police Department

During an encounter with a juvenile, an officer may complete a Juvenile Contact Report, which elicits basic information about the youth but does not include data fields regarding the national origin or language proficiency of the minor or his or her family. In completing the Juvenile Contact Report, an officer may make a notation that he or she used an interpreter to communicate with a suspect, victim, or witness. If an officer takes a minor to the Police Department's Pre-Processing Center,¹⁰ personnel complete an Intake and Screening Form,

⁹ During the OCR's onsite meeting with the Police Department, command staff representatives noted that school systems within San José have information about the size of local LEP juvenile populations, although the Recipient does not routinely collect or analyze these data.

¹⁰ See Compliance Review Report, *infra* Section V.A., for further discussion of the Pre-Processing Center.

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which, like the Juvenile Contact Report, lacks fields regarding a minor's national origin or language proficiency.

Recommendations for Police Department

The Police Department should enhance its systems for gathering information about contacts with LEP juveniles, which would allow it to assess more accurately the needs of San José's juvenile LEP populations. It can choose how it will collect and monitor this information, such as seeking to modify the Juvenile Contact Report and Intake and Screening Form, but it should ensure that its data collection system tracks the following information: (1) identification of the individual(s) needing language services (minor, family, victim, or witness); (2) the primary language spoken by the individual; and (3) how the Recipient provided language services.

B. Probation Department

The Probation Department relies on several tools to capture pertinent background information about minors and their families. First, during an initial screening interview of a youth at Juvenile Hall,¹¹ a probation officer makes handwritten notations on a Face Sheet, which is added to a minor's case file and includes information about the primary language of a juvenile and his or her parents or legal guardians.¹² Second, in connection with an initial meeting with a minor, personnel enter various data into the Probation Department's electronic Juvenile Records System regarding, among other things, (1) the ethnicity and primary language of the minor, and (2) the primary language of a parent or legal guardian. Third, the Recipient uses an electronic case management database, called the Juvenile Automated System. The Probation Department populates this system with juvenile-related data, including information about a minor's language proficiency, by transferring information from the Juvenile Records System.¹³ Once personnel add data about a minor to the Juvenile Automated System, the Probation Department can use that information for various case management purposes, such as ensuring that youth receive proper screenings and assessments, tailoring a case plan for each youth, and monitoring a minor's progress within the probation system. In its Response to the OCR's Data Request, the Probation Department notes that this case management system includes information about the primary

¹¹ See Compliance Review Report, *infra* Section V.B.1.a., for further discussion of Juvenile Hall.

¹² The Probation Department also operates a reception center for juveniles in the southern part of the County. See Compliance Review Report, *infra* Section V.B.1.b. When staff members interview youth or family at that facility, they use a separate form to note the primary language of the minor and his or her parent or legal guardian.

¹³ While the Probation Department transfers information from the Juvenile Records System to the Juvenile Automated System regarding the ethnicity and primary language of a minor, it does not automatically transfer data regarding the primary language of a parent or legal guardian. Instead, personnel must manually enter this information into the Juvenile Automated System database.

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language of 130 LEP juveniles and 268 LEP families.

Recommendations for Probation Department

The OCR commends the Probation Department for gathering information about the LEP status of juveniles and their families. To improve these data collection tools, the OCR recommends that the Recipient refine its databases to include information about how and why it provided language services. These additional data likely would assist the Recipient in deploying additional or different language resources.

C. District Attorney's Office

The District Attorney's Office tracks attorney case assignments in juvenile delinquency matters through a database that includes basic background information about a juvenile (but does not include data fields regarding a juvenile's ethnicity or language background). If a Juvenile Contact Report, a Probation Department report, a school district report, or a District Attorney's Office file note includes information about the language status of a minor, victim, or witness, then clerical staff may transfer that information to the database. The Recipient also determines the national origin of juveniles, their families, victims, or witnesses if that information seems relevant to facts being reviewed for charging purposes or to offenses charged.

Recommendations for District Attorney's Office

The District Attorney's Office should modify its data collection efforts to ensure that it consistently obtains the following information about the language proficiency of LEP persons:¹⁴ (1) identification of the individual(s) needing language services (juvenile, family, victim, or witness); (2) the primary language spoken by the individual; and (3) how the Recipient provided language services.

D. Public Defender's Office

The Public Defender's Office uses an intake form and an electronic case management system to document the ethnicity of a juvenile. Its case management system also includes specific data fields that denote the language of a juvenile client and whether he or she needs an interpreter. In adding information to the system regarding a minor's language, an employee can select one of thirty foreign languages from a pull-down menu. Between January 1, 2008, and December 31, 2009, the Recipient opened 147 juvenile cases involving LEP clients; in ninety-seven percent of those cases (143 matters), the clients spoke Spanish.

¹⁴ Of course, the District Attorney's Office should obtain data about juveniles consistent with existing legal restrictions governing its contact with represented parties.

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Recommendations for Public Defender's Office

The Public Defender's Office has implemented an effective data collection system that tracks its interactions with LEP juvenile clients. To gather more complete information about the services it provides to other LEP groups, the OCR urges the Recipient to refine its case management system to include those language services it provides to LEP families and witnesses. Specifically, it should obtain the following additional data: (1) identification of the individual(s) needing language services (family or witness); (2) the primary language spoken by the individual; and (3) how the Public Defender's Office provided language services.

E. Superior Court

Under Rule 2.894 of the California Rules of Court, each superior court must report to the Judicial Council of California (Judicial Council or Council) information about the appointment of certified, registered, noncertified, and nonregistered interpreters in court proceedings.¹⁵ To satisfy this obligation, the Superior Court collects and periodically reports interpreter usage information to the Judicial Council through the Council's Court Interpreter Data Collection System. This data collection system includes information about the number of court interpreter service days in the Juvenile Justice Court.¹⁶ In 2009, the Juvenile Justice Court accounted for 528 interpreter service days (the three languages with the most service days were Spanish (287 days), Vietnamese (132 days), and Cambodian (thirty-nine days)).

Recommendations for Superior Court

The Superior Court should explore the feasibility of collecting the following information about the Juvenile Justice Court's interactions with LEP persons: (1) identification of the individual(s) needing language services (juvenile, family, or witness); (2) the primary language spoken by the individual; and (3) how the Juvenile Justice Court provided language services.

¹⁵ The Judicial Council is the policymaking body of the California courts and issues statewide court rules and procedures. The Administrative Office of the Courts (AOC) is the staff agency of the Council. The Judicial Council, in consultation with its Court Interpreter Advisory Panel and through the AOC, oversees a statewide interpreter certification and training program for state courts and provides substantial guidance to state courts about language access issues. See Compliance Review Report, *infra* Section V.E.1., for further discussion of the Judicial Council interpreter program and Superior Court interpreters. The instant Compliance Review does not evaluate the substance of the Judicial Council's interpreter program; however, in reviewing the Superior Court's language services, the OCR makes several observations and recommendations that the Superior Court may wish to share with the Council.

¹⁶ The Juvenile Justice Court is a division of the Superior Court.

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F. DADS

The DADS tracks all of its clients through an electronic database, which includes data fields regarding a minor's ethnicity and language. In evaluating whether a client may be eligible to participate in the Juvenile Treatment Court program,¹⁷ the Recipient uses an assessment tool that includes specific questions about a minor's national origin and language proficiency. Despite the availability of these data, the Recipient does not appear to consult them to determine how often it encounters LEP persons. In responding to the OCR's Data Request about the language needs of clients and their families, the DADS relied on one of its bilingual Spanish-language clinicians to review a list of clients and identify cases that required language assistance. Based on this informal review, the Recipient determined that, from January 1, 2008, to December 31, 2009, the Juvenile Treatment Court program provided Spanish-language services to eighteen LEP juveniles and fifty-three LEP families of juveniles.

Recommendations for DADS

In administering its various juvenile-related programs, the DADS obtains helpful information about a juvenile's national origin and language. To improve its data collection efforts, the OCR recommends that the Recipient refine its electronic database and Juvenile Treatment Court assessment tool to include 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; and (3) how the DADS provided language services.

Recommendations for Police Department, Probation Department, District Attorney's Office, Public Defender's Office, Superior Court, and DADS

Despite the availability of various methods to document the primary languages of LEP persons involved in the juvenile justice system, the Recipients do not periodically evaluate how often they provide services in specific languages to LEP persons. They should review all language-related data on an annual basis to determine the evolving language needs of its LEP service populations, such as minors, families, victims, and witnesses.¹⁸

¹⁷ See Compliance Review Report, *infra* Section V.F.2., for further discussion of the Juvenile Treatment Court program.

¹⁸ In connection with this recommendation, the Superior Court should evaluate how often the Juvenile Justice Court relies on certified, registered, noncertified, and nonregistered interpreters.

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

This section of the Report evaluates the Recipients' efforts to provide language services to LEP persons in specific contexts.

A. Initial Youth Contact with Police Department

During a field encounter with a minor, the Police Department encourages an officer to resolve the matter without taking the youth into custody. Police Dep't, Policy L 3000, Line/Operations Procedures, Detention and Arrest – Juvenile Contacts, at 1 (Duty Manual 2008).¹⁹ As alternatives to arresting and detaining a minor, the officer can: (1) release the youth to a family member or accompany the minor to his or her residence; (2) refer the youth to a community agency providing shelter, care, diversion, or counseling; or (3) give the minor a citation for a specific offense and require the minor or family member to sign an English-language notice to appear at the Probation Department's Juvenile Division.²⁰ When an officer cannot immediately rely on one of these disposition alternatives, he or she may temporarily detain the minor at the Police Department's Pre-Processing Center, which gives the officer additional time to investigate the matter, to facilitate release of the minor to a family member, or to make arrangements to transfer the minor to Juvenile Hall. If an officer gives the minor a citation or takes the youth to Juvenile Hall, the officer completes an English-language Juvenile Contact Report and distributes copies of it to the youth and the Probation Department.²¹ Whenever an officer arrests or detains a juvenile, the officer must take immediate steps to notify the youth's parent or legal guardian of the arrest and, if relevant, the location of the child's confinement. *See id.* at 1.

Personnel can rely on several Police Department language resources to communicate with LEP persons, including juveniles and their families. The Recipient has a formal language certification process for sworn personnel, which requires individuals with self-identified language abilities to take oral and written tests conducted by the Berlitz Language Center.²² As of December 4, 2008, the Police Department had 334 personnel who were certified to provide interpretation or

¹⁹ This policy is consistent with guidance issued by the Santa Clara County Police Chiefs' Association emphasizing that law enforcement agencies throughout the County should "minimize unnecessary incarceration of youthful offenders by seeking alternatives to custodial confinement." Santa Clara County Police Chiefs' Association, Juvenile Detention Reform, Law Enforcement Policy for the Incarceration of Juveniles (July 2009).

²⁰ The notice requires the minor and a family member to agree to see a probation officer at Juvenile Hall, which is operated by the Probation Department's Juvenile Division.

²¹ The Juvenile Contact Report form reviewed by the OCR was prepared by the County (not the Police Department).

²² Pursuant to its Memorandum of Understanding with the San José Police Officer's Association, the Police Department pays a \$29 biweekly premium to officers who are certified to act as interpreters or translators in Spanish, Vietnamese, or another foreign language deemed operationally important by the Chief of Police.

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translation assistance; of those employees, 276 were certified in Spanish and twenty-nine were certified in Vietnamese.²³ In addition to its corps of certified interpreters and translators, the Recipient has a contract with Language Line Services (Language Line) to provide telephonic interpretation services. At its Pre-Processing Center, the Police Department also uses an I-Speak Form, which assists personnel in identifying the language of an LEP juvenile arrestee.²⁴ To identify any health concerns involving an arrestee, the Recipient uses a health information aid that contains basic medical questions and conditions in English and Spanish.

Despite the availability of these resources, the Police Department does not have a written policy, procedure, or protocol that explains how an officer should provide language assistance to an LEP juvenile or LEP family member.²⁵ In its Response to the OCR's Data Request, the Recipient explains that, if an officer needs interpretation or translation assistance and is aware of an on-duty officer with language ability, he or she may ask that specific officer to provide language assistance. If no officer is available in the immediate area for the language skill requested, then the sergeant of the patrol officer requiring assistance asks the Communications Unit to locate and deploy an officer to the scene. At that point, Communications Unit dispatchers endeavor to locate an on-duty Patrol Division officer or, if no such officer is available and the nature of the interaction is minor, non-sworn personnel who can interpret in the language requested. Occasionally, according to the Police Department, officers may also rely on bystanders or the friends or family members of LEP persons to interpret during emergency situations (until a qualified interpreter is available) or non-critical encounters, although an officer should not rely on a youth to interpret for his or her LEP family.

The Police Department also lacks a comprehensive training program that addresses issues involving the provision of services to LEP persons. According to command staff members, the Police Department reviews Language Line as an available resource in the cadet academy and during field training. During the OCR's interviews with sworn officers, however, several individuals could not recall receiving any training about providing language assistance to LEP persons.

²³ The Police Department also identified thirty-four individuals who had self-identified foreign-language ability but were not certified.

²⁴ The form translates the phrase "Mark this box if you read or speak [language.]" into thirty-seven foreign languages.

²⁵ The Police Department's Communications Manual contains a policy governing the provision of oral language assistance to emergency and non-emergency callers by call-takers; however, the policy does not address how personnel should communicate with LEP persons in any other context, such as during field encounters with minors.

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Recommendations for Police Department

The OCR commends the Police Department for administering a formal language certification program for sworn and civilian staff. Given the evolving language needs of the San José community, however, the Recipient should ensure that it has an adequate number of certified personnel who can communicate in those languages that officers frequently encounter throughout the City and in specific areas. In connection with this evaluation, the Police Department should update its interpreter list and include additional information about each identified employee, such as the schedule availability of each individual to provide language assistance services, whether each certified employee is qualified to interpret or translate, and whether each non-certified employee is otherwise qualified to interpret or translate. The Police Department should encourage non-certified personnel with self-identified foreign-language abilities to take the certification test. Further, in an effort to ensure that Recipient personnel consistently provide effective language assistance, the Police Department should establish a written plan on providing services to LEP juveniles and LEP families of juveniles in connection with field encounters and arrests.²⁶ See Compliance Review Report, *infra* Section IX., for guidance about developing an effective language assistance plan. The Police Department should also ensure that sworn and civilian personnel receive adequate training about the appropriate protocols for providing language assistance to LEP persons.

B. Probation Department's Early-Stage Involvement in Juvenile Justice System

1. Interview of Minor and Initial Case Assessment

a. *Juvenile Hall*

Within San José, the Probation Department becomes involved in matters involving youth when a Police Department officer gives a minor a citation or brings him or her to Juvenile Hall.²⁷ If an officer issues a citation to a minor, then the assigned deputy probation officer schedules an initial interview with the youth and, in most cases, his or her family to determine appropriate next

²⁶ The instant Report, as applied to the Police Department, limits its focus to the provision of language services to juveniles and their families. As discussed in the OCR's earlier compliance review report of the Police Department, however, the Recipient should have the capacity to provide language services during all of its interactions with LEP persons, regardless of whether the individuals encountered are minors or adults. Given the broad compliance obligations under Title VI and the Safe Streets Act, the OCR will provide technical assistance to the Police Department to ensure that its language access policy comprehensively addresses how personnel should interact with LEP persons in various contexts, including those involving emergency calls, field encounters, victim assistance, custodial interrogations, detention, and complaints against members of the service.

²⁷ Juvenile Hall houses male and female minors and has a rated capacity of 390 youth. On February 24, 2010, the facility held 280 minors (thirty-three females and 247 males).

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steps. When a Police Department officer brings a minor to Juvenile Hall, a Probation Department screening officer, who is a deputy probation officer, reviews the Juvenile Contact Report to ensure that it contains enough information about a sufficiently serious offense to warrant further assessment by the Probation Department. Before accepting custody of the minor, the screening officer also ensures that the Police Department officer (1) advised the minor of his or her *Miranda* rights, (2) notified the minor's parent or legal guardian of the arrest, (3) provided information about the victim, (4) noted the date and time of arrest, and (5) signed the Juvenile Contact Report. At that point, the screening officer adds descriptive information about the minor and his or her parent or legal guardian, including their language proficiency, to the Probation Department's Juvenile Records System database. Next, the screening officer re-administers a *Miranda* warning to the minor and interviews him or her. After the interview, the screening officer completes the Probation Department's Risk Assessment Instrument, which is a point-based tool that assists the Probation Department in determining whether to detain or release the minor.²⁸ After evaluating several factors, including the results of the Risk Assessment Instrument, the officer may:

- Release the minor with a warning (the matter is resolved without the involvement of the Juvenile Justice Court);
- Place the minor on informal probation (also called informal supervision), which typically lasts six months (Juvenile Justice Court does not get involved). Under this option, the Probation Department places conditions on what the youth can do, such as going to school, participating in community programs, and/or attending counseling; or
- Recommend that the District Attorney file a delinquency petition against the minor.²⁹ Under this option, the Probation Department can release the youth and place him or her on home supervision.³⁰ The minor and his or her parent or legal guardian must agree to

²⁸ In juvenile justice jurisdictions throughout California, there is a general presumption that a juvenile should not be placed in secure confinement. If a law enforcement officer processes a youth into Juvenile Hall, a probation officer must immediately release the minor to a parent or legal guardian, unless: (1) the minor does not have a parent or legal guardian who can or will take care or control of him or her; (2) the minor does not have a residence; (3) the minor cannot support himself or herself; (4) the minor's residence is unfit, or he or she is abused or neglected; (5) the minor must be in custody to be protected, or to protect property of another person from the minor; (6) the minor will likely run away; (7) the minor violated a court order; or (8) the minor is a danger to the public. *See* Cal. Welf. & Inst. Code § 628 (Deering 2011).

²⁹ In deciding whether to file a petition, the District Attorney's Office weighs several factors, including the age and sophistication of the minor, the nature of the conduct at issue, and any prior contacts with law enforcement.

³⁰ As a condition for release, a minor's parent, legal guardian, or other responsible relative must sign a document acknowledging that he or she understands the basic elements of the home supervision program. Under California law, the Probation Department has the obligation to translate this document "into a language the parent

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attend court proceedings and follow the conditions of the youth's release, which can include permitting a probation officer to visit the minor's residence, to search the residence and the minor's room, and to collect evidence. The Probation Department can also maintain custody of the youth at Juvenile Hall while the District Attorney's Office determines whether to file a petition.

If a minor is held at Juvenile Hall, he or she participates in several orientation activities. After minors enter the facility, they view an orientation film (presented in English, Spanish, and Vietnamese), which provides an introduction to Juvenile Hall and describes the rights of minors while they are detained. The Probation Department also distributes an orientation brochure, which is available in English, Spanish, and Vietnamese. After a minor completes the initial intake process, personnel from the County Department of Mental Health and the Valley Medical Center conduct mental and medical health assessments.³¹ At the end of the screening process, a Probation Department screening officer contacts the minor's parent or legal guardian and informs him or her of the youth's status.³²

The Probation Department primarily uses its own personnel to provide appropriate language assistance to LEP youth. It relies on the County's Department of Human Resources, which is part of the County's Employee Services Agency, to certify the oral, reading, and writing foreign-language abilities of those employees who have bilingual or interpreter skills. Once certified, an employee may be eligible to receive a monthly pay differential for that skill.³³ The Probation Department has 135 certified bilingual staff persons who can provide language assistance to juveniles and their families in the following languages: Spanish (119 employees); Vietnamese (fourteen employees); Hindi and Punjabi (one employee); and Korean (one employee). The Recipient also authorizes sixteen of these employees to serve as interpreters (fifteen are Spanish-language interpreters; one is a Vietnamese-language interpreter). The Probation Department maintains a list of qualified personnel who can provide foreign-language assistance, which includes information about each employee's name, job title, division, job site, foreign language,

understands." *Id.* § 628.1.

³¹ In evaluating the intake process at Juvenile Hall, the OCR limited its review to those services provided by the Probation Department.

³² In the Juvenile Hall visiting area, the Probation Department posts a sign, in English, Spanish, and Vietnamese, that contains information about visiting a juvenile.

³³ Pursuant to the agreements negotiated between the Probation Department and three labor organizations, a certified employee generally receives a pay premium when he or she works in a position that frequently requires the provision of oral interpretation or written translation assistance to LEP persons. Personnel may also receive the differential if their position is the only one at a work location where there is a demonstrated need for language services. Under the terms of two of the labor agreements, a certified employee receives a monthly pay premium of \$150; the third labor agreement increases the amount of that monthly differential to \$160.

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and foreign language proficiency level; the list also specifies whether the employee is authorized to serve as an interpreter. In addition to these internal language resources, the Recipient contracts with (1) interpreters who can provide oral language assistance in thirty-four foreign languages and (2) Language Line.³⁴ The Probation Department can also obtain interpreter assistance from the Superior Court.

The Probation Department expects personnel to provide language services to LEP youth throughout their detention at Juvenile Hall. *See* Probation Dep't, Institutional Behavior Control Policy, Procedures Manual, Juvenile Hall, Part 4, § 4.0 (Aug. 21, 2007) ("An interpreter, if necessary, will be provided at the earliest opportunity."); Probation Dep't, Unit Orientation, Procedures Manual, Juvenile Hall, Part 10, § 10.6 (Jan. 13, 2006) ("Accommodations for the minors who do not speak English will be made to assure a counselor fluent in the minor's language will read and explain the information to him/her."); Probation Dep't, Juvenile Hall Rules for Minors, Procedures Manual, Probation Dep't, Juvenile Hall, Part 4, § 4.1 (Oct. 25, 1997) ("Each Juvenile Hall counselor shall ensure that rules of conduct for minors are written and/or explained so that each minor understands what is expected, including translating and/or explaining said rules into whatever language a detained minor uses as a primary language."). While these procedures emphasize the importance of ensuring language access to its services, the Probation Department does not have one policy, procedure, or protocol that comprehensively explains how to assist LEP persons in different contexts. Instead, it provides only limited written guidance to employees about providing oral language assistance during client interviews. In that setting, if LEP juveniles or LEP families of juveniles speak Spanish or Vietnamese, then employees should primarily rely on certified bilingual or interpreter personnel to communicate with them. Probation Dep't, Use of Interpreters, Procedure Manual, Admin. Servs., Part 300, § 304 (Apr. 16, 2008). When a monolingual employee needs to interview an LEP juvenile but a qualified staff interpreter is unavailable, the employee should use a contract interpreter. *Id.* Despite this stated procedure, there are occasions when, according to the Recipient, an employee may rely on a third party to provide language assistance. For example, during the screening process, personnel may occasionally rely on an adult relative of the minor to interpret for the minor or another family member. Probation Dep't Resp. to Data Req. No. 12. If an adult relative is not available, or if that relative is not an appropriate source of language assistance, then a screening officer can utilize Language Line to provide telephonic interpretation assistance or obtain an interpreter from the Superior Court.

b. *South County Alternate Reception Center*

If a minor in the southern part of the County receives a citation from a local law enforcement officer, the officer may bring him or her to the Probation Department's South County Alternate

³⁴ In its Response to the OCR's Data Request, the Probation Department submitted a list of contract interpreters that had not been updated since May 18, 2004.

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Reception Center (Alternate Reception Center), which identifies and provides prompt early intervention services to youth who are charged with non-serious offenses.³⁵ The Alternate Reception Center is staffed with three Probation Department employees and serves as a “cite and release” facility; minors are not detained there for more than three hours. When an officer brings a juvenile to the Alternate Reception Center, a Probation Department employee contacts the youth’s parent or legal guardian and makes arrangements for the family to meet the minor at the facility and take him or her home. Before the family member arrives, a deputy probation officer interviews the minor about various topics, including the conduct that resulted in the youth’s arrest and the minor’s school-related performance and activities. Once a family member arrives, the deputy probation officer gives him or her additional information about the minor’s offense. The officer also schedules a follow-up appointment with the minor and family to discuss appropriate services for the youth. While most minors arriving at the Alternate Reception Center are English proficient, personnel have regular interactions with Spanish-speaking families. For those encounters, the Probation Department relies on certified bilingual personnel to provide language assistance; at the Alternate Reception Center, two of the three staff members are certified as bilingual in Spanish. Staff members can also access Language Line for interactions with LEP persons who speak a foreign language other than Spanish.

The Recipient does not provide training to new or existing employees assigned to Juvenile Hall or the Alternate Reception Center about how to provide language assistance to LEP persons.

2. Early Intervention: Restorative Justice Program

As an alternative to detention and to divert youth from further involvement in the juvenile justice system, the Probation Department manages the Restorative Justice Program. Under this program, the Recipient, often through various community-based organizations, provides early intervention, prevention, and diversion services, such as classes or counseling sessions, to certain first-time offenders. The program is managed by a Probation Department team that consists of a supervising probation officer, thirteen probation officers, and three clerks. After reviewing a minor’s Juvenile Contact Report and interviewing the minor and his or her parents or legal guardians (the Recipient sends appointment letters in English and Spanish), a probation officer can ask the supervising probation officer to consider including the youth in the program. If the supervising probation officer declines to accept the referral, the District Attorney’s Office can reverse that initial decision and place the minor in the program. In evaluating a minor’s suitability for the program, neither the Probation Department nor the District Attorney’s Office considers the language ability of the youth or his or her parents. To determine the appropriate level of services for a minor, the program utilizes an offense matrix that evaluates the seriousness of the minor’s current offense and the nature of any prior contacts with the Probation

³⁵ The Alternate Reception Center accepts minors between 5:30 p.m. and 1:00 a.m. on Thursday, Friday, and Saturday evenings.

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Department. The Recipient administers a separate assessment tool to those youth who receive higher scores on the offense matrix. The duration of a minor's tailored program, which can last 180 days, hinges on the results of these assessment instruments.

The Probation Department seeks to ensure that its personnel and contracted service providers can provide language assistance to LEP persons involved in the Restorative Justice Program. In its Response to the OCR's Data Request, the Probation Department notes that the following program staff members have foreign-language skills: six of the probation officers are bilingual (five speak Spanish; one speaks Spanish and Tagalog), and two clerks are bilingual (one speaks Spanish; one speaks Vietnamese). Three of these employees are certified as bilingual in Spanish. If a probation officer needs to communicate with an LEP youth or an LEP family member, then he or she contacts another probation officer or a clerical staff member within the program to provide in-person or telephonic language assistance. For languages other than Spanish, Vietnamese, and Tagalog, probation officers can contact one of the Probation Department's contract interpreters. If these alternatives are not available, then personnel can also request an interpreter through the Superior Court's Interpreter Unit. In an effort to ensure that contracted community-based organizations can provide language assistance in connection with Restorative Justice Program services, the Probation Department requires these groups to submit, as a component of their service delivery plans, information about their ability to communicate with LEP clients.

Recommendations for Probation Department

The Probation Department clearly understands the importance of providing effective language assistance to LEP minors in its care, as evidenced by its efforts to provide general policy guidance to employees about language access issues and to ensure the availability of various internal and external language resources. To strengthen these measures, the Recipient should develop a formalized, comprehensive language access policy that includes procedures for providing language assistance to LEP persons, including juveniles and their families, in different contexts. The plan should describe how the Recipient provides appropriate language access in connection with intake, orientation, health care and mental health treatment, visitation, educational programming, and other programming made available to juveniles. The plan should also prohibit personnel from relying on juveniles to interpret for their family members or other youth. *See* Compliance Review Report, *infra* Section IX., for additional guidance about developing an effective language assistance plan. The Recipient should also train its staff members about how to handle contact involving LEP juveniles and LEP families. Further, the OCR recommends that the Probation Department (1) revise its list of qualified interpreter and translator personnel to include (a) the contact information for each employee, (b) the schedule availability of each individual to provide language assistance services, and (c) information about whether each employee is qualified to translate; and (2) update its list of qualified contract interpreters. The Recipient should also identify its vital documents and determine whether those

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written materials should be translated into additional foreign languages. *See* Compliance Review Report, *infra* Section VIII., for guidance about enhancing the provision of written language services.³⁶

C. District Attorney Communications with Victims and Witnesses

Once the District Attorney's Office files a juvenile delinquency petition, it does not have direct contact with a minor or his or her family; however, attorney and non-attorney staff members routinely interact with victims and witnesses.

The District Attorney's Office provides written guidance to attorneys about ensuring that LEP persons receive adequate in-court interpretation assistance, which, as discussed below, is provided by the Superior Court. *See* District Attorney's Office, Article V, Section 5.02(b)(iii)1)b), Policy and Procedure Manual, Procedural Responsibilities – Request for Court Interpreter (Oct. 12, 2006). In describing an attorney's responsibilities to secure appropriate interpreter assistance for a victim or witness in a Juvenile Justice Court proceeding, the Recipient generally describes how an attorney should (1) document the need for oral language assistance and (2) ask the Juvenile Justice Court for an interpreter.³⁷ While all attorneys must read and be familiar with this policy as a condition of their employment, a District Attorney's Office representative noted to the OCR during its onsite visit that the Recipient does not provide formal training to new employees about issues involving language access in the Juvenile Justice Court. The Recipient emphasizes, however, that it provides ongoing training to attorneys about the need to provide language services to LEP persons because of its importance to litigating cases. District Attorney's Office Resp. to Data Req. No. 22 ("Effective case preparation and courtroom presentation skills, including the recognition of when to arrange for, and when to utilize, interpreters for witnesses and crime victims are important trial attorney skills which are taught and reinforced by supervisory attorney staff.").

Despite the existence of the District Attorney's Office policy governing language access in Juvenile Justice Court proceedings, the Recipient does not have a formal policy, procedure, or protocol about how personnel should provide language assistance in other contexts. In practice, for communications with LEP persons that occur outside the courtroom, the District Attorney's Office primarily relies on internal oral language resources. The Recipient participates in the County's language certification program, which is administered by the County's Employee Services Agency. Under that program, non-attorney staff members can become certified in a

³⁶ *See* Compliance Review Report, *infra* p. 31, for additional recommendations regarding the Probation Department's obligation to monitor contractor compliance with Title VI and the Safe Streets Act.

³⁷ The policy also emphasizes that prosecuting attorneys have the duty to ensure that defendants receive appropriate language assistance during all court proceedings.

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foreign language; certified personnel may also receive a pay premium for using those language skills if their employment responsibilities involve interaction with LEP persons.³⁸ The District Attorney's Office also provides language assistance through attorney and non-attorney staff members with self-identified bilingual or interpreter abilities.³⁹ During the OCR's onsite visit, the Recipient provided a roster of employees who have certified or self-identified foreign-language ability; the Recipient periodically circulates this list to personnel. According to the list, as of October 20, 2009, the District Attorney's Office could secure language assistance through thirty-eight employees. Twenty-eight of these staff members are certified and receive a pay differential for their language skills in the following languages: Spanish (twenty-two employees), Vietnamese (three employees), Farsi (one employee), Korean (one employee), and Mandarin and Taiwanese (one employee). Despite the availability of these certified personnel, the Recipient does not require staff members to seek language assistance from them before relying on non-certified employees. Personnel may also rely on friends or family members of a victim or witness to provide language assistance in order to facilitate the exchange of basic information about a matter; however, the District Attorney's Office does not favor this procedure in discussing complex concepts or case facts with an LEP person.

The District Attorney's Office also provides written translation services to LEP witnesses and LEP victims. It has translated several informational brochures and flyers, including those that describe the Recipient's functions, available resources for crime victims, outreach activities aimed at parents of at-risk youth, and truancy laws. All of these materials are available in Spanish; one document is available in Vietnamese. The Recipient also translated subpoenas, which contain instructions for witnesses, into Spanish and Vietnamese.

Recommendations for District Attorney's Office

The District Attorney's Office, through several measures, seeks to provide effective oral and written assistance to certain language groups. It recognizes the importance of providing written guidance to personnel about interacting with LEP persons and has the capacity to provide interpretation and translation assistance to language minorities. At the same time, the Recipient can strengthen each aspect of its language access program to ensure that it satisfies its statutory obligations with respect to all pertinent language groups. It should expand its written plan to provide significantly more information to personnel about available language resources and Recipient protocols for providing services to LEP persons. *See* Compliance Review Report, *infra* Section IX., for additional guidance about developing an effective language assistance plan. The District Attorney's Office should also encourage reliance on certified interpreters and revise

³⁸ Upon certification, personnel in the District Attorney's Office's Bureau of Investigation receive an hourly pay differential of \$0.81 while support staff personnel in other Recipient units receive an hourly pay premium of \$0.87.

³⁹ The District Attorney's Office does not use a telephonic interpretation service to communicate with LEP persons.

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its interpreter list to include more detailed information about employees with foreign-language skills, such as their schedule availability to provide language assistance services and whether they are certified or otherwise qualified to interpret or translate. To ensure that it can assist LEP individuals who speak less frequently encountered languages, the District Attorney's Office may wish to consider relying on a telephonic interpretation service that is capable of providing qualified interpreters. To improve its written translation efforts, the Recipient should identify its vital documents and ensure that they are available in the County's prevalent languages. *See* Compliance Review Report, *infra* Section VIII., for guidance about enhancing the provision of written language services. The District Attorney's Office should also ensure that appropriate personnel receive adequate training about the protocols for providing language assistance to LEP persons.

D. Public Defender Representation of Juveniles

In most cases, the Public Defender's Office is appointed in juvenile delinquency cases once the District Attorney's Office files a petition and the minor must appear in court.⁴⁰ Generally, once the Public Defender's Office determines that it will represent a youth, it sends an English- and Spanish-language letter to the minor to schedule an intake interview with the youth and his or her family.⁴¹ When the juvenile and his or her family arrive at the Public Defender's Office for the interview, they view a video, which is shown in English, Spanish, and Vietnamese, that describes the juvenile delinquency process. During the initial interview, the attorney or paralegal interviewers ask the participants to identify their primary language and to state whether they want the assistance of an interpreter. If a person suggests that he or she does not need an interpreter, but it becomes clear to the interviewer that the individual may in fact be LEP, then the interviewer will obtain an interpreter for the interview.

The Public Defender's Office does not have one written policy, procedure, or protocol that comprehensively addresses how attorney and non-attorney staff should interact with LEP persons in different settings. Instead, the Recipient uses several documents to provide targeted guidance to separate groups of employees; the Recipient regularly reviews these policies during training for new and existing personnel. To emphasize the importance of securing in-court language assistance, the Recipient's Preliminary Hearing Notebook reminds attorneys that clients have the right under California law to a court interpreter. The Recipient also provides information about language access issues in its Misdemeanor Team Orientation Manual, which is aimed at assistant public defenders and describes (1) how to establish and maintain rapport with an LEP client and interpreter, (2) effective ways to facilitate the interpretation process, (3) the

⁴⁰ The Recipient would not serve as counsel in a juvenile delinquency matter that involves a conflict of interest or where the minor has retained private counsel.

⁴¹ The Recipient may also interview a detained youth at Juvenile Hall.

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differences between simultaneous and consecutive interpretation, (4) the unique ethical issues involving interpreters, and (5) the role of the bilingual attorney in communicating with an LEP client. To assist investigators, the Recipient includes a brief section in its Policy, Procedure, and Training Manual for Investigation Division that addresses use of an interpreter. Finally, the Recipient has a general Policies and Procedures Manual, which applies to all personnel, that describes the mechanics of securing and compensating outside interpreters.

The Public Defender's Office primarily provides oral language assistance to LEP persons through bilingual non-attorney personnel who are certified as bilingual by the County's Employee Services Agency.⁴² Certified employees who use their foreign-language skills in the course of their daily duties receive a pay differential that amounts to approximately five percent of their compensation. As of January 1, 2010, the Recipient identified thirty-six certified non-attorney employees who receive a pay premium for their foreign-language abilities in the following languages: Spanish (thirty-one certified employees), Tagalog (three certified employees), and Vietnamese (two certified employees). Eighteen attorney and non-attorney personnel also self-report that they possess some degree of foreign-language ability in Spanish (seventeen employees) or Vietnamese (one employee). In addition to relying on these internal language resources, the Public Defender's Office uses contract interpreters. As of August 2008, the Recipient had access to sixty-one contract interpreters who could communicate in twenty-seven languages; sixteen of these persons were certified by the Superior Court.⁴³ The Recipient posts information about these available external interpreters at the reception desk in its lobby. If an LEP person speaks a language that cannot be interpreted by an in-house or outside interpreter, then the Public Defender's Office uses a Superior Court interpreter. Under Recipient protocol, an attorney should not rely on a client to interpret for a family member, although an investigator may rely on a family member or friend to interpret for a witness.

In interacting with LEP clients, the Public Defender's Office also frequently provides written translation services. For example, the Recipient may need to translate written statements in a client file, such as those contained in police reports, interrogations, or witness interviews, from English into the client's language or, alternatively, from the client's language into English. To translate Spanish statements into English, the Public Defender's Office relies on a certified staff translator or LawDocs Xpress, an outside vendor. If the Recipient needs to translate a document into or from a foreign language other than Spanish, then it uses either Superior-Court-certified personnel (for Vietnamese, Cambodian, or Mandarin translations) or Ubiqua, another outside vendor (for all other languages).

⁴² The Public Defender's Office does not use a telephonic interpretation service to communicate with LEP persons.

⁴³ Because these individuals are not Public Defender's Office employees, they are not eligible to be certified by the County.

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Recommendations for Public Defender's Office

The Public Defender's Office has undertaken significant efforts to provide language assistance to LEP persons and to provide written guidance to personnel about its language access policies and procedures. To improve its language assistance measures, the OCR recommends that the Recipient refine its language access policies to ensure that they satisfy the standard for an effective plan that we discuss in Section IX. of this Report. In documenting the foreign-language skills of its personnel, the Public Defender's Office should include (1) the contact information for each employee, (2) the schedule availability of each individual to provide language assistance services, and (3) information about whether each non-certified employee is otherwise qualified to interpret or translate. The Recipient should also update its list of qualified contract interpreters. As a supplement to these outside interpreters, it may be helpful for the Public Defender's Office to consider relying on a telephonic interpretation service that is capable of providing qualified interpreters. The Recipient should also identify its vital documents and determine whether those written materials should be translated into additional foreign languages. See Compliance Review Report, *infra* Section VIII., for additional guidance about enhancing the provision of written language services.

E. Juvenile Justice Court Delinquency Proceedings

1. Judicial Council Interpreter Program and Superior Court Interpreters

California has a framework for providing competent language access in its courts that relies, in large measure, on the leadership of the Judicial Council. Cal. Gov't Code §§ 68560-66 (Deering 2011). To provide statewide oral language assistance in court proceedings, the Council primarily relies on two categories of interpreters: certified and registered. To become a certified interpreter, an individual must (1) pass an examination that tests proficiency in a foreign language that the Council designates⁴⁴ and (2) register with the Council as a certified interpreter. Under the California Rules of Court, trial courts should periodically review the court interpreter skills and professional conduct of these certified interpreters. Cal. Rules of Court, Rule 2.891. The Superior Court does not have a procedure to conduct such an assessment of its certified interpreters. To become a registered interpreter in a nondesignated language, a candidate must (1) pass an examination that tests oral and written proficiency in English⁴⁵ and (2) register with

⁴⁴ The Judicial Council conducts a survey of courtroom language use every five years to identify languages that should be designated based on, among other factors, the language needs of the courts. See Cal. Gov't Code §§ 68562(a), 68563; The Institute for Social Research, *2010 Language Need and Interpreter Use in California Superior Courts* (May 2010). As of March 2010, the Council certified interpreters in the following twelve designated languages: Arabic, Eastern Armenian, Western Armenian, Cantonese, Japanese, Korean, Mandarin, Portuguese, Russian, Spanish, Tagalog, and Vietnamese.

⁴⁵ The oral component of the examination evaluates a candidate's English oral fluency; the written component

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the Council as a registered interpreter. All certified and registered court interpreters are subject to professional conduct standards that cover various areas of responsibility, including the duties to provide an accurate representation of their qualifications; to provide complete and accurate interpretation; to avoid and disclose conflicts of interest; to protect from disclosure privileged communications; to refrain from giving legal advice; to participate in continuing education curricula; to assess and report any impediments to performance; and to report ethical violations. Cal. Rules of Court, Rule 2.890; *see also* Judicial Council, Professional Standards and Ethics for California Court Interpreters (4th ed. June 2008); Judicial Council, Compliance Requirements for Certified Court Interpreters and Registered Interpreters of Nondesignated Languages (June 10, 2008).

The Superior Court has an Interpreter Unit (Unit) that consists of twenty-three employees who are certified or registered to interpret in six languages.⁴⁶ The Recipient also provides language assistance through eighteen interpreters who are independent contractors or employees of other California superior courts; fourteen of these interpreters are certified in six languages while four are registered in three languages. Super. Ct. Resp. to Data Req. Nos. 19, 34. These forty-one Unit and contract interpreters give the Juvenile Justice Court the flexibility to provide prompt language assistance in most juvenile delinquency matters. Recognizing the prevalence of Spanish and Vietnamese speakers in Juvenile Justice Court proceedings, the Superior Court always assigns a certified Spanish-language interpreter to that court and makes a certified Vietnamese-language interpreter available upon request.⁴⁷ The Superior Court also has an interpreter coordinator who handles requests for interpreter assistance in other languages.

The Judicial Council and the Superior Court ensure that judges, clerks, and other staff members receive training about interacting with LEP persons involved in Juvenile Justice Court proceedings. Under California court rules, within six months of taking their oaths of office, all new judges must attend the Council's New Judge Orientation, which covers the use of interpreters in the courtroom. The Council also requires new judges to attend, within two years of taking their oaths, its B.E. Witkin Judicial College, which is held annually over two weeks and

assesses a candidate's English vocabulary, grammar, and reading comprehension skills.

⁴⁶ In 2002, California adopted the Trial Court Interpreter Employment and Labor Relations Act (Act), which creates special requirements regarding a court's employment of and reliance on interpreters. *See* Cal. Gov't Code §§ 71800-29 (Deering 2011). Pursuant to the Act, the Superior Court is subject to a collective bargaining agreement that covers all Unit employees and provides for a minimum hourly rate of \$35.31 for these employees. The Superior Court is also a party to a separate employee contract governing Clerk's Office employees, which provides that certain bilingual employees deemed by the County to be proficient in a foreign language can receive a monthly pay differential of \$120.

⁴⁷ The Superior Court continuously posts employment announcements for (1) full-time Spanish or Vietnamese court interpreters and (2) part-time intermittent court interpreters. The Unit uses the responses to these announcements to maintain eligibility lists for its available interpreter positions.

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provides a detailed overview of issues involving language access in California courts. On a password-protected Web site, judicial officers and court professionals can also access a twelve-minute video, entitled Working with Spoken Language Interpreters – the Basics, that addresses issues involving reliance on in-court interpreters. New courtroom and legal process clerks attend the Court Clerk Training Institute, which also reviews the role of the interpreter in the Juvenile Justice Court. In addition, all court employees and contractors who work under the supervision of the Superior Court must attend a new employee orientation, which mentions the role of the Unit.

2. Provision of Language Assistance In Connection with Juvenile Delinquency Matters

The Superior Court provides oral and written language assistance, free of charge, to any LEP minor, family member of a minor, or witness involved in a juvenile delinquency proceeding. *See* Cal. Const. art. 1, § 14 (“A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.”); Cal. Gov’t Code § 68092(a) (Deering 2011); Cal. Evid. Code §§ 731(a), 752(b) (Deering 2011); Super. Ct. Resp. to Data Req. No. 21. Generally, the Juvenile Justice Court should provide a certified interpreter for designated languages. Cal. Gov’t Code § 68561. Occasionally, however, after conducting a diligent search, a judge may conclude that one is not available. In that instance, the judge may make a finding on the record that good cause exists to provisionally qualify an interpreter who does not satisfy the Judicial Council’s eligibility criteria. *See id.* §§ 68561(c), 68564(d); Cal. Rules of Court, Rule 2.893. In routine matters, such as continuances, a court may use a non-certified interpreter who is not even provisionally qualified to interpret. Cal. Rules of Court, Rule 2.893. For nondesignated languages, the Juvenile Justice Court should provide a registered interpreter or an interpreter who is otherwise qualified to provide language assistance. Cal. Gov’t Code § 68561. The Juvenile Justice Court does not rely on friends or family members of an LEP juvenile to provide language assistance. Whenever a judge relies on any interpreter in connection with a specific delinquency matter, he or she should instruct the interpreter and counsel about the nature and role of the interpreter’s involvement in that proceeding. Cal. Rules of Court, Std. 2.11.

If the District Attorney’s Office files a delinquency petition in the Juvenile Justice Court, then the juvenile will participate in either a pretrial hearing (if the juvenile is not detained) or a detention hearing (if the juvenile is confined). Before the first hearing, the Clerk’s Office in the Juvenile Justice Court sends a Notice of Hearing – Juvenile Delinquency Proceeding, which is prepared by the District Attorney’s Office, to the minor’s residence. The Notice (available in English and Spanish) provides information to the minor and his or her family about the purpose of the hearing and their respective legal rights and obligations, although it does not state that language assistance is available for LEP persons. Before a hearing for an in-custody or out-of-custody youth, the Probation Department, the District Attorney’s Office, or the Public Defender’s Office typically notifies the interpreter coordinator by facsimile or e-mail that an

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LEP person, such as a juvenile, family member, or witness, will need an interpreter. Once the coordinator receives such a request, she endeavors to make appropriate interpreter arrangements for the hearing. If the coordinator cannot find an available interpreter in the Superior Court's corps, then she will rely on Interpret, a contractor, to conduct a diligent search within California for a certified or registered interpreter. In some instances, the Juvenile Justice Court may need to continue a hearing if the coordinator cannot immediately provide an interpreter.

If an interpreter is not present at a minor's first appearance, then the Juvenile Justice Court may still inquire whether the minor or his or her family requires interpreter assistance.⁴⁸ In fact, if the judge, a party, or counsel becomes concerned at any stage of the proceedings about the ability of the minor or his or her family to understand the proceedings, then the Juvenile Justice Court provides a certified interpreter unless the LEP person affirmatively waives that language resource. *See* Cal. Rules of Court, Rule 2.893(d)(2). If a youth or family member expresses concern about an interpreter, or if it is evident to an attorney that the interpreter is not providing adequate language assistance, then counsel can report the concern to the Juvenile Justice Court and request a different interpreter.

The Superior Court also provides language assistance to LEP persons during interactions that occur apart from formal proceedings. The Recipient's Unit interpreters routinely assist counsel in conferring with LEP persons before and after courtroom appearances. Occasionally, however, a Superior Court interpreter may not be available to facilitate such communications. In those rare instances, the Public Defender's Office explained to the OCR that it would rely on a juvenile to convey routine information to an LEP parent or legal guardian. After a hearing, a deputy public defender gives the youth a written notice, which is available in English and Spanish, that contains the attorney's contact information and the next scheduled court date. The Juvenile Justice Court's Clerk's Office also has periodic interactions with LEP persons. For those encounters, under Juvenile Justice Court protocol, personnel should obtain language assistance through a certified bilingual staff person. In addition to the Unit interpreters, the Superior Court has access to ninety-two certified bilingual employees who can collectively provide oral language assistance in Spanish (sixty-three employees), Vietnamese (twenty-one employees), Farsi (two employees), Mandarin (two employees), Tagalog (two employees), Cantonese (one employee), Samoan (one employee), and Urdu (one employee);⁴⁹ three of these employees, each of whom is certified in Spanish, are assigned to the Juvenile Justice Court's Clerk's Office.⁵⁰ The Juvenile Justice Court also uses an online Self-Service Center to provide extensive information to the public about the delinquency process; information is posted in English,

⁴⁸ The Judicial Council issued a procedural standard explaining how courts should determine whether an LEP person needs an interpreter for a proceeding. Cal. Rules of Court, Std. 2.10.

⁴⁹ One staff person is bilingual in both Vietnamese and Cantonese.

⁵⁰ The Superior Court does not use a telephonic interpretation service to communicate with LEP persons.

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Spanish, and Vietnamese.

The Superior Court also seeks to provide written translation assistance to LEP persons involved in the Juvenile Justice Court's juvenile delinquency proceedings, although the Superior Court relies on the Judicial Council to translate materials that are used by superior courts throughout California. The Juvenile Justice Court uses two sets of forms: (1) statewide forms that are approved by the Judicial Council; and (2) local forms that are adopted by the Superior Court's Rules/Internal Policies Committee. The Council and the Superior Court separately determine the foreign languages into which their respective written materials will be translated. In its Response to the OCR's Data Request, the Superior Court lists eight forms that are used in the Juvenile Justice Court (seven of these documents are Judicial Council forms that are used by other superior courts; one form is solely used by the Juvenile Justice Court). While one of the Judicial Council's forms is available in seven foreign languages, the other statewide forms are only available in Spanish. The one local form that is used solely by the Juvenile Justice Court is translated in Spanish and Vietnamese.⁵¹ The Superior Court primarily relies on Transcend, a contractor, to translate its Web site and forms into Spanish and Vietnamese. Before the Superior Court publishes translated materials, it relies on its internal interpreters to review the text for accuracy. Interpreters also provide sight translation of documents that the Juvenile Justice Court issues in connection with juvenile delinquency proceedings.

Recommendations for Superior Court

The Superior Court provides substantial oral language assistance to LEP persons involved in its juvenile delinquency proceedings. Going forward, and consistent with its obligations under Rule 2.891 of the California Rules of Court, the Recipient should review the performance of its Unit interpreters to ensure that they provide effective in-court interpretation assistance. The Superior Court should also develop a language assistance plan that explains how the Juvenile Justice Court provides language services to the County's unique LEP populations.⁵² See Compliance Review Report, *infra* Section IX., for additional guidance about developing an effective language assistance plan. We also urge the Superior Court to consider adopting local rules regarding language access that can supplement the requirements and standards detailed in the

⁵¹ The Juvenile Justice Court also posts signage in its waiting area informing individuals in English, Spanish, and Vietnamese that "If you need an interpreter for court, please tell the person at the desk." Super. Ct. Resp. to Data Req. No. 16.

⁵² While the OCR limits the instant Compliance Review to the Superior Court's provision of language services in connection with juvenile delinquency matters pending before the Juvenile Justice Court, we encourage the Recipient to apply the Compliance Review Report's recommendations to its other programs and activities, such as those provided to juveniles and adults in other contexts. See, e.g., Letter from Thomas E. Perez, Assistant Attorney General, to Chief Justices/State Court Administrators (Aug. 16, 2010), available at http://www.lep.gov/final_courts_ltr_081610.pdf.

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California Rules of Court.⁵³ For instance, it may be helpful for the Superior Court to issue a local rule explaining how it assesses the skills and conduct of its certified interpreters. With respect to the translation of written documents, the Superior Court should identify the vital documents it uses in connection with juvenile delinquency proceedings. Once the Recipient has compiled such a list of written materials, it should (1) encourage the Judicial Council to translate appropriate statewide forms into additional languages and (2) translate its own written materials into additional languages that will allow it to more effectively serve local LEP groups. *See* Compliance Review Report, *infra* Section VIII., for additional guidance about enhancing the provision of written language services.

F. Post-Filing Diversion Programs

1. Overview

If the District Attorney's Office files a delinquency petition with the Juvenile Justice Court, then the judge, the Probation Department, the District Attorney's Office, or the minor's counsel can recommend, as early as the youth's first appearance, that he or she be found suitable for a specific diversion program. For instance, when appropriate, the Juvenile Justice Court may refer a juvenile to the Juvenile Treatment Court program, which provides alcohol and drug treatment services to minors and their families; the Deferred Entry of Judgment Program, which consists of special conditions that the Probation Department recommends; the Domestic Violence/Family Violence Court, which provides support services to juvenile offenders and victims; or the Mental Health Court, which facilitates the provision of mental health services to juveniles. During its Compliance Review, the OCR evaluated the language services provided in connection with the Juvenile Treatment Court program.⁵⁴

2. Juvenile Treatment Court Program

The Juvenile Treatment Court program identifies, early in the juvenile delinquency process, those youth who may benefit from intense alcohol or drug treatment services and tailors individualized case plans for those minors and their families. The program is coordinated by various agencies, including the Superior Court, the Probation Department, the District Attorney's Office, the Public Defender's Office, and the DADS.

⁵³ Under California law, superior courts "may adopt local rules to impose additional requirements, standards, examinations, and programs as necessary for equity or to recognize local conditions." Cal. Gov't Code § 68562(g).

⁵⁴ The OCR selected this program for review because it (1) involves a high level of collaboration and coordination among the Recipients and (2) seeks to include families in addressing the substance abuse needs of juveniles.

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a. *Referral and Screening Process.*

There are several ways that a minor could be referred to the Juvenile Treatment Court program. A probation officer may make an initial assessment that a youth would benefit from it. In that instance, the Probation Department sends its recommendation to the District Attorney's Office, which conducts a legal screening of the case to confirm that the minor is eligible to participate in the program. The Juvenile Justice Court, the District Attorney's Office, or the minor's counsel may also suggest that the youth is a potential program candidate. Regardless of the source of the referral, the DADS screens each minor to assess his or her suitability for the program. As a first step, the DADS, through a four-member juvenile justice services team, uses an American Society of Addiction Medicine assessment instrument to identify and evaluate a youth's drug and alcohol problems. After the DADS administers the initial assessment, representatives from the Juvenile Justice Court, the District Attorney's Office, the minor's counsel, the Probation Department, and the DADS meet to review the assessment results and to discuss whether the youth remains a promising candidate for the program. If these stakeholders conclude that the youth still seems likely to benefit from the Juvenile Treatment Court program, then the DADS evaluates the minor through a second, bio-social-psycho assessment instrument – the Global Appraisal of Individual Needs – Initial – which helps clinicians tailor an appropriate treatment plan for each juvenile. Ultimately, based in part on the results of the DADS assessment instruments, the Juvenile Justice Court decides whether to refer a minor to the Juvenile Treatment Court program. When a youth formally enters the Juvenile Treatment Court program, he or she receives an English-language Participant Handbook that explains key program objectives and expectations.

Many of the minor candidates who the DADS screens for the Juvenile Treatment Court program are LEP and speak Spanish. As a result, the DADS requires one of its four juvenile justice services team members to be certified by the Santa Clara Valley Health and Hospital Services Language Services Department (Language Services Department) as bilingual in Spanish. The person in this designated clinician position receives a monthly pay premium of \$150 for his or her foreign-language ability and communicates directly with Spanish-speaking juveniles. In its Response to the OCR's Data Request, the DADS suggests that this qualified bilingual clinician does not interpret for other personnel. During its onsite visit, however, the OCR received information that this bilingual clinician often provides interpretation assistance in Spanish to monolingual clinicians. For communications in other foreign languages, or if the bilingual clinician is not available to communicate with a Spanish-speaking minor, a representative from the DADS explained that personnel may obtain language assistance from a probation officer, a community group, or the Language Services Department.

b. *Services Provided in the Juvenile Treatment Court Program.*

Program clients receive services from either DADS clinicians or one of five community-based organizations. The participating community groups provide various support services to juveniles

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and their families, such as mentor programs and parent support groups. The DADS tailors a specific treatment program for each client based on several factors, including available insurance coverage for services, geographic considerations, level-of-care requirements, and cultural and language considerations. The language of a juvenile or family member may affect DADS' decision about which community-based group provides services.

A significant percentage of clients and their families is LEP. If a person speaks Spanish, then the DADS provides services to him or her through one of three bilingual clinician employees (the certified juvenile justice services clinician, a non-certified clinician located at a school site, or a non-certified clinician assigned to a clinic in East San José). The Recipient also has a clinician who, based on self-identification, speaks Korean. To communicate with an LEP person when these internal resources are inadequate, DADS personnel can obtain interpretation assistance from a probation officer, a community group, or the Language Services Department. The DADS generally does not use family members or friends to interpret for LEP persons involved in the program, although staff members may occasionally rely on an informal interpreter to provide a brief explanation of a non-clinical matter to a family member. DADS Response to OCR Data Req. No. 17.

The DADS also requires each contracted service provider to address the language needs of clients and their families. In its Response to the OCR's Data Request, the Recipient notes that the participating community groups have the following internal language resources: (1) Advent Group Ministries has Spanish-, Hindi-, and Bengali-speaking clinicians; (2) Asian-American Recovery Services has personnel with language proficiency in Vietnamese, Tagalog, Cambodian, Spanish, and Mandarin; (3) Asian-Americans for Community Involvement can provide language services in Spanish, Russian, Hindi, Japanese, Cantonese, Kannada, Marathi, and Hebrew; (4) Our Common Ground has Spanish-, Tagalog-, and Mandarin-speaking staff members; and (5) Community Health Awareness Council can provide services in Spanish.⁵⁵ In monitoring the program, the DADS periodically reviews these organizations to ensure they provide appropriate services to clients and their families. As part of that evaluation, the Recipient reviews each contractor's language resources.

The DADS does not have a written policy, procedure, or protocol that explains how an employee or a contractor should secure language assistance in different contexts. The Recipient also lacks a formal training curriculum for employees or service providers about how to provide language services to clients in the Juvenile Treatment Court program. Instead, it relies on the clinical lead member of the juvenile justice services team, the clinical standards coordinator, and the program manager of adolescent services to provide informal training to personnel involved with the

⁵⁵ In evaluating the Juvenile Treatment Court program, the OCR does not assess the quality of these language resources; however, as explained below, the DADS should ensure that all clients in the program receive effective language assistance, regardless of whether they receive services from a DADS employee or contractor.

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program. The DADS also administers a Learning Institute, which provides approximately twenty-four workshops each year for Recipient and service provider staff members. During one of the Institute's recent programs, a presenter addressed cultural competence issues affecting bilingual staff and interpreters.

Recommendations for DADS

The DADS has undertaken several helpful measures to provide oral language assistance to LEP minors and LEP families of minors involved in the Juvenile Treatment Court program. To ensure that these LEP persons have meaningful access to all aspects of this program, the DADS should develop a comprehensive language access plan. *See* Compliance Review Report, *infra* Section IX., for guidance about developing an effective language assistance plan. The Recipient should also train its staff members about how to interact with LEP persons. In addition, the DADS should identify its vital documents (such as its Participant Handbook) and determine into which foreign languages they should be translated. *See* Compliance Review Report, *infra* Section VIII., for guidance about enhancing the provision of written language services.

Recommendations for Probation Department and DADS

The Probation Department and the DADS are required by Title VI and the Safe Streets Act to provide meaningful access to the services they provide to juveniles in their own programs and in pertinent contracted services. To that end, the Recipients must monitor contractor compliance with these statutes and exercise effective oversight over service providers to ensure that they provide meaningful access to LEP juveniles and their families.

The Probation Department and the DADS should undertake immediate efforts to ensure that each contracted service provider offering early intervention or diversion programs in connection with the Recipients' own federally funded programs or activities has a written language access plan in place. *See* Compliance Review Report, *infra* Section IX., for guidance about developing an effective language assistance plan. Specifically, the groups should develop language access plans that comprehensively address how they provide interpretation and translation assistance in connection with all of their contracted juvenile-justice-related services, including those that occur in social services and community settings. Once relevant organizations prepare or refine their plans, they should train employees about how to provide language services to LEP persons. Each contracted service provider should also have readily available a list of qualified in-person interpreters, interpreters available via telephone, and contact information and instructions for use of a telephonic interpretation service. Further, each organization 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 vital documents into appropriate languages. *See* Compliance Review Report, *infra* Section VIII., for guidance about written language services.

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G. Complaints or Grievances

1. Police Department

The Police Department has detailed written procedures about how it receives, investigates, and resolves complaints, although these procedures do not provide guidance to personnel about how to assist LEP persons, such as juveniles or their families, during the complaint process. To inform the public about its complaint procedures, the Police Department distributes a brochure, entitled Citizen Complaint and Commendation Procedures, that is available in English, Spanish, and Vietnamese (the English-only brochure is the only version available on the Recipient's Web site). A person can file a complaint by telephone, letter, e-mail, facsimile, anonymously, or in person. To facilitate the complaint investigation process, the Recipient encourages a complainant to complete an Incident Form, which is available in English. The Police Department also requires a complainant to sign a document (available in English and Spanish) that briefly explains the complainant's rights and duties under California law.

2. Probation Department

The Probation Department has written procedures for handling complaints from the public and grievances from detained juveniles. When a member of the public files a complaint, he or she receives a notice and advisory summarizing the consequences of filing a false complaint. In the Probation Department's complaint policy, the Recipient states that this notice and advisory must be provided in the LEP complainant's language. The policy does not, however, explain how personnel should provide language assistance to an LEP person seeking to file a complaint. To inform the public about the complaint process, the Probation Department posts an English version of its complaint policy online; its Web site also includes a Citizens' Complaint Form in English, Spanish, and Vietnamese. In its Juvenile Hall orientation packet for juveniles, which is available in English, Spanish, and Vietnamese, the Probation Department describes the process for filing a grievance and appealing the imposition of discipline. The Probation Department also places English-language information about the grievance and disciplinary appeals process in the Juvenile Hall's receiving areas and housing units; the related forms for pursuing a grievance or an appeal are available in English and Spanish.

3. District Attorney's Office

The District Attorney's Office does not have a formal policy for handling complaints from the public and does not have a complaint form. The Recipient refers any complaints it receives to the appropriate supervisor for evaluation and response. Even though the District Attorney's Office lacks formal policy guidance about public complaints, the Recipient emphasizes that its office vision, with which all personnel are familiar, encompasses core values of communication, professionalism, and accountability.

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4. Public Defender's Office

The Public Defender's Office has a Complaint Resolution and Tracking Policy that describes the process for handling and resolving complaints, although the policy does not provide guidance about how to ensure that LEP persons can access the complaint process. The Recipient does not have a complaint form; complainants usually lodge oral complaints, which are handled by an assigned or supervising attorney in person or by telephone.

5. Superior Court

The Superior Court does not have a formal complaint process for litigants or members of the public, nor does it use a complaint form. Usually, complainants submit written concerns about judicial officers to the presiding judge of the Superior Court; persons may send written complaints involving any aspect of the administrative operations of the Superior Court to the chief executive officer of the Superior Court; or a complainant can submit, in writing, a general complaint about the Superior Court to the presiding judge and the chief executive officer. A person can also provide online feedback to the Superior Court through its Web site.

6. DADS

The DADS does not have a written policy that explains how it handles complaints involving the Juvenile Treatment Court program. Because the program involves several different agencies and service providers, in determining how to respond to a specific complaint, the DADS must identify the appropriate respondent. DADS Response to OCR Data Req. No. 20. If a person complains about how a specific agency, such as the Probation Department, the District Attorney's Office, the Public Defender's Office, or the Superior Court, provides services, then the DADS refers the complaint to that agency for review and resolution. The DADS handles complaints involving its own personnel, as well as any alleged violations of a client's privacy rights. If the complaint involves a contracted service provider, then the DADS relies on that contractor to address the allegations. The DADS provides minimal information to clients about the complaint process. When minors enter the program, the Recipient gives them a Notice of Privacy Practices (available in English, Spanish, and Vietnamese) that briefly describes the complaint process regarding the unauthorized disclosure of protected health information.

Recommendations for Police Department, Probation Department, District Attorney's Office, Public Defender's Office, Superior Court, and DADS

The OCR recommends that the Recipients develop or refine existing written complaint procedures to address receiving, investigating, and resolving complaints involving LEP persons. The Superior Court may also wish to consider adopting a local rule regarding its complaint

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process. In addition, the OCR recommends that the Superior Court, the District Attorney's Office, the Public Defender's Office, and the DADS each develop and distribute a written complaint form, which will provide better documentation of a complainant's allegations and enhance the collection of basic information from complainants about their concerns. Recipients should also ensure that they translate each complaint-related form, notice, and posting into their most frequently encountered languages.

VI. Community Outreach

During the Compliance Review, the OCR evaluated how effectively the Recipients interact with their community stakeholders, especially regarding issues involving the provision of language assistance to juveniles and their families. This section of the Report reviews several of the Recipients' community outreach efforts.

A. Recipient Involvement in Parent Project

The Parent Project is a Countywide community outreach initiative of the San José Mayor's Gang Prevention Task Force that involves collaboration among local law enforcement agencies, including the Police Department; the Probation Department; the District Attorney's Office; school districts; and community-based organizations. Through this program, the participating agencies give parents of at-risk youth information about prevention and intervention tools regarding various potential problems involving minors, including truancy, poor academic performance, alcohol and drug abuse, and gang involvement and violence.⁵⁶ The participating agencies provide the program at different locations throughout the County; meetings typically occur at community group facilities or libraries. If LEP persons participate in these meetings, bilingual Police Department officers often provide interpretation assistance. The participating agencies also provide various Spanish-language written materials about the Parent Project, such as informational flyers and brochures, course announcements, registration materials, participant questionnaires, and certificates of completion.

B. Probation Department Community-Related Activities

The Probation Department participates in the activities of the San José Mayor's Gang Prevention Task Force and the Gilroy Gang Task Force, which address issues involving gang violence. Both task forces include organizations that have the capacity to provide services to LEP juveniles and LEP families of juveniles. For instance, as discussed above, the Parent Project in San José provides oral and written language assistance to LEP persons. The Probation Department also periodically meets with community groups, several of which provide services to LEP juveniles

⁵⁶ The District Attorney's Office also refers persons to Parent Project, Jr., which is a pilot program modeled after the Parent Project that serves parents who have children between the ages of five and ten.

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and LEP families of juveniles, to discuss its juvenile justice activities.⁵⁷

C. District Attorney Community Outreach Activities

In addition to its involvement in Parent Project and Parent Project, Jr., the District Attorney's Office participates in the Law Related Education Program, which is a delinquency prevention tool that educates youth about the justice system. The Program serves most fifth graders throughout the San José School District. The District Attorney's Office also contributes to panel discussions and makes presentations as part of various Underage Drinking and Driving Prevention Programs, which have allowed the Recipient to provide information to more than 1000 students. As part of another community outreach initiative, the District Attorney's Office participates in the Vietnamese-American Parent/Student Education Series, which provides information about high-risk behaviors of youth.

D. Public Defender Involvement in Community-Based Initiatives

The Public Defender's Office participates in numerous community activities that endeavor to improve the County's juvenile justice process and to enhance the services provided to LEP persons involved in the system. As part of a formal County initiative to reform its juvenile detention system, the Public Defender chairs a workgroup that interacts extensively with the LEP community. The Public Defender also participates in the San José Mayor's Gang Prevention Task Force. Several Public Defender employees participate in La Raza Roundtable, which is an organization that seeks to improve the quality of life for members of the Hispanic community. The Recipient also participates in activities involving Fresh Lifelines for Youth, which is a community-based organization, and the City's Clean Slate Tattoo Removal Program; both programs target at-risk youth, including minors and their families who are LEP.

E. Superior Court Interactions with Community-Based Organizations

In its Response to the OCR's Data Request, the Superior Court identifies contacts with eight community-based organizations. Through the Probation Department, the Superior Court utilizes these organizations to provide specific services to youth involved in juvenile delinquency proceedings. The Superior Court relies on the Probation Department to monitor the effectiveness of these programs to meet individual needs and does not appear to engage in direct outreach to

⁵⁷ The Probation Department also participates in the Juvenile Justice Systems Collaborative, which was established by the Santa Clara Board of Supervisors for a three-year period (beginning July 1, 2008) and aims to "provide a channel for system partners to work together in the best interest of the minors in the juvenile delinquency system while preventing or reducing the unnecessary detention of minors." Juvenile Justice Sys. Collaborative Bylaws, Sec. II. The Probation Department also shares information with the Santa Clara County Juvenile Justice Commission, which seeks to promote an effective juvenile justice system in the County by, in part, inspecting juvenile detention facilities and holding hearings on matters involving the juvenile justice system.

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these or other groups who serve or represent LEP juveniles or LEP families of juveniles.

F. OCR Community Meeting

The OCR held a roundtable meeting with several community groups to discuss the Recipients' interactions with LEP juveniles and LEP families.⁵⁸ In discussing the County's juvenile justice system, several attendees suggested that Hispanic youth are disproportionately represented in the system, as compared to the percentage of Hispanics among the County's minor population. According to one attendee, several Recipients can improve their provision of oral language assistance to LEP families. Specifically, according to this individual, the Police Department, the Juvenile Justice Court, and the District Attorney's Office occasionally rely on youth to interpret for their LEP families. One participant also commented that the Juvenile Justice Court does not provide interpreters for LEP families of juveniles. Several representatives also noted that the Probation Department does not translate into foreign languages important brochures about the juvenile justice system, which makes it difficult for LEP persons to understand the delinquency process. Community representatives encouraged the Recipients to emphasize cultural sensitivity among personnel; to hire more bilingual staff; and to create more drug and alcohol treatment programs for Spanish- and Vietnamese-speaking youth.

Recommendations for Police Department, Probation Department, District Attorney's Office, Public Defender's Office, Superior Court, and DADS

The Recipients should continue their efforts to participate in outreach activities and to discuss with the community how to improve the juvenile justice system. Going forward, the OCR recommends that the Recipients place an even greater emphasis on educating the community about their language assistance resources. The Recipients should also improve their ability to gather community feedback about their provision of services to LEP individuals. To the extent they have not already done so, these agencies may consider meeting with LEP community stakeholders, advocates, and attorneys, perhaps in collaboration with community, business, legal, and religious leaders representing LEP groups, to discuss the LEP community's unique outreach needs and the provision of language access within the juvenile justice system. As discussed in Section IX. of this Report, the Recipients should also refine or implement appropriate language assistance plans; inform the public and appropriate community representatives about existing or new plans; and seek feedback about them from advocates and community organizations.

⁵⁸ By meeting with community representatives, the OCR sought to assess community perspectives on Recipient operations and to identify concerns and perceptions regarding the provision of language services in the juvenile justice system. Given this limited objective, the OCR did not consider the merits of specific claims that, if established, would be inconsistent with Recipient policies or DOJ best practices in providing services to LEP persons.

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VII. Resources Available to the Recipients

California'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. During fiscal year 2009, the Recipients received the following amounts: (1) Police Department – \$294,460,280; (2) Probation Department – \$124,837,737; (3) District Attorney's Office – \$87,291,843; (4) Public Defender's Office – \$37,744,948; (5) Superior Court – \$144,930,803; and (6) DADS – \$50,005,487. The Probation Department, the Public Defender's Office, the Superior Court, and the DADS provided information to the OCR about some of their language assistance costs.⁵⁹ In fiscal year 2009, the Probation Department paid \$235,766 in bilingual premium compensation for employees working on juvenile matters; the Public Defender's Office paid \$33,057.57 to third parties for oral and written foreign-language assistance; the Superior Court expended \$3,706,594 for court interpreter services in all court locations; and the DADS paid \$1800 in premium pay to the certified interpreter employee assigned to the Juvenile Treatment Court program.

Recommendations for Police Department, Probation Department, District Attorney's Office, Public Defender's Office, Superior Court, and DADS

The OCR commends the Recipients for placing a priority on providing additional compensation to those personnel who have certified foreign-language abilities and for acknowledging the need to provide written translation services to LEP persons. As a next step, the Recipients should evaluate how effectively the Recipients' language resources respond to the needs of the County's LEP populations. 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. In connection with this assessment, the Recipients should explore how to provide more effective services to LEP persons who communicate in less frequently encountered foreign languages, such as Chinese and Tagalog; these language minorities should receive the same meaningful access to important Recipient programs and activities as populations who communicate in commonly encountered foreign languages like Spanish and Vietnamese. The Recipients should also work with community groups serving LEP populations to determine what additional steps they can take to attract more employees who are qualified to interpret, translate, and provide direct language services to LEP persons involved in the juvenile justice process. These agencies may also utilize community groups to identify additional community resources in the County that can provide cost-effective and reliable language assistance services, in appropriate circumstances, to juveniles, families, victims, and witnesses.

⁵⁹ In several instances, the Recipients could not readily provide information about the cost of internal language resources, such as premium pay provided to certified interpreter employees, because those expenses are not tracked as separate fiscal units by the agencies.

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VIII. Providing Written Language Services

In addition to a recipient's other language-related obligations under Title VI and the Safe Streets Act, such as those related to the provision of oral language resources, a recipient must also ensure that it provides effective written language services to LEP persons. 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. Under this provision, recipients should translate "vital documents" for LEP groups that comprise five percent or 1000, 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. If a document is not translated and must be presented to an LEP individual, then 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.

Recommendations for Police Department, Probation Department, District Attorney's Office, Public Defender's Office, Superior Court, and DADS

The Recipients have translated into several foreign languages various documents that relate to the juvenile justice system. In accordance with the DOJ Guidance, however, the Recipients should take additional steps to ensure that various documents are available in frequently encountered languages. They should perform an inventory of all pertinent written materials, identify the documents that may be "vital" to LEP groups, such as juveniles, families, victims, and witnesses, 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 strategies for distributing their translated materials to those eligible to receive specific services. As one component of this strategy, Recipients should take steps to ensure that important information available in English on agency Web sites is also available in appropriate foreign languages. The agencies should also actively encourage employees to distribute translated documents during their work-related interactions with members of the public and at community meetings. Further, to ensure that LEP persons are aware of the availability of free language services, the agencies should post a sign(s) in appropriate foreign languages stating that, on request, free language assistance services are available. The Notice of Hearing – Juvenile Delinquency Proceeding should contain a similar provision about the availability of language services. In addition, agencies like the Probation Department and the DADS that provide federally funded juvenile services through contractors must devise a system to require contractors to comply with the same requirements.

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IX. Developing Effective Plans on Language Assistance for LEP Persons

An effective language assistance plan for serving LEP persons includes a number of common strategies that can be divided into the following five basic elements: (1) determining the agency's language service needs based on a focus on the important contacts the agency has or should have with LEP persons, including juveniles, families, victims, and witnesses; (2) identifying oral and written 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 persons, including community members, juveniles, families, victims, and 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 give feedback to your agencies on the language services provided. Each written plan should include a blueprint for management action and effective implementation to ensure that each entity gives sufficient consideration to various issues, including those related to policy, budgeting, hiring, supervision, training, monitoring, public notice, and outreach.

Recommendations for Police Department, Probation Department, District Attorney's Office, Superior Court, and DADS

The Recipients should establish comprehensive written language assistance plans on providing services to LEP persons, such as minors, families, victims, and witnesses, in a variety of contexts; these plans should incorporate the five elements referenced above and address the concerns raised in this Compliance Review Report. In implementing this recommendation, the Recipients may wish to consult the DOJ Guidance, along with the following documents: (1) Language Access Instrument and Planning Tool for Federally Conducted and Federally Assisted Programs; (2) 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; (3) Limited English Proficiency Resource Document: Tips and Tools from the Field; and (4) 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. The OCR also suggests that each agency name one person on its 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 access plan. Once the Recipients have implemented or refined their language assistance plans, they should ensure that staff members receive training about the proper procedures for providing language assistance services to LEP persons, such as minors, family members, victims, or witnesses. Following this training, the Recipients should establish periodic training sessions focused specifically on providing language assistance services to LEP individuals.

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X. Conclusion

This letter serves as notice that the OCR has made a preliminary determination that, although the Police Department, the Probation Department, the District Attorney's Office, the Public Defender's Office, the Superior Court, and the DADS 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 the Recipients need to take further action to ensure they adequately provide language assistance services to LEP persons, including minors, families, victims, and witnesses, who are involved in the juvenile justice process. On request, the OCR is available to provide technical assistance to the Recipients in implementing its recommendations and formulating comprehensive written language assistance plans. Immediately upon receipt of this letter, which is a public document, we ask that the Recipients have responsible agency officials contact Attorney Advisor Christopher 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 appropriately implemented.

Thank you for your cooperation and the assistance of your respective agency personnel throughout the Compliance Review process. If you have any questions, please contact Mr. Zubowicz at [REDACTED]

Sincerely,

/s/ Michael L. Alston

Michael L. Alston
Director

cc: Supervisor George Shirakawa
Chairperson, County of Santa Clara Public Safety and Justice Committee

Pam Serrano, Chair
Santa Clara County Juvenile Justice Commission