

**Testimony of Alexis Christensen
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**Before the Committee on Government Operations and Facilities
Council of the District of Columbia**

Budget Oversight Hearing Regarding the Office of Administrative Hearings

March 25, 2022

The Legal Aid Society of the District of Columbia¹ submits the following testimony regarding the Mayor’s proposed Fiscal Year 2023 budget for the Office of Administrative Hearings (OAH). The COVID-19 pandemic broadened our collective understanding of what agencies like OAH could accomplish with limited budgets. OAH pivoted from in-person operations to fully remote operations in the span of a few months and has continued to offer remote hearings, and eventually, limited in-person options, this past year. The agency’s efforts to serve District residents seeking administrative justice in critical safety-net benefit programs should be commended. However, the pandemic also exposed gaps in OAH’s technology, information technology (IT) staffing, language access services, and stalled implementation of a project to provide the public with a searchable public portal for OAH Final Orders. As the District reflects on lessons learned during the pandemic, we urge the Council to adopt the following recommendations for investment at OAH.

The District Should Increase Funding for Key Information Technology Initiatives at OAH

The District must provide OAH with the funding it needs to invest in permanent remote access technology to allow litigants – especially low-income litigants and litigants who are elderly or disabled – to access the hearings process from home while seeking resolution to administrative agency decisions. The pandemic has taught us that OAH can administer justice fairly and

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 is the oldest and largest general civil legal services program in the District of Columbia. Over the last 90 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

efficiently using remote technology while providing litigants with access to the agency through phone and video hearings.

We also commend OAH for its responsiveness to stakeholders' calls for an electronic filing system. OAH will launch a beta test in April 2022, which will allow litigants to file cases electronically in unemployment compensation cases.

These accomplishments are laudable; however, we recommend that the Committee increase funding for OAH to:

1. Support the continuation of remote hearings by telephone and video,
2. Invest in a searchable public portal for Final Orders, and
3. Funding at least one Information Technology full-time position at OAH.

Increase Funding for Remote Hearing Technologies

While previously offering in-person hearings by default, and remote hearings only rarely upon request, the COVID-19 pandemic fundamentally changed OAH's conception of how to conduct administrative hearings in the District. For the past two years, OAH has conducted, and continues to conduct, hearings using the WebEx platform via telephone (and sometimes video). In October 2021, OAH expanded hearing options to include in-person hearings by request.

Legal Aid's clients have expressed appreciation for remote access to OAH hearings during the pandemic as many individuals experience barriers to traveling downtown to Judiciary Square, including inflexible work schedules, childcare and eldercare responsibilities, physical impairments, and difficulty accessing or being able to afford public transportation or parking. As we testified at the OAH's most recent Performance Oversight Hearing, greater flexibility allows litigants to meaningfully participate in their hearing in a manner most convenient for them and may even increase attendance rates for hearings.² Video hearings are particularly valuable to Limited and Non-English Proficient (LEP and NEP) litigants who request language interpretation at a hearing. Being able to see the interpreter's gestures or understanding when a speaker is pausing for interpretation. These cues help LEP and NEP litigants fully participate in their hearing. For similar reasons, video hearings are valuable to individuals with varying physical and mental abilities.

² See Legal Aid Testimony Regarding Performance Oversight for the Office of Administrative Hearings, February 10, 2022, available at <https://www.legalaiddc.org/wp-content/uploads/2022/02/Testimony-before-the-Committee-on-Government-Operations-Facilities-regarding-the-OAH.pdf>.

At the OAH Oversight Hearing on February 10, 2022, Chief Judge Colleen Currie agreed to maintain remote hearings at OAH despite any changes to OAH's in-person operational status.³ To support the goal of providing litigants with access to administrative justice, we ask that the Committee confirm that continued remote hearing access is funded in the proposed FY23 budget. Further, we urge the Committee to approve an increase in funding to support the greater availability of video technology for remote and hybrid hearings.

Invest in and Timely Implement a Searchable Public Portal for Final Orders

Public access to OAH Final Orders is not a luxury, it is a mandate in law. DC Code § 2-1831.13 provides that “all documents filed in any case before the Office [OAH] shall be available to the public for review unless a statute, protective order, or other legal requirement prohibits disclose.”⁴ OAH has yet to publish any Final Orders for jurisdictions like the Department of Human Services, the Department of Health Care Finance,⁵ or the Department of Employment Services. Barring any legitimate reason to not disclose OAH decisions, OAH is required by law to publish Final Orders in all jurisdictions.

In addition to being a requirement of law, publishing Final Orders also enhances agency accountability and transparency. As discussed in our OAH Oversight Testimony, the publication of Final Orders will build trust among OAH's constituencies.⁶ It will also give representatives the ability to adequately prepare for hearings at OAH. Without access to OAH's past decision, representatives must use guesswork as to how to zealously advocate on behalf of their clients.

OAH's FY21-FY22 Year to Date Oversight Pre-Hearing responses state that the agency “will work with the Office of the Technology Officer (OCTO) and Journal Technologies (JTI) to determine the level of effort and procurement state of work...for a searchable public database with OAH Orders.”⁷ This is an insufficient goal for FY23 as OAH can – and should – do more to make progress on this important project. For several years, stakeholders and litigants have requested access to a searchable public portal for Final Orders and while OAH continues to maintain that the project is underway, there has been limited progress on the project to date. We strongly urge the Committee to work closely with OAH to set a concrete and detailed timeline,

³ See Oral Testimony by Chief Judge Currie at the OAH Oversight Hearing before the Committee on Government Operations and Facilities, February 10, 2022, *available at* http://dc.granicus.com/ViewPublisher.php?view_id=53.

⁴ DC Code § 2-1831.13, <https://code.dccouncil.us/us/dc/council/code/sections/2-1831.13>.

⁵ See 42 CFR § 431.244(g). Details the requirement that the public have access to all Medicaid agency hearing decisions subject to certain conditions.

⁶ See, *supra*, note 2.

⁷ The Office of Administrative Hearings FY 22 Performance Oversight Questions before the Committee on Government Operations and Facilities, 10, February 2022, *available at* <https://dccouncil.us/wp-content/uploads/2022/02/Pre-Hearing-Responses-OAH.pdf>.

budget, and implementation benchmarks this budget season to ensure the project is funded and ready to implement during FY24.

As discussed in detail below, OAH is restrained in its capacity to take on major projects due to staffing vacancies and limited current staff capacity. OAH must designate one staff person to direct the searchable portal project, as well as an additional staff person to support the project director's work. The Committee should ensure that there is sufficient funding for both of these positions. OAH needs increased bandwidth to ensure the agency meets its obligations set out in the DC Code regarding disclosure of public documents.

Increase Funding for at Least One (1) Additional Full-Time Employee
Information Technology Position

Currently, OAH has two funded Information Technology (IT) positions to serve 100 Full-Time Equivalents (FTE).⁸ The IT personnel to employee ratio is not sustainable even when both positions were filled—and until recently, *both* IT positions were vacant.⁹ As of March 24, 2022, only one IT position has been filled. OAH acknowledges that “the demand on those two [IT] positions has exceeded their capacity, which has in some circumstances negatively impacted case and workflow.”¹⁰ Even when both IT positions were filled, OAH struggled to move forward key technology projects like the searchable portal for Final Orders due to limited IT capacity. The agency is not appropriately staffed for its caseload and operational needs.¹¹ OAH is going through “a digital transformation” which requires additional IT support staff.¹² Regardless of when this digital transformation reaches completion, the overextended IT staffing issue remains. The OAH IT staff must have the capacity to both maintain existing systems and support new initiatives. Two FTE positions are not enough to accomplish OAH's obligations.

Additionally, OAH's current budget includes one IT position titled “Information Technology Specialist,” with a starting salary is \$52,080.¹³ Though the qualifications and duties of the

⁸ The District of Columbia, *FY 2023 Proposed Budget and Financial Plan, Vol. 2 Agency Budget Chapters – Part 1*, Submitted to the Council of the District of Columbia by the Government of the District of Columbia Muriel Bowser, Mayor, 482, March 16, 2022, available at <https://app.box.com/s/bzjtghnj6tsfqxvllleob88r41k7lildf>.

⁹ *See, supra*, note 3.

¹⁰ The Office of Administrative Hearings FY 22 Performance Oversight Questions before the Committee on Government Operations and Facilities, 62, February 2022, available at <https://dccouncil.us/wp-content/uploads/2022/02/Pre-Hearing-Responses-OAH.pdf>.

¹¹ *Id.* at 60.

¹² *Id.*

¹³ *Id.* at 69.

position are not clear,¹⁴ OAH must be able to attract and retain IT professionals with competitive salaries and reasonable workloads. The Committee should increase resources for IT so that OAH can hire at least one (1) additional IT professional at an increased salary. It is crucial to ensure OAH has the resources it needs to provide vital services to staff and move forward with important technology projects.

OAH Should Continue to Prioritize Language Access

Per the DC Language Act of 2004,¹⁵ the DC Office of Human Rights (OHR) reviews and monitors District government agencies' language access programs. OHR conducts annual assessments based on agency-reported data to determine whether the agencies are in compliance with the obligations set forth in the DC Language Access Act. These assessments center around LEP and NEP individual's access to agency services.¹⁶ We recognize that OAH received an eleven out of eleven overall score on OHR's 2020 Annual Compliance Review for language access programming.¹⁷ However, there are still gaps in services that must be addressed, especially for Amharic speakers with limited English proficiency. For instance, though the Amharic language is the second most requested language at OAH,¹⁸ in FY22, OAH did not contract with an Amharic interpreter service. In FY20, OAH reported 228 encounters with Amharic speakers.¹⁹ At a recent hearing with a Legal Aid client, an Amharic interpreter did not show up and the Administrative Law Judge (ALJ) had to call Language Line Solutions for Amharic interpretation. Although Language Line Solutions provides interpretation on short notice, not all Language Line interpreters are professionally trained to interpret legal matters. In contrast, per OAH's Language Access Policy, the agency will "exclusively use professional and qualified interpreters to interpret for LEP/NEP persons..."²⁰ Quality interpretation is critical to a LEP and NEP litigant meaningfully participating in their case. Situations like the one described above could have been avoided if OAH had a contract with an Amharic interpreter service.

¹⁴ The position was not listed on the DC Government Career Opportunities as of March 24, 2022.

¹⁵ DC Mun. Regs. tit. 4 §§ 1200-1299 (2014).

¹⁶ *Id.* at § 1214.

¹⁷ DC Office of Human Rights, 2020 Language Access Program Annual Compliance Review Report, December 2021, *available at* https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/v4%20OHR_Language_Access_Report_Dec2021%20%28002%29.pdf.

¹⁸ As reported in a March 23, 2022 email from the OAH Language Access Coordinator. The data represents Amharic language encounters in FY 20.

¹⁹ *Id.*

²⁰ DC Office of Administrative Hearings, Language Access Policy, OAH Policy No.: 21-003, June 30, 2021.

Because Amharic is the second most encountered language at OAH (the first being Spanish), we recommend that Committee and OAH leadership work together to ensure that there are sufficient funds in the FY23 budget for Amharic language interpreter services. We thank OAH for contracting with Spanish and Sign Language interpretation services in FY22 and encourage the Committee to increase funding for Amharic language interpreters at OAH. OAH should continue to expand its language services to ensure all LEP and NEP litigants have access to sufficient language services. We ask the Committee to increase OAH's local funding so that OAH can build greater Amharic interpretation capacity.

OAH Should Continue to Invest in Assisting *Pro Se* Litigants

One of the main ways OAH fulfills its duty to assist *pro se* litigants is through the OAH Resource Center. The Resource Center is a self-help center that provides legal information and referrals to *pro se* litigants and for the past years has operated remotely.²¹ It is *pro se* litigants' main contact for assistance with their cases, and between March 2021 and the present, OAH reports over 700 contacts with individuals through the Resource Center.²²

We commend OAH for responding to stakeholders' requests to fully fund the Resource Center Coordinator position, and more recently, for filling a Program Analyst position dedicated to the Resource Center. We hope that OAH will continue to maintain funding for these positions, and further, that it will look for ways to continue to build the capacity of the Resource Center to serve *pro se* litigants. The Resource Center is a critical component of maintaining access to justice at OAH, and as such, must be fully funded.

Conclusion

We appreciate the opportunity to testify before this Committee on OAH's proposed budget. We look forward to continuing to work with this Committee and OAH to ensure that the FY23 budget provides litigants with access to justice at OAH. We will be happy to answer any questions you may have.

²¹ Office of Administrative Hearings, OAH Resource Center, *available at* <https://oah.dc.gov/service/oah-resource-center>.

²² *Id.* at 39.