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Deal mandates non-English driver exams

By [Gordon Y.K. Pang](#)

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The state is promising to make driver's licensing examinations in Hawaii available in non-English versions for at least the next five years under a settlement agreement reached between the state and the immigrant advocacy group Faith Action for Community Equity.

The agreement between FACE and the state Department of Transportation was announced Thursday, the same day jury selection in FACE's lawsuit over the issue was scheduled to begin in U.S. District Court. Instead, District Judge Susan Oki Mollway approved the settlement.

While the state has made the tests available in 12 nonEnglish languages since 2014, the plaintiffs said it was important to proceed with the case to gain assurances for the long term, and the settlement reached this week does that, said Gavin Thornton, an attorney with the Hawaii Appleseed Center for Law and Economic Justice, which has been representing FACE in the case.

Tests were made available in many of the 12 languages prior to 2008, but they were pulled and not replaced when the state Legislature required a new question be added to the exam. It then took the state more than five years, and a lawsuit, for the non-English versions to become available again, Thornton said. The state previously had contended that it was not required to offer non-English tests, he said.

"Under the settlement, the state has agreed to continue offering translated driver's examinations in the 12 nonEnglish languages now offered for a period of at least five years," Thornton said. "If additional questions are added to the examination by the Legislature, the questions will be translated and added to the examination without any lapse in the availability of translated examinations."

The two sides will also work to review the Chuukese version of the exam, which drew complaints for being difficult to understand, Thornton said.

FACE's core argument was that not having the non-English tests available for such a lengthy period, by itself, constituted discrimination by the state. Obtaining a driver's license is vital for those with limited English skills when they seek employment, education and health care.

The 12 languages are Tagalog, Japanese, Chinese, Korean, Vietnamese, Samoan, Tongan, Ilocano, Spanish, Chuukese, Marshallese and Hawaiian.

Hawaii DOT Director Ford Fuchigami, in a joint news release, said his agency still disputes there was any purposeful discrimination involved in the decision to not make the translated exams available, but that it is committed to giving the nonEnglish exams.

"We are proud of our current language access program and are dedicated to a positive and proactive approach to language access and will continue to look at additional ways to ensure that those with limited English skills can safely drive on our roads."

Two federal agencies, in court documents, sided with the FACE argument and suggested that hundreds of millions of dollars in federal transportation money was being jeopardized by the state's actions.

A May 14 letter to the Hawaii DOT from the U.S. Department of Transportation's Departmental Office of Civil Rights, said: "Because HDOT receives substantial federal financial assistance from (federal) DOT, it is subject to Title VI of the Civil Rights Act of 1964 and may not engage in discrimination on the basis of race."

The Hawaii Department of the Attorney General, in a statement to the Honolulu Star-Advertiser, said the state DOT is complying with the law and that federal funds have not been in jeopardy. "Since we have received

the letter referred to, the Hawaii DOT has engaged in a dialogue with the U.S. Department of Transportation to reassure them as to our intent to address any concerns they may have," state attorneys said in an email. "There is no threat of a loss of federal funds."

The Department of Justice also weighed in with concerns.

"Recipients of federal financial assistance must provide (limited English proficient) individuals with timely, meaningful access," the Justice Department said, in a court brief.

"On its face, a 51/2-year delay in providing translation of a vital document such as a drivers license exam results in an 'effective denial of the service, benefit or right at issue or the imposition of an undue burden on or delay in important rights, benefits or services' to a person with limited English skills."

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