

City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



AUDITS & SPECIAL REPORTS

Marjorie Landa

Deputy Comptroller for Audit

Audit Report on the Compliance of the
New York City Office of Administrative
Trials and Hearings with Executive
Order 120 Regarding Limited English
Proficiency

SZ17-059A

January 6, 2017

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, NY 10007

SCOTT M. STRINGER
COMPTROLLER

January 6, 2017

To the Residents of the City of New York:

My office has audited the New York City Office of Administrative Trials and Hearings (OATH) to determine whether OATH is in compliance with Executive Order 120 (EO 120), which requires that City agencies providing direct services to the public to create a language access implementation plan to ensure meaningful language access to their services. According to the 2014 American Community Survey, over 75 percent of all New Yorkers speak a language other than English at home, and almost 46 percent of the City's population is limited in English language proficiency (LEP). For these New Yorkers, interacting with City government can be a challenge. We audit City agencies such as OATH to help ensure that they are complying with applicable laws and regulations and that they are providing residents access to important City services.

The audit found that in its offices, OATH generally complied with EO 120. Our review of OATH's Language Access Plans from 2009 through 2015 demonstrates that OATH has made steady progress in its efforts to provide meaningful language access to the agency's services for LEP customers at its seven business centers. Each annual Language Access Plan described the steps that OATH has taken to provide additional services to the LEP population. Further, the audit found that OATH generally provides direct services to its customers in the top six New York City LEP languages at its seven business centers located throughout the five boroughs, Monday through Friday from 8:00 a.m. to 5:00 p.m. Finally, the audit found that through a City-wide contract with Language Line Services, Inc. and other translation services, OATH has the ability to provide document translation and phone interpretation services in over 250 languages.

The report recommends that OATH continue to adhere to EO 120 to ensure that it adequately meets the language needs of the communities it serves. As required by EO 120, OATH should utilize available and relevant studies and update and post all subsequent Language Access Plans on its website.

The results of the audit have been discussed with OATH officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott M. Stringer".

Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER AUDITS & SPECIAL REPORTS

Audit Report on the Compliance of the New York City Office of Administrative Trials and Hearings with Executive Order 120 Regarding Limited English Proficiency

SZ17-059A

EXECUTIVE SUMMARY

This audit was conducted to determine whether the New York City Office of Administrative Trials and Hearings (OATH) is in compliance with Executive Order (EO 120), which requires that City agencies providing direct services to the public create a language access implementation plan to ensure meaningful language access to their services. We found that OATH generally complied with EO 120. Our review of OATH's Language Access Plans from 2009 through 2015 demonstrates that OATH has made steady progress in its efforts to provide meaningful language access to the agency's services for Limited English Proficiency (LEP) customers at its seven business centers. We recommend that OATH continue to adhere to EO 120 to ensure that it adequately meets the language needs of the communities it serves.

AUDIT REPORT

Background

New York is home to one of the most diverse populations in the world, with more than four million foreign-born residents from more than 200 different countries. New Yorkers come from every corner of the globe and speak over 200 different languages. More than 75 percent of all New Yorkers speak a language other than English at home, and almost 46 percent, or 1.8 million people, are limited in English proficiency. For these New Yorkers, interacting with City government can often be a challenge.¹

Local Law 73 was enacted in 2003 to enhance the ability of the City's LEP residents to interact with City government and, more specifically, to obtain needed social services. The

¹ Data is from the Mayor's Office of Immigrant Affairs.

law applies to four social service agencies: the Human Resources Administration; the Department of Homeless Services; the Administration for Children's Services; and the Department of Health and Mental Hygiene. It requires that free language assistance services be provided for clients when they seek to obtain services at any of these agencies, as well as job centers and food stamp offices.

In July 2008, Mayor Bloomberg signed EO 120, which requires all City agencies to provide opportunities for limited English speakers to communicate with City agencies and receive public services. EO 120 specifically requires City agencies providing direct public services to ensure meaningful access to those services to LEP persons. To accomplish this, EO 120 requires these agencies to develop and implement agency-specific language assistance plans for LEP persons.

Specifically, EO 120 requires each agency to:

- Designate a Language Assistance Coordinator within 45 days of the effective date of EO 120, to oversee the creation and execution of an agency-specific internal language access policy and implementation plan.
- Develop such a plan by January 1, 2009, using a four-factor analysis based on guidance issued by the U.S. Department of Justice including: the number or proportion of LEP persons in the eligible service population; the frequency with which LEP individuals come in contact with the agency; the importance of the benefit, service, information, or encounter to the LEP person; and the resources available to the agency and the costs of providing various types of language services.
- Provide services in languages based on at least the top six LEP languages spoken by the population of New York City, as those languages are determined by the Department of City Planning, based on United States Census data, and as those languages are relevant to services offered by each agency. The designated top six LEP languages spoken by the population in New York City are Spanish, Chinese (Mandarin, Cantonese, and Formosan), Russian, Bengali, French Creole, and Korean.²
- Ensure that the language access policy and implementation plan includes: identification and translation of essential public documents; interpretive services, including telephone interpretation for the top six languages and others as appropriate; training of frontline workers on language access policies; posting of signage in conspicuous locations about the availability of free interpretation services; and establishment of an appropriate monitoring and measurement system regarding the provision of agency language services.

EO 120 references the New York City Charter requirement that the Mayor's Office of Operations (Operations) coordinate the provision of language services to the public and provide technical assistance to City agencies providing such services. In addition, the Mayor's Office of Immigrant Affairs is responsible for promoting immigrants' access to City

² These are the current top six languages according to the New York City Department of City Planning's *Top Languages Spoken at Home by Limited English Proficiency (LEP) Universe: Population 5 years and over*, Issued in March 2016. The original top six languages were Spanish, Chinese, Russian, Korean, Italian, and Haitian Creole (French Creole).

services by developing appropriate polices and outreach programs to educate immigrant and foreign language speakers about such services.

This audit focuses on whether OATH complied with EO 120. OATH's mission is to provide fair and timely hearings and trials by overseeing the operations of two divisions: the Trials Division and the Hearings Division. The Trials Division holds administrative disciplinary hearings on cases brought by City agencies, commissions, and boards involving individuals within the City's civil servant workforce, and hearings on human rights and discrimination cases, car seizures, license revocation cases, and contractual disputes. The Hearings Division adjudicates violation notices and summonses issued by various City enforcement agencies such as the Departments of Health and Mental Hygiene, Buildings, Environmental Protection, Sanitation, Consumer Affairs, and the Taxi and Limousine Commission. Thus, both divisions provide direct services to the public. OATH also offers training services through the Administrative Judicial Training Institute, and mediation services through the Center for Creative Conflict Resolution.

Objective

The objective of the audit was to determine whether OATH is in compliance with EO 120, which requires that City agencies providing direct services to the public create a language access implementation plan to ensure meaningful language access to their services.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

To achieve our audit objective, we reviewed OATH's Language Access Plan and other pertinent documents, interviewed key OATH personnel, and conducted site visits from August 2, 2016 through August 5, 2016 and on August 8, 2016 at OATH's seven business centers located throughout the five boroughs, where services are provided to the public. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with officials from OATH and Operations during and at the conclusion of this audit. OATH officials were notified of our finding during the course of the audit and agreed that an exit conference was not necessary. On December 16, 2016, we submitted a draft report to OATH officials with a request for written comments. We received a written response from OATH on December 23, 2016. In their written response, OATH officials generally agreed with the audit and stated,

OATH has reviewed the report and the Findings and Recommendations and thanks the Office of the Comptroller for its finding that OATH complied with Executive Order 120 and provided meaningful language access to OATH's

services for LEP respondents at our seven locations. OATH will continue to give meaningful language access to our services for LEP respondents and all of our locations and continue to make strides to give access to justice to all who appear at our tribunals.

The full text of OATH's response is included as an addendum to this report.

FINDING AND RECOMMENDATION

We found that OATH generally complied with EO 120. Our review of OATH's Language Access Plans from 2009 through 2015 demonstrates that OATH has made steady progress in its efforts to provide meaningful language access to the agency's services for LEP customers at its seven business centers. Each annual Language Access Plan described the steps that OATH has taken to provide additional services to the LEP population.

OATH provides direct public services at its seven business centers located throughout the five boroughs, Monday through Friday from 8:00 a.m. to 5:00 p.m. The Trials Division holds administrative hearings on cases brought by City agencies, commissions, and boards involving disciplinary hearings of the City's civil servant workforce. This division also holds hearings on human rights and discrimination cases, car seizures, license revocation cases, and contractual disputes. We found that individuals are offered free interpretation services at the trials. Sign language interpretation is also offered. The Hearings Division, which consists of three parts—Health and Consumer, ECB, and Vehicle for Hire (e.g., livery, taxi, and Paratransit)—adjudicates notices or summons issued by various City enforcement agencies. The public can contest the charges in the notice or summons on-line, by mail, or over the telephone if they do not want to appear in person. We found that OATH offered the public free interpretation services for those hearings. In addition, OATH accepts defenses that are written in a foreign language and has those defenses translated for free.

We found that hearing support clerks working in the seven business centers' waiting rooms are available to respond to questions by the public in person or by phone. We found that these and other staff were trained on the use of Language Line and another telephonic service to communicate with the LEP populations that called and were there in person. We found that OATH also has an interactive voice response telephone system that provides information to the public in eight different languages. The public can use it to obtain information concerning the hearing and appeal process, and information on their specific case.

Overall, we found that OATH provides these services to its customers in the top six New York City LEP languages as required by EO 120. Further, we found that through a City-wide contract with Language Line Services, Inc. and other translation services, OATH has the ability to provide document translation and phone interpretation services in over 250 languages. Appendices I and II contain details of the specific items we tested and the results of our tests. Appendix III illustrates OATH's efforts to ensure EO 120 compliance.

Recommendation

OATH should continue to adhere to EO 120 to ensure that it adequately meets the language needs of the communities it serves.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, § 93, of the New York City Charter.

We reviewed OATH's Language Access Policy and Implementation Plans and other pertinent documents, interviewed key OATH personnel, and conducted site visits from August 2, 2016 through August 5, 2016, and on August 8, 2016 at the office's seven business centers located throughout the five boroughs.

To achieve our objectives, we performed the following:

- Reviewed EO 120 and Local Law 73;
- Reviewed and analyzed OATH's Language Access Policy and Implementation Plans;
- Created compliance checklists to assess OATH's compliance with EO 120;³
- Conducted interviews with OATH's designated Language Access Coordinator and other staff members;
- Reviewed and assessed whether OATH's language assistance plan was developed in accordance with EO 120, using the required four-factor analysis;
- Tested whether OATH provided public services in at least the top six LEP languages spoken by the New York City population;⁴
- Obtained and reviewed documentation and assessed whether OATH identified and translated essential public documents provided to or completed by the public;
- Tested whether interpretation services, including the use of telephonic interpretation services, are available;
- Obtained training materials and/or written policies and procedures;
- Visited OATH's locations from August 2, 2016 through August 5, 2016, and on August 8, 2016, and observed whether the locations had signs indicating that free interpretation services were available, and whether signs were displayed in conspicuous locations throughout the seven business offices;
- Assessed whether OATH established an appropriate monitoring and measurement system regarding the provision of agency language services; and
- Assessed whether OATH created appropriate public awareness strategies for the agency's service population.

In addition, we conducted various audit tests as noted in Appendix II.⁵

³ See Appendix I for the completed checklist created in connection with this audit.

⁴ See Appendix II for further descriptions of the tests we conducted.

⁵ See Appendix II for further descriptions of the tests we conducted.

LEP COMPLIANCE CHECKLIST

Question	Auditor's Assessment	Auditor's Comments
1. Does OATH provide direct public services?	Yes	OATH provides direct public services Citywide.
2. Does OATH have a Language Access Policy and Implementation Plan, and when was it instituted?	Yes	OATH had a Language Access Plan dated July 2009. OATH's current plan, dated July 2015, is currently posted on OATH's website. The 2016-2017 Language Access Plan is designated to be updated and posted in December 2016.
3. Does OATH have a Language Access Coordinator?	Yes	OATH's Assistant Commissioner for Public Affairs and Communication is the designated Language Access Coordinator.
4. Did the Language Access Coordinator oversee the creation of the Language Access Policy and Implementation Plan?	Yes	The Language Access Plan was created under OATH's prior Language Access Coordinator. The current plan was created and updated by the current coordinator.
5. Did the Language Access Coordinator oversee the execution of the Language Access Policy and Implementation Plan?	Yes	OATH's language coordinator oversees the execution of the Language Access Plan.
6. Does the Language Access Coordinator monitor the Language Access Policy and Implementation Plan?	Yes	OATH's language coordinator monitors the progress of the Language Access Plan.
7. Did OATH develop the plan using the four-factor analysis?	Yes	OATH's updated Language Access Plan, dated July 2015, was developed using the four-factor analysis and the language needs most often used by OATH.
8. Does OATH provide services in languages based on at least the top six NYC LEP languages?	Yes	Pursuant to OATH's Language Access Plan, OATH provides services in the top six NYC LEP languages. In addition, pursuant to a DCAS Citywide contract with Language Line Services, Inc., OATH has the ability to provide documentation translation and phone interpretation services in over 250 languages.
9. Does OATH identify and translate their "essential public documents?"	Yes	OATH's Language Access Plan identifies its essential documents for translation into the top six LEP languages. In addition, OATH has added an additional two languages to its forms. Translated documents are available on OATH's website.

LEP COMPLIANCE CHECKLIST

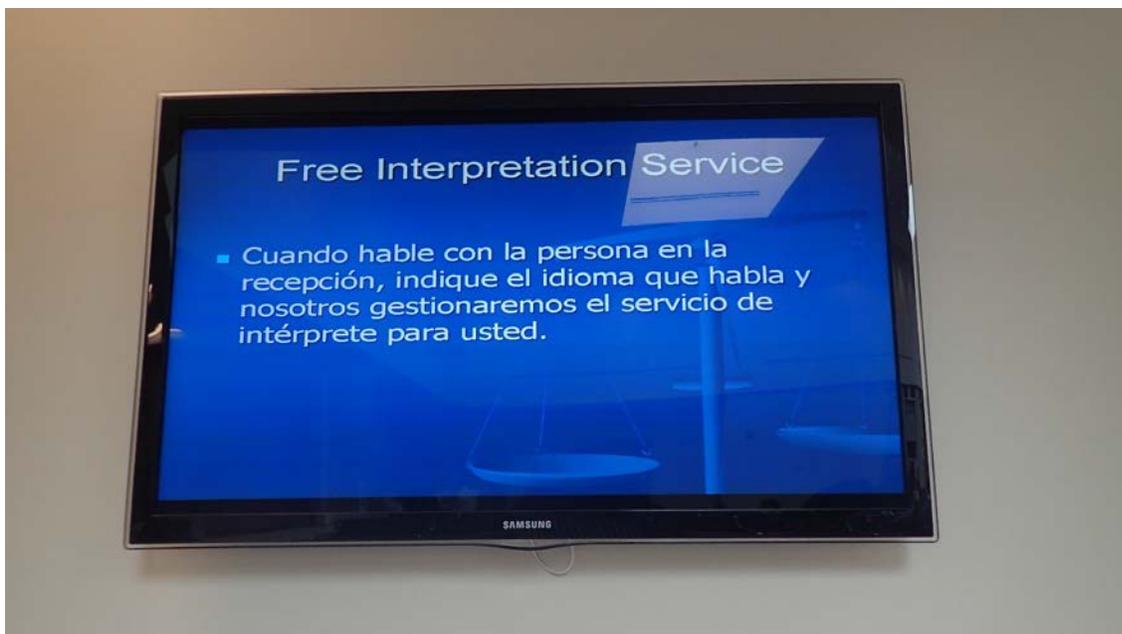
10. Does OATH provide interpretation services (including telephonic interpretation) for the top six LEP languages and others as appropriate?	Yes	<p>Pursuant to the Citywide contract with the Language Line Services, Inc., OATH is able to provide interpretation services in over 170 languages, including the top six LEP Languages. OATH also contracted with Voiance Language Services, LLC, which, overall, gives them the ability to translate in 250 languages. OATH also contracts with Geneva to provide written transcription services.</p> <p>OATH also displays the available language on its telephone handsets. (See Appendix III.)</p>
11. Does OATH train its frontline workers and managers on language access policies and procedures?	Yes	<p>During the site testing, the OATH employees interviewed were familiar with the Language Line and Voiance policies and the procedures to be followed when conducting interpretation and translation services.</p>
12. Are there any signs or postings in OATH regarding free available language assistance?	Yes	<p>During site testing, we observed “Free Interpretation Services Available” signs posted in the agency’s public/common areas and office areas. In addition, the seven sites visited included a continuous PowerPoint presentation in the waiting area that displayed the availability of free language translation services.</p>
13. Did OATH establish an appropriate monitoring and measurement system regarding the provision of agency language services?	Yes	<p>OATH monitors the provision of agency language services by reviewing invoices from the vendors that provide translation and interpretation services. We reviewed the invoices and verified that the bills identify each call, the duration, the language translated, and the cost of each call. OATH used independent contractors (e.g., court stenographers) to ensure that hearings requiring interpretations receive a fair and impartial translation that is both verbal and written.</p>
14. Did OATH create public awareness strategies for language services?	Yes	<p>OATH provides notification to the public of available services via signs at the public service center and OATH’s website. The documents available include awareness strategies in the top six LEP languages. OATH has provided the same services in the top 16 LEP languages.</p>

LEP TESTS CONDUCTED

Test	Criteria For Evaluation	Auditors' Assessment
1. Anonymous phone calls.	<ul style="list-style-type: none"> Was a staff person able to respond to the call in the language of need, or else able to transfer the call to another staff person or a telephonic Interpreter service? 	<p>Yes. OATH's main public access line (1-844-OATH-NYC) provides information to the public in the top six LEP languages and two additional languages.</p>
2. Is the website accessible in languages other than English?	<ul style="list-style-type: none"> Was public information available in languages other than English? 	<p>Of the 35 languages listed on OATH's website, we sampled and successfully translated the top six languages spoken in New York City. This did not include the available Google Site translations.</p>
3. Make site visit to OATH's location, meet with front line workers and evaluate in-person procedures for language accommodation.	<ul style="list-style-type: none"> Were frontline workers able to provide language assistance services either directly or through a tool/procedure such as "I Speak" cards and placing a call to an interpreter to provide language assistance? Was signage posted notifying customers of their right to free language services? 	<p>OATH's frontline workers were familiar with the procedures for using the language assistance lines.</p> <p>There was signage posted notifying customers of their right to free language interpretation services.</p> <p>In addition, there is a continuous PowerPoint presentation.</p>
4. Translate "You Have a Right to Free Interpretation" posters.	<ul style="list-style-type: none"> Did the poster state that free translation and interpretation services were available? 	<p>Each of the languages on the poster was translated and accurately reflect that free translation and interpretation services were available.</p>

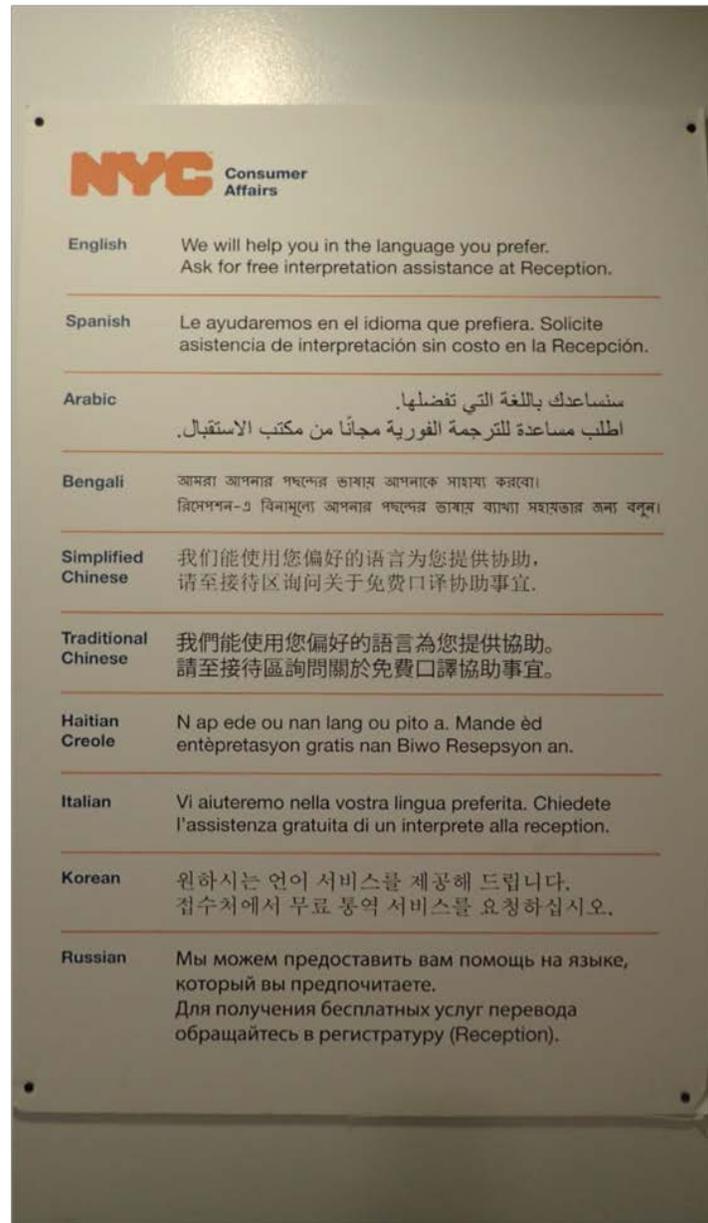
LEP COMPLIANCE OBSERVATION

POWERPOINT PRESENTATION AVAILABLE AT ALL SITES



LEP COMPLIANCE OBSERVATION

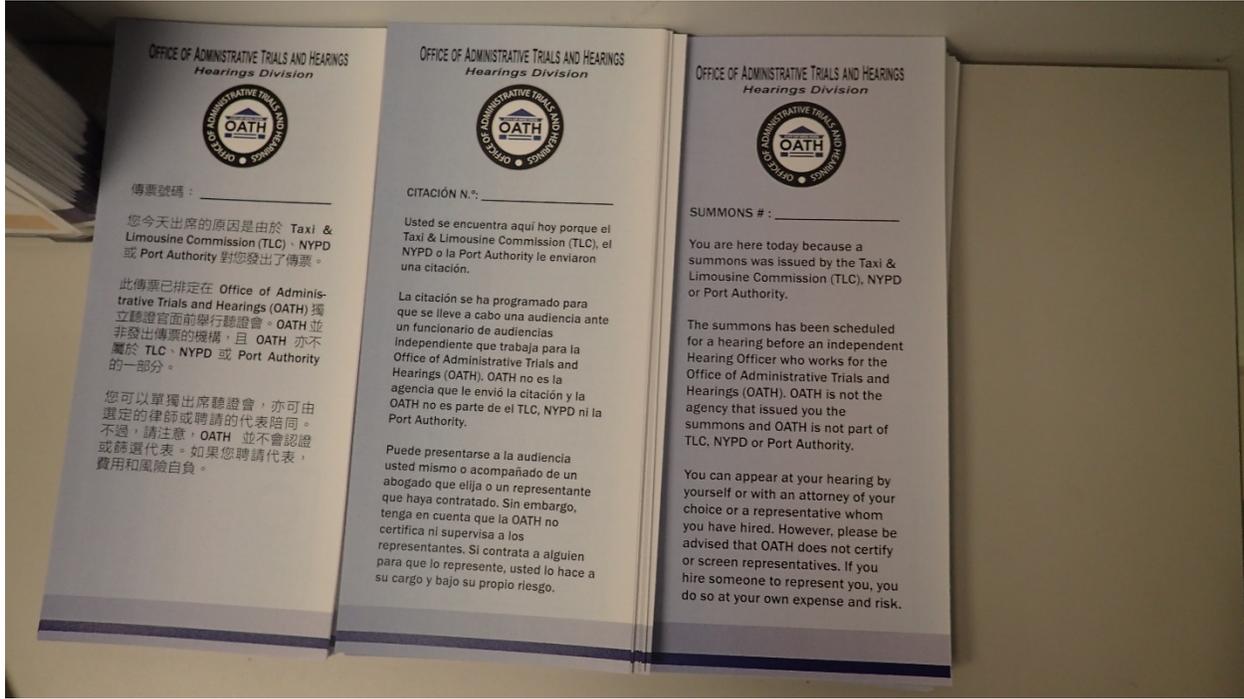
EXAMPLES OF LEP COMMUNICATIONS IN THE SEVEN BUSINESS CENTER CENTERS



LEP COMPLIANCE OBSERVATION



LEP COMPLIANCE OBSERVATION





ADDENDUM

THE CITY OF NEW YORK
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
100 CHURCH STREET 12TH FLOOR • NEW YORK, N. Y. 10007-2620
Tel #: (212) 933-3001 • www.nyc.gov/oath

FIDEL F. DEL VALLE
COMMISSIONER
CHIEF ADMINISTRATIVE LAW JUDGE

December 19, 2016

Ms. Marjorie Landa
Deputy Comptroller for Audit
Office of the Comptroller, Bureau of Audit
Municipal Building
1 Centre Street, Room 1100
New York, NY 10007

RE: Audit Report on the Compliance of the New York City Office of Administrative Trials and Hearings with Executive Order 120 Regarding Limited English Proficiency
SZ17-059A

Deputy Comptroller Landa:

The Office of Administrative Trials and Hearings ("OATH") is in receipt of your Audit Report on the Compliance of the New York City Office of Administrative Trials and Hearings with Executive Order 120 Regarding Limited English Proficiency (Audit Number SZ17-059A).

OATH has reviewed the report and the Findings and Recommendations and thanks the Office of the Comptroller for its finding that OATH complied with Executive Order 120 and provided meaningful language access to OATH's services for LEP respondents at our seven locations.

OATH will continue to give meaningful language access to our services for LEP respondents and all of our locations and continue to make strides to give access to justice to all who appear at our tribunals.

Sincerely,

A handwritten signature in blue ink, reading "Fidel F. Del Valle", is positioned above the printed name and title.

Fidel F. Del Valle
Commissioner
Chief Administrative Law Judge
Office of Administrative Trials and Hearings (OATH)

Cc: Mindy Tarlow, Director, Mayor's Office of Operations
George Davis III, Deputy Director, Mayor's Office of Operations