

**Testimony of Maggie Donahue  
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The Legal Aid Society of the District of Columbia**

**Before the Committee on Government Operations  
Council of the District of Columbia**

**Budget Oversight Hearing Regarding the Office of Human Rights**

**April 5, 2019**

The Legal Aid Society of the District of Columbia<sup>1</sup> submits this testimony to express our concerns with the most the Mayor’s proposed FY20 budget for the Office of Human Rights (OHR).

Legal Aid testified at OHR’s performance oversight hearings both this year and last year about serious problems we have seen related to OHR’s processing of discrimination complaints.<sup>2</sup> Specifically, we expressed concerns related to:

- 1) An intake system that unduly slows down the processing of complaints, including by engaging in the unnecessary and often harmful rewriting of complaints;
- 2) A need for more training of staff in discrimination and housing law, across units and in particular at the mediation level; and
- 3) OHR’s failure to engage in meaningful enforcement of the Language Access Act.

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<sup>1</sup> 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 87 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 law, public benefits, immigration, and consumer protection. More information about Legal Aid can be obtained from our website, [www.LegalAidDC.org](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

<sup>2</sup> See February 22, 2018 Legal Aid Testimony at the Performance Oversight Hearing Regarding the Office of Human Rights, available at <https://www.legalaiddc.org/wp-content/uploads/2018/02/Legal-Aid-Performance-Oversight-Testimony-re-OHR-FINAL.pdf> (accessed 4/3/19) (attached as Exhibit A), and February 28, 2019 Legal Aid Testimony at the Performance Oversight Hearing Regarding the Office of Human Rights, available at <https://www.legalaiddc.org/wp-content/uploads/2019/02/Legal-Aid-FY18-19-OHR-Oversight-Testimony-FINAL.pdf> (accessed 4/3/19) (attached as Exhibit B).

It is important that the Committee make sure that OHR's budget and plans for FY20 reflect a commitment to addressing these problems. Unfortunately, it is unclear whether this budget shows such a commitment.

### **OHR's Intake Unit Should Be Streamlined Rather Than Expanded**

OHR's creation of a new intake unit in FY17<sup>3</sup> has been counterproductive. The unit systemically engages in the unskilled rewriting of complaints and conducts unnecessary interviews at the intake stage with complainants who are ready to simply move forward with their complaints. The intake unit at OHR drags out the complaint process needlessly, resulting in inaccurate charges and prejudicing complainants. We have recommended that OHR eliminate intake interviews and the rewriting of charges whenever the complainant is represented by counsel, and that OHR only engage in the interview and re-writing process if necessary to help the complainant meet the basic legal sufficiency standard to proceed to the next stage – which should rarely be the case. Following Legal Aid and other advocates' suggestions by making these changes should allow for OHR to trim, rather than expand, the budget for intake.

It appears, however, that OHR may have done the opposite of what our testimony and the testimony of other organizations and advocates have suggested. Instead of streamlining the intake unit, which would free up funding to improve OHR in other areas (such as providing much needed training of staff on discrimination and housing law), OHR is proposing to increase funding for intake from the \$354,000 approved in FY19 to \$475,000 for FY20, an increase of \$121,000 or nearly 34%.<sup>4</sup>

We urge this Committee to inquire as to whether OHR can and will make advocates' suggested changes to its intake process, and why OHR is currently proposing to increase the intake budget, given these suggested changes.

### **Fair Housing Investments – Not Cuts – Are Needed**

Simultaneously, OHR is proposing to *decrease* funding for its Fair Housing Program, from \$131,000 approved in FY19 to \$17,000 for FY20, a decrease of \$114,000, or 87%.<sup>5</sup> This decrease is concerning, especially given the issues we have highlighted of staff not understanding housing and discrimination law in the District. We expressed concerns both this year and last year that mediators have often encouraged tenants bringing housing complaints to

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<sup>3</sup> See February 20, 2018 responses of OHR to the Committee on the Judiciary and Public Safety's pre-hearing questions, at pgs. 2, 20, available at <http://dccouncil.us/wp-content/uploads/2018/10/JPS-Performance-Oversight-Responses-2018-OHR.pdf> (accessed 4/3/19).

<sup>4</sup> See [https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/hm\\_ohr\\_tables\\_2020m.pdf](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/hm_ohr_tables_2020m.pdf) (accessed 4/3/19).

<sup>5</sup> See *id.*

sign away their rights and move out of their rent-controlled units, with little to no compensation to the tenant from the landlord for the discrimination suffered by the tenant. We have provided examples of staff not understanding the nuances of reasonable accommodations and source of income discrimination, both fair housing issues. We suggested training for OHR mediators in D.C. housing law, and training for all staff in discrimination law as it relates to all substantive areas, including fair housing.

It is unclear, given these concerns, why OHR believes it should be decreasing its fair housing budget. We urge the Committee to inquire as to this cut, and how OHR proposes addressing the issue of competency in its staff on issues of fair housing, as well as other substantive areas of discrimination law.

### **The Council Should Ensure That Protections in the Language Access for Education Amendment Act Go into Effect in the Coming Fiscal Year**

We have previously testified that OHR is unable to hold the agencies who violate District residents' language access rights accountable in any meaningful way after making a finding of non-compliance under the current Language Access law.<sup>6</sup> OHR currently proposes "corrective actions" that agencies are supposed to implement on specific timelines, but which non-compliant agencies routinely ignore and/or make unilateral changes to, with little to no follow up from OHR to ensure compliance.

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<sup>6</sup> Legal Aid, as a member of the Language Access Coalition and as an organization that has brought language access complaints at OHR throughout the years on behalf of our clients, has testified about problems with enforcement of the Act, and the need for a change to the Language Access law to improve its enforcement mechanisms, repeatedly since at least 2009.

*See, e.g.,* 3/30/2009 Budget hearing for OHR at 4 (proposing amending the Act by creating a private right of action, thereby improving enforcement without regard to OHR's budget) <https://www.legalaiddc.org/wp-content/uploads/2013/10/JHatton3-30-09.pdf> (accessed 4/4/19); 7/1/15 Testimony Supporting Language Access for Education Act of 2015 (laying out examples of how OHR's issuance of corrective actions has been ineffective, and proposing a private right of action be created), <https://www.legalaiddc.org/wp-content/uploads/2015/07/mdonahue7.1.15.pdf> (accessed 4/4/19); 5/8/17 Testimony Supporting Language Access for Education Act of 2017 (laying out in detail problems with OHR's enforcement of the language access act through the issuance of corrective actions, and proposing adding teeth to the law to strengthen enforcement), <https://www.legalaiddc.org/wp-content/uploads/2017/05/MDonahue-5.8.17.pdf> (accessed 4/4/17); 2/22/18 Performance Oversight Regarding OHR Testimony at 6 (providing an example of OHR's corrective actions enforcement gone wrong), <https://www.legalaiddc.org/wp-content/uploads/2018/02/Legal-Aid-Performance-Oversight-Testimony-re-OHR-FINAL.pdf> (accessed 4/4/19); 2/28/19 Performance Oversight Hearing for OHR at 5 (noting that, once funded, the Language Access for Education Amendment Act will resolve some of the enforcement issues outlined in Legal Aid's 2018 testimony at OHR), <https://www.legalaiddc.org/wp-content/uploads/2019/02/Legal-Aid-FY18-19-OHR-Oversight-Testimony-FINAL.pdf> (accessed 4/4/19).

This problem could be addressed with the implementation of the Language Access for Education Amendment Act, which contains a fine structure that would help OHR carry out meaningful enforcement of the law. We, along with fellow members of the DC Language Access Coalition urge the Committee to look for ways to fund the Act in FY20. At the very least, the Council should ensure the immediate implementation of the fine structure for the upcoming fiscal year.

### **Conclusion**

In conclusion, Legal Aid asks that this Committee inquire as to why OHR is proposing a drastic cut to its fair housing budget, and a significant increase to its intake budget, given concerns that have been raised both this year and last year that suggest that the opposite changes need to be made to improve OHR's ability to effectively address discrimination complaints. We also ask that the Council ensure, at the very least, that the fine structure of the Language Access for Education Amendment Act of 2018 is implemented in FY20 so that enforcement of the Language Access Act can immediately improve.