Legal Aid Society
OF THE DISTRICT OF COLUMBIA
MAKING JUSTICE REAL

Testimony of Maggie Donahue
Staff Attorney, Housing Law Unit
The Legal Aid Society of the District of Columbia

Before the Committee on the Judiciary, Committee on Education, and Committee of the Whole
Council of the District of Columbia:
"Language Access for Education Act of 2015"

July 1, 2015

The Legal Aid Society of the District of Columbia[1] supports the Language Access for Education Act, which, among other things, amends the Language Access Act of 2004 to provide a private cause of action for individuals who suffer violations of the Act and adds the Executive Office of the Mayor and the Council as covered entities.[2]

Legal Aid has litigated cases alleging violations of the Language Access Act of 2004 before the OHR under current law. Our work in these cases has made clear that although the 2004 Act provides many important protections, enforcing the Act can be extremely difficult. The bill before the Committees today helps to address many of those gaps in enforcement. Our testimony today focuses on the bill's creation of a private right of action. We believe the private right of action improves enforcement of the Language Access Act in three critical ways: by making monetary damages available, by providing the opportunity to obtain enforceable relief ordering covered entities to fully comply with the law, and by allowing litigants the opportunity to use transparent court procedures to right wrongs done to them by violations of the Act.

First, by allowing complainants to recover monetary damages where they can show that they were denied certain services, the bill will improve enforcement of the Language Access Act. Because individuals who suffer violations of the Act cannot recover any damages whatsoever under the current law,[3] many D.C. residents who have suffered harm never bring complaints before OHR. Bringing a complaint before OHR takes time and energy, and many individuals living in poverty especially cannot afford to set aside that time and energy to pursue a claim that will do nothing to make them whole. As a result, we have seen that many violations of the Language Access Act go unreported and are never remedied.

---

[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." Over the last 83 years, tens of thousands of the District's neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family, public benefits, consumer, and appellate law. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

[2] Language Access for Education Amendment Act of 2015, 2015 DC L.B. 66, D.C. Council Period 21 (proposed Feb. 3, 2015).

[3] Language Access Act of 2004, D.C. Code §§2-1931–37 (2015); 4 D.C.M.R 1200-1299 (2015).

The availability of damages under the bill will encourage individuals to report language access violations by offering the opportunity to make them whole.[4] The private right of action means that the woman who misses four days of work, repeatedly returning to the Housing Authority when denied services in Spanish, could recover lost wages and transportation costs that she incurred due to violations of the Act. Further, the possibility of recovering attorneys' fees – a common feature of civil rights laws – will help make sure that legal service providers are able to assist individuals who wish to be heard by the courts.[5] This promise of compensating individuals for damages they suffer when denied language access is the most critical element of the private cause of action included in the bill.

Second, the private cause of action will improve enforcement of the Act's requirements by allowing litigants to obtain enforceable court orders requiring covered entities to take certain actions to comply with the Act.[6] Under current law, even where OHR finds there has been a violation of the Act, the complainant has no role in proposing, shaping, or enforcing the "corrective actions" issued by OHR. Currently, OHR, in closed-door consultation with the entity found in non-compliance, proposes "corrective actions," intended to ameliorate the language access violation(s) and prevent their recurrence.[7] However, the complaint has no involvement or voice in that process. The complainant can neither inform nor enforce the corrective actions. If the corrective actions are not followed, the complainant must begin the process anew with another Language Access Act complaint before OHR. This system places an unfair burden on an individual denied services and meaningful access and fails to provide agencies with sufficient incentives to comply fully with the Language Access Act.

Legal Aid has filed multiple Language Access complaints on behalf of D.C. residents where OHR found the covered entity to be in violation of the Language Act, but where the complained of conduct continued—sometimes for years after such a finding, despite corrective actions issued by OHR.

For example, the Department of Consumer and Regulatory Affairs repeatedly denied legally required interpretation services to one Legal Aid client. She eventually filed a Language Access Complaint, and the agency was found in non-compliance with the Act. DCRA was ordered to, among other things, insure that inspectors had quick reference guides to language line with them during their field duties, such as when inspection homes. However, years after this case, DCRA still had not come into full compliance with the Act. Just this year, OHR heard another complaint from a different D.C. resident alleging almost identical violations. DCRA has

---

[4] Language Access for Education Amendment Act of 2015 §4(a)(5)(B)(ii) ("The court may grant any relief it deems appropriate, including, but not limited to . . . [t]he payment of compensatory damages, both monetary and in-kind, to the person aggrieved by the violation.").

[5] *Id.* at §4(a)(5)(B)(iii) ("The court may grant any relief it deems appropriate, including, but not limited to . . . [t]he payment of court costs and reasonable attorney fees.").

[6] *Id.* at §4(a)(5)(A)(B)(i) ("The court may grant any relief it deems appropriate, including, but not limited to . . . [i]ssuing temporary restraining orders and preliminary injunctions against the respondent; and . . . [r]equiring the respondent to take affirmative action, including, but not limited to: (i) [a]n order enjoining such acts or failure to act that violated the D.C. Language Access Act of 2004 . . . ").

[7] 4 D.C.M.R. §1223 (2015).

finally agreed to have its inspectors wear visible tags making clear that they can call the language line.

The problem of inadequate enforcement is not limited to any particular agency. Legal Aid brought a complaint in 2011 on behalf of a Spanish-speaking D.C. resident who was denied language appropriate services after coming to the top of the D.C. Housing Authority's waitlist for public housing. I testified in 2011 about this particular client's experience in front of the Committee on Housing and Workforce Development. Despite having already been identified by DCHA as an LEP individual, she was repeatedly discouraged and dismissed by various staff at DCHA after asking for language appropriate services at her appointment. As a result of this resident's complaint, OHR found DCHA to be in noncompliance with the Act, and issued corrective actions. As part of these corrective actions, the D.C. Housing Authority agreed to set up a system to ensure the bilingual personnel would be standing by when LEP/NEP customers had scheduled appointments, to prevent a repeat of such an incident.

Unfortunately, it later became clear to Legal Aid that no such system was instituted; in 2014 we brought a new complaint on behalf of a new individual, based on an almost identical set of facts.

It should not take years to bring a city agency into full compliance with the law. The private cause of action in the bill offers the promise of increased agency compliance with the Act, because a prevailing litigant will be able to obtain an enforceable court order and the power to demand that the agency comply fully with that order.

Third, the private cause of action in the bill allows individuals denied language access the opportunity to raise their claims in D.C. courts and benefit from transparent court procedures. Under the current system, individuals who bring complaints—and entities who respond to such complaints—cannot obtain reasonable information about the other side's view of the case. OHR acts as a "behind closed doors" investigator, where it seeks and shares information with both sides only as it chooses during the course of its investigation.[8] As a result, OHR's decisions about compliance or noncompliance may be made based on the contentions of one party that the other party never had the opportunity to fully know or rebut.

This transparency problem would be rectified with the availability of a private right of action, where parties must present all communications they make to the court to the other side.[9] The prohibition on ex-parte communications that protects the parties in civil actions strengthens

---

[8] OHR's position is that "[t]he parties may request and receive a copy of the complete investigative file once the investigative case file has closed, OHR has issued a letter of determination, and the period for appeals has lapsed." *See* May 26, 2015 email from OHR Deputy Director to Legal Aid staff attorney Maggie Donahue. This policy comes despite OHR's requirement to provide the Complainant with copies of all documents and information submitted by Respondent, except those documents that OHR deems to be privileged or confidential, and to provide Complainant with an opportunity to rebut information submitted by the Respondent. *See* 14 D.C.M.R. 1222.3 (2015).

[9] *See, e.g,* D.C. Code of Judicial Conduct Rule 2.9 (2014) (generally prohibiting judges from engaging with ex parte communications with the parties).

the sense of legitimacy and fairness of the process for both sides. The discovery process available through the courts will also allow each side the opportunity to examine the evidence of the other side before proceeding all the way to adjudication of the case. [10] Such transparency in the process will increase settlement possibilities and allow litigants to trust that their claims have been fairly heard and considered.

The private cause of action brings new possibilities for more rapid and robust compliance with the Language Access Act across the District. The private cause of action allows individuals denied language-appropriate services the opportunity to shape the contours of a court order guiding future agency conduct.[11] By proposing the content of a court order, the complainant can leverage his or her experiences in order to improve agency behavior. And, perhaps most importantly, once an order is in place, if the covered entity violates the order, then the complainant can bring a motion to enforce the court's order as part of the already existing case. This relieves the complainant of the unfair burden current law places on him or her to bring a new case every time the problem repeats itself, despite corrective actions being in place. The authority of a court order, and the potential costs of non-compliance for an agency, will also communicate to agencies that it is unacceptable to take years to come into compliance with a law that has been on the books already for more than a decade.

* * *

In addition to the private right of action, many other components of the proposed Bill would help the city move toward full realization of language access for all. The Bill's proposals to add the Executive Office of the Mayor and the Council of the District of Columbia as covered entities with major public contact also are important steps toward fully realizing the 2004 Act's potential. Ensuring D.C. residents, regardless of language spoken, have full and complete access to the Council and the Mayor's office should be a critical priority for city government.

At today's hearing, we are fortunate that the D.C. Council has provided interpretation for the many witnesses who need to speak in a language other than English. We sincerely thank the Council staff who made this possible. However, it is worth noting that the Language Access Act does not currently require such interpretation at a hearing like today's that touches dramatically on the lives of individuals who speak limited or no English. It is easy to imagine what would have been lost if the many voices represented today had not been heard. Today also demonstrates that the Council—just like other D.C. agencies with major contact with the public—can, and should, comply with the Language Access Act

We urge the Council to enact the Language Access for Education Act of 2015. Thank you for the opportunity to testify today.

---

[10] *See, e.g.,* D.C. SCR-Civil Rule 26 (2014).

[11] *See id.* at §4(a)(5)(A)(B)(i) ("The court may grant any relief it deems appropriate, including, but not limited to . . . [i]ssuing temporary restraining orders and preliminary injunctions against the respondent; and . . . [r]equiring the respondent to take affirmative action, including, but not limited to: (i) [a]n order enjoining such acts or failure to act that violated the D.C. Language Access Act of 2004 . . . ").