



ACCESS DENIED

THE UNFULFILLED PROMISE OF THE D.C. LANGUAGE ACCESS ACT



DC | Language Access Coalition

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"Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination." J. Douglas, in *Lau v. Nichols*, 414 U.S. 563, 569 (1974) (quoting 110 Cong. Rec. 6543 (Sen. Humphrey, quoting from President Kennedy's message to Congress, June 19, 1963)).

"I truly believe that the Language Access Act of 2004 is a clear demonstration of the successful efforts of the Mayor's administration, District Council, and the LEP population working together to formulate and implement an innovative and groundbreaking plan. This plan . . . will ensure that all District of Columbia residents, including those who are of limited English proficiency, shall be able to access the services and programs that are available to them." Kenneth Saunders, former Director of the D.C. Office of Human Rights, Remarks at the Brookings Institution Mayor's Forum on the D.C. Language Access Act (June 21, 2004).

"The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue." *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923).

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ABOUT THE CONTRIBUTORS

This Report was written by the American University Washington College of Law Immigrant Justice Clinic, based on information and data collected by the D.C. Language Access Coalition.

AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW IMMIGRANT JUSTICE CLINIC

The Immigrant Justice Clinic (IJC) is one of eleven law clinics within the Clinical Program at American University Washington College of Law (WCL). The Clinical Program is designed to give law students the opportunity to represent real clients with real legal problems. The Student Attorneys take on the responsibility of handling litigation, negotiation, and addressing pressing legal issues with institutional clients in order to learn practical lawyering skills. Student Attorneys in the IJC work in teams under the supervision of a full-time faculty member. The IJC provides representation on a broad range of cases and projects involving individual immigrants and migrants, and their communities, both in the D.C. metropolitan area and overseas. Students Attorneys in the IJC regularly appear in Immigration Court, and may also appear before federal district court, the courts of Maryland and D.C., and before federal and state agencies. Since migration has a transnational dimension, the IJC occasionally advocates before regional and international bodies.

IJC's work on the Report falls under its focus area on civil rights for immigrants, one of four broad substantive areas that the Clinic targets in its caseload. The other substantive areas include: immigrant deportation defense and immigration detention; immigrant workers' rights; and immigration, gender, and sexual orientation. The docket of the IJC is structured to develop students, skills and values needed to be effective immigrants' rights practitioners, while also responding to the unmet legal needs of the client community.

D.C. LANGUAGE ACCESS COALITION

The D.C. Language Access Coalition (DCLAC) was created under the D.C. Language Access Act of 2004 to aid in implementation of the law. DCLAC is an alliance of more than 40 community-based organizations and civil rights organizations, which all provide services to D.C.'s African, Asian, and Latino Communities. In 2007, DCLAC hired its first Director, Jennifer Deng-Pickett. In 2009 Jennifer co-directed DCLAC with the then Deputy Director, Patrick Coonan. After Jennifer left DCLAC in early 2010, Patrick and Sapna Pandya co-directed DCLAC until Patrick transitioned out in 2011. DCLAC is now headed by an Executive Committee, currently composed of seven members of the Coalition. The activities and advocacy of the Coalition, and its committees, are coordinated by Tereguebode Goungou. DCLAC works to ensure that the D.C. Language Access Act is fully implemented and that all LEP/NEP individuals can equally access public services, programs, and activities by receiving translation and interpretation services in their native languages.

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LIST OF ACRONYMS USED

BLAP	Biennial Language Access Plan
CSSD	District of Columbia Child Support Services Division
DCLAC	District of Columbia Language Access Coalition
DOH	District of Columbia Department of Health
DHS	District of Columbia Department of Human Services
DOES	District of Columbia Department of Employment Services
DCHA	District of Columbia Housing Authority
DCPS	District of Columbia Public Schools
DCRA	District of Columbia Department of Consumer and Regulatory Affairs
FEMS	District of Columbia Fire and Emergency Medical Services
FOIA	Freedom of Information Act
HSEMA	District of Columbia Homeland Security and Emergency Management Agency
HUD	U.S. Department of Housing and Urban Development
IJC	Immigrant Justice Clinic
LEP	Limited English Proficient
MPD	Metropolitan Police Department of the District of Columbia
NEP	No-English Proficient
OAA	District of Columbia Mayor's Office on African Affairs
OAPIA	District of Columbia Mayor's Office on Asian and Pacific Islander Affairs
OHR	District of Columbia Office of Human Rights
OLA	District of Columbia Mayor's Office on Latino Affairs
OTA	District of Columbia Office of the Tenant Advocate
WCL	Washington College of Law, American University

EXECUTIVE SUMMARY

In recent decades, the Washington, D.C. metropolitan area has emerged as an important gateway city for immigrants arriving in the U.S. These immigrants hail from all corners of the world, and have significantly enhanced the cultural and language diversity of the nation's capital. The District of Columbia is now home to tens of thousands of limited English proficient and non-English proficient (LEP/NEP) persons; countless other LEP/NEP individuals are employed in D.C., do business here, or otherwise interact with the city government. To facilitate access to D.C. government services, programs, and activities by LEP/NEP persons, eight years ago the city enacted the D.C. Language Access Act of 2004 (the Act), a comprehensive language access law that imposes affirmative obligations upon nearly all D.C. government agencies. Among its core requirements, the Act mandates that "covered entities" provide oral translation services for any non-English language, and that vital documents be translated into languages that meet certain numerical thresholds. The Act imposes additional structural and reporting requirements on agencies that have significant public contact. Compliance with the Act and its regulations is overseen by the D.C. Office of Human Rights (OHR), which also administers a complaint procedure for individuals whose language access rights have been denied.

The Act is part of a line of legislation designed to offer greater government access to national origin and language minorities. Title VI of the Civil Rights Act of 1964, an important piece of federal legislation in this line, states that "[no] person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance."¹ In *Lau v. Nichols*, the U.S. Supreme Court clarified that discrimination based upon language ability is often a form of discrimination based upon national origin, therefore violating the Civil Rights Act.² In 2000, President Clinton reaffirmed the importance of language access in Executive Order 13166, and in the years that followed, several cities — including San Francisco, Oakland, New York City, and Washington, D.C. — enacted language access laws.

This Report offers an assessment of the D.C. government's compliance with the Act, now eight years after the law's passage. DCLAC surveyed 258 LEP/NEP individuals who live or work in the District of Columbia to gauge their

experiences seeking services at city agencies. DCLAC also evaluated agency compliance with the Act through in-person and telephonic testing, and by reviewing agency websites. Additionally, IJC reviewed Biennial Language Access Plans prepared by city agencies and submitted Freedom of Information Act (FOIA) requests to obtain additional data. This research uncovered substantial deficiencies in the efforts of agencies to comply with the Act. Although a handful of agencies have embraced the Act, many more struggle with offering even the most basic interpretation services and with translating vital documents. Many of the Report's findings differ from the government's own internal assessment of its compliance with the Act. Some specific findings are as follows:

Community Member Profiles and Language Access Experiences

The surveys conducted for this study confirmed the rich linguistic and cultural diversity that exists within the District of Columbia. Unfortunately, the surveys also revealed that a majority of the LEP/NEP community members experienced some kind of language access difficulty at an entity covered by the Act.

- The District of Columbia is home to remarkable national origin and language diversity. Community members surveyed hailed from 25 different countries, and primarily spoke ten languages, including: Amharic, Arabic, Burmese, Chinese (Mandarin and Cantonese), French, Korean, Spanish, Tigrinya, Tagalog, and Vietnamese. In addition, community members reported they were comfortable speaking 13 other languages, in a variety of combinations, including: Bambara, Ewe, Fujianese, German, Greek, Guragigna, Kabye, Kotokoli, Oromo, Portuguese, Russian, Somali, and Wolof. Testing was also conducted in Bengali. Therefore, this Report covers community members that speak and are comfortable with 24 different languages within the District of Columbia.
- Fifty-eight percent of the survey respondents reported some kind of language access difficulty at a covered entity in the District. Speakers of Asian languages reported such difficulties with the most frequency: 80 percent of Chinese-speaking respondents and 72 percent of Vietnamese-speaking respondents reported language access concerns.

- Among respondents that reported difficulty with language access at a covered entity, 74 percent noted the lack of adequate interpretation and 50 percent noted a lack of documents or signs in the respondent's language. Many reported multiple language access concerns.

Agency Determinations of Language Access Needs

Under the Act and its accompanying regulations, all covered entities are required to track the language needs of customers they serve or encounter or are likely to serve or encounter. "Covered entities with major public contact" under the Act are subject to more detailed tracking and reporting requirements. Although many agencies are beginning to make efforts to document language needs, few have adopted a comprehensive approach. Many data sources, such as those mandated by the Act — data collected by the District of Columbia Public Schools, data collected by and made available by District government offices that conduct outreach to LEP/NEP communities, data collected and made available by DCLAC, language-need data collected annually by the covered entities themselves, and any other language-related information — are not consulted.³ In addition, certain segments of the customer base are unaccounted for. The research revealed the following:

- Many entities rely on Language Line usage and intake or sign-in sheets to track language needs. Unfortunately, not all of the agencies appear to use a database or other electronic means to record this information. Therefore, it remains unclear how this information is compiled and tracked.
- Although many agencies are tracking the language needs of new customers, few have adopted a systematic approach to assessing the language needs of LEP/NEP individuals who are already "in the system."
- Few entities are consulting with the sources of data named in the Act. Consequently, while agencies may have data regarding the language needs of *some* of the individuals *currently* being served or encountered, few have comprehensive data regarding individuals *likely* to be served or encountered. The Metropolitan Police Department offers a positive example with its thorough approach to data collection.

Translation of Vital Documents and Signs

The Act requires agencies to translate their vital documents into any non-English language spoken by either (1) three percent of the population served or encountered, or likely

to be served or encountered, by the agency or (2) 500 individuals within the population served or encountered, or likely to be served or encountered, by the agency — whichever is less. The survey responses and testing consistently revealed non-compliance with this obligation, as follows:

- Of the 150 community survey respondents who reported some kind of language access difficulty at a covered entity, 30 percent cited a lack of translated documents, and 31 percent cited a lack of translated signage.
- Translation difficulties were most pronounced among the Amharic- and Vietnamese-speaking respondents. For example, among the Amharic speakers who encountered a language access difficulty, 41 percent reported a lack of translated documents.
- Where testers audited agency websites, to determine whether they could access vital documents and basic information in the tested language, about 70 percent were unable to access such information.
- Even agency self-reporting revealed a lack of consistent translation of vital documents. In particular, translation of documents into languages *other* than Spanish — such as Amharic, Korean, and Vietnamese — were relatively uncommon, partly since the agencies are not conducting research and analysis to determine which languages meet the three percent or 500 population requirement for translation pursuant to the Act.

Provision of Oral Language Services

The surveys and testing revealed that many covered entities failed to meet their obligation to provide oral language interpretation through the means of bilingual staff, in-person interpreters, and/or telephonic interpretation through Language Line. A significant discrepancy exists between agencies' self-reporting and the actual experiences of LEP/NEP individuals.

- Community survey respondents reported a range of interpretation-related issues, including the unavailability of bilingual staff and/or in-person interpreters, a long wait for an interpreter, and the failure to offer the use of telephonic interpretation services. Many reported a combination of these issues.
- Chinese- and Vietnamese-speaking respondents reported the most problems relating to interpretation. Of the Chinese speakers who reported facing some kind of language access difficulty, 64 percent cited interpretation issues. The proportion was 66 percent for Vietnamese speakers.

- Telephone testers generally had a poor experience with interpretation services. When testers were instructed to call the covered entity, only 40 percent were assisted in their tested language and/or offered telephonic interpretation services.

Training of Employees in Language-Access Related Competencies

The surveys and in-person testing revealed that many covered entities failed to meet their obligation to train employees in language access-related competencies and regarding their duties under the Act.

- While some employees at covered entities were helpful, many remain unaware of their obligations to provide language access services such as interpretation through resources such as Language Line, even if there are no bilingual personnel or interpreters employed at their agency.
- Many LEP/NEP individuals surveyed and several of the in-person testers reported encountering agency staff who appeared “irritated” or “annoyed” by the request for language services, and who treated the LEP/NEP individuals in a “rude” or “confrontational” manner.

Outreach to LEP/NEP Communities

The Report found that the outreach of covered entities with major public contact into the LEP/NEP communities generally complied with the obligations under the Act, although the depth of outreach varied greatly. Covered entities with major public contact conducted a variety of outreach events, targeting specific LEP/NEP communities in D.C., and informing these communities about available services.

- Some covered entities with major public contact detailed extensive and varied outreach into the communities while others were vague and noncommittal to outreach plans.

RECOMMENDATIONS

Based on the findings described above, this Report makes the following recommendations:

Recommendations Relating to Internal Agency Operations

1. Structure agency databases and files to allow for tracking of language needs.
2. Adopt a robust and transparent approach to determining language needs of customers and potential customers.

3. Work in consultation with the D.C. Language Access Coalition and the Mayor’s constituent offices for outreach and training purposes.
4. Ensure that all agency personnel who interface with members of the public are regularly trained on the Act, basic interpretation and translation protocols, use of in-person and telephonic interpretation services, availability of translated documents within the agency, and cross-cultural communication.
5. Redouble compliance efforts targeted to languages other than Spanish, particularly Asian and African languages.
6. Increase signage in non-English languages.
7. Ensure that recorded phone messages are accessible to LEP/NEP persons.
8. Upgrade agency websites to offer information in multiple languages.
9. Translate vital documents into all languages that meet the threshold for the covered entity. Further, ensure that each covered entity is conducting its own annual data collection and analysis to determine the language communities it serves, encounters, or is likely to serve or encounter.
10. Develop a more robust internal monitoring system within covered entities.

Recommendations Relating to Agency Oversight and Accountability

1. Promote greater accountability for agency compliance with goals set out in Biennial Language Access Plans (BLAPS).
2. Encourage collaboration and training across covered entities and highlight best practices.
3. Actively promote the hiring of bilingual staff across covered entities, and assess the language proficiency of existing bilingual staff.
4. Ensure that the Office of Human Rights reports on its own record of language access compliance.
5. Allocate sufficient funds at the citywide level to language access issues and needs.

Recommendations Relating to Enforcement

1. Streamline, standardize, and accelerate the Act’s language access complaint process.
2. Make the complaint process more accessible and transparent.
3. Record and document “informal” complaints against covered entities.
4. Create a private right of action and right to appeal under the Act.

HISTORY OF LANGUAGE ACCESS RIGHTS AND LEGISLATION IN THE UNITED STATES

Language diversity — and debates about language rights — have been features of U.S. history from colonial times to the present. Around the time the Declaration of Independence was signed, there were a number of non-English languages being spoken in the colonies — those of immigrants, trafficked slaves, and of the Native Americans.⁴ In the same era, language-related legislation emerged: John Adams, a proponent of English language standards and institutions, proposed a law in 1780 to create an official academy to “purify, develop, and dictate usage of” English in reaction to the diversity of languages. Ultimately, Congress refused to pass the law due to possible infringement upon private citizens’ individual Constitutional rights and liberties.⁵ In the many decades that have followed, the importance of language diversity, and the right to exercise language rights and access basic services, has been asserted through the courts and the legislature. The language access rights that exist today are not a novel concept, but rather a continuation of decades of jurisprudence recognizing their importance.

A major test to language rights emerged in the early 20th century, when growing nationalism led to laws prohibiting educational instruction in non-English languages, including German and Italian.⁶ In 1923, the Supreme Court held in *Meyer v. Nebraska* that such restrictions in educational settings violated the 14th Amendment’s Due Process Clause.⁷ In *Meyer*, a teacher had been charged with violating a Nebraska law restricting non-English languages as a medium of study by allowing a student to read the Bible in German.⁸ The Court recognized Nebraska’s desire for all of its citizens to speak English, but held that “this cannot be coerced by methods which conflict with the Constitution.”⁹ The Court ultimately affirmed that “[t]he protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue.”¹⁰

Language issues rose to the fore again in the 1960s, during the civil rights movement. During this time, the seeds of the modern language access movement were sown. In passing the Civil Rights Act of 1964, Congress recognized the existence of segregation and discriminatory policies in entities that were receiving federal funding. Title VI of the

Civil Rights Act clarifies that “[no] person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance.”¹¹

Title VI of the Civil Rights Act was explicitly extended to language access rights following the U.S. Supreme Court decision in *Lau v. Nichols*.¹² In *Lau v. Nichols*, Chinese-speaking students brought a class action lawsuit against members of the San Francisco school board, alleging unequal educational opportunities due to their limited English proficiency.¹³ The Court determined that discrimination based on language ability is, in essence, discrimination based on national origin, and therefore violates the Civil Rights Act.¹⁴ Agencies receiving federal funding who fail “to take affirmative steps to provide ‘meaningful opportunity’ for limited English proficient (LEP/NEP) individuals to participate in its programs and activities violates the recipient’s obligations under Title VI and its regulations.”¹⁵

President Bill Clinton reaffirmed the federal government’s commitment to providing access to federally-funded programs and services, regardless of the language spoken by an individual. In 2000, President Clinton issued Executive Order 13166, which requires recipients of federal funding to “take reasonable steps to ensure meaningful access to their programs and activities by LEP persons” by developing access plans, drafting related agency guidance, and consulting with stakeholders.¹⁶ The administration of



Chinese American schoolchildren in San Francisco were at the center of the 1974 Supreme Court case *Lau v. Nichols*, which extended Title VI of the Civil Rights Act’s protection against national origin discrimination to include a prohibition against discrimination based on language ability. Photo courtesy of the San Francisco History Center, San Francisco Public Library.

President Barack Obama recommitted to these language access obligations in February 2011 with a memorandum produced by the Office of the Attorney General.¹⁷ The memorandum urged agencies to take a number of steps, including establishing Language Access Working Groups, evaluating protocols regarding LEP/NEP individuals, enhancing the ability of staff to interact with LEP/NEP individuals, and more.¹⁸

STATE-LEVEL LANGUAGE ACCESS LAWS AND ORDINANCES

Various language access laws have been enacted across the United States at both the state and local levels in the past decade, reflecting a growing awareness that without legislation, discrimination based upon national origin continues to occur against LEP/NEP communities. The D.C. Language Access Act of 2004 (the Act) is only one such language access law, and mirrors the requirements found in many other jurisdictions. Most language access laws incorporate the same core requirements to ensure access to basic services regardless of English language proficiency. Overall, language access laws respond to the presence of large LEP/NEP immigrant communities. The laws codify the jurisdiction's recognition that basic services should not be denied or hindered due to language barriers. Generally, each of these laws requires interpretation services and the translation of vital documents. The languages targeted by the laws tend to be based upon a percentage of the population of the area that speaks certain languages and therefore varies by jurisdiction. Usually, there is some type of oversight mechanism, where agencies either report on compliance or describe how they will adhere to the law. Also, an office or department is designated to streamline the enforcement of the language access laws. This Report focuses on some of the earlier language access laws in the cities of San Francisco, Oakland, New York, and the State of Hawaii, but notes that the list is not comprehensive.¹⁹

Enacted in April 2001, San Francisco's Language Access Ordinance (LAO) was the first comprehensive language access law requiring city departments to provide services in non-English languages.²⁰ The LAO defined languages covered by the ordinance as those spoken by a "substantial number" of LEP/NEP persons using a given department's services; a "substantial number" exists when 10,000 LEP/NEP residents, five percent or more of the clients served by the department, or five percent of the residents of the

supervisory district in which the department's offices are located, speak a shared language other than English.²¹

San Francisco's LAO classifies city agencies in a two-tier system, with Tier 1 agencies held to higher standards due to their closer contact with LEP/NEP individuals (as described below, the Council of the District of Columbia adopted a similar approach in the Language Access Act). Under the LAO, Tier 1 departments are required to provide information and services in each language meeting the "substantial number" requirement.²² All Tier 1 departments must notify LEP/NEP individuals, in their native language, of their rights to request services in another language.²³ Tier 1 departments are also required to post notices in public areas in the relevant languages, ensure translations are accurate and appropriate for the target audience, and designate a staff member to be responsible for accurate translations and appropriate standards.²⁴ These Tier 1 departments are also required to translate written materials providing vital information to the public regarding its services or programs.²⁵ In contrast, Tier 2 departments must only translate public-posted documents providing information (a) regarding department services or programs, or (b) affecting a person's access to benefits or services.²⁶ Additionally, as long as city officials are given notice, San Francisco residents are also able to request interpretation at city meetings.²⁷ The LAO holds city departments accountable by requiring them to report on how they determined what languages meet the "substantial number" threshold and on how they otherwise complied with the LAO.²⁸ In response to 2006 survey results that 45 percent of San Francisco residents were foreign-born and speak more than 28 languages, the LAO was amended in 2009 to expand its scope.²⁹

The second city to pass a language access law was also in California. Oakland passed the "Equal Access to Services Ordinance" on May 8, 2001.³⁰ The ordinance sought to establish equal access to city services and programs by requiring departments to offer bilingual services and materials if a substantial portion of the public utilizing city services is LEP/NEP.³¹ The ordinance requires the city to comply with set standards and rules.³² For example, departments are required to utilize sufficient bilingual employees in order to provide information and services in each language spoken by a "substantial number of Limited English Speaking" persons.³³ A "substantial number" is defined as at least 10,000 residents who speak a shared language other than English. The City of Oakland is required to determine annually which languages reach this threshold.³⁴

Furthermore, the ordinance requires the City of Oakland to translate and adequately stock certain documents that provide vital information to the public, including brochures, outreach materials, applications for services, written notices for fines or rights, and complaint forms.³⁵ In addition, the city must provide oral interpretation of any public meeting or hearing if given 48 hours' notice.³⁶ City departments are required to maintain recorded telephonic messages in each "substantial number" language.³⁷ Among other duties, the city is required to publicize bilingual job openings in non-English languages, and to submit annual compliance plans to the City Manager.³⁸

Frustrations with Oakland's inadequate compliance with the Equal Access to Services Ordinance were brought to the courts in September 2008. Two lawsuits were filed against the city of Oakland to compel compliance with its obligations to provide basic services to more than 70,000 LEP/NEP residents.³⁹ On February 16, 2011, the City of Oakland settled both lawsuits and agreed to fulfill its obligations under the ordinance.⁴⁰ Advocacy groups expressed that the success of the settlement will ensure that "basic and potentially life-saving city services" are not denied to LEP/NEP persons.⁴¹

The City of New York passed the Equal Access to Human Services Act of 2003 two years after San Francisco and Oakland passed language access laws.⁴² The law requires the city's Human Resource Administration (HRA) to provide free language assistance services to LEP/NEP individuals seeking to enroll in critical safety-net programs and services, such as Medicaid and food stamps, at HRA sites.⁴³ The law also mandates translation of documents into the following covered languages: Arabic, Chinese, Haitian Creole, Korean, Russian, and Spanish.⁴⁴ On July 22, 2008, Mayor Bloomberg issued Executive Order No. 120, extending language access requirements to all agencies that provide direct public services, but gave flexibility to agencies to determine appropriate language assistance.⁴⁵ The Executive Order required that the policies and implementation plans include certain core elements: identification and translation of essential public documents, telephonic interpretation services, and posting of conspicuous signage relating to the provision of agency language services, among others.⁴⁶

On August 11, 2009, Legal Services NYC filed a lawsuit on behalf of six low-income New Yorkers who alleged their

access to benefits were denied or delayed because of language barriers, in violation of the New York law.⁴⁷ The plaintiffs sought declaratory judgments that their rights had been violated, along with an injunction ordering the agency to abide by the laws and to award retroactive benefits and damages.⁴⁸ As of the date of this publication, the case remains under review.⁴⁹

The most recent language access law discussed in this Report also has the largest scope. In 2006, the State of Hawaii passed Act 290 to ensure that LEP/NEP individuals have equal access to state-funded services.⁵⁰ The Hawaii law applies to all state agencies and entities receiving state funding.⁵¹ These agencies and entities are required to establish language access plans, provide reasonable oral language services that are competent and timely, and provide written translation of vital documents for LEP/NEP groups making up five percent or 1,000 individuals of the eligible population, whichever is less.⁵² Act 290 also established an Office of Language Access to monitor compliance and a Language Access Advisory Council to advise the state on implementation.⁵³ To help state agencies determine the level of assistance required, the Act provides a four-factor test: (1) the number or proportion of LEP/NEP persons served or encountered in the eligible service population; (2) the frequency with which LEP/NEP persons come in contact with the services, programs, or activities; (3) the nature and importance of the services, programs, and activities; and (4) the resources available to the State or covered entity, and the costs.⁵⁴ This test is similar to the one used by recipients of federal funding to determine language access requirements under Title VI of the Civil Rights Act of 1964. As described below, a similar test appears in the D.C. Language Access Act.

In the first year of implementation, the Office of Language Access developed a reporting tool, ensured all state agencies submitted initial language access plans, and established a LEP/NEP complaints procedure.⁵⁵ Hawaii's language access act was amended in 2008, to state explicitly that the law expects effective and timely communication between state agencies and LEP/NEP individuals.⁵⁶ In addition, Hawaii has designated August as Language Access Month to "promote awareness of language access for government services and emphasize the importance of and need for language access in Hawaii's diverse society."⁵⁷

HISTORY OF THE D.C. LANGUAGE ACCESS ACT

The D.C. Language Access Act of 2004 followed federal and District legislation aimed at protecting the rights of LEP/NEP individuals. Earlier D.C. legislation laid the groundwork for the Act. In 1976, the D.C. Council enacted the “Spanish Language Laws,” which required the D.C. Mayor to provide D.C. residents with Spanish translations of D.C. publications relating to health, safety, and welfare.⁵⁸ In 1977, the D.C. Council passed the Bilingual Translation Services Act, which required any D.C. agency with more than 500 employees to appoint a Spanish language program coordinator to ensure that Spanish-speaking LEP/NEP persons would have equal access to services and programs offered by D.C. agencies.⁵⁹ However, D.C. agency compliance with the two laws was negligible, evidenced by the fact that the Council did not hold a compliance hearing until 2002, nearly 30 years after the laws were passed.⁶⁰

On April 21, 2004, Mayor Anthony Williams signed and enacted the District of Columbia Language Access Act. At its core, the Act requires virtually all D.C. government agencies, departments, and programs to provide oral language services for LEP/NEP individuals. In addition, agencies must also translate their agency’s vital documents into other languages when certain population thresholds are met.⁶¹

The Act has been an important step in helping immigrant and LEP/NEP communities navigate unfamiliar educational, legal, and cultural systems.⁶² Often, these populations are the ones that depend most on the guidance and services provided by the government.⁶³ Eight years after its passage, the Act remains vitally important in D.C. given the significant numbers of LEP/NEP persons who are living in the District or interface with D.C. agencies.⁶⁴

HISTORY OF THE D.C. LANGUAGE ACCESS COALITION

The D.C. Language Access Coalition (DCLAC) is an alliance of diverse community-based organizations that serves in a consulting role on the implementation of the Act.⁶⁵ DCLAC is provided for in the Act as a non-partisan, consultative third-party organization that collaborates with the Office of Human Rights, the D.C. Mayor’s constituent



The D.C. Language Access Act was signed into law by Mayor Anthony Williams in 2004, in the presence of members of the D.C. Language Access Coalition.

offices [Office on Latino Affairs (OLA), the Office on Asian and Pacific Islander Affairs (OAPIA), and Office on African Affairs (OAA)], and other entities to monitor D.C. government agencies’ compliance with, and implementation of, the Act.⁶⁶ DCLAC assists OHR and other D.C. government agencies in data collection, development of their language access plans (described in more detail below), identification of other entities that should be covered under the Act due to substantial contact with the public, and overall implementation of the Act.⁶⁷ Currently, the Coalition’s work falls into four predominant areas: (1) building advocacy capacity; (2) advocating for language policy improvements with the D.C. government; (3) developing community outreach and education programs on language access; and (4) creating internal processes to enhance the Coalition’s capacity. DCLAC has prioritized four government services areas that are of critical importance to immigrant and LEP/NEP communities — healthcare, human services, housing, and education.⁶⁸ Since December 2010, DCLAC has been hosted by Many Languages One Voice, a federally recognized 501(c)(3) non-profit organization registered in Washington, D.C.

BASIC PROVISIONS OF THE ACT

The Act is codified in Title 2, Chapter 19, subchapter II of the D.C. Code, and is supplemented by regulations in Title 4, Chapter 12 of the D.C. Municipal Regulations, first published in June 2008. Like the San Francisco Law, the Act utilizes a two-tier structure by imposing a set of core obligations upon a broad range of “covered entities,” and then outlining additional requirements for “covered entities with major public contact.” Under the Act, a covered entity is defined as “any District government agency, department or program that furnishes information or renders services,

programs, or activities directly to the public or contracts with other entities, either directly or indirectly, to conduct programs, services, or activities.”⁶⁹ All covered entities must collect data annually about the languages spoken by actual and potential LEP/NEP customers, and all covered entities must capture the numbers of such customers who come into contact with the covered entity through a database and tracking applications.⁷⁰ Target languages

for covered entities’ customers are determined by the data they collect, and different types of oral language services are offered in those languages based upon the data, importance of the service, and resources.⁷¹

The Act requires all covered entities to provide both oral language services and written language services.⁷² Oral language services, via in-person or telephone interpretation, must be accessible in all languages.⁷³ To determine the type of oral language services a covered entity must provide (in-person interpretation, telephone interpretation, hiring of bilingual staff, etc.), each covered entity annually assesses oral language services needs based on: (1) number of LEP/NEP persons served; (2) frequency with which LEP/NEP persons come into contact with the entity; (3) importance of the service; and (4) available resources.⁷⁴ To determine the number of LEP/NEP persons served or likely to be served, the covered entities are to consult with U.S. Census Bureau data, other government data, and data from DCLAC.⁷⁵ If the overall findings suggest that additional personnel are required to meet oral language service needs, the covered entity must hire bilingual personnel into existing budgeted vacant public contact positions.⁷⁶

Covered entities also must translate vital documents into any non-English language that is spoken by a population that constitutes three percent or 500 individuals, whichever is less, of the population that is served or encountered, or likely to be served or encountered, in D.C.⁷⁷ Vital documents are defined in the Act as “applications, notices, complaint forms, legal contracts, and outreach materials published by a covered entity in a tangible format that inform individuals about their rights or eligibility requirements for benefits and participation.”⁷⁸ In addition, covered entities must also place signs and posters promoting the availability of language services at points of



The D.C. Language Access Coalition was given a formal role under the D.C. Language Access Act, and is responsible for monitoring the law’s implementation and agency compliance.

entry and other public locations in languages spoken by a population that constitutes three percent or 500 individuals, whichever is less, of the population that is served or encountered by the covered entity.⁷⁹

The Act allows for noncompliance complaints to be filed with the D.C. Office of Human Rights (OHR). Any individual may “request an inquiry into individual or systemic non-

compliance with the Act.”⁸⁰ A person wishing to complain may either fill out a questionnaire in person at OHR or submit one via OHR’s website (available only in English).⁸¹ In addition, the person must write a statement, precisely identifying the parties and the actions he or she wishes to complain of.⁸² It is the role and responsibility of the Language Access Director, who is an employee of OHR, to investigate complaints and resolve alleged violations of the Act.⁸³

REQUIREMENTS OF COVERED ENTITIES WITH MAJOR PUBLIC CONTACT

The term “covered entity with major public contact” is defined as a covered entity whose primary responsibility consists of meeting, contracting, and dealing with the public.⁸⁴ Entities that are designated as such must fulfill the obligations of “covered entities” and satisfy several additional requirements. For example, covered entities with major public contact are required to designate a Language Access Coordinator on their staff.⁸⁵ A Language Access Coordinator supervises and coordinates a covered entity’s language access activities and any other language access related endeavors undertaken to comply with the provisions of the Act.⁸⁶ The covered entities with major public contact are required to conduct outreach into LEP/NEP communities.⁸⁷

Additionally, covered entities with major public contact are held accountable to OHR through biennial reporting of their compliance with the Language Access Act.⁸⁸ Biennial Language Access Plans (BLAPs) are created in consultation with the agency’s Language Access Coordinator,⁸⁹ the agency’s Director, the D.C. Language Access Director,⁹⁰

DCLAC, and other consultative agencies such as OLA, OAPIA, and OAA.⁹¹ Per the Act and its regulations, the following information must be reported in the BLAPs:

- Type of oral language services that the entity will provide and how the determination was reached;⁹²
- Title of translated documents that the entity will provide and how the determination was reached;⁹³
- Number of public contact positions⁹⁴ and number of bilingual employees in such positions, including the language spoken;⁹⁵
- Evaluation and assessment of the adequacy of the services to be provided, including assessment mechanisms;⁹⁶
- Description of the funding and budgetary sources upon which the covered entity intends to rely to implement the language access plan;⁹⁷ and
- Outreach plan for the D.C. LEP/NEP communities served or likely to be served and a plan to conduct cultural and linguistic competency trainings within the designated BLAP period.⁹⁸

To facilitate both agency reporting and ongoing compliance, the Act's regulations outline specific duties for the Language Access Coordinators designated within the covered entities with major public contact.⁹⁹ Their responsibilities include the following:

- Establish and implement the agency's BLAP;¹⁰⁰
- Issue a report on a quarterly basis to the D.C. Language Access Director regarding the agency's implementation of the BLAP;¹⁰¹
- Aid in preparing an annual report that details agency implementation of the Act within the fiscal year — detailing, *inter alia*, the number of LEP/NEP individuals encountered, a list of translated vital documents, oral language services offered, names of organizations that are contracted to provide language services, agency budget for language services, list of bilingual staff, and a list of contractors and grantees;¹⁰² and
- Receive reports of alleged violations of the Act and report them to the Language Access Director.¹⁰³

LANGUAGE ACCESS OVERSIGHT BY THE OFFICE OF HUMAN RIGHTS

The D.C. Office of Human Rights (OHR) has the duty to “provide oversight, central coordination, and technical assistance to covered entities in their implementation”

of the Act.¹⁰⁴ Vital to this mission is its role to report on covered entities' performance under the Act,¹⁰⁵ and to collect and publish statistical information regarding language access complaints.¹⁰⁶ To fulfill this mandate, the Act creates a Language Access Director position within OHR who is responsible for ensuring that covered entities fulfill the Act's requirements.¹⁰⁷ It further provides a broad mandate to the Language Access Director to review each covered entity's language action plan, track and investigate public complaints made against covered entities, and monitor the performance of Language Access Coordinators.¹⁰⁸ The Act's regulations offer guidance on what these oversight duties mean in practice.¹⁰⁹

The Language Access Coordinator of a “covered entity with major public contact” first meets with a representative from the Office of Human Rights, who advises the entity on how to complete the BLAP. Then, the Language Access Coordinator meets with a panel of consultative agencies, composed of representatives from the D.C. Mayor's Office on Latino Affairs, D.C. Mayor's Office on African Affairs, the D.C. Mayor's Office on Asian and Pacific Islander Affairs, and the D.C. Language Access Coalition. After this is completed, the Language Access Director ensures that the agencies are prepared to provide LEP/NEP persons with interpretation and translation services by meeting with each agency head and Language Access Coordinator prior to approving their BLAP.¹¹⁰ He or she ensures that each BLAP complies with the agency's responsibilities under the Act, and offers the agency the chance to correct any deficiencies in its proposed procedure.¹¹¹ The Language Access Director reviews the quarterly and annual implementation reports of the covered entities to prepare an “annual synopsis” for the OHR Director regarding the status of overall agency compliance with the Act — including deficiencies found and progress made in implementation.¹¹² A separate Annual Compliance Report is prepared for partnership agencies, community organizations, and the public to present the status of covered entities' compliance with the Act.¹¹³ In addition, the Language Access Director investigates and adjudicates public language access complaints.¹¹⁴

The OHR director presents the annual report on D.C. agency and covered entity compliance with the Act to the Mayor and the Office of the City Administrator.¹¹⁵ An entity's failure to complete a BLAP, or to fulfill the enumerated reporting criteria, is to be included in this annual report.¹¹⁶

OHR ANNUAL COMPLIANCE REPORT FOR FY 2011

The Office of Human Rights released its Language Access Annual Compliance Review (Annual Review) for the 2011 fiscal year on February 8, 2012.¹¹⁷ The present Report differs from OHR's Annual Review by both its testing methodology and the conclusions based on the testing results.

OHR uses a two-part process to prepare its Annual Review. OHR uses the quarterly reports of the covered entities and agencies for the majority (60%) of its data.¹¹⁸ OHR assigns a rating of 0 to 2 for each language requirement that the agency must fulfill under the Act.¹¹⁹ The remaining portion of data for the Annual Review (40%) is from testing of covered entities which is conducted by a third-party organization that is contracted through OHR.¹²⁰ OHR determines the top three languages that each agency is likely to encounter from their self-reported data from the previous fiscal year, and further divides the agencies into categories based on the volume of individuals that they were likely to encounter for those languages.¹²¹ In preparation for its February 2012 Annual Review, the contracted testing organization conducted 282 tests, for 12 weeks starting on April 1, 2011. These tests included a combination of in-person tests and telephonic tests.¹²² From these tests, OHR compiled a "compliance rating" that represents the agency's overall compliance with the requirements of the Act.¹²³ The Annual Review reported that there was a 13 percent overall increase in agency compliance with the Act since 2009.¹²⁴ Furthermore, the Annual Review reported that no agencies were below "Average Compliance."¹²⁵

The present Report diverges significantly from OHR's Annual Review on both methodology and conclusions:

First, the nature of the data used in this Report is significantly different. OHR relies on agency self-reporting for more than half of its data for the Annual Review. Even on the portion of the overall compliance rating that relies on third-party testing, OHR uses self-reported agency data on languages that it is likely to encounter as a "base-line" for which languages to test at each agency. The result is that agencies have the most substantial role in determining the Annual Review results, essentially determining how they have performed under the Act and also which languages they will be tested on by the third-party organization. The present

Report, on the other hand, relies entirely on independently-gathered survey and testing data and information to reach its conclusions.¹²⁶ Furthermore, by basing the statistical conclusions entirely on the survey and testing data, this Report supports the contention that independent organizations and the LEP/NEP individuals who interact with the agencies, not the agencies themselves, are best-suited to determine agency compliance under the Act.

Second, all six non-English languages that have been recognized as prevalent by OHR were tested in the present Report. The OHR Annual Review determined, based on agency self-reported data, the top three languages that the agency was likely to encounter and then tested the agency on only those languages.¹²⁷ The present Report did not limit data testing of an agency to three languages per agency, but rather conducted tests in many different languages, including in all six non-English languages into which OHR has translated its "I Speak" cards, or cards used to educate the community about language access. In contrast, the OHR Annual Review did not test Korean, only testing five of the six languages OHR chose to target in its "I Speak" card outreach.¹²⁸

Third, this Report relied on a broader range and different modes of testing. In addition to in-person and telephonic testing, data was also collected through online website testing, and, most significantly, through community surveys of LEP/NEP individuals. The community surveys represented real individuals with actual needs who had attempted to interact with at least one D.C. agency. This methodology not only matches the controlled style of testing as performed by OHR, but more accurately reflects the status of agency compliance by also measuring actual performance in interactions with individuals who require agency services. This Report is not limited to the languages that agencies frequently encounter, but also includes languages that are spoken by residents who are the most marginalized. The Act intended to open the D.C. government to speakers of all languages, not simply to speakers of some frequently spoken languages.

Finally, the conclusions of this Report show an overall lower level of agency compliance than that reported in OHR's Annual Review. The wider range of problems and more substantial language access violations highlighted in this Report show that agencies have a long way to go before they can claim full compliance under the Act.

INTRODUCTION TO OUR STUDY: RESEARCH METHODOLOGY

The development of the research methodology for this Report commenced in 2010 and was the product of collaboration between student attorneys and faculty in the Immigrant Justice Clinic at WCL, and members of DCLAC. American University's Institutional Review Board ("IRB") reviewed and cleared the aspects of the research plan relating to human subjects in March 2011. Data collection began soon thereafter, and concluded in early 2012. The surveys and tests were administered by trained volunteers. The relative numbers of individuals surveyed in each language group are not proportionate to the numbers of speakers of each language in the District. Furthermore, only a small percentage of the total LEP/NEP population was surveyed for this study. The selection of participants was based upon available funding, resources, and volunteers.



Trained volunteers surveyed LEP/NEP community members who sought to access services at a covered entity in the District of Columbia.

also assessed performance in the face of other languages including Arabic, Bengali, Burmese, Tagalog, and Tigrinya.

The primary vehicle for data collection was the community member survey, focused on capturing LEP/NEP community member experiences. In addition to this survey, DCLAC and IJC developed three methods to test agency compliance: phone testing, in-person testing, and reviewing agency websites. In utilizing these three testing methods, DCLAC limited testing to six agencies: Department of Health, Department of Human Services, Department of Motor Vehicles (DMV), Office of the Tenant Advocate, Department of Employment Services, and D.C. Public Schools. Furthermore, in conducting the testing, volunteers used factual scenarios developed by DCLAC and IJC. Volunteers were

DCLAC used four primary data collection methods: (1) surveys and testing; (2) review of Biennial Language Access Plans submitted by government agencies; (3) collection of qualitative narratives from community members; and (4) formal requests to D.C. agencies for information under the Freedom of Information Act. Copies of the surveys developed and utilized to gather data for this Report are available on DCLAC's website. Each of these methods is described in more detail below.

assigned specific agencies and scenarios to test. These volunteers were trained at organized sessions, where they were educated about the law, the surveys, and the different scenarios. Volunteers were instructed to remain as discreet as possible, avoiding indicating they were affiliated with testing, in order to create an effective and authentic testing environment.

Some additional information about each of the surveys follows.

SURVEYS AND TESTING

Data was collected using four different methods designed to test agency compliance with the Act and to elicit the experiences of community members. From March 2011 until February 2012, data was collected by trained DCLAC volunteers and community members. The four data collection methods explored agency compliance not only vis-à-vis the six languages that OHR's "I Speak" outreach deemed most prevalent in D.C. (Amharic, Chinese, French, Korean, Spanish, and Vietnamese), but

Community Member Survey

The Community Member Survey was meant to collect basic demographic information about LEP/NEP community members and data regarding their experiences at D.C. government agencies. Community members were asked whether they encountered difficulty accessing services at covered entities in D.C. For context, community members were also asked their English language proficiency, age, gender, native language(s) spoken, covered entities visited, and the nature of language access issues (if any) encountered.

In-Person Agency Testing Survey

The In-Person Agency Testing Survey was conducted in teams of one trained volunteer and one LEP/NEP individual actually in need of services. The volunteer was instructed to avoid revealing his or her affiliation with the LEP/NEP individual. The volunteer accompanied the LEP/NEP individual to the agency, and observed interactions between government employees and the individual. After leaving the agency, the volunteer interviewed the community member who was seeking services, using a survey form prepared by DCLAC and IJC.

Telephone Agency Testing Survey

The Telephone Agency Testing Survey was conducted by bilingual volunteers who were assigned specific scenarios as described above. These volunteers called assigned agencies to request assistance, using only the tested language, and without revealing their bilingual abilities. If they reached a live person and were unable to communicate with them, they were instructed to simply repeat the name of the tested language and record the government employee's actions.

Website Agency Testing Survey

The Website Agency Testing Survey was conducted by volunteers who simply utilized D.C. government agencies' individual websites, trying to find information regarding one of their assigned scenarios in the target language. Volunteers tested whether the website was navigable in the tested language, whether any portion of the website was translated, and whether vital documents posted on the agency's website were available in the test language.

REVIEW OF BIENNIAL LANGUAGE ACCESS PLANS

As provided under D.C. law, every entity designated as a "covered entity with major public contact" is required to prepare a Biennial Language Access Plan (BLAP).¹²⁹ The Act's application to different entities took a staggered approach; therefore, not all covered entities with major public contact have BLAPs for each reporting year since its promulgation in 2004.¹³⁰ The BLAPs are received by the Office of Human Rights where they are reviewed,



The community surveys tested individuals who spoke Spanish, French, Chinese, Amharic, Korean, and Vietnamese, representing a diverse cross-section of D.C.'s LEP/NEP community. Photo courtesy of the D.C. Mayor's Office on African Affairs.

accepted by the Language Access Director, and then published in the D.C. Register for public viewing.¹³¹ For purposes of this Report, where a covered entity with major public contact provided more than one BLAP, those documents were reviewed to measure the progress the entity had made in providing access to the LEP/NEP populations it serves or encounters or is likely to serve or encounter.

COLLECTION OF COMMUNITY MEMBER NARRATIVES

Collected data and statistics only go so far to show whether an agency is in compliance with the Act. It is important that the experiences of LEP/NEP individuals who require language access in their interactions with covered agencies and entities are not lost in the numbers. Therefore, DCLAC and IJC gathered narratives describing the personal experiences of LEP/NEP individuals regarding their interactions with D.C. government agencies. DCLAC and IJC spoke with attorneys, community organizers, and the LEP/NEP individuals themselves to gather these narratives.

FREEDOM OF INFORMATION ACT REQUESTS

The D.C. Freedom of Information Act (FOIA), like its federal counterpart, allows individuals to request access to D.C. government agency records.¹³² In seeking information

regarding D.C. agency compliance with their legal obligations under the Act, IJC submitted FOIA requests to 15 D.C. government agencies utilized by many LEP/NEP D.C. residents, as indicated by this Report.¹³³

By filing the FOIA requests IJC hoped to receive agency records that documented the following:

1. How often each of the agencies used Language Line for interpretation since 2004, and which languages were interpreted;
2. What methodology the agencies had each devised to determine into which languages they needed to translate their vital documents;¹³⁴
3. How the agencies were training their staff regarding their legal obligations to customers under the Act; and
4. How the agencies were reaching out to limited and no English proficient communities to make their services more accessible.

By law, the agencies have 15 business days to respond to FOIA requests or, in unusual circumstances, may request in writing an extension of up to ten additional business days. In all, agencies may take up to 25 business days to respond.¹³⁵ The FOIA requests were sent on February 2, 2012, thus agencies were required to respond no later than March 8, 2012. However, IJC received only six responses in time for the writing of this Report.¹³⁶

FINDINGS ON D.C. GOVERNMENT COMPLIANCE WITH THE LANGUAGE ACCESS ACT

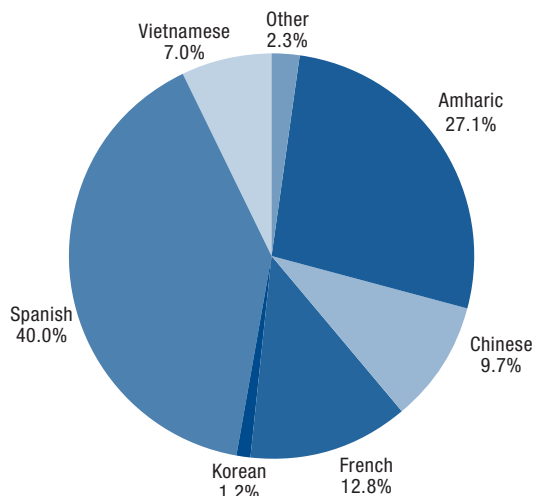
SUMMARY OF FINDINGS FROM COMMUNITY MEMBER SURVEYS AND AGENCY TESTING

In total, DCLAC surveyed 258 LEP/NEP individuals who live or work in the District, and who hail from a range of different language communities. The survey was designed to collect basic demographic information about the respondents, and also to assess their experiences accessing services at entities covered by the Act.

Demographic Profile of Survey Respondents

DCLAC and trained volunteers focused on surveying individuals who spoke Amharic (27.1%), Mandarin and Cantonese (hereinafter referred to as “Chinese”) (9.7%), French (12.8%), Korean (1.2%), Spanish (40%), and Vietnamese (7%), since these are some of the most prevalent non-English languages spoken in the District.¹³⁷ In addition to these languages, some of the other primary languages spoken by survey respondents (2.3%) were Arabic, Burmese, Tagalog, and Tigrinya. See Figure 1 below. There are, of course, many other languages spoken in the District that DCLAC was unable to survey, however, survey respondents noted that they were also comfortable in the following additional languages: Bambara, Ewe, Fujianese, German, Greek, Guragigna, Kabye, Kotokoli, Oromo, Portuguese, Russian, Somali, and Wolof.

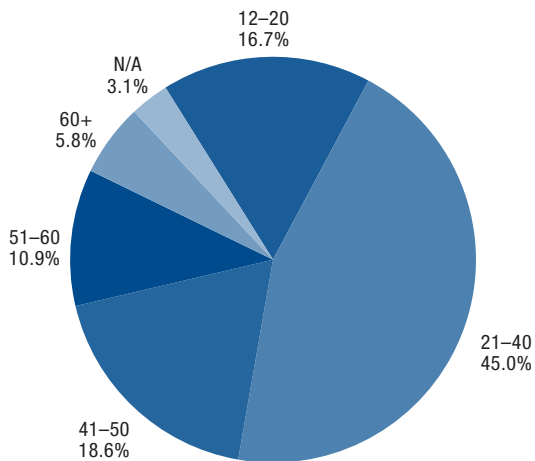
Figure 1: Community Member Surveys — Primary Language Spoken



Respondents hailed from more than 25 different countries, including Algeria, Burkina Faso, Cameroon, the Central African Republic, China (including Hong Kong), Colombia, the Democratic Republic of Congo, the Dominican Republic, El Salvador, Eritrea, Ethiopia, Guatemala, Guinea, Honduras, Ivory Coast, Mali, Mauritania, Mexico, Morocco, Nicaragua, Peru, Senegal, South Korea, Togo, and Vietnam.

A roughly equivalent number of women and men were surveyed.¹³⁸ Additionally, the ages of the survey respondents ranged from 12 years old to over 60 years old.¹³⁹ See Figure 2 below.

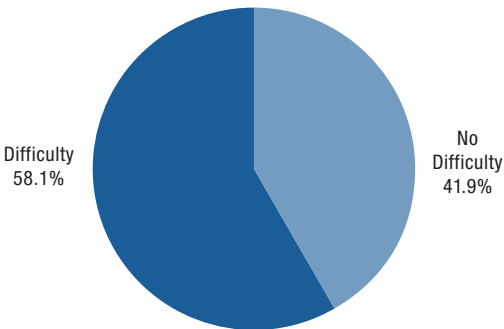
Figure 2: Ages of Community Member Survey Respondents



Respondents’ Experiences at Covered Entities

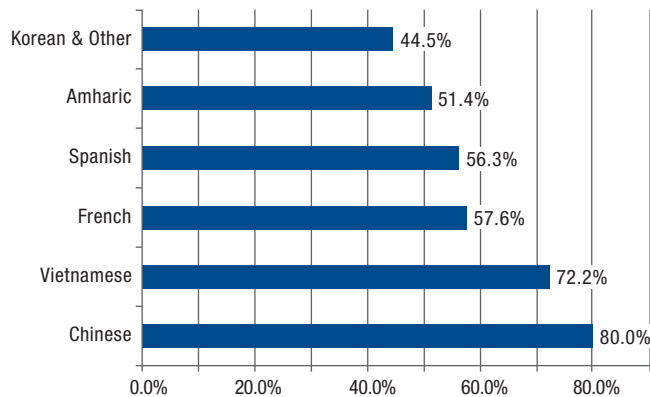
Of the 258 surveyed individuals, 150, or 58.1 percent of the surveyed population, reported some form of difficulty relating to language access at a covered entity. See Figure 3 below. Community members were asked whether they encountered difficulties with interpretation, translation, or lack of signage, and whether they experienced long waits for an interpreter, or subjectively felt some form of discrimination.

Figure 3: Percentage of Total Survey Population that Encountered Language Access Difficulty at a Covered Entity



The surveys indicated that Chinese speakers had the most language access difficulties at D.C. government agencies, with 80 percent of all Chinese-speaking respondents reporting a difficulty of some sort. Amharic speakers as a group reported the lowest rate of language access difficulties — yet even for that language group, a majority (51.4%) reported some kind of difficulty. See Figure 4 below. Difficulties ranged from lack of live interpreters or Language Line services, long waits for interpretation services, no signage in the community member’s language, a lack of translated vital documents, and/or discriminatory treatment (from the respondent’s point of view).

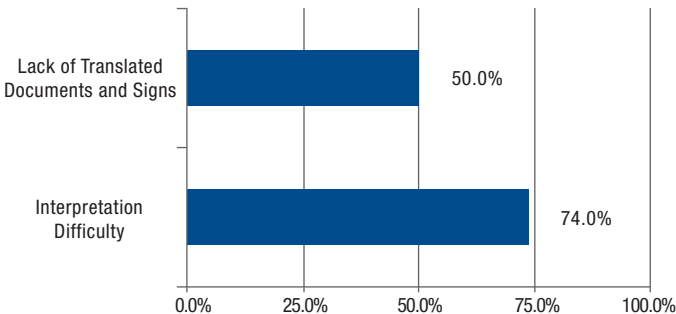
Figure 4: Percentage of All Survey Respondents that Reported Language Related Difficulty at a Covered Entity, by Language Spoken



Of the 150 individuals that reported language access difficulties at covered entities in the District of Columbia, 75 individuals, or 50 percent of those surveyed, reported difficulties stemming from the lack of translated documents. Specific translation difficulties and agencies’ legal obligations under the Act are described below in Section 2, Covered Entities’ Compliance with Obligation to Translate Vital Documents and Signs.

Furthermore, 111 individuals, or 74 percent of the survey respondents who reported some kind of difficulty, stated that they failed to receive adequate interpretation.¹⁴⁰ Naturally, these percentages overlap since many respondents reported both translation *and* interpretation problems. See Figure 5 below. Particulars of the interpretation difficulties and the agencies’ legal obligations are described below in Section 3, Covered Entities’ Compliance with Obligation to Provide Oral Language Services.

Figure 5: Percentage of Survey Complaints Relating to Translation and Interpretation Difficulties



Summary of Agency Testing

In addition to the community member surveys, DCLAC also conducted 85 tests of agencies, to gauge their compliance with the Act. These tests included 18 in-person tests at government agencies, 27 tests of agency websites to assess language accessibility and the availability of vital documents, and 40 tests of agency interactions by telephone.

Of the 18 in-person agency tests, only 11 testers (61%) were offered interpretation assistance pursuant to the Act, in the form of a live interpreter or Language Line services in the tested language. Of the 27 agency website tests conducted, only eight (29%) testers were able to access translated documents and information in the tested language. Finally, of the 40 telephone testers, only 16 (40%) received assistance in the tested language.

Overall, of the 85 tests of agency compliance with the Act, only 21 (25%) reported services in compliance with the Act. Specifically, the testing exposed the lack of covered entities’ compliance with the requirements regarding the provision of oral interpretation services, and the translation of vital documents. The tests also reflected the challenges that LEP/NEP individuals are likely to encounter when browsing agency websites or communicating in writing with covered entities. Finally, these results may also suggest insufficient employee training in language access-related competencies.

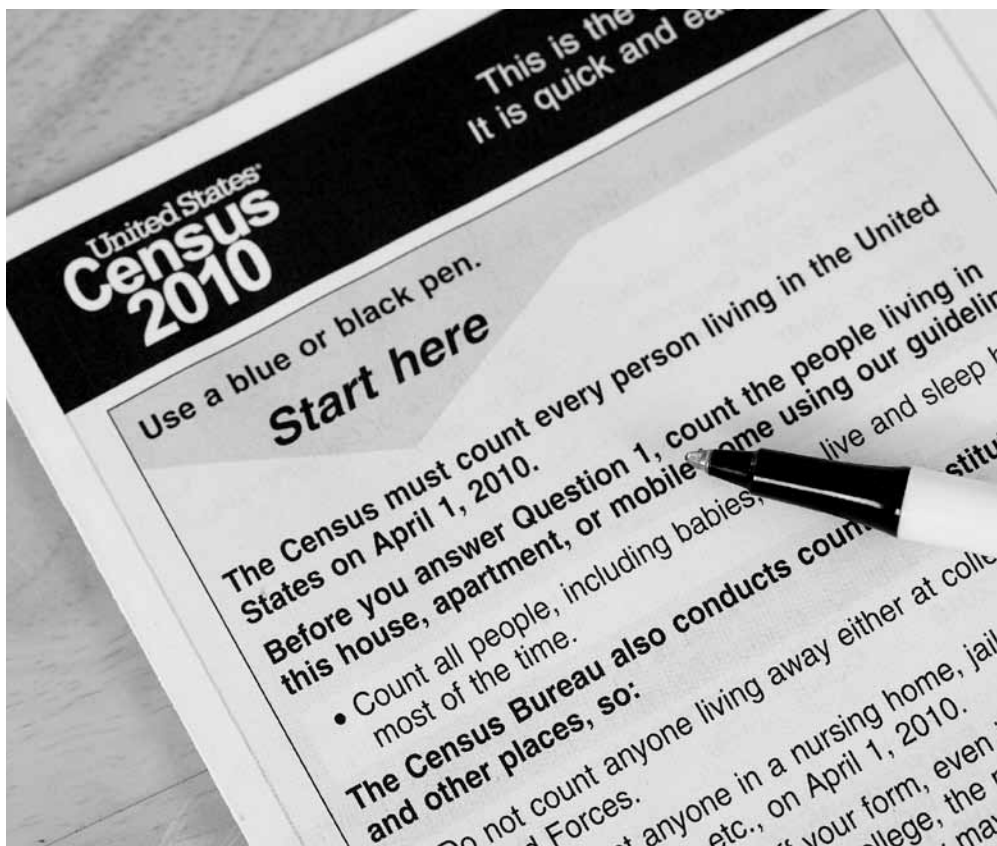
COVERED ENTITIES' COMPLIANCE WITH OBLIGATION TO DETERMINE THE LANGUAGE NEEDS OF D.C. COMMUNITIES

As described above, all covered entities are required to track the language needs of current or likely customers, as well as provide oral language services for all languages and written translations of vital documents into some languages. In addition, in their Biennial Language Access Plans, covered entities with major public contact are required to report the types of oral language services that the entity will provide and how they determined that need.¹⁴¹ The Act recommends that agencies use the following resources to determine the number of LEP/NEP persons served or likely to be served: U.S. Census Bureau data, local census data regarding language use and ethnic demographics, other government data including intake information from other entities, and data from DCLAC.¹⁴² DCLAC and IJC reviewed the entities' BLAPs and responses from FOIA requests to assess compliance with this requirement.

SELF-REPORTING ON COMPLIANCE WITH DETERMINING LANGUAGE NEEDS

Covered entities with major public contact are required to report in their BLAPs how they assess the language needs of the LEP/NEP community members they serve or encounter, or are likely to serve and encounter.¹⁴³ These entities tended to report two tracking methods in their BLAPs: data collected from Language Line usage, and information obtained by sign-in sheets or intake forms. For example, the Department of Health (DOH) reported documenting Language Line phone calls and actual numbers of LEP/NEP individuals served for the 2009-10 BLAP period.¹⁴⁴ In its most recent BLAP, DOH also reported using data from manual intakes and sign-in sheets.¹⁴⁵ The Department of Human Services (DHS) recorded language data from

its intake forms and created an electronic database that it plans on monitoring for effectiveness. For example, in DHS's proposed 2011-12 BLAP, the agency suggests that its goal is to unify its database so that all the divisions and programs of the DHS will be consistent in collecting data of LEP/NEP persons. At present, this is not a reality in part because primary language data is not collected uniformly across the agency.¹⁴⁶ In a 2006 BLAP, the Department of Employment Services (DOES) reported that its program managers track and report language assistance usage on a quarterly basis, in part to determine whether bilingual employees should be utilized at agency sites in future years.¹⁴⁷



D.C. agencies are required to determine the languages that they are likely to encounter by using census data, among other sources of information.

The D.C. Housing Authority (DCHA) proposed a more comprehensive approach that did not solely track new customers, but also sought to capture the language needs of existing clients who were recertifying for their programs. In the 2007–08 reporting period, DCHA collected data on primary languages of applicants. It also had programs specific to Latino and Asian communities and updated the applications for DCHA programs to ask about the primary languages of all applicants.¹⁴⁸ Beginning in the 2009–10 reporting period, existing clients who were recertifying were asked if they were LEP/NEP and about their primary language.¹⁴⁹ In 2011–12 the DCHA also began identifying languages via telephone through Language Line interpreters.¹⁵⁰

Census data was also commonly reported as a source of information about language needs. In the 2007–08 reporting period, the Fire and Emergency Medical Services (FEMS) used census data to determine language needs, since it deals with the entire D.C. population.¹⁵¹ During the same reporting period, the Homeland Security and Emergency Management Agency (HSEMA) reported that it maintained a database on languages based on census data and data from the Mayor’s office.¹⁵² However in the 2011–12 reporting period, HSEMA stated that it does not have databases or tracking applications, but collects data from front desk sign-in sheets or reports from community seminars.¹⁵³

The Metropolitan Police Department (MPD) also included multiple layers of reporting in order to get a more comprehensive picture of the language needs of its clients. In the 2007–08 reporting period, MPD used census data as well as compiled Language Line usage data.¹⁵⁴ It also required personnel to report on LEP/NEP persons they encountered on a quarterly basis.¹⁵⁵ Beginning in 2009–10, MPD also used activity logs with their Asian and Latino Liaison Units to supplement their data, and then switched to electronic records for 2011–12.¹⁵⁶

Although the BLAPs present a mixed picture with respect to this obligation, the agencies’ response to FOIA requests raised additional concerns. None of the agencies that responded in time for the writing of this Report provided documents that described the methodology that the agency used to determine which languages met the 3 percent of the population or 500 individuals threshold. Consistent with the BLAPs, OHR’s official response stated that OHR and other D.C. agencies track the frequency

of language(s) encountered and determine if a specific language has reached the threshold using some or all of the following methods: (1) Language Line usage reports; (2) interpretation requests submitted by agency staff; (3) sign-in sheets in reception areas that capture language(s) spoken by LEP/NEP customers; and (4) database tracking systems where LEP/NEP customers are identified. However, other than Language Line usage reports, none of the agencies provided any documents supporting any of the other methods. Furthermore, none of the agencies that responded provided documents containing research or data collection used to determine the threshold.

CONCLUSION

In general, covered entities with major public contact do self-report methods of determining the language needs of the populations they serve or encounter, or are likely to serve or encounter. However, these entities did not report wide usage of the many different sources they were directed to consult, per the Act and its regulations.¹⁵⁷ Indeed, the determination of the community’s language needs should be based on more than one data source, given the different points of contact with an agency, and the reliability of any given set of data. For example, the community surveys described in this Report indicate that many individuals needing oral interpretation services were not given access to Language Line; therefore, assessments made solely on Language Line usage would likely be inaccurate. For this reason, DCHA and MPD’s methods appear to be more in line with the requirements of the Act as far as tracking those already served.¹⁵⁸ While many entities documented new clients through Language Line data and intake forms, the DCHA and MPD reported a more comprehensive approach which should result in a more complete picture of language needs of the clients and customers they encounter. Additionally, although a few agencies, such as MPD, maintain this data in electronic form, it appears that others may still rely upon paper records. Ultimately, the most complete and effective method to track language needs — a method required explicitly in the Act — is through fields in agency databases.¹⁵⁹ Of course, just as important as the collection of data is how the agency uses such data. Once a customer is tagged as LEP/NEP, that customer should receive language assistance whenever the customer comes into the agency. Furthermore, for agencies utilizing written or

computerized intake methods, collecting information on each customer's language needs should be made mandatory, even if the customer refuses to answer (for this an option of "no response" could be provided for in the intake form) or is an English-proficient individual.

However, even these comprehensive approaches focus largely on those individuals served or encountered, without considering the Act's requirement to capture those *likely* to be served or encountered. If a covered entity is likely to serve or encounter the entire D.C. population, then it must research the languages spoken by the entire population and not simply focus on the languages spoken by people who already interact with the covered entity. If there is a large population of LEP/NEP individuals who speak a certain language, and that population is not being served by an agency, then the agency should be aware of the population in order to plan accordingly with respect to outreach, translation, and oral languages services. The Act

guards against the possibility of neglecting any substantial language population by requiring the consideration of those likely to be served or encountered. The responses to the FOIA requests similarly suggest that the agencies may be making *ad hoc* assessments of language needs without carefully consulting the full range of available information.

Finally, there is scarce data available on the language-tracking efforts undertaken by covered entities that are *not* covered entities with major public contact. Since these entities are not required to prepare BLAPs, there is minimal public oversight of how they track language needs; as described more fully below, this tracking is necessary to make decisions about translation of vital documents.

In summary, for D.C.'s LEP/NEP communities to truly have access to government-funded agencies, more comprehensive and accurate assessments of language service needs should be implemented at all covered entities.

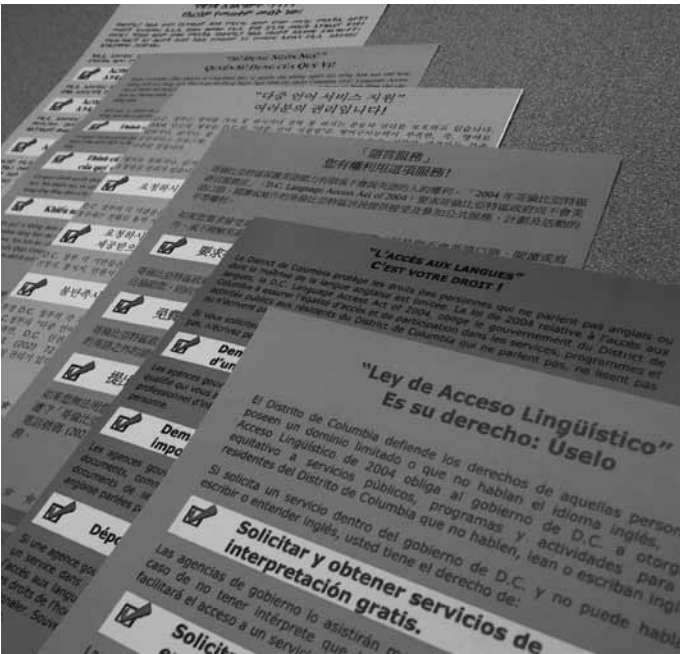
COVERED ENTITIES’ COMPLIANCE WITH OBLIGATION TO TRANSLATE VITAL DOCUMENTS AND SIGNS

Covered entities must determine whether a particular language is spoken by a LEP/NEP population that constitutes three percent or 500 individuals, whichever is less, of the population that is served or encountered, or likely to be served or encountered by the entity, to determine whether vital documents and signs must be translated into the language.¹⁶⁰ DCLAC and IJC relied upon community member surveys and agency testing, along with a review of BLAPs and FOIA responses, to assess compliance with this obligation.

SURVEY RESPONSES RELATING TO TRANSLATION OF VITAL DOCUMENTS AND SIGNS

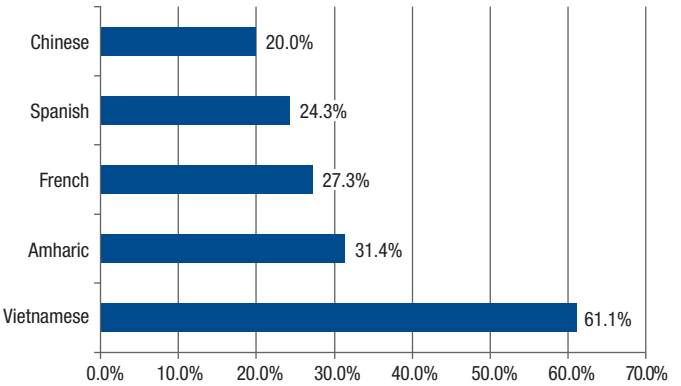
Of the 150 individuals that reported language access difficulties at covered entities in D.C., 75 individuals, or 50 percent of those individuals, reported difficulties with translation. See Figure 5 above. Translation difficulties fell into two categories: (1) the covered entity did not have documents translated into the survey respondent’s primary language; or (2) the covered entity did not have signage in the survey respondent’s primary language. Of all the survey respondents who encountered language access difficulties, 30 percent reported that the covered entity lacked translated documents,¹⁶¹ and 30.7 percent reported a lack of signage in their language.¹⁶² Naturally, these complaints often overlapped.

Broken down by language, 31.4 percent of Amharic-speaking respondents, 20 percent of Chinese-speaking respondents, 27.3 percent of French-speaking respondents, 24.3 percent of Spanish-speaking respondents, and 61.1 percent of Vietnamese-speaking respondents reported difficulties due to lack of translation — whether that be a lack of translated documents or a lack of language-appropriate signage. See Figure 6 below.



OHR language access cards explaining LEP/NEP rights under the Act in six different languages.

Figure 6: Percentage of Surveys Reporting Translation Difficulties, Broken Down by Language Population Surveyed



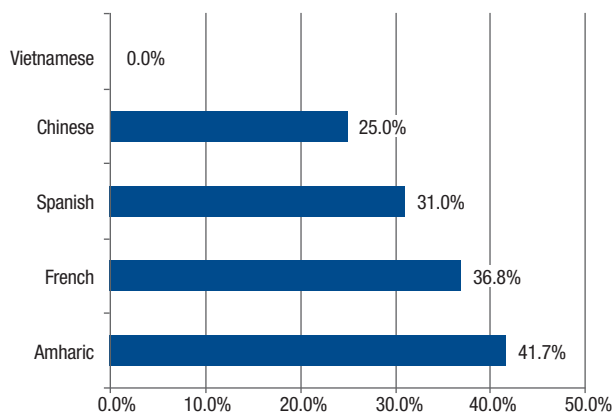
Having translated documents makes agency processes easier for everyone. Luckily, when one LEP/NEP individual dealt with an agency and did not find translated documents in her language, she found a very helpful agency employee who took the time necessary to assist her.

“He was very helpful and tried very hard to help me. When he didn’t have translated documents, he asked [the] interpreter to stay and translate the document as he read it.”

Lack of Translated Documents

Speakers of four of the six languages surveyed by DCLAC reported a significant difficulty relating to the lack of translated documents. Of all the survey respondents that encountered some kind of language access problem, 41.7 percent of Amharic-speaking respondents, 36.8 percent of French-speaking respondents, 31 percent of Spanish-speaking respondents, and 25 percent of Chinese-speaking respondents reported experiencing a problem in accessing services at a covered entity due to a lack of documents translated into their respective languages. See Figure 7. Surprisingly, of the 18 Vietnamese-speaking survey respondents, none reported a problem with document translation, perhaps because of the type(s) of services sought, or because of an expectation that no translated documents would even be available. However, a significant proportion of Vietnamese speakers *did* face difficulties with signs not being translated.

Figure 7: Percentage of Survey Complaints Relating to Lack of Translated Documents, Broken Down by Language Population Surveyed

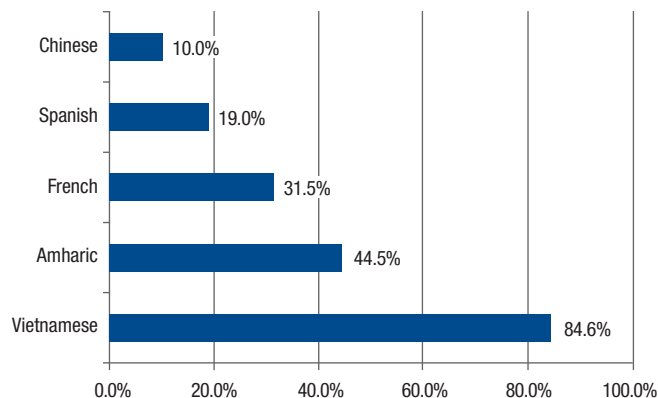


Lack of Translated Signage

In addition to a lack of translated documents, many survey respondents encountered difficulties accessing services because they were unable to read signs written only in English. Of all the survey respondents that faced language difficulties, 84.6 percent of Vietnamese-speaking respondents, 44.5 percent of Amharic-speaking respondents, 31.5 percent of French-speaking respondents, 19 percent of Spanish-speaking respondents and ten percent of Chinese-speaking respondents reported experiencing

difficulty accessing services due to a lack of signage in their respective languages.¹⁶³ See Figure 8 below.

Figure 8: Percentage of Survey Complaints Relating to Lack of Translated Signage, Broken Down by Language Population Surveyed



AGENCY WEBSITE TESTING

For many covered entities, their websites are relied upon to provide vital documents to customers and clients. Although translation of the website is not specifically required under the Act, provision of vital documents in certain languages is a legal obligation of covered entities. It is logical that when these translated vital documents are primarily available on the website, the website must then be navigable, and therefore translated, for LEP/NEP individuals that seek to access these translated vital documents. The authors also note with concern that OHR's website for filing language access complaints is available only in English and, therefore, is not accessible for LEP/NEP individuals wanting to file a complaint.

Where testers audited agency websites to determine whether they could access vital documents and information in the tested language, only 30 percent were able to do so. French-speaking testers had the most success, with four out of nine testers finding some sort of translated information. However, three of those testers reported that the translation was inaccurate and another was only able to access a translated explanation of the forms, not actual translated forms. Of the 12 Spanish-speaking testers, only three were able to obtain the translated documents and information needed. Of the six Vietnamese-speaking testers, only one was able to access translated information — from the D.C. Public Schools' (DCPS) website. The other

Vietnamese-speaking testers were unable to access any language-appropriate documents or information, or even a brief phrase in Vietnamese accompanied by a phone number to call for assistance.

That said, Spanish-speaking testers did give positive reviews to the DCPS and the Office of the Tenant Advocate (OTA) websites. The entire DCPS website was available in Spanish (and several other languages). There was also a video in Spanish and a phone number to call for additional information in Spanish. The tester noted there was clearly “an effort to communicate effectively with people engaging with the DCPS system for the first time. Several YouTube videos are also helpful for people with low literacy...” OTA’s website also had a section under “tenants” entitled “en español,” which contains a significant amount of information in Spanish.

SELF-REPORTING ON COMPLIANCE WITH OBLIGATION TO TRANSLATE VITAL DOCUMENTS

In their BLAPs, the covered entities with major public contact self-reported varying levels of compliance with the Act’s requirement to translate vital documents.

In general, there was a lack of consistent translation of vital documents, and in some instances, backwards progress over the years. For example, in the 2007-08 reporting period, DCHA reported having vital documents in Spanish and also documents in Korean, Vietnamese, and Chinese relating to the Linguistically Isolated Voucher program for Asian populations.¹⁶⁴ In the subsequent reporting period, DCHA translated updated notices only into Spanish;¹⁶⁵ a more limited set of documents were translated into Asian languages.¹⁶⁶ By the 2011-12 reporting period, DCHA provided federal Housing and Urban Development (HUD) forms in the six most prevalent languages, but most other forms were translated only into Spanish, if at all.¹⁶⁷

Often, even if vital documents were translated by covered entities with major public contact, translations were largely in Spanish, or limited entirely to Spanish. For example, over the years, DHS has been translating its documents and by the 2011-12 reporting period, translations were mostly completed, but only in Spanish.¹⁶⁸ Similarly, in the 2007-08 reporting period, DOES took an inventory of vital documents for future translation and translated posters for walk-in customers where most LEP/NEP persons were

encountered.¹⁶⁹ Four years later, DOES listed numerous documents translated into Spanish, but only forms and letters for hearings were translated into other languages.¹⁷⁰

FEMS and MPD self-reported the highest levels of compliance with the Act’s translation requirements. In the 2009-10 reporting period, FEMS translated some documents for Emergency Medical Services, FOIA, and a smoke alarm flyer into some of the six most prevalent languages.¹⁷¹ In the 2011-12 reporting period, FEMS reported the same documents that were translated in 2009-10 but added additional languages.¹⁷² MPD was the most positive example: in the 2007-08 reporting period, all 63 vital documents of MPD were translated into seven languages.¹⁷³ In addition, some non-vital educational information was translated into four languages.¹⁷⁴ In the 2009-10 reporting period, MPD translated flyers, posters, brochures and all of their vital documents, and plans to continue expanding translations into 2011-12.¹⁷⁵

CONCLUSION

Many covered entities fail to meet their obligations to provide translated vital documents and signs in the languages served or encountered, or likely to be served or encountered in D.C. This failure stems, in part, from the entities’ failure to adequately track language needs, as described in the section above. The community member surveys clearly confirmed that LEP/NEP individuals in the District encounter difficulty relating to a lack of translated documents and/or signage at covered entities. These difficulties were especially pronounced for certain language groups: about 42 percent of Amharic speakers who encountered language access difficulties cited a lack of translated documents, and about 85 percent of Vietnamese speakers who faced language access difficulties cited a lack of appropriate signage. Similarly, a minority of the agency website testers were able to access translated documents online. This data suggests that covered entities should review and enhance their protocols relating to determining language needs and translating documents and signage. In their BLAPs, the covered entities with major public contact even self-report the insufficient translation of vital documents, a fact which hinders many individuals from effectively accessing government services.

Although there are several covered entities that provide documents translated into Spanish, translations into other languages are scarce. Agency failure to offer translation

may occur for multiple reasons. If an entity is intentionally not translating documents into a particular language because the entity does not believe that the language meets the threshold, then the agency should state this fact. In addition, the agency must analyze the sources of data listed in the Act to support its assertion that the language does not meet the threshold of those likely to be served or encountered.

Agencies may also contend that the document is not “vital,” or may choose not to comply with the law because

they believe that it is too expensive to do so. Finally, with respect to letters or forms automatically generated through existing databases, the agencies may be hamstrung by existing data systems that simply do not allow for translation into particular languages. Although this Report acknowledges that each covered entity surveyed has different thresholds for which languages are required to be translated under the Act, the data does support the conclusion that there are deficiencies across the board in providing translated vital documents to LEP/NEP individuals in D.C.

Maria*

Sometimes, giving an LEP/NEP individual a non-translated document is the same as not giving her the document at all.

In May 2009, Maria visited the offices of the D.C. Child Support Services Division (CSSD) to speak about the child support that she received. Unlike many individuals, Maria was knowledgeable about her rights under the Language Access Act, and she attempted to assert them. However, she was informed that there were no Spanish-speaking staff members, and she left without solving her problem.

CSSD began to send documents and communications to Maria, but they were all in English. Around early 2010, CSSD began sending her “Monthly Notice of Child Support Activity” statements that detail the money collected and disbursed to the custodian of a child. These notices further stated the factors that may affect a child support award amount as well as instructions for how to contest the child support payment if the recipient has disagreements with the amount of a payment. Failure to take advantage of these instructions could lead to a cancellation of the payments altogether. CSSD claimed that it did not need to translate these documents because they are standardized forms on its computer system and that they merely input information which is then filled into the appropriate blanks on the form. It further averred that, as a standardized computer form that was drafted by a third party, it was not a “vital document” that required translation under the Act.

Fortunately, the Office of Human Rights determined through a formal complaint adjudication that the “Monthly Notice” was a vital document that required translation, and that its status as a computerized document did not mean that it could avoid this requirement.

In Maria’s case, she might have lost the awards she relied on because of her inability to read the documents she received. Agencies need to have procedures in place to mark an individual’s language in their computer system so that the recipient automatically receives documents in his or her language.

COVERED ENTITIES' COMPLIANCE WITH OBLIGATION TO PROVIDE ORAL LANGUAGE SERVICES

Under the Act, all covered entities are required under the Act to provide oral language services to customers, via in-person or telephone interpretation, in all languages.¹⁷⁶ In addition, covered entities are to determine the type of oral language services needed based upon an annual assessment that considers the following factors: (1) the number of LEP/NEP persons served in D.C.; (2) the frequency with which LEP/NEP persons come into contact with the entity; (3) the importance of the service; and (4) the entity's available resources.¹⁷⁷ Depending on the results of this assessment, a covered entity may choose to hire additional bilingual personnel, rely upon other in-person interpreters, or use telephonic interpretation services.¹⁷⁸ Covered entities should make these determinations by updating their databases, tracking applications, and utilizing resources such as census data, governmental data, and D.C. Language Access Coalition data.¹⁷⁹



Interpretation services such as Language Line ensure that individuals who interface with agencies can have near-instant interpretation. These services also makes the interaction between the agency employee and the LEP/NEP individual much smoother.
© 2012 Language Line Services

SURVEY FINDINGS ON COMPLIANCE WITH OBLIGATION TO PROVIDE ORAL LANGUAGE SERVICES

Community Survey Data

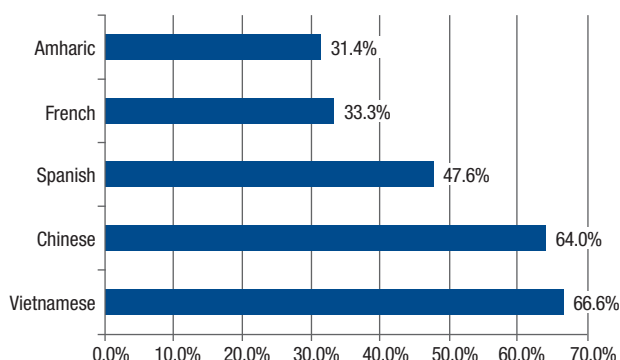
Interpretation issues represented the vast majority of all language access difficulties reported in community surveys — in fact, interpretation issues were cited by 74 percent of all respondents who encountered some kind of difficulty.¹⁸⁰ Interpretation problems included the absence of an in-person interpreter or bilingual staff, long waits for interpretation services, and the failure to use Language Line.

Among these, the largest number of interpretation problems that individuals experienced involved the lack of bilingual staff (48%). A significant number also reported a general unavailability of in-person interpreters (39.3%), long waits for interpretation services (27.3%), and the failure to use Language Line (15.3%).¹⁸¹ Many of the surveys reported problems involving a combination of these issues.

Chinese- and Vietnamese-speaking respondents reported the most problems relating to interpretation. See Figure 9 below. Of the Chinese speakers who reported facing

some kind of language access difficulty, 64 percent cited interpretation issues. The proportion was 66 percent for Vietnamese speakers.

Figure 9: Percentage of All Survey Complaints Relating to Interpretation, Broken Down by Language Population Surveyed



Lack of In-Person Interpreters

The unavailability of in-person interpreters presented a problem for LEP/NEP individuals and had a range of negative effects on each different language. By far, Chinese- and Vietnamese-speaking respondents reported the most difficulties in this area: 64 percent of all Chinese-speaking respondents and 61 percent of all Vietnamese-speaking

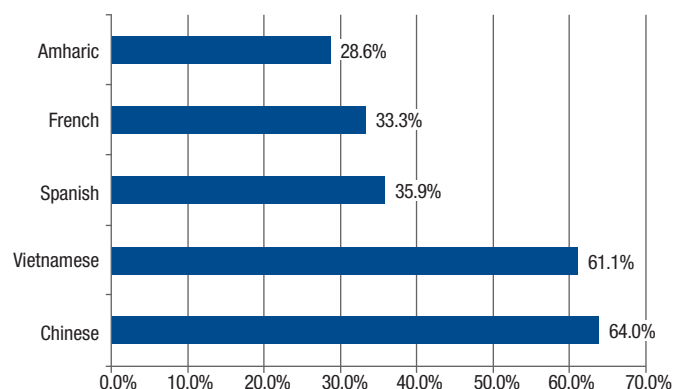


In-person interpreters are also an option for individuals who need to interact with an agency. Photo courtesy of the Baltimore Sun Company, Inc., All Rights Reserved.

respondents reported lack of in-person interpretation as a problem. As Figure 10 below demonstrates, all language groups reported significant challenges in this area.

While covered entities can often satisfy their obligations under the Act with the use of a telephonic interpretation service, the Act's regulations do contemplate circumstances when telephonic interpretation would not be "reasonably sufficient," and in-person interpretation would be necessary.¹⁸² These results suggest that community members may have felt hampered by the lack of an in-person interpreter, and that agencies should carefully consider the trade-offs of in-person versus telephonic interpretation.

Figure 10: Percentage of All Survey Respondents Complaining of a Lack of In-Person Interpretation, Broken Down by Language Population Surveyed



Long Waits for Interpretation Services

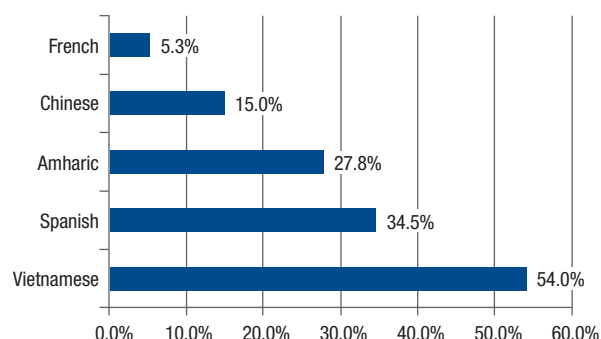
Community survey respondents also indicated that they experienced a long wait for an interpreter. Notably, 54 percent of Vietnamese speakers who encountered language access difficulties stated that they experienced a long wait. Spanish and Amharic speakers reported a similar percentage of problems with long waits, at 34.5 percent, and 27.8 percent respectively. The community surveys of Chinese speakers showed that 15 percent experienced a long wait for an interpreter. While English-speaking residents may also be affected by long waits at covered entities, the LEP/NEP residents surveyed were asked specifically about long waits for an interpreter. See Figure 11 below. These delays can be attributed to many factors, including staff members' lack of familiarity with language access protocols, insufficient training of agency staff on the use of Language Line, inability to determine the language being spoken, and scarce availability of trained interpreters, among other reasons.

Mr. Heng*

Long waits for interpretation services can directly affect an LEP/NEP individual's access to basic medical attention.

"At (a local hospital), there is one nurse who speaks Chinese. Though she is a nurse by profession, she also acts as the hospital's only Chinese interpreter. When (a Chinese speaker) show(s) up for an appointment, you sit in the waiting room until the nurse sees you and comes by to ask you what you need. If she is busy, then all you can do is wait for her until she is free to interpret for you. For one appointment, I know I will have to spend all day at the hospital."

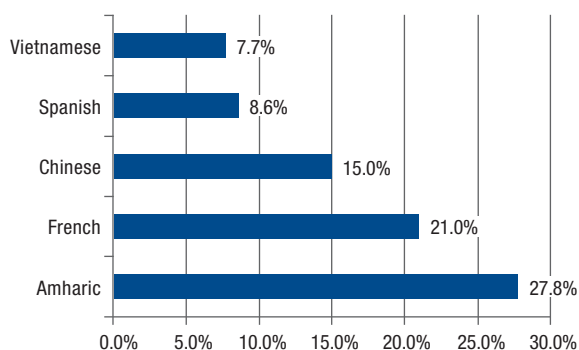
Figure 11: Percentage of All Survey Complaints Relating to Long Waits for Interpretation Services, Broken Down by Language Population Surveyed



Failure to Offer Language Line

Community surveys that reported that covered entities failed to offer Language Line represented the smallest proportion of problems relating to interpretation. However, Amharic speakers were affected in the greatest proportions, as 27.8 percent of their language access difficulties involved not being offered Language Line. French speakers indicated that a failure to offer Language Line interpretation was implicated in 21 percent of their language access difficulties; the percentages for Chinese and Spanish speakers were 15 percent and 8.6 percent, respectively. It is possible that the survey results underreport this problem, as some respondents may have been unaware that Language Line was an option, and therefore failed to report its unavailability.

Figure 13: Percentage of All Survey Complaints Relating to Failure to Offer Language Line, Broken Down by Language Population Surveyed



Telephone Testing Results

"The assistance was very good. The employee was extremely helpful, especially in providing a nearby employment advice-seeking center and scheduling me with a live interpreter when I wished to visit."

"The person finally acknowledged that I spoke French after I told him three times. The person went to locate a bilingual employee. The employee spoke Spanish and English but little French. The employee was rude, irritated, and confrontational. He said he was going to transfer to a French speaking person and he hung up."

"The employee was really nice and asked me to wait a few minutes while he connected me with a live person. He located a bilingual employee to assist. The employee was helpful and the service was very good!"

"I called during regular business hours but nobody picked up. On my third try someone picked up and I said, "¿Habla español?" The employee continued to speak English...and did not seem knowledgeable about using Language Line. The employee tried to be helpful but I was never transferred to Language Line or a bilingual employee and the person kept speaking English."

As the above quotes indicate, telephone testers had mixed experiences with agency representatives. Testers were instructed to call the covered entity and speak only the tested language. Of the 40 attempts, only 16, or 40 percent, were assisted in their tested language and/or offered telephonic interpretation services.

There were six telephonic tests conducted in French; in only two — those testing OTA and DCPS — were the testers able to speak with French interpreters and/or employees. One test concluded simply because the tester was unable to reach a live person. For the remaining three French-language tests the testers reported very poor service, and encountered rude and irritated government employees. Of the three that reported poor service, two never got through to a live person and were instead forwarded to a recorded menu that was in many different languages, but not in French. One was transferred to a bilingual employee who spoke Spanish and English. This employee was indifferent to the tester's predicament, said he could not help, and hung up on the tester.

Blandine

At times, the language access protocols required by the Act work exactly as intended. Blandine, an LEP immigrant from Togo, describes a positive experience she had with DOES:



"I lost my job in 2011 and I applied for unemployment benefits while looking for another job. I called the Department of Employment Services (DOES) to speak to a social worker. I thought I could communicate easily in English, but it was not that easy. I never knew about the law in D.C. that gives me rights to an interpreter if I needed one. So, I tried my best speaking English, but the social worker hardly understood me. She asked me if I spoke French, and I said yes. She then transferred me to an interpreter who spoke French and this helped a lot to ease the rest of the conversation. I was able to get the information I needed. It was great! Thank you to the officials who care about those of us who don't speak English when we arrive in the United States."

Of the five tests conducted in Spanish, the testers reported three good experiences while calling DHS, DCPS, and the DMV. Testers reported that they were served efficiently and in a friendly and helpful manner. One tester reported a negative experience while calling DOH. The employee was friendly and tried to be helpful but did not appear to be knowledgeable about telephonic interpretation and, therefore, the tester never received interpretation.

Three of the six telephonic tests conducted in Vietnamese — those testing DOH, DHS, and DCPS — resulted in the testers receiving telephonic interpretation services. However, the other three testing scenarios resulted in the tester not being assisted. In one case, the tester received an automated command to press "4" to receive assistance in Vietnamese. However, after pressing "4" instructions were given in English only.

Only two of the six tests conducted in Chinese resulted in testers receiving assistance. In one test, an employee at the DMV connected the Chinese-speaking tester to Language Line; in another test, a tester of DOES encountered a recorded message that allowed Chinese speakers to connect to Language Line. The other covered entities tested simply did not respond to the Chinese-speaking tester. For example, a staffer at one covered entity with major public contact just sat in silence as the tester kept requesting help in Chinese; eventually, the tester hung up.

Of the six telephone tests conducted in Amharic, only DCPS provided language assistance through the use of Language Line. The other five Amharic-language tests concluded when the tester reached automated messages in English; the tester did not receive assistance. For example, in one of the Amharic-language testing scenarios, a covered entity with major public contact had a recorded greeting in six languages, but not Amharic.

There were five telephone tests conducted in Korean; only two covered entities (OTA and DHS) provided Language Line interpretation. However, two other covered entities with major public contact either did not reply to the tester's requests for a Korean interpreter, or did not answer, and their recorded message did not have a Korean option.

Since DCLAC was able to recruit a Bengali volunteer, two agencies were tested in Bengali — DOES and DHS. Both times, the tester received telephonic interpretation services.

SELF-REPORTING ON COMPLIANCE WITH OBLIGATION TO PROVIDE ORAL LANGUAGE SERVICES

In recent years, agencies have offered positive accounts of their own efforts to provide oral language services. In general, covered entities with major public contact reported compliance with requirements for interpretation services, including use of bilingual staff and Language Line. For some agencies, however, the bilingual staff is limited to Spanish speakers.

For example, in the 2007-08 reporting period, FEMS identified bilingual staff that passed a competency test, hired bilingual employees, and recruited bilingual staff.¹⁸³ In the subsequent reporting period (2009-10) FEMS continued recruiting bilingual staff, used Language Line for interpretation and translation, and distributed “know your rights” cards.¹⁸⁴ In its most recent BLAP, however, FEMS disclosed that the bilingual staff on record spoke only Spanish and that the agency was not recruiting additional bilingual staff.¹⁸⁵ Following a similar trajectory, in the 2007-08 reporting period, DCHA had bilingual staff for Spanish interpretation and used Language Line or other certified interpreters.¹⁸⁶ To its credit, in the 2009-10 reporting period, DCHA used its own ‘secret shoppers’ to test agency services.¹⁸⁷

Some agencies have reported bilingual staff covering a range of non-English languages. For example, the list of certified bilingual staff in 2011-12 for MPD included staff members fluent in multiple languages, more than the six recognized by OHR as prevalent.¹⁸⁸ In the 2007-08 reporting period, DHS had Spanish-, Vietnamese-, Amharic-, Chinese-, and French-speaking employees and all other languages were interpreted through Language Line.¹⁸⁹ By 2011-12, DHS had many more bilingual employees listed with a wider range of covered languages.¹⁹⁰ By contrast, in 2011-12, HSEMA reported that it is still working with Human Resources to advertise for more bilingual staff.¹⁹¹ Likewise, in the 2011-12 reporting period, DOH began a recruitment and retention plan for bilingual staff, expected to be ready for review at the end of 2012.¹⁹²

CONCLUSION

Covered entities under the Act have an absolute obligation to provide oral language services to LEP/NEP persons, either through the use of bilingual staff or in-person interpreters, or with the aid of a telephonic interpretation service. This obligation is extended to any LEP/NEP person seeking services, regardless of the language spoken. Unfortunately, the research reveals a significant disparity between the agencies’ generally positive self-reporting regarding this duty, and the actual experiences of community members and testers. Several covered entities with major public contact reported the existence of bilingual staff, concerted efforts to recruit additional bilingual staff, and/or the use of Language Line.

In contrast, community member surveys highlighted that LEP/NEP individuals continue to have difficulty accessing oral language services at covered entities. Significant percentages of respondents reported long waits for interpretation services, and even a total failure to offer Language Line. Many respondents also cited the absence of an in-person interpreter as a source of difficulty, which raises questions about the sufficiency of telephonic interpretation in all cases. Moreover, the telephonic testing confirmed the discrepancies between reporting in the BLAPs and actual experiences of LEP/NEP individuals.

The deficient provision of oral language services by covered entities forecloses individuals from accessing essential services in D.C., as evidenced by Gabriela’s story below. Many agency employees are unaware that their obligations to provide interpretation continue even if there is no bilingual staff or actual in-person interpreter present. Oral language services should be easy to provide, especially because all covered entities have access to telephonic interpretation services. It appears, therefore, that covered entities need to improve the ways in which they train their employees to use telephonic interpretation and need to impress upon employees the importance of compliance.

Gabriela*

An agency's failure to provide interpretation services when interacting with an individual in his or her own home can have detrimental consequences.

Gabriela required Spanish translation and interpretation when dealing with the D.C. Department of Consumer and Regulatory Affairs (DCRA), which is responsible for conducting housing and safety code inspections. In November 2009, Gabriela contacted DCRA to complain of bedbugs, among other issues. She spoke with a woman in DCRA that also spoke Spanish and arranged for an inspector to come to her apartment. After the inspector missed his appointments, she made repeated calls to DCRA and was told there were no Spanish speakers. Finally, she received a call from the woman who spoke Spanish and they arranged another appointment. At no time did the English-speaking DCRA employees inform her of her right to telephonic interpretation services. When the inspector arrived, he did not speak Spanish. Gabriela could not inform him of what was wrong with her apartment, and she was not informed of what the inspector was doing because of the inability to communicate. She was never notified of her right to have access to an interpretation service during the appointment through the inspector's cell phone, and no effort was made to offer interpretation.

Gabriela later called DCRA to request a copy of the inspection report in Spanish. The employee who answered her call told her "we don't speak Spanish," before hanging up the phone. Gabriela was unable to receive a translated copy of her housing inspection report because DCRA determined that it was not classified as a "vital document" that required translation under the Language Access Act.

Gabriela's experience showed that denying language access can affect every stage of an agency's interaction with an individual. Gabriela not only was prevented from adequately explaining her problem, she was also foreclosed from being informed of the investigation's results. Her experience further shows just how much freedom agencies have to declare some documents non-vital documents, even those that pertain to someone's home.

COVERED ENTITIES' COMPLIANCE WITH OBLIGATION TO TRAIN EMPLOYEES IN LANGUAGE ACCESS-RELATED COMPETENCIES

Covered entities are required to train all staff members who have contact with the public in the use of telephonic interpretations services, and in directing LEP/NEP persons to those services.¹⁹³ Additionally, covered entities with major public contact must develop a plan to conduct internal cultural and linguistic competency trainings.¹⁹⁴

SURVEY FINDINGS ON COMPLIANCE WITH TRAINING GOVERNMENT EMPLOYEES

In-Person Agency Testing

The in-person testing conducted by DCLAC helped reveal whether employees of a covered entity utilized their training when facing a LEP/NEP individual. The testers were instructed to enter assigned agencies and speak only in the tested language. Only a small majority of the in-person tests (56%) reported that they were offered Language Line assistance or access to interpreters during their attempts to access services. The experiences of the in-person testers shed light on whether trainings conducted by the covered entities were effectively being implemented on a daily basis.



"In the process of interviewing people involved in the Mount Pleasant fire—as residents, advocates, first responders, and other government employees—it was very much apparent that awareness of the language needs of the communities are key to effective emergency response and disaster relief. Language resources and extensive planning can make the difference between life and death, and are also crucial to the long-term relief efforts after the cameras have gone away." Robert Winn, producer, Communities in Translation (2011). Photo courtesy of Robert Winn.

For example, of the five Bengali in-person tests, two were offered Language Line services by staffers at the Department of Parks and Recreation and DOH. The remaining three tested Upper Cardozo Health Center, OTA, and Office of

Two "In-Person Testers" Reflect on their Experiences with Agency Staff

One tester discovered that the Language Line employee was out of the office and the other staff could not reach him. No one else knew how to use the Language Line (in fact, only one person in the office actually knew). The staff member called the Office of Human Rights to ask how to use it, but then he had to go to his office to look for the ID number. Then, after waiting for about ten minutes, the employee finally figured out how to use Language Line.

When the second tester went into another agency and the employee tried to use the Language Line phone, she found that it was disconnected. She told the tester to follow her to another phone, which was disconnected as well. Then, she tried to figure out how to connect to Language Line with a regular phone, but she didn't know how to do it. The tester had to wait about 20-30 minutes for Language Line to be connected. When the tester finally asked for information about getting a driver's license, the agency didn't have any information in the language required. The employee just referred the tester to other documents, which were written in English.

the People's Counsel — none were able to receive assistance. Of the three Bengali tests that were denied access, one tester was not helped at all and reported that the government employee acted in a rude and annoyed manner. The employee that was contacted to help the Bengali tester was bilingual, speaking Spanish and English. In the other two attempts, the testers were not able to receive answers for their inquiries. However, the testers stated that the government employees helping them were respectful and gave them their business cards so they could make an appointment, even though the employees could not speak Bengali.

Three Amharic-speaking in-person tests and one French-speaking tester were offered Language Line services and the testers described the government employees as very helpful. Both Tigrinya-speaking tests resulted in eventually being offered Language Line services, but the testers reported first having to deal with a few levels of unhelpful, irritated, and rude government employees. The Tigrinya testers felt frustrated, stating it was difficult because everyone was making "a big deal" out of their request for help.

Of the five Spanish-speaking in-person tests, one was offered Language Line services. Two were assisted by bilingual government employees. The other two testers were not helped at all. The two testers who were denied assistance reported that in addition to lacking knowledge of the Act and competency in serving LEP/NEP individuals, the government employees were rude, irritated, and confrontational.

Self-Reporting on Compliance with Training Government Employees

Covered agencies with major public contact generally self-report compliance with the requirement to train their employees on cultural and linguistic competencies, including Language Line trainings and trainings conducted by OHR. In response to the authors' FOIA request, the six agencies that responded in time for the writing of the Report included training material on one or more of the following issues: the use of Language Line; cultural diversity; cultural sensitivity and communication; and the Act. This training material came in the form of PowerPoint presentations, instructions, and academic literature. While many of the



DCLAC staff members train individuals about key provisions of the Language Access Act.

agencies included OHR's training, entitled "Serving the District's LEP/NEP Communities," the training material was not limited to that solely provided by OHR. However, it was not clear how often the trainings were administered based on the FOIA responses.

The agencies' BLAPs contained similar information. For example, in the 2011–12 reporting period, DOH reported that it met its

goals of providing trainings in cultural competency and language services.¹⁹⁵ In the 2009–10 reporting period, FEMS provided necessary Language Line trainings,¹⁹⁶ and for 2011–12, the agency reported using the OHR trainings as well.¹⁹⁷ In 2007–08, HSEMA reported holding quarterly trainings on language access and mandatory Language Line trainings for anyone in Emergency Operations.¹⁹⁸ Its subsequent BLAP reported yearly diversity trainings and OHR trainings, and according to the most recent BLAP, HSEMA plans to have staff participate in all trainings at the request of the agency director.¹⁹⁹

Some covered entities with major public contact excel in providing cultural and linguistic competency training for their employees, including the creation of taskforces or the provision of specialized trainings related to major cultural or ethnic groups. MPD created a taskforce for language access in 2007–08 and provided Language Line trainings for new recruits and transfers.²⁰⁰ In 2009–10, MPD reported conducting Language Line and cultural sensitivity trainings for new recruits and transfers as well as learning modules on the ten most prevalent cultures in the D.C. area.²⁰¹ In 2011–12 MPD reported that all personnel are required to complete OHR's language access online training module.²⁰² Similarly, DHS reported that it conducted annual Language Line and cultural competency trainings in the 2007–08 reporting period and had its own Language Access Taskforce.²⁰³ In 2011–12, DHS reported that employees are required to use the online OHR training module.²⁰⁴

CONCLUSION

Despite generally positive findings on the self-reporting by the covered entities with major public contact, responses from surveyed individuals regarding the lack of employee training in use of Language Line and reporting inadequate

treatment based upon limited English proficiency, show that trainings may not be enhancing the day-to-day experiences of some LEP/NEP customers. More cultural competency trainings may need to be systematically implemented to mitigate the unpleasant experiences that some LEP/NEP customers have reported. Additionally, testing of employees'

knowledge of available tools, such as telephonic interpretation services, may need to accompany the annual trainings. Deficient training affects the proper implementation of other requirements under the Act, such as the provision of oral language services described above. Proper training will ensure that covered entities can comply with the Act.

Nichelle*

Some LEP/NEP individuals file complaints against an agency with the D.C. Office of Human Rights (OHR) to enforce their rights under the Language Access Act. Even receiving a favorable decision from OHR, however, does not guarantee that others will receive sufficient language access from the same agency in the future.

In 2010, an Amharic speaker filed a language access complaint against the D.C. Department of Human Services (DHS) for failure to provide oral interpretation and translated documents when he applied for food stamps. After an investigation, OHR found that DHS had violated the Language Access Act by denying this individual interpretation and translation services in Amharic. In its determination, OHR found that Amharic speakers met the threshold required (three percent or 500 individuals of the population served, encountered, or likely to be served or encountered, whichever is less) for DHS to provide translation of written vital documents. The agency was instructed to take appropriate measures to comply with the Act.

The very next year, in 2011, another Amharic speaker, Nichelle, went to the DHS Taylor Street Service Center to apply for food stamps for her child. The first time she went in, she was told in English that there were too many people and she could not be helped. When she returned, she was again told in English that there were too many customers, but that day the center set a date for Nichelle to return. Nichelle returned for the third time, on her appointment date, only to be told that she was there on "the wrong day" for Amharic speakers.

Though there are certain days that an Amharic speaker from Mary's Center is available to provide in-person interpretation and help to DHS customers, the employee that Nichelle spoke with apparently was not aware that the Act requires the agency to provide interpretation on other days as well.

Nichelle finally received the food stamps that she needed for her child, but only after she contacted a legal services attorney to speak with DHS on her behalf. A Taylor Street Service Center supervisor, who speaks Amharic, was very responsive to the attorney and ultimately contacted Nichelle directly to ensure that she was approved for benefits, back-dated to the first day she went in to the center.

But what about all the LEP/NEP customers who do not contact a legal services attorney, and do not know their language access rights? OHR had already ordered DHS to make language access services, including written translations, available for their Amharic-speaking customers. What remedies do other customers have when their language access rights are still violated? David Steib, an attorney with the Legal Aid Society of D.C., attributes problems like these to the inability of individuals to bring legal action against agencies that deny them language access. Mr. Steib notes that "the Language Access Act does not have a lot of teeth as long as there is no private right of action." Agencies are supposed to comply with the Language Access Act, but there are few consequences if they do not — even if OHR has already found them in violation of the Act and ordered them to correct any deficiencies.

COVERED ENTITIES WITH MAJOR PUBLIC CONTACT'S COMPLIANCE WITH OBLIGATION TO CONDUCT OUTREACH INTO LEP/NEP COMMUNITIES

Covered agencies with major public contact must develop a plan to conduct outreach into LEP/NEP communities.²⁰⁵ The regulations provide examples of potential outreach activities, including the following:

- Conducting public meetings; organizing events in LEP/NEP communities (including fairs, community meetings, forums, educational workshops);
- Deploying entities' mobile unit/truck/van to visit specific community centers, community based organizations or schools;
- Disseminating information through LEP/NEP media outlets (including local TV, newspapers, and radio);
- Deploying outreach personnel to visit and/or perform regular "walk throughs" within the various LEP/NEP communities;
- Partnering with community-based organizations for the implementation of projects and/or delivery of services;
- Sponsoring educational, informational, cultural and/or social events in LEP/NEP communities; and
- Organizing regular needs assessment meetings with LEP/NEP community-based organizations.²⁰⁶



Community outreach can occur at events like Fiesta D.C. — a festival to preserve and promote Latino culture in D.C. Photo courtesy of Tim Wright.

SELF-REPORTING ON OUTREACH METHODS BY COVERED ENTITIES

The covered entities with major public contact that did self-report outreach activities into LEP/NEP communities showed general adherence to this requirement, albeit with varying levels of activities. Generally, agency outreach efforts have targeted the Latino and Asian immigrant populations, but some entities are beginning to focus on D.C.'s African immigrant communities. For example, in the 2009-10 reporting period, the DOH's outreach objective centered on Latino populations but was expanding to Asian and African immigrant communities.²⁰⁷ For MPD, outreach was noted as a regular aspect of the job in

2007-08, and MPD created Asian and Latino Liaison Units to help with outreach to LEP/NEP communities.²⁰⁸ In its most recent BLAP, MPD committed to 156 outreach activities per year, focusing on Asian, Latino, and expanding to African communities.²⁰⁹ FEMS also reported participating in a joint town hall meeting with MPD.²¹⁰

Some covered entities with major public contact reported partnering with community organizations or other government agencies to perform outreach. For example, in the 2007-08 reporting period, DCHA partnered with culturally-based organizations through its Linguistically Isolated Voucher Programs, distributed flyers, and attended activities and meetings.²¹¹ DCHA continued this work in subsequent years, and sponsored a meeting in Columbia Heights, D.C., for community outreach.²¹² Also, within the 2007-08 reporting period, DOES used "Mobile One-Stop" sites to reach out to LEP/NEP communities.²¹³ In its most recent BLAP, DOES indicated its intent to participate in LEP/NEP public meetings at other agencies and planned on hosting its own public meeting.²¹⁴

MPD, HSEMA, and DHS all reported the most detailed outreach plans that demonstrated commitment to the Act. In the 2007–08 reporting period, HSEMA researched the LEP/NEP communities to create an outreach plan and used community contacts to disseminate information and attend meetings.²¹⁵ HSEMA subsequently reported that it had coordinated a National Preparedness Month full of events with a multicultural component, reached out to Mayor’s Office units, and had an outreach coordinator attend community functions.²¹⁶ In its most recent BLAP, HSEMA committed to organizing ten outreach activities targeting groups deemed likely to encounter services and to continue working on interpreting and translating emergency preparedness seminars.²¹⁷ Similarly, DHS reported partnerships with cultural organizations in D.C. for school-related services, public meetings, and distribution of translated documents through its community partners in the 2007–08 reporting period.²¹⁸ In 2009–10, the DHS reported organizing, attending, and supporting 49 culturally relevant outreach activities and committed to increasing that number by 25 percent;²¹⁹ in the 2011–12

reporting period DHS committed to conducting 40 outreach activities.²²⁰

CONCLUSION

Outreach into the LEP/NEP communities, as required in the Act, is generally done, although outreach without competency in other aspects of language access does not result in effective promulgation of services to the LEP/NEP communities. As demonstrated by the D.C. Mayor’s Office on Asian and Pacific Islander Affairs and the DCHA (see story below), despite outreach into the Asian community about the voucher program, the lack of effective services meant many LEP/NEP individuals, though at least informed of the available services, could not access the services for which they qualified. The covered entities with major public contact reported a variety of outreach events related to their agency’s purpose; continued coordination between agencies for outreach could prove an efficient use of resources if the agencies are able to serve the customers that they attract.

The D.C. Mayor's Office on Asian and Pacific Islander Affairs and the D.C. Housing Authority

The denial of a right to language access is not always limited to a particular individual's experience. Withholding interpretation and translation services can undermine even the best-intentioned programs.

In 2005, the D.C. Mayor's Office on Asian and Pacific Islander Affairs (OAPIA) and the D.C. Mayor's Office on Latino Affairs joined together with the D.C. Housing Authority (DCHA) to institute the Linguistically Isolated Tenant-Based Housing Choice Voucher program. This program would provide a total of 100 housing vouchers to linguistically-isolated communities, distributed to different language minorities based on census numbers. Eighty-one vouchers were allotted to Spanish-speaking tenants and 19 were allotted to tenants who spoke Asian and Pacific Islander languages. The 81 vouchers for Spanish-speakers were assigned relatively quickly due to the number of employees in DCHA who spoke Spanish or who had previous experience with using translation services for Spanish-speaking tenants.

Asian applicants faced a completely different experience. OAPIA informed Asian communities that the housing voucher program was available with DCHA. Asian applicants who came to DCHA's offices were informed in English that they brought the wrong documents or were asked to return with an English-speaking relative. DCHA failed to inform the applicants of their rights under the Language Access Act, and did not provide any interpretation or translation services. Most applicants left without ever knowing why they were sent away. After repeated attempts by Asian tenants to apply for the program, applicants just stopped coming in to DCHA to apply for the voucher program. Despite the large number of eligible tenants being informed about the program, the 19 Asian community vouchers took four years to place.

After realizing that the program was failing the communities it was meant to help due to a failure to provide interpretation and translation services, OAPIA and the Vietnamese American Community Service Center accompanied applicants to DCHA. They provided the interpretation and translation services that were the responsibility of DCHA, but which were not being offered. The experience of Asian applicants with the housing vouchers program shows that even community-oriented programs are a failure if the community cannot speak with its government.

CONCLUSION: ASSESSING OVERALL COMPLIANCE

Despite generally positive self-reporting by covered entities, the community surveys and testing described in this Report revealed a far more complicated picture of language access compliance. Although some covered entities made a good faith effort to determine language access needs of their communities and to conduct community outreach, compliance with these requirements was inconsistent across agencies. Additionally, the testing and surveys reflected significant rates of non-compliance with requirements to provide translated vital documents and signs, to provide oral language services, to effectively train employees in language access-related competencies, and to conduct outreach to LEP/NEP community members. The community surveys and individual stories indicate that even partial compliance under the Act in many cases does not necessarily allow for meaningful access to basic services.

The Act created an internal oversight structure to monitor agency compliance with the Act. As mentioned above, each covered entity with major public contact must create a Biennial Language Access Plan (BLAP). Unfortunately, agencies are currently not being held accountable to the goals listed in the BLAPs. The research indicates that covered entities' self-reporting on their BLAPs contrast starkly with LEP/NEP community members' experiences. These discrepancies cannot be overlooked.

In 2011, only seven new language access complaints were filed with OHR, five of which are under review. Last year, OHR found two agencies to be in violation of the Act. However, as this Report's findings clearly indicate, of the LEP/NEP residents surveyed, 58 percent reported difficulties related to language access. Among the in-person testers, only 56 percent were able to receive the oral interpretation services required under the Act; among telephone testers, only 40 percent received oral interpretation services. Moreover, when testers contacted covered entities requesting translated vital documents in Korean and Chinese, testers were told there were no translated documents — even when such documents should have been translated, according to the agency's BLAP. These results, the community members' experiences, and all of the other data in the Report point to inadequate compliance and insufficient oversight. This Report finds that although most covered entities have taken some steps

to comply with the Act, many of the agencies' obligations under the Act are simply not satisfied. Unless each element of the Act is satisfied, equal access for LEP/NEP individuals will not be achieved. For example, if a covered entity conducts outreach into LEP/NEP communities, but fails to adequately train its staff on the use of telephonic interpretation services, such as Language Line, the core purpose of the Act will be thwarted.

To encourage greater compliance with the Act's provisions, and provide LEP/NEP individuals meaningful access to D.C. government services, programs, and activities, DCLAC and IJC make the following recommendations:

RECOMMENDATIONS RELATING TO INTERNAL AGENCY OPERATIONS

1. Structure Databases and Files to Allow for Tracking of Language Needs

The Act called upon covered entities to modify their databases so as to track language needs of those they serve and encounter or are likely to serve and encounter. Eight years later, this remains a priority. Agencies should streamline their ability to provide individuals with language-appropriate services by implementing a system that "flags" the individual's file — in both electronic and physical forms — with the individual's preferred language. Once an individual has been flagged as LEP/NEP, files should be marked so that the individual receives interpretation and translation services without having to request them during every interaction that the individual has with the agency. This system will be especially useful where an agency uses standardized forms on a computer system, and where the field for the customer's language needs is made mandatory. If an electronic file is marked as needing a language other than English, the computer automatically would send that individual documents and correspondence in that language. Such language-need tracking helps each LEP/NEP individual who interacts with the agency, and cumulatively also provides the agency with essential data about its customers' language needs, helping the agency to assess the need for bilingual staff, translation of written documents, and other services.

2. Adopt a Robust and Transparent Approach to Determining Language Needs of Customers and Potential Customers

The Act and its accompanying regulations identify multiple sources of data for determining the language needs of current or prospective customers. Unfortunately, few entities rely on this full range of data. As a result, entities are not aware of the language needs of the population served, encountered, or likely to be served or encountered by the entity, and they do not know which languages require written translation of vital documents, among other problems. Agencies should create more detailed, robust plans to collect data regarding the language access needs of the communities served, and should actually collect this data on a regular basis. Additionally, OHR and language access advocates should appraise these methods and results, to ensure the accuracy and effectiveness of the data collection plans and data collected.

3. Work in Consultation with the D.C. Language Access Coalition and the Mayor's Constituent Offices for Outreach and Training Purposes

Agencies should follow through with their statutory mandate to work with the D.C. Language Access Coalition to enforce the Act, particularly with regards to outreach and training. The resources provided by the Coalition and the Mayor's Constituent Offices would unquestionably enhance staff training efforts and outreach to LEP/NEP community members. DCLAC and the Constituent Offices bring years of experience and insight on language access-related matters, and they have forged close relationships with LEP/NEP communities.

4. Ensure that All Agency Personnel who Interface with Members of the Public are Regularly Trained on the Act, Basic Interpretation and Translation Protocols, Use of In-Person and Telephonic Interpretation Services, Availability of Translated Documents Within the Agency, and Cross-Cultural Communication

One of the specific needs of LEP/NEP residents is effective interpreter services, translation services, and cross-cultural communication. If agencies were to ensure training for employees who interface with members of the public regarding vital skills such as the Act's requirements and purposes, basic interpretation and translation protocols, use of in-person and telephonic interpretation services, and cross-cultural communication, the Act's goals of language

access would be more fully realized. Employees should know when and how to respectfully identify a language access need and how to utilize the many language access resources available.

5. Redouble Compliance Efforts Targeted to Languages Other than Spanish, Particularly Asian and African Languages

As described above, speakers of Asian and African languages reported language access difficulties in particularly high numbers. This data suggests the need for greater attention to the language access needs of the District's Chinese-, Korean-, Vietnamese-, French- and Amharic-speaking residents. Agencies should not assume that the Act's requirements are met with Spanish language services. There are many other language access needs in the District.

6. Increase Signage in Non-English Languages

Language access regulations clearly require that agencies translate signage when certain numerical thresholds are met. Unfortunately, non-compliance with this requirement was reported by many community members. Covered entities should increase signage in non-English languages in their lobbies and offices, so as to ensure that LEP/NEP individuals have accurate information regarding agency services and processes. Signs should also clearly indicate the availability of language access services.

7. Ensure that Recorded Phone Messages are Accessible to LEP/NEP Persons

Covered entities should ensure that recorded phone messages such as those that indicate when employees are busy, or the office is closed, are recorded in multiple non-English languages. Many of the telephone testers — particularly those testing languages other than Spanish — were simply unable to navigate basic phone systems in the target language.

8. Upgrade Agency Websites to Offer Information in Multiple Languages

If an agency's website offers information, forms, or documents vital to the services provided, that website should offer the information in multiple languages. In this increasingly digitized world, language access obligations must necessarily include certain minimum obligations relating to translation of websites. If agency website's home pages (or portions of home pages) are not translated into multiple

languages, LEP/NEP individuals will simply not have equal access to critical agency information. Of particular note is the fact that only English speakers can access the internet-based form to file language access complaints on the Office of Human Rights' website.

9. Translate Vital Documents Into All Languages that Meet the Threshold for the Covered Entity. Further, Ensure that Each Covered Entity Conducts its Own Annual Data Collection and Analysis Regarding the Languages it Serves or Encounters, or is Likely to Serve or Encounter.

As mentioned in Recommendation 2, above, covered entities are responsible for collecting data about populations they serve, encounter, or are likely to serve or encounter. This data determines which languages require written translation of vital documents for each entity. In addition to completing this data collection, each covered entity should ensure that its vital documents are translated into all languages meeting its threshold for written translation, and that these documents are made available to agency staff. Each covered entity should also collect data and analyze demographics to assess language access needs as required under the Act, including collecting data about each customer's language preference so they can provide language access to that particular customer, and collecting data about its cumulative language needs to make decisions about placement of bilingual employees and other services. This core requirement of the Act remains a challenge through the present.

10. Develop a More Robust Internal Monitoring System Within Covered Entities.

There are many steps that can be taken within covered entities to monitor compliance with the Act. For example, Language Access Coordinators should review the files of a random cross-section LEP/NEP customers to ensure that notices are being sent in the customer's primary language. Monitoring should include a review of the quality of interpretation and translation services being provided to LEP/NEP customers. Other means of internal testing can also be developed.

RECOMMENDATIONS RELATING TO AGENCY OVERSIGHT AND ACCOUNTABILITY

1. Promote Greater Accountability for Agency Compliance with Goals Set out in Biennial Language Access Plans

The Biennial Language Access Plans could be a greater source of accountability if they included information on whether the goals from the previous reporting period were met. Currently, the BLAPs map out the entity's plans for the next two years with no reference to the previous reporting period. Analyses that included explanation on why the objectives of the previous BLAP were or were not met would create accountability and may encourage entities to create more internal testing as a result.

2. Encourage Collaboration and Training Across Covered Entities, and Highlight Best Practices

OHR should coordinate more frequent meetings with the Language Access Coordinators, or even convene a working group with Language Access Coordinators and representatives of consultative entities such as DCLAC, OLA, OAPIA, and OAA. Such gatherings would allow covered entities and key stakeholders to exchange information and strategize on effective practices. Providing a space for covered entities to share best practices as well as coordinate outreach collaboratively can increase efficiency in achieving outreach objectives under the Act. In addition, OHR should ensure that the Language Access Director is well versed in best practices across the country. The Language Access Director should attend national conferences and should create a dialogue with other local, state, and federal government offices.

3. Actively Promote the Hiring of Bilingual Staff Across Covered Entities, and Assess the Language Proficiency of Existing Bilingual Staff

Incentivizing the hiring and retention of bilingual staff could cut down on costs of providing third-party interpretation and translation services. For example, the MPD provides stipends for bilingual employees. Bilingual staff also enhance language access by providing more opportunities for in-person interpretation, rather than having to rely solely on telephonic interpretation. In addition to hiring new bilingual staff, covered entities must ensure that existing staff that are classified as "bilingual" possess the language proficiency to adequately serve LEP/NEP customers.

4. Ensure that the Office of Human Rights Reports on its Own Record of Language Access Compliance

The Office of Human Rights should also report on its language access compliance. OHR oversees all of the covered entities for compliance but fails to show whether it complies with the Act. As the only entity that can currently provide a remedy for a failure to comply with the Act, OHR should set an example and be more transparent as to whether it is fulfilling its duties.

5. Allocate Sufficient Funds at the Citywide Level to Language Access Issues and Needs

Language access certainly requires some government expenditure. Given the critical importance of this right, the D.C. Council must provide sufficient appropriations so that agencies may fulfill their obligations under the Act. Furthermore, the D.C. Council must ensure that agencies that are provided extra funding for serving LEP/NEP populations are utilizing this funding for appropriate purposes. For example, specific funds that have been appropriated to D.C. Public Schools should be used not just at the Central Office, but also on an individual school level, so that students and families who directly access DCPS can be assisted.

RECOMMENDATIONS RELATING TO ENFORCEMENT

1. Streamline, Standardize, and Accelerate the Act's Language Access Complaint Process

Under the current provisions of the Act and its Regulations, individuals must submit a formal complaint to OHR. Resolution of language access complaints has taken an inordinately long period of time and the process has not been standardized for all complainants. This Report recommends that the Office of Human Rights amend its Case Management Procedures to require that complaints be resolved in fewer than 120 days from the assigning of a docket number.

2. Make the Complaint Process More Accessible and Transparent

OHR's website should be updated to allow for LEP/NEP persons to file complaints in languages other than English. Additionally, OHR should report non-confidential information regarding all formal language access complaints filed, and how those complaints were resolved.

3. Record and Document "Informal" Complaints Against Covered Entities

Many community members experience language access violations without ever filing a formal language access complaint with OHR. This Report recommends (1) that all covered entities report any complaints they receive to OHR and (2) that OHR maintain publicly available data on all "informal" complaints received regarding violations of the Act, whether reported by covered entities, LEP/NEP persons, or by lawyers and language access advocates.

4. Create a Private Right of Action and Right to Appeal Under the Act

As described above, the current complaint process is exceedingly slow. Moreover, there is no meaningful procedure for violating agencies to be held accountable if they do not comply with the corrective actions issued after a finding of non-compliance. This Report endorses the inclusion of a private right of action into the D.C. Language Access Act. A private right of action would give a more immediate and direct benefit to the individual who cannot receive the interpretation or translation services they need. It would also incentivize agencies to fulfill their obligations under the Act rather than facing a more costly lawsuit. A private right of action would provide much-needed "teeth" to the Act's enforcement provisions. With the private right of action should also come the opportunity for judicial review at an appellate level. Currently, there is no way to appeal an unfavorable decision by OHR in a language access complaint.

WHAT YOU CAN DO

GET INVOLVED WITH DCLAC

If you are a community-based organization in D.C.

DCLAC member organizations work collaboratively to improve language access for the LEP/NEP population in D.C. DCLAC members' commitment and participation is based on each organization's comfort level. For more information on membership in DCLAC, please contact Sapna Pandya, Director of Many Languages One Voice (MLOV), at (202) 621-0001.

If you are an individual that would like to volunteer

DCLAC relies on committed volunteers to continue to conduct outreach to the LEP/NEP communities and realize its mandate of monitoring covered entities' compliance with and implementation of the Act. For more information on how you can get involved, please contact Tereguebode Goungou, MLOV's Language Access Advocate and Coordinator of the DCLAC, at (202) 621-0001.

LEARN MORE ABOUT LANGUAGE ACCESS RIGHTS IN D.C.

The issue of language access rights is dynamic and ever-changing in D.C. For current projects and events related to language access, please visit the DCLAC website at <http://www.dclanguageaccess.org/cm/>.

In addition, *Communities in Translation*, a 2011 documentary about the impact of language barriers during emergencies, provides insight on the provision of language access by responding D.C. agencies during a 2008 fire in the Mount Pleasant neighborhood of D.C.

ENDNOTES

* Pseudonyms were given to community members' who shared their stories relating to language access to protect their identities.

¹ 42 U.S.C. § 2000d (2010).

² *Lau v. Nichols*, 414 U.S. 563 (1974).

³ D.C. CODE § 2-1932(c)(1)-(2).

⁴ See Philip C. Aka & Lucinda M. Deason, *Culturally Competent Public Services and English-Only Laws*, 53 *How. L.J.* 53, 76 (2009) (citing American Civil Liberties Union of Florida, *Raising Public Awareness: English Only*, www.aclufl.org/take_action/download_resources/info_papers/6.cfm (discussing how "English Only" laws contradict United States' history as a multilingual nation)).

⁵ See *id.*

⁶ See, e.g., *Meyer v. Nebraska*, 262 U.S. 390 (1923) (challenging a Nebraska law restricting the use of languages other than English in the classroom).

⁷ *Id.* at 401-03.

⁸ *Id.* at 396.

⁹ *Id.* at 399-401.

¹⁰ *Id.* at 401.

¹¹ Civil Rights Act of 1964, 42 U.S.C. §§ 2000d — 2000d(7) (2010).

¹² *Lau v. Nichols*, 414 U.S. 563 (1974).

¹³ *Id.* at 564-65.

¹⁴ *Id.* at 568.

¹⁵ DOJ Policy Guidance on the Enforcement of Title VI of the Civil Rights Act of 1964 — National Origin Discrimination Against Persons with Limited English Proficiency, 65 *Fed. Reg.* 50124 (Aug. 16, 2000).

¹⁶ Exec. Order No. 13,166, 65 *Fed. Reg.* 50121, 50121-22 (2000); Press Release, Office of the Press Secretary for the White House, Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency (Aug. 11, 2000), [available at](http://www.justice.gov/crt/about/cor/Pubs/eolep.php) <http://www.justice.gov/crt/about/cor/Pubs/eolep.php>.

¹⁷ Memorandum from the Att'y Gen. of D.C. for Heads of Fed. Agencies, Gen. Counsels, and Civil Rights Heads (Feb. 17, 2011) (expressing the Federal Government's renewed commitment to language access obligations under Executive Order 13166) [available at](http://www.lep.gov/13166/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf) http://www.lep.gov/13166/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf.

¹⁸ *Id.* at 2-3 (noting that other action items include: "evaluate and/or update response to LEP needs by... conducting an inventory of languages most frequently encountered, identifying the primary channels of contact with LEP community members... and reviewing programs for language accessibility; ensure agency staff can competently identify LEP contact situations and take the necessary steps to provide meaningful access; notify the public, through mechanisms that will reach the LEP communities you serve, or your LEP policies, plans and procedures, and LEP access-related developments...; when considering hiring criteria, assess the extent to which non-English language proficiency would be necessary for particular positions or to fulfill your agency's mission; for written translations, collaborate with other agencies to share resources...; for agencies providing federal financial assistance, draft recipient guidance...").

¹⁹ See MD. CODE., STATE GOV'T §§ 10.1101-1105 (finding that "the inability to speak, understand, or read the English language is a barrier that prevents access to public services provided by State... and that the public services available through these entities are essential to the welfare of Maryland residents.").

²⁰ S.F., CAL., ADMIN CODE §§ 91.1-16. The Language Access Ordinance was formerly known as the Equal Access Ordinance. See generally Dymally-Alatorre Bilingual Services Act, CAL. GOV'T CODE § 7290 (creating a legal obligation for state-level agencies to provide bilingual services to ensure equal access since 1973, the Act allows local agencies to exercise discretion in the scope of the bilingual services they provide).

²¹ S.F., CAL., ADMIN CODE § 91.2(k).

²² *Id.* § 91.3(a).

²³ *Id.* § 91.3(c).

²⁴ *Id.* § 91.4(c)-(e).

²⁵ *Id.* § 91.4(a).

²⁶ *Id.* § 91.4(b).

²⁷ *Id.* § 91.6(b).

²⁸ *Id.* § 91.10.

²⁹ *Id.* § 91.1(b)(7). The amended act added thirteen departments to the "Tier 1" list, including the San Francisco International Airport, the Recreation and Park Department, and the Office of the Treasurer and Tax Collector. *Id.* § 91.2(l).

³⁰ OAKLAND, CAL., MUN. CODE § 2.30.10 (2001).

³¹ *Id.* § 2.30.030(a).

³² *Id.* § 2.30.010-160.

³³ *Id.* § 2.30.040(a).

³⁴ *Id.* §§ 2.30.020.

³⁵ *Id.* §§ 2.30.050-.060.

³⁶ *Id.* § 2.30.070(b).

³⁷ *Id.* § 2.30.080.

³⁸ *Id.* §§ 2.30.040-.100.

³⁹ The first lawsuit filed in September 2008 was brought by Public Advocates, Inc., Family Bridges, Inc., the Organization of Chinese Americans-East Bay Chapter, The Spanish Speaking Unity Council, and California ACORN. Another lawsuit was filed by the Educational Coalition for Hispanics in Oakland (ECHO), the Spanish Speaking Citizens' Foundation, and Asociación de Comerciantes Profesionales de Oakland (ACPO Inc.).

⁴⁰ Press Release, Public Advocates, Inc., Oakland Settlement Gives Non-English Speakers Access to Government Services (Feb. 16, 2011), [available at](http://www.publicadvocates.org/sites/default/files/press_releases/englishfi-nal_2.16.2011_0.pdf) http://www.publicadvocates.org/sites/default/files/press_releases/englishfi-nal_2.16.2011_0.pdf (last accessed Feb. 29, 2012).

⁴¹ *Id.*

⁴² N.Y.C., N.Y., ADMIN. CODE tit. 8, ch. 10, § 8-1001.

⁴³ *Id.* §§ 8-1003; see *id.* §§ 8.1002(a)–(b) (defining agency as “the human resources administration/department of social services, including any part, subdivision, field office or satellite facility thereof,” which includes a job center, food stamp office, medical assistance program office, etc.).

⁴⁴ *Id.* § 8-1002(j) (defining “covered language”).

⁴⁵ Exec. Order No. 120 from Michael R. Bloomberg, N.Y.C. Office of the Mayor, Citywide Policy on Language Access to Ensure the Effective Delivery of City Services (July 22, 2008) [hereinafter *Bloomberg Order*]; see also Assemb. B. 8276, 234th Sess., Reg. Sess. (N.Y. 2011) (amending the New York City administrative code to include provisions from Local Law 72 and the Executive Order extending the law to all city agencies).

⁴⁶ *Bloomberg Order*, *supra* note 45.

⁴⁷ See Jennifer Lee, *Welfare Agency Is Sued Over Translation Services*, NY TIMES (Aug. 11, 2009) (explaining the suit against New York City’s Human Resources Administration where six plaintiffs allege lost or delayed benefits due to language access issues).

⁴⁸ Complaint at para. 211, *Boureima v. N.Y.C. Human Res. Admin.*, 2009 WL 7049056 (N.Y. Sup. Ct., Aug. 11, 2009).

⁴⁹ As of April 6, 2012, this case is pending before the Supreme Court of New York. See *WebCivil Supreme — Case Search*, N.Y. UNIFIED CT. SYS., <http://iapps.courts.state.ny.us/webcivil/FCASSearch?param=1> (last accessed Apr. 7, 2012). See *N.Y.C. v. Div. of Hous. & Cmty. Renewal*, 97 N.Y.2d 216, 229 (N.Y. 2001) (providing an example of a final judgment upholding the legality of Local Law 73, finding that its goals are not in conflict with other New York City law).

⁵⁰ HAW. REV. STAT. §§ 371.31–.37; see *Hawaii’s Language Access Law*, OFFICE OF LANGUAGE ACCESS OF HAW., <http://hawaii.gov/labor/ola/ola-links/what-the-law-says> (last visited Apr. 6, 2012).

⁵¹ HAW. REV. STAT. § 371.32.

⁵² *Id.* §§ 371.33–.34. Hawaii’s law does not limit or specify the languages in which assistance must be available.

⁵³ *Id.* §§ 371.36–.37. This Council’s role is similar to the role of the D.C. Language Access Coalition in assisting with and ensuring the D.C. government’s compliance with the D.C. Language Access Act.

⁵⁴ *Id.* §§ 371.33(a)(1)–(4).

⁵⁵ Serafin Colmenares Jr., Office of Language Access of Hawaii, Remarks at the First Hawaii Conference on Language Access (Mar. 28, 2008) (transcript available at <http://hawaii.gov/labor/ola/conference-speeches-and-presentations/Language%20Access%20in%20Hawaii%20March%2028%20Jun%20Colmenares.pdf>).

⁵⁶ HAW. REV. STAT. § 371, Part II.

⁵⁷ Language Access Month Proclamation (Aug. 20, 2008), *available at* <http://hawaii.gov/labor/ola/pdf/Language%20Access%20Month%20%20-5454-%20Proclamation.pdf>.

⁵⁸ D.C. CODE § 2-1314.

⁵⁹ *Id.* § 2-1342.

⁶⁰ Report from Jim Graham, Subcommittee on Human Rights, Latino Affairs & Property Mgmt., to All Councilmembers, at 3 (Dec. 18, 2003) [hereinafter *Jim Graham Report*] (discussing Bill No. 15-139, the Language Access Act of 2003).

⁶¹ D.C. CODE §§ 2 - 1931-37.

⁶² *Jim Graham Report*, *supra* note 60.

⁶³ See, e.g., Mayor Anthony Williams, Remarks at the Brookings Institution Mayor’s Forum on the D.C. Language Access Act 9 (June 21, 2004) (transcript available at <http://www.brookings.edu/events/2004/0621demographics.aspx>).

⁶⁴ See *MPI Data Hub: The District of Columbia, Language & Education*, MIGRATION POLICY INST. (2012), www.migrationinformation.org/datahub/state2.cfm?ID=DC (“In 2009, 26.1 percent of the District of Columbia’s total foreign-born population age 5 and older were LEP”).

⁶⁵ D.C. MUN. REGS. tit. 4, §§ 1209.1, 1226.1.

⁶⁶ D.C. MUN. REGS. tit. 4, § 1204.5.

⁶⁷ *Id.* § 1209.2.

⁶⁸ *About Us*, D.C. LANGUAGE ACCESS COAL., www.dclanguageaccess.org/cm/aboutus.

⁶⁹ D.C. MUN. REGS. tit. 4, § 1205.1 (adopting slightly different language from the Act, *infra* note 70); see *id.* § 1205.3 (noting that grantees of the covered entities also must provide the services in accordance with the Act.).

⁷⁰ *Id.* § 1205.6, D.C. CODE § 2-1932(c).

⁷¹ D.C. MUN. REGS. tit. 4, § 1205.7.

⁷² D.C. CODE §§ 2-1932–33; see *id.* § 2-1931 (“covered entity” is any D.C. government agency, department, or program that furnished information or renders services, programs, or activities directly to the public or contracts with other entities, either directly or indirectly, to conduct programs, services, or activities (not including Advisory Neighborhood Commissions)).

⁷³ D.C. MUN. REGS. tit. 4, § 1205.10; see *id.* § 1205.7 (discussing how a target language is determined).

⁷⁴ D.C. MUN. REGS. tit. 4, § 1205.7.

⁷⁵ D.C. CODE § 2-1932(c).

⁷⁶ D.C. MUN. REGS. tit. 4, § 1205.8.

⁷⁷ D.C. CODE § 2-1933(a) ; D.C. MUN. REGS. tit. 4, §§ 1205.16–.17.

⁷⁸ D.C. CODE § 2-1931(7).

⁷⁹ D.C. MUN. REGS. tit. 4, § 1205.12.

⁸⁰ *Id.* § 1216.2.

⁸¹ D.C. MUN. REGS. tit. 4, § 1217.3.

⁸² *Id.* § 1217.5.

⁸³ *Id.* § 1217.4.

⁸⁴ D.C. CODE §§ 2-1931(3)(A)–(C) (noting that section 2-1931(3)(B) includes a list of initial covered entities with major public contact and that the Language Access Director has the authority through the Mayor to designate other entities after consulting DCLAC under section 2-1931(3)(C)); see also D.C. MUN. REGS. tit. 4, §§ 1206(2)(a)–(b) (listing covered agencies with major public contact and agencies that were designated by the LA Director).

⁸⁵ D.C. MUN. REGS. tit. 4, § 1206.3(b).

⁸⁶ D.C. MUN. REGS. tit. 4, § 1207.

⁸⁷ D.C. MUN. REGS. tit. 4 §§ 1206.4(a)–(p) (listing potential outreach activities of covered entities with major public contact).

⁸⁸ See D.C. CODE § 2-1934(a)(1); D.C. MUN. REGS. tit. 4, § 1206.3(a).

⁸⁹ See D.C. MUN. REGS. tit. 4, § 1206.3(b) (mandating that all covered agencies with major public contact designate a Language Access Coordinator).

⁹⁰ The Language Access Director is appointed within the D.C. Office of Human Rights and is in charge of coordinating and supervising the activities of the covered entities for compliance with the Act. D.C. CODE § 2-1931; see *id.* § 2-1935 (outlining the duties of the Language Access Director).

⁹¹ D.C. CODE § 2-1934(a)(2); D.C. MUN. REGS. tit. 4, § 1213.1.

⁹² D.C. CODE § 2-1934(a)(2)(A); D.C. MUN. REGS. tit. 4, § 1213.2(a).

⁹³ D.C. CODE § 2-1934(a)(2)(B); D.C. MUN. REGS. tit. 4, § 1213.2(b).

⁹⁴ These “public contact positions” would include receptionists and other employees that LEP/NEP individuals come into contact when seeking services at covered entities.

⁹⁵ D.C. CODE § 2-1934(a)(2)(C); D.C. MUN. REGS. tit. 4, § 1213.2(c).

⁹⁶ D.C. CODE § 2-1934(a)(2)(D); D.C. MUN. REGS. tit. 4, § 1213.2(e).

⁹⁷ D.C. CODE § 2-1934(a)(2)(E); D.C. MUN. REGS. tit. 4, § 1213.2(f).

⁹⁸ D.C. MUN. REGS. tit. 4, §§ 1213.2(g)–(h); see *id.* §§ 1206.4(a)–(p) (listing potential outreach activities including conducting public meetings, organizing events in the LEP/NEP communities, disseminating information through LEP media outlets, etc.).

⁹⁹ D.C. MUN. REGS. tit. 4, § 1207. The Language Access Coordinators also have the role to ensure that the agency can best fulfill the requirements of the Act. See *id.* Agency directors also have a role in ensuring agency compliance with the Act. See *id.* § 1208.

¹⁰⁰ *Id.* § 1207.2; see also *id.* § 1213 (stating the procedure and requirements for BLAPs).

¹⁰¹ *Id.* §§ 1207.4, 1214.

¹⁰² *Id.* § 1215.1.

¹⁰³ *Id.* § 1207.5.

¹⁰⁴ D.C. CODE § 2-1935(a); D.C. MUN. REGS. tit. 4, § 1202.1.

¹⁰⁵ D.C. MUN. REGS. tit. 4, § 1203.2.

¹⁰⁶ *Id.* § 1202.3.

¹⁰⁷ See D.C. CODE § 2-1935(b) (designating a Language Access Director and outlining the duties of the position).

¹⁰⁸ D.C. CODE §§ 2-1935(b)(1)–(3).

¹⁰⁹ D.C. MUN. REGS. tit. 4, §§ 1204.1–10.

¹¹⁰ *Id.* § 1213.3.

¹¹¹ *Id.* §§ 1204.2–3, 1213.3.

¹¹² *Id.* § 1204.4.

¹¹³ *Id.* The partnership agencies and organizations are the Office of the City Administrator, Office on African Affairs, Office on Asian and Pacific Islander Affairs, Office on Latino Affairs, and the D.C. Language Access Coalition. *Id.* § 1204.5. The Annual Compliance Report is available to the public within 30 days of a request. *Id.*

¹¹⁴ *Id.* § 1204.6; see also *id.* §§ 1216–24 (the full procedure of investigating and adjudicating public complaints under the Act).

¹¹⁵ *Id.* § 1203.2.

¹¹⁶ *Id.* § 1213.5.

¹¹⁷ D.C. OFFICE OF HUMAN RIGHTS, 2011 ANNUAL COMPLIANCE REVIEW (2012), [hereinafter *OHR 2011 Annual Report*] available at http://ohr.dc.gov/sites/default/files/dc/sites/ohr/release_content/attachments/FY%202011%20Language%20Access%20Compliance%20Review.pdf.

¹¹⁸ *Id.* at 13.

¹¹⁹ *Id.* OHR assigns 2 points for a requirement that is “fully met,” 0.1–1 point for requirements that are “partially met,” and 0 points for requirements that were “not met.”

¹²⁰ *Id.*

¹²¹ *Id.* The Annual Review states that it used this data in determining which languages to test for in a particular agency. *Id.*

¹²² *Id.* at 14. The testing organization conducted 177 telephonic tests and 105 in-person tests. *Id.*

¹²³ See *id.* at 16. The rating includes scores from self-reported quarterly reports from the agencies, the tester’s impressions, OHR’s score of the tester’s report on the particular test, and a separate rating on the agency’s fulfillment of the testing requirements based on the test encounter. *Id.* at 13–14.

¹²⁴ *Id.* at 16.

¹²⁵ *Id.* at 17.

¹²⁶ Agency BLAPs are utilized for the sole purpose of determining what agencies believe their particular language access obligations to be, and whether these obligations have been subjectively met.

¹²⁷ *OHR 2011 Annual Report*, *supra* note 115, at 13.

¹²⁸ See *id.* at 13, n. 9.

¹²⁹ See D.C. CODE § 2-1934(a).

¹³⁰ See *Language Access Law in D.C.*, D.C. OFFICE ON LATINO AFFAIRS, <http://dc.gov/DC/OLA/Programs+and+Services/Language+Access> (providing a timeline of when the Act applied to different covered entities).

¹³¹ D.C. MUN. REGS. tit. 4, § 1206.3(a); see *BLAPs*, D.C. LANGUAGE ACCESS COAL., <http://www.dclanguageaccess.org/cm/node/34> (providing links to some BLAPs from the 2007–08 and 2009–10 reporting periods).

¹³² D.C. CODE § 2-531.

¹³³ FOIA requests were submitted to OHR, Department of Motor Vehicles (“DMV”), Department of Employment Services (“DOES”), Department of Human Services (“DHS”), Public Schools (“DCPS”), Housing Authority (“DCHA”), Department of Consumer and Regulatory Affairs (“DCRA”), Metropolitan Police Department (“MPD”), Department of Transportation (“DCDOT”), Homeland Security and Emergency Management Services (“HSEMA”), Fire and Emergency Management Systems Department

("FEMS"), Department of Health ("DOH"), Office of the Tenant Advocate ("OTA"), Child Support Services Division ("CSSD"), and Child and Family Services Agency ("CFSA").

¹³⁴ The Act requires covered entities to translate their vital documents into any non-English language spoken by either (1) 3 per cent of the populations served or encountered, or likely to be served or encountered by the covered entity or (2) 500 individuals — whichever is less. D.C. CODE § 2-1933(a); D.C. MUN. REGS. tit. 4, § 1205.16.

¹³⁵ D.C. CODE §§ 2-532(c)–(d).

¹³⁶ Agencies that replied to the FOIA requests were the Child Support Services Division, the Department of Human Services, the Homeland Security and Emergency Management Agency, the Department of Motor Vehicles, the Office of Human Rights, and the Office of the Tenant Advocate.

¹³⁷ Of the 258 individuals surveyed, the language breakdown is as follows: 70 spoke Amharic; 25 spoke Chinese; 33 spoke French; three spoke Korean; 103 spoke Spanish; and 18 spoke Vietnamese.

¹³⁸ Of the 258 individuals surveyed, 131 were male, 123 were female, and four chose not mark their gender on the survey.

¹³⁹ Of the 258 individuals surveyed, 43 were 12–20 years old, 116 were 21–40 years old, 48 were 41–50 years old, 28 were 51–60 years old, 15 were over 60 years old, and eight did not mark their age on the survey.

¹⁴⁰ 111 out of 258 of the survey responses indicated that there were interpretation problems.

¹⁴¹ D.C. MUN. REGS. tit. 4, § 1213.2(a).

¹⁴² D.C. CODE § 2-192(b).

¹⁴³ See *id.* §§ 2-1934(a)(2)(A)–(B); D.C. MUN. REGS. tit. 4, §§ 1213.2(a)–(b).

¹⁴⁴ D.C. DEP'T OF HEALTH, BIENNIAL LANGUAGE ACCESS PLAN (2009).

¹⁴⁵ D.C. DEP'T OF HEALTH, BIENNIAL LANGUAGE ACCESS PLAN (2011).

¹⁴⁶ D.C. DEP'T OF HEALTH, BIENNIAL LANGUAGE ACCESS PLAN (2007); D.C. DEP'T OF HEALTH, BIENNIAL LANGUAGE ACCESS PLAN (2011).

¹⁴⁷ D.C. DEP'T. OF EMPLOYMENT SERVICES, BIENNIAL LANGUAGE ACCESS PLAN, 8 (2006).

¹⁴⁸ D.C. HOUSING AUTHORITY, BIENNIAL LANGUAGE ACCESS PLAN, 4 (2008).

¹⁴⁹ D.C. HOUSING AUTHORITY, BIENNIAL LANGUAGE ACCESS PLAN, 6 (2007).

¹⁵⁰ D.C. HOUSING AUTHORITY, BIENNIAL LANGUAGE ACCESS PLAN, 4–5 (2011).

¹⁵¹ D.C. FIRE & EMERGENCY MGMT. SYS., BIENNIAL LANGUAGE ACCESS PLAN, 4–5 (2007).

¹⁵² D.C. HOMELAND SECURITY & EMERGENCY MGMT. AGENCY, BIENNIAL LANGUAGE ACCESS PLAN, 5 (2007).

¹⁵³ D.C. HOMELAND SECURITY & EMERGENCY MGMT. AGENCY, BIENNIAL LANGUAGE ACCESS PLAN, 6 (2011).

¹⁵⁴ D.C. METROPOLITAN POLICE DEP'T, BIENNIAL LANGUAGE ACCESS PLAN, 4 (2007).

¹⁵⁵ *Id.*

¹⁵⁶ D.C. METROPOLITAN POLICE DEP'T, BIENNIAL LANGUAGE ACCESS PLAN, 18–20 (2009); D.C. METROPOLITAN POLICE DEP'T, BIENNIAL LANGUAGE ACCESS PLAN, 21–22 (2011).

¹⁵⁷ See D.C. CODE § 2-1932(c)(1) (stating that a covered entity determines oral language services annually through the US Census Bureau data, language-related information, local census data, other government data that includes intake data from other entities, and data from DCLAC).

¹⁵⁸ *Id.*

¹⁵⁹ D.C. MUN. REGS. tit. 4, § 1205.6.

¹⁶⁰ D.C. CODE § 2-1933(a); D.C. MUN. REGS. tit. 4, §§ 1205.12, 1205.16. 17 (noting that the regulations only provide for individuals served or encountered).

¹⁶¹ Of the 150 surveys that reported language access complaints, 45 reported that there was a lack of translated documents.

¹⁶² Of the 150 surveys that reported language access complaints, 46 reported that there was a lack of signage.

¹⁶³ Out of 70 surveys of the Amharic language, 22 reported translation problems. Of the 22 that reported translation problems, 15 reported lack of documents translated into Amharic and 16 reported lack of signage in Amharic. Out of 25 surveys of the Chinese language, five reported translation problems. Of the five that reported translation problems, five reported lack of documents translated into Chinese and two reported lack of signage in Chinese. Out of 33 surveys in the French language, nine reported translation problems. Of the nine that reported translation problems, seven reported lack of documents translated into French and six reported lack of signage in French. Out of the 103 surveys in the Spanish language, 25 reported translation problems. Of the 25 that reported translation problems, 18 reported lack of documents translated into Spanish and 11 reported lack of signage in Spanish. Out of the 18 surveys in the Vietnamese language, 11 reported translation problems. Of the 11 that reported translation problems, 11 reported lack of signage in Vietnamese.

¹⁶⁴ D.C. HOUSING AUTHORITY, BIENNIAL LANGUAGE ACCESS PLAN, 8 (2007).

¹⁶⁵ D.C. HOUSING AUTHORITY, BIENNIAL LANGUAGE ACCESS PLAN, 7 (2008).

¹⁶⁶ *Id.*

¹⁶⁷ D.C. HOUSING AUTHORITY, BIENNIAL LANGUAGE ACCESS PLAN, 6–7 (2011).

¹⁶⁸ D.C. DEP'T OF HUMAN SERVICES, BIENNIAL LANGUAGE ACCESS PLAN, 11–12 (2011).

¹⁶⁹ D.C. DEP'T. OF EMPLOYMENT SERVICES, BIENNIAL LANGUAGE ACCESS PLAN, 10 (2006).

¹⁷⁰ D.C. DEP'T. OF EMPLOYMENT SERVICES, BIENNIAL LANGUAGE ACCESS PLAN, 9–12 (2011).

¹⁷¹ D.C. FIRE & EMERGENCY MGMT. SYS., BIENNIAL LANGUAGE ACCESS PLAN, 8 (2009).

¹⁷² D.C. FIRE & EMERGENCY MGMT. SYS., BIENNIAL LANGUAGE ACCESS PLAN, 6 (2011).

¹⁷³ D.C. METROPOLITAN POLICE DEP'T, BIENNIAL LANGUAGE ACCESS PLAN, 4–6 (2007).

¹⁷⁴ *Id.* at 5.

¹⁷⁵ D.C. METROPOLITAN POLICE DEP'T, BIENNIAL LANGUAGE ACCESS PLAN, 23–26 (2009); D.C. METROPOLITAN POLICE DEP'T, BIENNIAL LANGUAGE ACCESS PLAN, 24–30 (2011).

¹⁷⁶ D.C. MUN. REGS. tit. 4, § 1205.10; see *id.* § 1205.7 (discussing how a target language is determined).

¹⁷⁷ D.C. CODE § 2-1932(b); D.C. MUN. REGS. tit. 4, § 1205.7.

¹⁷⁸ D.C. CODE § 2-1932(d); D.C. MUN. REGS. tit. 4, § 1205.13.

¹⁷⁹ D.C. CODE § 2-1932(c)(1); D.C. MUN. REGS. tit. 4, § 1205.7.

¹⁸⁰ 150 of the survey responses indicated some type of language access issue.

¹⁸¹ 72 involved the absence of bilingual staff, 59 involved the unavailability of in-person interpretation, 41 involved a long wait for interpretation, and 23 of the interpretation issues involved agency or covered entity's failure to offer Language Line.

¹⁸² D.C. MUN. REGS. tit. 4, § 1205.13.

¹⁸³ D.C. FIRE & EMERGENCY MGMT. SYS., BIENNIAL LANGUAGE ACCESS PLAN, 11–12 (2007).

¹⁸⁴ D.C. FIRE & EMERGENCY MGMT. SYS., BIENNIAL LANGUAGE ACCESS PLAN, 9–10 (2009).

¹⁸⁵ D.C. FIRE & EMERGENCY MGMT. SYS., BIENNIAL LANGUAGE ACCESS PLAN, 8–9 (2011).

¹⁸⁶ D.C. HOUSING AUTHORITY, BIENNIAL LANGUAGE ACCESS PLAN, 10–11 (2007).

¹⁸⁷ D.C. HOUSING AUTHORITY, BIENNIAL LANGUAGE ACCESS PLAN, 8 (2008).

¹⁸⁸ See D.C. METROPOLITAN POLICE DEP'T, BIENNIAL LANGUAGE ACCESS PLAN, 32–47 (2011) (listing all bilingual staff along with languages spoken).

¹⁸⁹ D.C. DEP'T OF HUMAN SERVICES, BIENNIAL LANGUAGE ACCESS PLAN, 9 (2006).

¹⁹⁰ D.C. DEP'T. OF HUMAN SERVICES, BIENNIAL LANGUAGE ACCESS PLAN, 14–16 (2011).

¹⁹¹ D.C. HOMELAND SECURITY & EMERGENCY MGMT. AGENCY, BIENNIAL LANGUAGE ACCESS PLAN, 11 (2011).

¹⁹² D.C. DEP'T OF HEALTH, BIENNIAL LANGUAGE ACCESS PLAN, 9 (2011).

¹⁹³ D.C. MUN. REGS. tit. 4, § 1205.11.

¹⁹⁴ D.C. MUN. REGS. tit. 4, § 1213.2(h).

¹⁹⁵ D.C. DEP'T OF HEALTH, BIENNIAL LANGUAGE ACCESS PLAN, 11 (2011).

¹⁹⁶ D.C. FIRE & EMERGENCY MGMT. SYS., BIENNIAL LANGUAGE ACCESS PLAN, 11 (2009).

¹⁹⁷ D.C. FIRE & EMERGENCY MGMT. SYS., BIENNIAL LANGUAGE ACCESS PLAN, 10 (2011).

¹⁹⁸ D.C. HOMELAND SECURITY & EMERGENCY MGMT. AGENCY, BIENNIAL LANGUAGE ACCESS PLAN, 12–13 (2007).

¹⁹⁹ D.C. HOMELAND SECURITY & EMERGENCY MGMT. AGENCY, BIENNIAL LANGUAGE ACCESS PLAN, 12–13 (2011).

²⁰⁰ D.C. METROPOLITAN POLICE DEP'T, BIENNIAL LANGUAGE ACCESS PLAN, 9–10 (2007).

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