

**Memorandum**

To: Mr. David J. Gau  
Executive Director

Date: May 5, 2016

From: Todd Gilman, Chief *Notable Service by  
for Todd Gilman*  
Taxpayers' Rights and Equal Employment Opportunity Division

Subject: **Agenda Item for May Board Meeting  
Interpreters for Board Meetings**

**STATE BOARD OF EQUALIZATION**

BOARD APPROVED

At the May 25, 2016 Board Meeting

Joann Richmond  
Joann Richmond, Chief  
Board Proceedings Division

**Background:**

It is BOE's policy to provide equal access to services and information to all taxpayers and the general public, including those who are limited English proficient (LEP), in accordance with the Dymally-Alatorre Bilingual Services Act (Government Code 7290-7299.8). The Equal Employment Opportunity (EEO) Office coordinates BOE's Certified and Volunteer Bilingual Lists to assist in the delivery of services to BOE's LEP taxpayers and members of the public. The Certified Bilingual List includes BOE employees who have taken a bilingual oral fluency examination given by BOE's Examination and Recruitment Section or another state agency. BOE employees who pass the examination are added to BOE's Certified Bilingual List. Currently BOE has employees who are certified bilingual in Cantonese, Chinese (Written), Farsi, Hindi, Japanese, Korean, Mandarin, Punjabi, Russian, Spanish, and Vietnamese. The Volunteer Bilingual List includes employees who have not been certified through a testing process, but who have self-identified as having bilingual skills and have volunteered to utilize their language skills to assist taxpayers and other BOE customers. In addition to the Certified and Volunteer Bilingual Lists, the EEO Office contracts with Language People to provide interpretation services that are not available through either the Certified or Volunteer Bilingual Lists. The EEO Office's contract with Language People has been in place since July 1, 2014.

**Issue:**

Employees on BOE's Certified Bilingual List have previously been utilized when interpreters were needed during the Board Meetings. At the March 2015 Board Meeting, a BOE employee was used to assist in interpreting for a taxpayer's oral hearing before the board and concerns were raised by the Board regarding the quality of the interpretation. Some of the concerns were:

- The interpreter did not translate what the taxpayer said verbatim and used phrases such as, "I think what they meant was."
- The interpreter added/subtracted to what was being said during the hearing.
- There were challenges with the interpreter understanding and working within the Board hearing process.

As a result of the concerns expressed by the Board, the Board Proceedings Division and Legal Department – Settlement and Taxpayer Services Division met with the Taxpayers’ Rights and Equal Employment Opportunity Division to review the procedures for interpreters at Board Hearings.

**Recommendations:**

When requested, taxpayers have a right to have a qualified and experienced interpreter present at Board Hearings. Moreover, state law requires the BOE, when conducting an administrative hearing, to comply with Government Code sections 11435.20, 11435.25, and 11435.55 relative to the furnishing of language assistance to a party or witness at the hearing (See Gov. Code, §§ 15609.5, 11425.10(a) (9), and 11018.). State law specifically requires that the BOE contract with interpreters from the California Department of Human Resources’ (CalHR) list of certified interpreters or those certified by the Judicial Council. If the BOE cannot secure a CalHR or Judicial Council certified interpreter, the BOE has authority to provisionally qualify and use a non-certified interpreter. It is only in these circumstances (when a CalHR or Judicial Council certified interpreter cannot be secured) that we recommend the Board alternatively secure an interpreter from BOE’s Certified or Volunteer List.

In an effort to provide our taxpayers with a fair and efficient hearing processes and ensure the taxpayer’s rights are protected it is recommended that outside interpreters provide simultaneous interpretation at Board Hearings for those cases where the taxpayer is scheduled for an oral hearing before the Board and either the taxpayer or a witness has requested an interpreter.

The interpreters from BOE’s current contractor, Language People, are certified and professionally trained in both consecutive and simultaneous interpreting. In addition, Language People has interpreters that are certified by CalHR and the Judicial Council. The interpreters have experience in court and administrative proceedings and understand their role in the hearing process, which is to interpret for the taxpayer the statements made by all hearing participants, and translate the taxpayer’s statements to the Board Members and other hearing participants. It is not the interpreter’s job to represent the taxpayer before the Board, add any additional facts, embellish what the taxpayer says, or suggest what the interpreter thinks the taxpayer is trying to say.

The role of the interpreter is to act as a translator for the taxpayer or witness. The interpreter is not expected to be a technical expert; nor is the interpreter responsible for responding to the taxpayer or witnesses’ questions, or resolving their tax issue. Therefore, it is not required that the interpreter have technical, administrative, or program knowledge of the BOE. In fact, it is in the Board’s best interest to use an outside interpreter who has no interest in the case or relationship to BOE, other than to interpret for the taxpayer/witness, translate accurately to the Members and other hearing participants what the taxpayer/witness is saying, and relay back to the taxpayer/witness comments and questions from the Members and the hearing participants. Using an outside interpreter rather than a BOE employee will eliminate the argument that the taxpayer was not given a fair hearing because the interpreter was a BOE employee.

Utilizing an outside interpreter for Board Hearings is not a collective bargaining issue; and BOE’s current contract with Language People is justified pursuant to Government Code section 19130 (b) (10). Each situation utilizing an outside interpreter is dependent on the unavailability of an interpreter from CalHR or the Judicial Council to be present for the hearing. In addition, utilizing an outside interpreter for Board Hearings does not affect BOE employees’ ability to receive the bilingual pay differential. An employee is eligible to receive a bilingual pay differential if the employee uses a language other than English to perform their duties at least 10 percent of the time during their normal course of work. Since the use of BOE interpreters at Board Hearings is not a regular occurrence, those employees on BOE’s Certified Bilingual List who are receiving the

bilingual pay differential, have qualified for the pay differential based on duties that are a part of their normal course of work, aside from interpreting for taxpayers/witnesses at Board Hearings.

The goal is to have a qualified and experienced interpreter available at the Board Hearing when requested by the taxpayer. As demonstrated at the April 27, 2016, Board Hearing in Culver City the interpreters contracted through Language People are highly skilled in providing both consecutive and simultaneous interpreting, can pivot and be flexible when procedural changes occur during an administrative hearing, and are familiar with standard interpreter procedures in providing a complete and accurate interpretation. Should there be a circumstance where a CalHR or Judicial Council certified interpreter is not available for a Board Hearing, the Board has authority to provisionally qualify and use a non-certified interpreter.