



Legal Aid Society
OF THE DISTRICT OF COLUMBIA

MAKING JUSTICE REAL

**Testimony of Maggie Donahue
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**Before the Committee of the Whole
Council of the District of Columbia:
“Language Access for Education Amendment Act of 2017”**

May 8, 2017

The Legal Aid Society of the District of Columbia¹ supports the Language Access for Education Amendment Act of 2017, which, among other things, 1) establishes monetary penalties for violations of the Act and 2) requires the Office of Human Rights to publish an annual summary of all decisions, orders, corrective actions, and fines issued in the prior year.

Almost two years ago, in the summer of 2015, Legal Aid testified along with our client, Sonia Ventura, about the need to improve the Language Access Act of 2004 by adding teeth to the law. Specifically, we testified about the importance of including an explicit private right of action for those who suffer violations of the Language Access Act of 2004 so that the requirements of the law become enforceable, rather than aspirational.² A private right of action would enable victims of violations of the Act to recover monetary damages, and would motivate agencies by the threat of such damages to comply with the law.

A private right of action was not added, however, and the frustrations Sonia and I voiced two years ago are the same frustrations we have today; agencies have little to no incentive to comply with the law, and those who suffer violations have little to no incentive to file complaints in the first place, even if their rights are violated.

Under the current scheme, if agencies are found in non-compliance with the law, they begin a dialogue with the Office of Human Rights (OHR), where the violating agency and OHR devise a set of “corrective actions” together that in theory addresses some of the systemic issues underlying the violations at the agency.

Unfortunately, the corrective actions process has fallen short of both motivating agencies to correct patterns of noncompliance and encouraging most complainants to file when their rights

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 85 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 See “Legal Aid Testifies in Favor of Two D.C. Council Bills” <http://www.makingjusticereal.org/legal-aid-testifies-in-favor-of-two-key-d-c-council-bills> (accessed 5/7/17).

are violated. Sonia Ventura's story demonstrates why it is so important that agencies face more than just the current corrective action scheme for noncompliance if the Act truly hopes to influence agency behavior.

In July 2015, OHR found that the D.C. Housing Authority (DCHA) had failed to comply with the Language Access Act in its interactions with Legal Aid client, Sonia Ventura, including by hanging up the phone on her at two different public housing properties where she was attempting to schedule an appointment to view available units.

After the findings of non-compliance were issued by OHR, Legal Aid requested a copy of the corrective actions issued to the violating agency (DCHA). OHR informed us that it would send the corrective actions within the week, once DCHA had a chance to review them.

By November 2015, we still had not received the corrective actions, so we requested them again. Corrective actions had still not been finalized at that time, but we were sent a list of five detailed corrective actions that had been proposed by OHR in August 2015, along with DCHA's response to those proposals. Unfortunately, DCHA's response to OHR's proposed corrective actions removed many of the detailed requirements, and extended the deadlines for the agency to come into compliance with the Act well into 2016.

We followed up in December 2015 to express some concerns about the corrective actions that were proposed by OHR and those counterproposals of DCHA.

In May 2016, after not receiving any updates from OHR, we followed up to see if DCHA had at the very least followed some of its own proposed deadlines and corrective actions. We were told that OHR would check with DCHA, but then did not hear back from OHR after this.

In February 2017, we checked in one more time to see if there was any news about the corrective actions. To date, we have not received a response.

The delay and inefficacy of corrective actions-only enforcement demonstrated by Ms. Ventura's case is not an aberration. For example, it took over a year from OHR's finding of non-compliance for corrective actions to be finalized by OHR in a very similar case to Ms. Ventura's that was filed years prior.³

Publishing an annual summary of all OHR decisions and corrective actions will help hold OHR more accountable to the public in its issuance of corrective actions following its findings of non-compliance. But that transparency alone will not be enough to incentivize agencies to comply, and incentivize those whose rights were violated to file. A fine structure will be essential to closing the current enforcement gaps and making the Language Access Act a reality for all residents of the District of Columbia.

³ I testified about this client's experience – which was in many ways extremely similar to Ms. Ventura's experience – as part of Legal Aid's testimony to the D.C. Council's Committee of Housing and Workforce Development in February 2012. See <http://www.legalaiddc.org/wp-content/uploads/2013/10/MDonahue2-13-12.pdf>

For all of these reasons, and the reasons outlined in Legal Aid’s prior testimony in support of closing the enforcement gap of the Language Access Act in 2015,⁴ we urge the Council to enact the Language Access for Education Amendment Act of 2017.

⁴ See “Legal Aid Testifies in Favor of Two D.C. Council Bills” <http://www.makingjusticereal.org/legal-aid-testifies-in-favor-of-two-key-d-c-council-bills> (accessed 5/7/17).