

**Testimony of David Steib
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**Before the Committee on Aging and Community Affairs,
Council of the District of Columbia**

**Agency Performance Oversight Hearings
Fiscal Year 2010-2011**

March 3, 2011 – 10:00 AM

Introduction

The District of Columbia is a pioneer in protecting the language access rights of its residents. In 2004, the DC Council passed the Language Access Act, a vital and innovative piece of legislation intended to ensure that all residents – regardless of the languages they speak - have meaningful access to the city’s services. Broadly speaking, the Act first requires District government agencies to offer oral language services to any individual who contacts the agency, regardless of the language spoken by the individual. Second, the Act requires District government agencies to provide written translations of documents in certain specified languages. Third, the Act requires District government agencies with major public contact to establish a language access plan and to designate a language access coordinator. Finally, the Act requires that the Office of Human Rights monitor government agencies’ compliance with the Act and provide technical assistance.

The efforts to implement and enforce the DC Language Access Act are riddled with problems. Currently, one of the major problems impeding the success of the Act is a perception that District government agencies need only translate vital documents into Spanish, and not into any other language. This perception is clearly contrary to the law. Our concern is the degree to which the Office of Human Rights is responsible for creating this perception and for misinterpreting the Language Access Act. This problem is made worse by the lack of judicial review of Office of Human Rights decisions and the lack of a private right of action that would allow aggrieved District residents to pursue complaints in other forums.

The DC Language Access Act requires government agencies to determine which populations they are likely to serve or encounter in order to translate vital documents into appropriate languages.

In the District of Columbia, limited English proficient individuals and non-English proficient individuals, or LEP/NEP individuals, are often unaware of the government services available to them. Some LEP/NEP individuals fear that they will be unable to access government services without the ability to speak, read, and understand English. The Language

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid provides assistance in public benefits, housing, family, and consumer law matters.

Access Act was passed to ensure that LEP/NEP individuals are able to benefit from public services at a level equal to English proficient individuals. Because LEP/NEP individuals are particularly isolated, the Language Access Act requires each DC government agency to identify not only the LEP/NEP individuals that it serves or encounters, but also those LEP/NEP individuals that the agency is likely to serve or encounter. Indeed, the Act requires that “a covered entity shall provide translations of vital documents into any non-English language spoken by a limited or no-English proficient population that constitutes 3% or 500 individuals, whichever is less, of the population served or encountered, or likely to be served or encountered, by the covered entity in the District of Columbia.” D.C. Code § 2-1933 (2011).

The Act thus specifies when a government agency must translate vital documents. If a large enough number of potential customers speak a certain language, then the government agency must provide translations into that language. The Act requires that agencies be able to meaningfully serve potential customers who constitute a significant portion of the population. At the same time, the Act avoids unnecessarily draining scarce resources by translating documents into obscure languages spoken by only a very small number of DC residents. If the Act did not require that each agency identify potential customers, a vicious circle of language isolation could result. A negligent agency could refuse to translate vital documents and justify the decision by simply stating that the agency does not serve or encounter LEP/NEP customers. Meanwhile, the agency’s lack of language access efforts might be the reason that LEP/NEP customers are unable to access the services of the agency.

DC government agencies fail to identify the LEP/NEP residents that are likely to be served or encountered, and the Office of Human Rights does not hold such agencies accountable for their failures.

District residents are not receiving translations of the vital documents that they need from government agencies, even though the second requirement of the Language Access Act makes it clear that government agencies must provide such translations. Government agencies are simply failing to collect data concerning the populations that they serve or encounter, or are likely to serve or encounter. Because they don’t meet their data collection requirements under the Act, agencies argue that they do not know how to determine their translation obligations.

Some District residents who have been denied translations by government agencies have filed language access complaints with the Office of Human Rights. The Office of Human Rights has misinterpreted the requirements of the Language Access Act when investigating the complaints and when explaining the law to government agencies. As an example, let us consider a language access complaint that was decided in the last year. An owner of a DC dry cleaner wanted to take a steam engineering license exam in order to obtain the business license required by law to operate his establishment. The Department of Consumer and Regulatory Affairs (DCRA), a DC government agency covered by the Language Access Act, is in charge of administering the exam. Although the owner of the dry cleaner speaks Korean, DCRA did not provide the licensing exam in Korean. Furthermore, DCRA did not translate any of its correspondence with the owner of the dry cleaner into Korean. The owner of the dry cleaner filed a complaint.

The Office of Human Rights, which is tasked with investigating language access complaints and issuing written determinations, found in this case that DCRA does not have to translate documents into Korean. In its written determination, the Office of Human Rights based this finding on data collected by DCRA regarding the number of Korean speakers that DCRA had served or encountered in previous fiscal years. According to this data, the Office of Human Rights reasoned, DCRA does not serve sufficient numbers of Korean residents to require that documents be translated into Korean.

However, the sole reliance on data collected by DCRA is problematic in several respects, which reflect systemic problems in the implementation of the law. First, DCRA, like most other government agencies, does not effectively collect data concerning the languages spoken by the customers that it serves or encounters. Unfortunately, DCRA's computer system does not require employees to capture data about language spoken by each individual who contacts the agency. Second, even if such data were collected, it would still not reflect the population that DCRA was likely to serve or encounter, as required by the Language Access Act. The Office of Human Rights stated in the written determination described above that the Act does not provide clear guidance on determining the population that is likely to be served.

However, the Language Access Act provides for situations in which an agency has difficulty determining the population of individuals who are likely to be served. The Act directs agencies to the US Census and to other data. Given the straightforward text of the Language Access Act, it is unclear how the Office of Human Rights could find that DCRA did not have to translate vital documents into Korean without doing a full analysis of those likely to be served or encountered by the agency.

Unfortunately, the above example is not an isolated case and appears instead to be reflective of the Office of Human Rights's official policy regarding written translations. Since issuing its written determination in July, the Office of Human Rights has met with the Language Access Coordinator for DCRA. The Office of Human Rights has stated that DCRA need only provide vital documents in English and Spanish, and in no other languages. If DCRA follows the guidance of the Office of Human Rights, there will be serious consequences for District residents who speak Chinese, French, Amharic, or any other language that meets the threshold set by the Act. The Office of Human Rights has indicated that agencies need not concern themselves with determining the populations likely to be served or encountered, as required by the Act. Such disregard for the law is of the utmost concern.

There is no method for appealing an unfavorable determination by the Office of Human Rights and there is no other forum in which to bring a language access complaint.

Unfortunately, the owner of the dry cleaner has no choice but to accept the determination issued by the Office of Human Rights. The Language Access Act, and its implementing regulations, offers no opportunity for judicial review of a determination by the Office of Human Rights. Furthermore, the Language Access Act itself does not grant a complainant the right to bring a language access complaint in any forum other than at the Office of Human Rights. For that reason, it is imperative that the Office of Human Rights understand and be faithful to the text and intention of the Act. Unfortunately, the Office of Human Rights is currently unable or

unwilling to recognize that each agency has an obligation to determine the languages into which it must translate documents, taking into account the population likely to be served or encountered by the agency. It is also important that a private right of action be added to the Language Access Act so that when mistakes of interpretation are made, complainants have other avenues to seek redress of language access violations.

Legal Aid recommends the following steps to improve implementation of the Language Access Act.

- **The Office of Human Rights should offer appropriate oversight and technical assistance to ensure that each covered entity is determining, at least annually, the languages spoken by the population served or encountered, or likely to be served or encountered, by the covered entity.** The Language Access Act very clearly requires government agencies to determine the “languages spoken and the number or proportion of limited or no-English proficient persons of the population that are served or encountered, or likely to be served or encountered, by the covered entity in the District of Columbia.” D.C. Code § 2-1932 (2011). Currently, most agencies do not make such a determination, although the Act requires them to do so.
- **The Office of Human Rights should determine the population likely to be served or encountered by a government agency as part of any language access complaint investigation regarding written translations.** When the Office of Human Rights investigates a public complaint regarding language access violations in the form of a failure to provide written translations by a covered entity, the Office of Human Rights should make a determination of the entity’s population likely to be served or encountered. The Office of Human Rights should consult the sources of data identified in the Act as resources for determining a covered entity’s population likely to be served or encountered:
 - (A) The United States Census Bureau’s most current report entitled “Language Use and English Ability, Linguistic Isolation” (or any other successor report);
 - (B) Any other language-related information;
 - (C) Census data on language ability indicating that individuals speak English “less than very well”;
 - (D) Local census data relating to language use and English language ability;
 - (E) Other governmental data, including intake data collected by covered entities; data collected by the District of Columbia Public Schools; and data collected by and made available by District government offices that conduct outreach to communities with limited-English proficient populations and that serve as a liaison between the District government and limited-English proficient populations, such as the Office of Latino Affairs and the Office of Asian and Pacific Islander Affairs; and
 - (F) Data collected and made available by the D.C. Language Access Coalition.

D.C. Code § 2-1932 (2011).

- **The DC Language Access Act should be amended to allow for judicial review of determinations by the Office of Human Rights and to allow for a private right of action for those complainants who wish to sue the District for violations of the Act.** When a DC resident's language access rights have been violated, and the Office of Human Rights fails to recognize the violations, such an aggrieved resident should be able to have his or her case heard by a judge. The Language Access Act should be amended so that determinations by the Office of Human Rights are subject to judicial review. Furthermore, if the Language Access Act allowed for a private right of action, then a complainant could choose between bringing a complaint before the Office of Human Rights or before the DC Courts. A private right of action is desirable not only because it would allow a complainant to choose her forum, but also because it would allow additional remedies for LEP/NEP individuals who have suffered harm as a result of language access barriers. A Medicaid or DC Healthcare Alliance beneficiary who incurs medical debt as a result of the District's failure to provide interpreter services, for example, needs more than an Office of Human Rights investigation to get compensation for the financial harm suffered.
- **Additional funding should be allocated to government agencies and the Office of Human Rights in order to ensure compliance with the Language Access Act.** Each DC government agency must have the necessary funds to collect data concerning the population served or encountered, to analyze the population likely to be served or encountered, and to provide legally mandated translations of vital documents. In addition, the Office of Human Rights must have the funding necessary to adequately investigate language access complaints and to properly enforce the law. We urge the DC Council to give full force and effect to the Language Access Act by increasing funding to the programs and agencies created to implement the legislation.

We believe these steps will help to ensure that the Language Access Act achieves its stated goals. Regardless of whether or not the DC Language Access Act of 2004 is amended, we urge this Committee and the Council to remain vigilant in its enforcement of the provisions already written into the law.