

**OFFICE OF HUMAN RIGHTS**

**NOTICE OF FINAL RULEMAKING**

The Director of the Office of Human Rights (“OHR Director”), pursuant to the authority set forth in Sections 2(3)(C) and 6(b)(6) of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code §§ 2-1931 *et seq.* (2012 Repl.)) (“Language Access Act”), and Mayor’s Order 2007-127, dated May 31, 2007, hereby gives notice of his intent to adopt an amendment to Chapter 12 (Language Access Act) of Title 4 (Human Rights and Relations) of the District of Columbia Municipal Regulations (“DCMR”).

The amendment will delete the existing Chapter 12 (Language Access Act) of Title 4 in its entirety and add a new Chapter 12 (Language Access Act), to provide guidance and assistance to District agencies and members of the public with the implementation of the Language Access Act, for individuals with limited English proficiency or no English proficiency, who are encountered or served by the District of Columbia government.

The first Notice of Proposed Rulemaking was published in the *D.C. Register* on May 17, 2013 at 60 DCR 7023. The OHR Director received comments from the Consultative Agencies listed in § 1209 of the Language Access Act and the D.C. Language Access Coalition, many of which were subsequently incorporated. The Notice of Second Proposed Rulemaking was published on February 7, 2014 at 61 DCR 1011, and the office again received suggestions from the Language Access Coalition and one other constituent. These suggestions were minimal, technical, and non-substantive, and have been incorporated into this Notice of Final Rulemaking.

These final rules were adopted on September 5, 2014 and will be effective upon publication of this notice in the *D.C. Register*.

**A new Chapter 12, LANGUAGE ACCESS ACT, of Title 4, HUMAN RIGHTS AND RELATIONS, of the DCMR is added to read as follows:**

**CHAPTER 12      LANGUAGE ACCESS ACT**

**1200            SCOPE**

The provisions of this chapter shall apply to all District government agencies that constitute “covered entities” and “covered entities with major public contact” as defined in Sections 2(2) and 2(3) of the Language Access Act of 2004 (D.C. Official Code § 2-1931(2) and § 2-1931(3)) (“the Act”).

**1201            PURPOSE**

1201.1        In order for covered entities to meet their obligations under the Act and to provide enforcement of the Act, the Office of Human Rights adopts this chapter to:

- (a) Define the roles and responsibilities of parties assigned to oversee and implement the Act;
- (b) Provide assistance with data collection on the languages spoken by limited-English proficient or non-English proficient (“LEP/NEP”) populations as required under the Act;
- (c) Provide assistance and guidance to covered entities regarding reporting requirements, and to covered entities with major public contact in implementing Biennial Language Access Plans (“BLAPs”) pursuant to § 1212; and
- (d) Set forth guidelines for the investigation of complaints filed under the Act and for enforcement of the Act.

**1202           ROLE OF THE OFFICE OF HUMAN RIGHTS**

1202.1           The Office of Human Rights (“OHR”) shall provide covered entities with oversight, central coordination, and technical assistance in their implementation of the provisions of the Act.

1202.2           OHR shall ensure that the delivery of services by covered entities meets acceptable standards of translation and interpretation by providing information to the Office of Contracting and Procurement (“OCP”) to assist in the development of a quality procurement process.

1202.3           OHR shall ensure that staff members of covered entities in public contact positions are trained regarding their legal obligations to serve limited-English proficient or non-English proficient (“LEP/NEP”) customers under the Act. These trainings shall include information on how to improve accessibility for LEP/NEP customers, including, but not limited to, the use of professional and qualified multilingual telephonic interpretation services and how to appropriately direct LEP/NEP customers to such services.

1202.4           OHR shall collect and publish statistical information regarding language access public complaints received by OHR, including those not assigned to an investigator. The statistical information shall be included in the Language Access Report required by § 1203.2.

**1203           ROLE OF THE DIRECTOR OF THE OFFICE OF HUMAN RIGHTS**

1203.1           The Director of the Office of Human Rights (“OHR Director”) shall designate an employee of OHR as the Language Access Director (“LA Director”) to coordinate activities under the Act. The LA Director shall carry out all job functions under the direction and supervision of the OHR Director. The OHR Director may also designate additional staff to assist the Language Access Director.

- 1203.2 The OHR Director shall prepare an annual Language Access Report and deliver it to the Mayor, the Office of the City Administrator (“OCA”), the Language Access Coalition, and the Consultative Agencies on the deficiencies found, progress made, and overall compliance with the Act for each covered entity. The report shall be delivered no later than ninety (90) days after the end of the fiscal year, and shall include:
- (a) Results of the annual implementation reports required by § 1205.3;
  - (b) A summary of language-access-related data reported throughout the fiscal year to OHR by covered entities with major public contact; and
  - (c) A summary of the results of audits and field tests conducted by OHR pursuant to § 1227.

1203.3 The OHR Director’s annual Language Access Report shall be made available to the public within thirty (30) days of a request.

#### **1204 ROLE OF THE LANGUAGE ACCESS DIRECTOR**

1204.1 The Language Access Director (“LA Director”) shall be responsible for coordinating activities of covered entities under the Act and for carrying out the language access responsibilities of the Office of Human Rights (“OHR”), as described in § 1202.1.

1204.2 The LA Director shall oversee the language access complaint procedures for the OHR.

1204.3 The LA Director shall conduct education and outreach regarding the Act to covered entities and community-based organizations directly serving limited-English proficient or non-English proficient (“LEP/NEP”) residents.

1204.5 The LA Director shall provide training resources to personnel in public contact positions for covered entities regarding compliance with the Act. The LA Director will deliver this training and/or ensure that Language Access Coordinators deliver this training to personnel either in person or via web-based resources. In addition, all District personnel shall have access to in-person or web-based training regarding compliance with the Act.

1204.6 The LA Director shall provide all covered entities with a policy manual that contains baseline policies and procedures that ensure agency-wide compliance with the Act.

1204.7 The LA Director shall issue an annual survey to all covered entities that are not designated as covered entities with major public contact. The survey shall request

implementation reports addressing agency encounters with LEP/NEP constituents and available resources and/or systems in place to serve LEP/NEP customers, as required by § 1205.3.

- 1204.8 The LA Director shall review and monitor each Biennial Language Access Plan (“BLAP”) required by § 1212 for compliance with the Act. If a BLAP fails to comply with the Act, the LA Director shall assist the agency in revising the BLAP and shall set a deadline for submission of the revised BLAP.
- 1204.9 The LA Director shall review covered entities’ implementation reports and provide an annual synopsis to the OHR Director on the deficiencies found and progress made in implementing the Act. The synopsis shall be included in the annual Language Access Report required by § 1203.2.
- 1204.10 The LA Director shall monitor the performance and responsibilities of the Language Access Coordinators as described in § 1207, and of the Language Access Points of Contact as described in § 1205.17.
- 1204.11 The LA Director shall consult with the D.C. Language Access Coalition as specified in § 1208 and the Consultative Agencies listed in § 1209 regarding the implementation of the Language Access Act.
- 1204.12 The LA Director shall advise the District’s Department of Human Resources and the personnel authorities of covered entities who have independent hiring authority on issues related to the recruitment and hiring of bilingual public contact personnel.
- 1204.13 The LA Director shall serve as the Language Access Coordinator for OHR and shall fulfill the responsibilities listed in § 1207 for that agency.

**1205 ROLES OF COVERED ENTITIES**

- 1205.1 Pursuant to Section 2(2) of the Act, all District government agencies, departments, or programs that furnish information or render services, programs, or activities directly to the public or that contract with other entities, either directly or indirectly, to conduct programs, services or activities to the public are covered entities.
- 1205.2 Each covered entity shall provide written translation of vital documents into any non-English language spoken by a limited-English proficient or non-English proficient (“LEP/NEP”) population that constitutes 3% or 500 individuals, whichever is less, of the population served or encountered, or likely to be encountered, by the covered entity.
- 1205.3 At the end of each fiscal year, each covered entity shall submit an implementation report reflecting its assessment of non-English languages spoken by LEP/NEP

populations constituting three percent (3%) or five hundred (500) individuals, whichever is less, of the population served or encountered, or likely to be served or encountered, by the covered entity, as well as resources available to these LEP/NEP populations.

- (a) Each covered entity shall also submit the data it relied on to make the determination of each non-English language spoken by an LEP/NEP population constituting three percent (3%) or five hundred (500) individuals, whichever is less, of the population served or encountered, or likely to be served or encountered, by the covered entity. This data shall include, but not be limited to, resources cited in Section 3(c)(1) of the Act (D.C. Official Code § 2-1932(c)(1)).
- (b) The covered entity shall provide the determination to the Language Access Director (LA Director) no later than thirty (30) days after the end of the fiscal year.
- (c) The LA Director shall evaluate whether the data submitted by the covered entity supports the covered entity's determination, and whether the data relied upon by the covered entity is sufficient and appropriate. If the LA Director concludes that a covered entity's determination is not supported by sufficient and appropriate data, the LA Director shall make a revised determination of any non-English language spoken by a LEP/NEP population that constitutes three percent (3%) or five hundred (500) individuals, whichever is less, of the population served or encountered, or likely to be served or encountered, by the covered entity. In making this determination the LA Director shall rely upon resources cited in Section 3(c)(1) of the Act (D.C. Official Code § 2-1932(c)(1)).
- (d) The covered entity may appeal a determination of the Language Access Director to the Director of the Office of Human Rights ("OHR Director").

1205.4 The covered entity shall ensure that all vital documents that are translated into a non-English language spoken by a LEP/NEP population are widely distributed within the agency, accessible at points of entry, and available online, to the extent that the same vital documents in the English language are widely distributed within the agency, accessible at points of entry, or available online.

1205.5 Each covered entity shall provide oral language services to LEP/NEP individuals who seek to access or participate in the services, programs, or activities offered by the covered entity, as further described in this chapter.

1205.6 The covered entity shall determine the type of oral language services it must provide in order for the LEP/NEP customers it serves to access or participate in the services, programs, or activities offered by the covered entity, based on the

following factors, as set forth in Section 3(b) of the Act (D.C. Official Code § 2-1932(b)):

- (a) The number or proportion of LEP/NEP persons of the population served or encountered, or likely to be serve or encountered, by the covered entity;
- (b) The frequency with which LEP/NEP individuals come into contact with the covered entity;
- (c) The importance of the service provided by the covered entity; and
- (d) The resources available to the covered entity.

1205.7 Each covered entity shall provide oral language services to LEP/NEP customers who seek to access or participate in public meetings conducted by the covered entity, if the request is made at least five (5) business days in advance of the public meeting. Requests for oral language services in advance of public meetings shall be made to the covered entity's Language Access Coordinator ("LAC") or Language Access Point of Contact ("LAPOC") in person, by telephone, or by electronic mail.

1205.8 To the extent that a covered entity requires additional personnel to provide the type of oral language services needed, it shall, in consultation with its personnel authority, give preference to hiring qualified bilingual personnel into existing budgeted vacant public contact positions.

1205.9 In order to assist in providing oral language services to LEP/NEP customers, each covered entity shall maintain a current account (either directly or through a District-wide or multi-agency contract) with a professional and qualified multilingual telephonic interpretation service that provides immediate oral language services to LEP/NEP customers.

1205.10 When the services described in § 1205.9 are not reasonably sufficient to ensure access to the services provided by the covered entity, the covered entity shall provide qualified and experienced in-person interpretation services to LEP/NEP customers.

1205.11 Each covered entity shall update databases, applications, and tracking systems to contain fields that will capture and/or produce data about the specific languages spoken and the number of LEP/NEP customers speaking a given language in the population(s) served.

1205.12 Each covered entity shall work closely with OHR and the LA Director to ensure that all staff members of covered entities in public contact positions are trained regarding their legal obligations for serving LEP/NEP customers under the Act.

- 1205.13 Each covered entity shall place appropriate signs or posters communicating the availability of language accessible services at a conspicuous location within customer service locations (including mobile locations) operated by the covered entity. The signs or posters shall be in the language(s) identified as those spoken by three percent (3%) or five hundred (500) individuals, whichever is less, of the population served or encountered, or likely to be served or encountered, by the covered entity.
- 1205.14 Each covered entity shall provide oral language services to LEP/NEP customers who participate directly in administrative hearings conducted by the covered entity, whether or not the customer is accompanied by an advocate or attorney.
- 1205.15 If the covered entity offers oral interpretation and/or written translation to a LEP/NEP customer and the customer refuses the interpretation or translation services, then the covered entity shall provide an OHR-promulgated waiver form to the customer. The customer must sign this form in order to waive his/her rights under the Act. The form shall be in the language of the customer and shall confirm that the LEP/NEP customer is voluntarily waiving his or her right to free interpretation and/or translation services provided by the covered entity. The covered entity may provide an oral translation of the written text of the waiver form if a written translation is not available in the customer's language or if the customer is unable to read his or her native language.
- 1205.16 Each covered entity shall:
- (a) Ensure that contractors hired by the covered entity to carry out services, programs, or activities directly to the public collect data required by this section regarding contact with LEP/NEP customers and report this data to the covered entity on a quarterly basis, provide oral interpretation services and translate vital documents according to the same standards required of the covered entity, and train personnel on all compliance requirements;
  - (b) Ensure that any grantee that provides services under a covered entity's mandate complies with the requirements of the Act;
  - (c) Require that contractors and grantees certify in writing that the compliance requirements required by paragraphs (a) and (b) of this subsection will be satisfied by their subcontractors and sub-grantees; and
  - (d) Ensure that contractors and grantees receive language access compliance training or guidance in accordance with standards set forth by OHR. Any required training shall be provided by OHR, unless the agency agrees to provide the training and OHR approves the provision of training by the agency.

- 1205.17 Each covered entity that is not designated as a covered entity with major public contact shall designate a Language Access Point of Contact (“LAPOC”). The LAPOC shall serve as a language access information coordinator and assist in implementing all of the covered entity’s requirements under the Act and these regulations. The LAPOC shall also:
- (a) Receive, maintain, update, and disseminate information regarding language access resources for the covered entity, including, but not limited to, annual distribution of the covered entity’s language access policy;
  - (b) Complete the annual implementation report for the covered entity consistent with the requirements in § 1205.3;
  - (c) Attend an annual training on Language Access Act obligations and resources made available by OHR; and
  - (d) Receive reports of alleged violations of the Language Access Act from individuals, Consultative Agencies, or other organizations, and shall provide the reports to the LA Director as they are received.

1205.18 Each covered entity that is not designated as a covered entity with major public contact shall respond to the annual survey issued by the LA Director pursuant to § 1204.7.

## **1206 ROLES OF COVERED ENTITIES WITH MAJOR PUBLIC CONTACT**

1206.1 Pursuant to Section 2(3)(A) of the Act, covered entities with major public contact are covered entities whose primary responsibility consists of meeting, contracting, and dealing with the public. “Dealing” with the public refers to providing direct services to and interacting with the public.

1206.2 Covered entities with major public contact are:

- (a) The agencies listed in Section 2(3)(B) of the Act, which are as follows:
  - Alcoholic Beverage Regulation Administration;
  - Child and Family Services Agency
  - Department of Behavioral Health;
  - Department of Consumer and Regulatory Affairs
  - Department of Corrections
  - Department of Employment Services
  - Department of Health;
  - Department of Housing and Community Development;
  - Department of Human Resources;
  - Department of Human Services;
  - Department of Motor Vehicles;



Department of Parks and Recreation;  
Department of Public Works;  
District of Columbia general ambulatory and emergency care centers;  
District of Columbia Housing Authority;  
District of Columbia Public Library;  
District of Columbia Public Schools;  
Fire and Emergency Medical Services Department;  
Homeland Security and Emergency Management Agency;  
Metropolitan Police Department;  
Office on Aging;  
Office of Contracting and Procurement;  
Office of Human Rights;  
Office of Planning;  
Office of Tax and Revenue; and  
Office of the People’s Counsel.

- (b) Pursuant to Section 2(3)(B) of the Act, agencies designated by the Language Access Director (“LA Director”) under the direction of the Director of the Office of Human Rights (“OHR Director”), which are as follows:

Department of General Services;  
Department of Health Care Finance;  
Department of Small and Local Business Development;  
Department of the Environment;  
Department of Transportation;  
Department of Youth Rehabilitation Services;  
Department on Disability Services;  
District of Columbia Lottery and Charitable Games Control Board;  
District of Columbia Public Charter Schools;  
Office of Administrative Hearings;  
Office of the Attorney General-Child Support Services Division;  
Office of the State Superintendent of Education;  
Office of the Tenant Advocate;  
Office of Unified Communications; and  
Office of Zoning.

1206.3 In addition to the requirements contained in this section, each covered entity with major public contact must meet all of the responsibilities for covered entities under the Act and § 1205 (other than those responsibilities that are specifically limited to covered entities without major public contact).

1206.4 Each covered entity with major public contact shall establish and implement a complete Biennial Language Access Plan (“BLAP”) required by § 1212 that is

approved by the LA Director and published in the *D.C. Register* every two (2) years.

- 1206.5 Each covered entity with major public contact shall designate a Language Access Coordinator (LAC) who shall carry out the responsibilities described in § 1207. Each covered entity with major public contact may also work with the LA Director to establish a language access team. The functions of a language access team may include, but are not limited to, designating the covered entity's LAC, providing translated vital documents, ascertaining served and likely to be served populations, providing for the training needs of the covered entity, and investigating complaints of non-compliance with the Act.
- 1206.6 Each covered entity with major public contact shall have all staff members in public contact positions attend either web-based or in-person training, provided by OHR, on the requirements for serving limited-English proficient or non-English proficient ("LEP/NEP") customers under the Act and on the use of professional and qualified multilingual telephonic interpretation services and how to appropriately direct LEP/NEP customers to such services.
- 1206.7 Each covered entity with major public contact shall develop a plan to conduct outreach to LEP/NEP communities to disseminate information about the language access benefits and services offered by the covered entity as well as LEP/NEP goals stated in the covered entity's BLAP. Outreach activities may include, but are not limited to, the following:
- (a) Conducting public meetings with reasonable advance notice to the public in locations where LEP/NEP populations are known to congregate, such as schools, community centers, or places of worship;
  - (b) Organizing events (such as fairs, community meetings, forums, and educational workshops) in LEP/NEP communities;
  - (c) Deploying mobile units to visit community centers, community based organizations, or schools;
  - (d) Disseminating information through in-language or ethnic media outlets (including local television, newspapers, and radio);
  - (e) Deploying outreach personnel to perform regular walk-throughs in LEP/NEP communities;
  - (f) Partnering with community-based organizations for the implementation of projects and/or delivery of services;
  - (g) Distributing flyers, brochures, and other printed material in diverse languages and at diverse locations;

- (h) Disseminating information through covered entities' websites;
- (i) Issuing press releases in diverse languages and directing those press releases to media outlets serving LEP/NEP communities;
- (j) Implementing a topic-specific campaign to raise awareness of a particular service or project in an LEP/NEP community;
- (k) Sponsoring educational, informational, cultural, and/or social events in LEP/NEP communities;
- (l) Participating in LEP/NEP community events and/or meetings;
- (m) Inviting LEP/NEP community members to visit agency service site(s) and government facilities;
- (n) Cosponsoring community events with community-based organizations that serve LEP/NEP communities;
- (o) Participating in and/or cosponsoring events that target the District's LEP/NEP communities with other District government agencies; and
- (p) Organizing regular needs assessment meetings with LEP/NEP community-based organizations.

**1207 ROLE OF LANGUAGE ACCESS COORDINATORS**

- 1207.1 Each Language Access Coordinator ("LAC") shall coordinate and assist in implementing the requirements of the Act and these regulations that apply to covered entities with major public contact.
- 1207.2 Each LAC shall report directly to his or her agency director, or the director's designee, on issues related to compliance with the Act and implementation of the Act, including budget issues related to the delivery of language access services required by the Act.
- 1207.3 Each LAC shall establish and be responsible for ensuring implementation of the agency's Biennial Language Access Plan ("BLAP").
- 1207.4 The LAC shall submit a quarterly report, as described in § 1214, to the LA Director regarding the agency's implementation of its BLAP.
- 1207.5 Each LAC shall receive reports of alleged violations of the Language Access Act from individuals, Consultative Agencies, or other organizations, and shall provide the reports to the LA Director as they are received.

**1208           ROLE OF D.C. LANGUAGE ACCESS COALITION**

- 1208.1           The D.C. Language Access Coalition (“LA Coalition”) shall serve in an external non-governmental role consulting on the implementation of the Act.
- 1208.2           The Language Access Director (“LA Director”) shall consult with the LA Coalition on the following:
- (a)     Data collection;
  - (b)     Development and modification of BLAPs;
  - (c)     Identification of additional covered entities to be designated under the Act as covered entities with major public contact; and
  - (d)     Overall implementation of the Language Access Act.
- 1208.3           Consultation pursuant to § 1208.2 requires that the LA Director:
- (a)     Notify the LA Coalition of activities that would significantly impact the implementation of the Act with sufficient notice so as to allow the LA Coalition to provide meaningful input; and
  - (b)     Give reasonable consideration to the LA Coalition’s input, which may, where appropriate, lead to changes to decisions.

**1209           ROLE OF THE CONSULTATIVE AGENCIES**

- 1209.1           The following agencies shall serve as consultative bodies to the Language Access Director (“LA Director”) and the Director of the Office of Human Rights (“OHR Director”) to develop and update covered entities’ Biennial Language Access Plans (BLAPs) and assist in the implementation of the Act: the Office on African Affairs, Office of Asian and Pacific Islander Affairs, and the Office on Latino Affairs (collectively, the “Consultative Agencies”).
- 1209.2           The Consultative Agencies shall furnish demographic data on their respective communities to the LA Director, who shall provide the data to Language Access Coordinators (“LACs”) and Language Access Point of Contacts (“LAPOCs”).
- 1209.3           The Consultative Agencies shall provide outreach to limited-English proficient or non-English proficient (“LEP/NEP”) communities in the District on the Act and assist the LACs to develop and implement outreach efforts.
- 1209.4           The Consultative Agencies shall assist OHR in the development of quality control instruments in their respective languages.

1209.5 The Consultative Agencies shall provide technical assistance to the Department of Human Resources and the personnel authorities of covered entities with independent hiring authority (collectively, “personnel authorities”) regarding issues related to the recruitment and hiring of bilingual public contact personnel.

1209.6 The Consultative Agencies shall assist their constituents with language access concerns by first referring the concern to the LAC or LAPOC of the covered entity in question. If the concern is not addressed by the covered entity, the consultative agency shall refer the concern to the LA Director.

## **1210 ROLE OF PERSONNEL AUTHORITIES FOR COVERED ENTITIES**

1210.1 The personnel authority for each covered entity shall develop strategies for recruiting and maintaining bilingual personnel, including assessing the non-English language abilities of all future and current District personnel who both self-identify as bilingual and apply for or currently fill an employment position designated as “bilingual” or “bilingual preferred.”

1210.2 Pursuant to § 1205.8, the personnel authority shall assist the staff of covered entities in assessing the covered entity’s budgeted vacant public contact positions and classifying identified positions as “bilingual” or “bilingual preferred.”

## **1211 BASELINE ASSESSMENTS**

1211.1 Prior to implementing its first Biennial Language Access Plan (“BLAP”), each covered entity with major public contact shall complete a baseline assessment of its compliance with the Act. The baseline assessment shall include a description of current service interaction with limited-English proficient or non-English proficient (“LEP/NEP”) communities, current outreach activities to LEP/NEP communities, resources available to personnel serving LEP/NEP customers (such as translation and interpretation services and translated documents), and the number and position titles of current staff that self-identify as bilingual. The baseline assessment information shall be provided to the Language Access Director (“LA Director”) and included in the covered entity’s initial BLAP.

1211.2 Upon the completion of each two (2)-year BLAP cycle, each covered entity with major public contact shall update the information in the prior assessment with current information. The updated information shall be included in the covered entity’s BLAP.

1211.3 The Language Access Coordinator (LAC) for each covered entity with major public contact shall facilitate the work required for completing the baseline assessments within the agency, as well as complete and submit the assessments to the LA Director.

1211.4 The LA Director shall meet with each LAC and respective agency director or designee to review the agency’s baseline assessment.

**1212 BIENNIAL LANGUAGE ACCESS PLAN**

1212.1 A covered entity with major public contact shall establish a Biennial Language Access Plan (“BLAP”). Each BLAP shall be established in consultation with:

- (a) The Language Access Director (“LA Director”);
- (b) The D.C. Language Access Coalition;
- (c) The covered entity’s Language Access Coordinator (“LAC”);
- (d) The covered entity’s Director; and
- (e) The Consultative Agencies.

1212.2 Each BLAP shall set forth, at a minimum, the following:

- (a) The types of oral language services that the covered entity will provide and a description of how the covered entity made this determination;
- (b) Which languages are spoken by a limited-English proficient or non-English proficient (“LEP/NEP”) population that constitutes three percent (3%) or five hundred (500) individuals, whichever is less, of the population served or encountered or likely to be served or encountered by the covered entity, and how the covered entity made this determination;
- (c) The titles and types of each document that the covered entity will provide in translation and a description of how the covered entity made this determination;
- (d) The total number of public contact positions in the covered entity, the number of bilingual employees in public contact positions, and the languages spoken by the bilingual employees identified on the list;
- (e) The number, position, and location of bilingual employees the covered entity plans to hire in public contact positions;
- (f) The names, titles and contact information of members of the covered entity’s language access team, if one has been established pursuant to § 1206.5;

- (g) An evaluation of the language access services provided, the language access data collection systems in place, and whether the goals stated in the previous BLAP were met;
- (h) A policy, administrative issuance, or procedures and guidelines that inform personnel of the protocols to follow when an LEP/NEP customer requests language assistance, and provide direction regarding other language access compliance requirements.
- (i) A plan to conduct outreach to the District’s LEP/NEP communities served or likely to be served by the covered entity;
- (j) A plan to provide training to employees in public contact positions about the covered entity’s legal obligations under the Act, and to develop cultural competency skills to support them in providing quality customer service to LEP/NEP customers; and
- (k) A description of the budgetary resources with which the covered entity will implement the BLAP.

1212.3 Each BLAP shall be subject to approval by the LA Director. The LA Director shall meet with each LAC and respective agency director to review draft agency BLAPs prior to approval of the BLAP. The LA Director shall consult resources including but not limited to those listed in Section 3(c)(1) of the Act (D.C. Official Code § 2-1932(c)(1) (2012 Repl.)) to verify the identification of the languages which are spoken by a LEP/NEP population that constitutes three percent (3%) or five hundred (500) individuals, whichever is less, of the population served or encountered, or likely to be served or encountered by the covered entity.

1212.4 A covered entity with major public contact shall complete its initial BLAP after completion of the baseline assessments, within a time period designated by the LA Director.

1212.5 Each BLAP shall be updated every two (2) fiscal years.

1212.6 The LA Director shall report to the Director of the Office of Human Rights (“OHR Director”) the failure by any covered entity with major public contact to submit a BLAP in a timely manner. The OHR Director shall include a list of these failures in the OHR Director’s annual Language Access Report to the Office of the City Administrator.

**1213 QUARTERLY REPORTS**

1213.1 Each covered entity with major public contact shall submit to the Language Access Director (“LA Director”) a quarterly report describing its progress in

implementing the covered entity's Biennial Language Access Plan ("BLAP") within thirty (30) days after the end of each quarter of the fiscal year.

1213.2 Each quarterly report shall:

- (a) Provide the status of all tasks required of the covered entity with major public contact in accordance with its BLAP and requirements of the Act; and
- (b) Report the number of complaints received during the quarter in question and the steps taken to resolve each complaint.

1213.3 Failure to submit quarterly reports in a timely manner shall be reported to the Director of the Office of Human Rights ("OHR Director"), and such failure shall be included in the OHR Director's annual Language Access Report to the Office of the City Administrator ("OCA"), required by § 1203.2.

**1214 ANNUAL REPORT OF COVERED ENTITIES WITH MAJOR PUBLIC CONTACT**

1214.1 Each covered entity with major public contact shall submit to the Language Access Director ("LA Director") an annual language compliance and progress report. The report shall be submitted within sixty (60) days after the end of each fiscal year.

1214.2 The annual report shall be submitted in such a form as may be designated by the LA Director and shall contain the following information regarding entities with major public contact:

- (a) The total number of limited-English proficient or non-English proficient ("LEP/NEP") individuals served or encountered by the entity during the fiscal year (delineated by language);
- (b) The total number of all individuals served or encountered by the entity during the fiscal year;
- (c) A list of vital documents that have been translated into non-English languages by the entity and the specific non-English languages into which they have been translated;
- (d) A description of oral language services offered by or through the entity;
- (e) An itemized list of funds expended by the entity for language access purposes;



- (f) A list of the bilingual staff employed in public contact positions by the entity;
- (g) A list of the covered entity with major public contact's contractors and grantees, as described in § 1205.16, and the status of their compliance with the Act;
- (h) The number of waiver forms signed in accordance with the provisions in § 1205.15;
- (i) The number of language access complaints received during the course of the fiscal year and the steps taken to resolve those complaints; and
- (j) A description of actions taken by the entity to improve the delivery of services to LEP/NEP customers and a description of any remaining challenges in providing services to LEP/NEP customers.

1214.3 The LA Director shall report failures to fulfill the criteria set forth in § 1214.2 to the Director of the Office of Human Rights ("OHR Director"), and the OHR Director shall include a list of these failures in the OHR Director's annual Language Access Report to the OCA required by § 1203.2

1214.4 The LA Director shall provide copies of the annual reports of the covered entities with major public contact to the D.C. Language Access Coalition and the Consultative Agencies.

1214.5 Annual reports of the covered entities with major public contact shall be made available to the public within thirty (30) days of a request.

**1215 INQUIRIES, REQUESTS FOR ASSISTANCE, AND PUBLIC COMPLAINTS OF NONCOMPLIANCE WITH THE LANGUAGE ACCESS ACT**

1215.1 The Office of Human Rights ("OHR") shall receive and track all inquiries and requests for assistance or information concerning language access. Inquiries and requests for assistance may be submitted in writing or verbally by a limited-English proficient or non-English proficient ("LEP/NEP") customer or an individual or third party acting on the customer's behalf. Each inquiry or request shall be addressed and resolved by the Language Access Director ("LA Director") and documented in accordance with the OHR Standard Operating Procedures Manual.

1215.2 OHR shall post on its website the process for submitting an inquiry, request, or complaint, and shall also post an overview of its investigative process. OHR shall also provide this information to each individual who files a complaint with OHR.

1215.3 The filing of a public complaint alleging noncompliance with the Act does not supersede or preclude the filing of a complaint alleging intentional illegal discrimination under the D.C. Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code §§ 2-1401.01 *et seq.*). Discrimination complaints shall be filed in accordance with the procedures in Chapters 1 and 7 of Title 4 of the District of Columbia Municipal Regulations.

## **1216 FILING OF PUBLIC COMPLAINTS**

1216.1 The procedures in this section apply to the filing of a public complaint alleging a violation of the Act.

1216.2 Any person or organization may file with the Office of Human Rights (“OHR”) a public complaint alleging a violation of the Act. The public complaint may be filed on behalf of a complainant by a person or organization with an interest in the welfare of the complainant.

1216.3 The public complaint may be submitted in writing on a complaint form promulgated by OHR, online via the OHR’s website, verbally to an OHR staff member by telephone or in person, or through a covered entity.

1216.4 If a covered entity receives a public complaint, the covered entity shall forward the complaint to the Language Access Director (“LA Director”).

1216.5 A public complaint may request an investigation into individual or systemic noncompliance with the Act.

1216.6 A public complaint shall be deemed filed when OHR receives a statement sufficiently precise to identify the parties and to describe generally the action or practice complained of.

1216.7 In addition to commencing the investigative process when requested by a complainant, the LA Director shall commence the investigative process on his or her own initiative whenever he or she has reason to believe that an agency covered under the Act, or an employee of such an agency, has failed to comply with the Act.

1216.8 A public complaint shall be processed by OHR in accordance with OHR’s Standard Operating Procedures Manual. The LA Director shall administer or supervise the investigation and resolution of the complaint.

1216.9 If the alleged act(s) of noncompliance was committed by OHR, the complaint shall be brought before the Office of the City Administrator (“OCA”), or an agency or person designated by OCA, for review and investigation.

## **1217 DISMISSAL FOR LACK OF JURISDICTION**

- 1217.1 Prior to investigating a complaint, the Language Access Director (“LA Director”) shall determine, based on the face of the complaint, whether the following jurisdictional requirements have been met:
- (a) The public complaint has been filed with the Office of Human Rights (“OHR”) within one (1) year of the occurrence of the alleged act of noncompliance or the discovery of the alleged act of noncompliance, whichever occurs later;
  - (b) The respondent is identified as a covered entity, a covered entity with major public contact, or a grantee or contractor of a covered entity or a covered entity with major public contact; and
  - (c) The complaint alleges a violation of the Act.
- 1217.2 The LA Director shall perform the jurisdictional review required by this section within two (2) business days after he or she receives the complaint.
- 1217.3 If the LA Director determines that the jurisdictional requirements of Subsection 1217.1 have not been met, the LA Director shall issue an order dismissing the complaint without an investigation. The order shall be issued promptly after the jurisdictional review has been completed.
- 1217.4 No complaint shall be assigned to an investigator until the jurisdictional review required by this section has been completed.
- 1217.5 If at any time after an informal resolution process or investigation has begun the LA Director determines that the jurisdictional requirements of this section have not been met, the LA Director shall promptly issue an order dismissing the complaint on jurisdictional grounds.

## **1218 ADMINISTRATIVE DISMISSALS**

- 1218.1 The Language Access Director (“LA Director”) shall dismiss a public complaint without prejudice for the following administrative reasons:
- (a) The complainant has failed to respond to the Office of Human Rights (“OHR”) or cannot be reached by OHR, and OHR does not have sufficient information from the complainant to pursue an investigation; or
  - (b) The complaint fails to state a claim of noncompliance with the Act.
- 1218.2 An Order dismissing a complaint for an administrative reason shall state the reason for the dismissal in writing, and shall be served on the parties.

**1219 WITHDRAWAL OF COMPLAINTS**

1219.1 A public complaint may be voluntarily withdrawn at the request of the complainant at any time before a final decision and order is issued pursuant to § 1223. The request to withdraw a complaint must be made in writing. The circumstances of a withdrawal may be investigated by the Language Access Director (“LA Director”).

**1220 REOPENING OF WITHDRAWN OR ADMINISTRATIVELY DISMISSED COMPLAINTS**

1220.1 A complainant may request that a complaint previously dismissed for an administrative reason or voluntarily withdrawn be reopened, provided that the complainant submits a written request within thirty (30) days after receiving the order dismissing the complaint and states specifically the reasons why the complaint should be reopened.

1220.2 The Language Access Director (“LA Director”), upon receipt of a request to reopen a complaint, may, within his or her discretion, reopen the case for good reason or in the interest of justice.

1220.3 The decision of the LA Director to reopen a complaint shall be served on all parties to the complaint.

**1221 RESOLUTION OF COMPLAINTS PRIOR TO INVESTIGATION**

1221.1 The Language Access Director (“LA Director”) shall attempt to resolve a public complaint with the covered entity against which the complaint was filed before assigning the complaint for investigation by:

- (a) Working with the covered entity to ensure the complainant, within a reasonable period of time, receives the information and language access services they are seeking from the covered entity or, alternatively, working to develop a solution that is acceptable to the complainant, the covered entity, and the LA Director; and
- (b) Allowing the covered entity to acknowledge its non-compliance with the Act rather than be subject to an investigation. In such cases, the LA Director shall find the covered entity in noncompliance, and shall use the information acquired during the Office of Human Rights (OHR) intake procedure to fashion and issue an order as described in Section 1223.

1221.2 If a complaint is not resolved pursuant to § 1221.1(a) or (b) within forty-five (45) days after the complaint was filed, the complaint shall be assigned to an OHR investigator.

**1222 INVESTIGATION**

- 1222.1 Upon assignment of the case to an investigator, the investigator shall serve a copy of the public complaint by electronic mail to the director and Language Access Point of Contact (“LAPOC”) or Language Access Coordinator (“LAC”) of the covered entity that is the subject of the complaint (the “Respondent”).
- 1222.2 The investigation may include site visits, interviews of witnesses, and inspection of Respondent’s records.
- 1222.3 After receiving all requested documents from the Respondent, the investigator shall provide the Complainant with copies of all documents and information submitted by Respondent, except for documents that the investigator deems to be privileged or confidential. The investigator shall provide Complainant with an opportunity to rebut information submitted by the Respondent.
- 1222.4 At the completion of the investigation, the investigator shall prepare a report setting forth his or her findings. The report shall include any supporting documents.

### **1223 DETERMINATION AND ORDER**

- 1223.1 After receiving the investigator’s report, the Language Access Director (“LA Director”) shall review and analyze the case and prepare a preliminary decision and order. The preliminary decision and order shall include findings of fact and conclusions of law. If there is a finding of noncompliance with the Act, the preliminary decision and order shall also include requirements for appropriate remedial actions, if any, to be taken by the Respondent, including, where appropriate, providing language access services to the Complainant and/or other limited-English proficient or non-English proficient (“LEP/NEP”) individuals within a reasonable timeframe. The LA Director shall submit the preliminary decision and order to the General Counsel of the Office of Human Rights (“OHR”) for review.
- 1223.2 After consultation with the LA Director, the Office of Human Rights Director (“OHR Director”) shall issue a final decision and order that includes findings of fact and conclusions of law. In the event the final decision and order includes a finding of noncompliance with the Act, the LA Director shall:
- (a) Within sixty (60) days, schedule a meeting with Respondent to discuss the final decision and order and appropriate corrective actions; and
  - (b) Within sixty (60) days of the meeting with Respondent, issue an order enumerating required corrective actions.
- 1223.3 The final decision and order shall be issued within six (6) months of the date the complaint is filed.

1223.4 If Respondent does not take action required by the final decision and order within the timeframe designated in the final decision and order, Respondent’s failure to act will be reported to the Office of the City Administrator (“OCA”) or Office of the Mayor for further action.

1223.5 Each final decision and order shall state the parties’ right to reconsideration and specify any relevant filing deadlines.

**1224 RIGHTS AND RESPONSIBILITIES OF PARTIES**

1224.1 All parties are entitled to, and shall receive, a fair and impartial investigation by the Language Access Director (“LA Director”).

1224.2 All parties shall:

- (a) Cooperate with, and comply with all requests of, the LA Director or the Office of Human Rights (“OHR) during the investigation of the complaint; and
- (b) Furnish OHR with the following:
  - (1) All documents, records, names of witnesses, and any other necessary information needed to investigate the complaint; and
  - (2) Current contact information.

1224.3 Noncompliance by the covered entity against which the complaint is filed shall be reported to the OCA for further action.

**1225 RECONSIDERATION**

1225.1 A Complainant may request reconsideration of a determination of compliance, or a respondent may request reconsideration of a determination of non-compliance, by submitting a written application for reconsideration to the Director of the Office of Human Rights (“OHR Director”). The application shall state specifically the grounds upon which the request for reconsideration is based.

1225.2 An application for reconsideration shall be filed with the Language Access Director (“LA Director”) within fifteen (15) calendar days after the party filing the application (the “moving party”) receives the LA Director’s final decision and order.

1225.3 After receiving an application for reconsideration, the LA Director shall send letters acknowledging receipt of the application to both the moving party and the non-moving party. The LA Director shall send with the letter to the non-moving party a

copy of the application for reconsideration, and the non-moving party shall be given fifteen (15) calendar days after receipt of the LA Director's letter to file a response.

1225.4 In considering whether to grant a motion for reconsideration, the OHR Director, in consultation with the LA Director, shall determine:

- (a) Whether the moving party has:
  - (1) Presented newly discovered, material facts that were not reasonably available during the OHR investigation; or
  - (2) Identified a material error in the decision and order; or
  - (3) Identified statements in the application which, if deemed true and accurate, would warrant modification of the final decision and order; or
- (b) Whether the moving party has demonstrated that reconsideration is necessary in order to avoid an injustice.

1225.5 If, after review of a timely-filed application for reconsideration and the response to the application for reconsideration, the OHR Director, in consultation with the LA Director, concludes that the moving party has not satisfied the standards for reconsideration set forth in § 1225.4, the OHR Director shall deny the application for reconsideration.

1225.6 If the OHR Director, in consultation with the LA Director, concludes that the application for reconsideration has satisfied the standards for reconsideration set forth in § 1225.4, the complaint shall be reopened for further investigation.

1225.7 If, at the end of further investigation and after considering the record as a whole, the OHR Director, in consultation with the LA Director, concludes that the moving party has not presented sufficient evidence to warrant a modification to the final decision and order, the final decision and order shall be affirmed by a final decision and order on reconsideration, and the parties shall be notified in writing.

1225.8 If the OHR Director, in consultation with the LA Director, determines, after further investigation, that the final decision and order should be modified, the LA Director shall issue a final decision and order on reconsideration, which shall include a detailed written basis for the modification of the final decision and order. The final decision and order on reconsideration shall be transmitted to both parties within sixty (60) days of the date the application for reconsideration was filed.

1225.9 In the event the final decision and order on reconsideration includes a finding of noncompliance with the Act, it shall specify all required corrective actions.

1225.10 Each final decision and order on reconsideration shall state the parties' right to appeal the order and specify any relevant filing deadlines.

## **1226 APPEALS**

1226.1 An appeal from a final decision and order or a final decision and order on reconsideration may be filed with the District of Columbia Office of Administrative Hearings (OAH).

1226.2 The moving party shall file an appeal with the OAH within thirty (30) calendar days after the date the Office of Human Rights' final decision and order or final decision and order on reconsideration is issued.

1226.3 OAH shall adjudicate the appeal consistent with its own policies, procedures, and standards of review.

## **1227 AUDITS AND FIELD TESTS**

1227.1 The Office of Human Rights ("OHR") shall conduct audits and field tests of covered entities, as deemed necessary, to ascertain the agency's level of compliance with the Act.

1227.2 After OHR completes each audit or field test, it shall issue a report describing the results of the audit or field test to the covered entity being audited and the Language Access Director ("LA Director"). The report shall also include a list of corrective actions that the agency should take to correct any violations or potential violations of the Act.

1227.3 The OHR Director shall include a list of negative audit findings in the OHR Director's annual report to the OCA required by § 1203.2.

1227.4 The LA Director may investigate any specific instance of noncompliance cited in an audit or field test and may issue a decision and order pursuant to §§ 1221, 1222, and 1223.

1227.5 Audits and field tests of OHR may be conducted by an agency designated by the OCA.

## **1299 DEFINITIONS**

1299.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

**Act** – the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code §§ 2-1931 *et seq.* (2012 Repl.)).



**Administrative hearing** – a hearing before a government agency or before an administrative law judge.

**Biennial Language Access Plan (“BLAP”)** – a two (2)-year mandatory compliance plan for each covered entity with major public contact that is to be revised and published in the *D.C. Register* biennially by the covered entity.

**Bilingual employee** – an employee who is certified as proficient in both the English language and a language other than English by the personnel authority of the covered entity in which the employee is employed.

**Complainant** – an individual, group of individuals, or organization(s) who files a public complaint alleging a violation of the Language Access Act against an agency.

**Consultative Agencies** – a collective term used to refer to the Office on African Affairs, Office on Asian and Pacific Islander Affairs, and Office of Latino Affairs. These agencies are referred to in Section 5(a)(2) of the Act (D.C. Official Code § 2-1934(a)(2)) as government offices that conduct outreach to communities with LEP/NEP populations.

**Covered entity** – a 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 such programs, services, or activities. The term “covered entity” does not include Advisory Neighborhood Commissions.

**D.C. Language Access Coalition** – the established alliance of diverse community-based organizations in the District that work with the District government to foster and promote the civil rights of immigrant and LEP/NEP communities by advocating for meaningful language access within the District.

**Interpretation** – oral/verbal conversion of the meaning of a dialogue from one language to another language and vice versa. There are three (3) types of interpretation:

- (a) Sight translation, in which an interpreter reads a document written in one language and translates it orally into another language;
- (b) Consecutive interpretation, in which an interpreter translates a speaker’s words orally after the speaker has stopped speaking; and
- (c) Simultaneous interpretation, in which an interpreter speaks simultaneously with the source language speaker.

**Limited English Proficient (LEP) individual** – an individual who does not speak English as his or her primary language and who has a limited ability to read, speak, write, or understand English.

**Linguistic and cultural competency training** – training that educates, informs, instructs, or provides guidance on how to provide readily available, culturally appropriate oral and written language services to LEP/NEP individuals through such means as bilingual/bicultural staff, trained interpreters, and qualified translators.

**Non-English Proficient (NEP) individual** – an individual who cannot speak or understand the English language at any meaningful level.

**Oral language services** – language translation or assistance services provided to enable LEP/NEP individuals to access or participate in programs or services offered by a covered entity. Oral language services include:

- (a) Commercial interpretation services, which are oral interpretation services provided by professional businesses;
- (b) Interpreters made available through community service organizations that are publicly funded for that purpose;
- (c) Multilingual telephonic interpretation services, which are over-the-phone oral interpretation services that provide professionally trained and qualified interpreters in various languages;
- (d) Staff interpreter services, in which an employee who has been proven competent in oral interpretation through certification, training, or assessments offers oral interpretation; and
- (e) Employment of bilingual or multi-lingual employees.

**Personnel authority** – the District of Columbia Department of Human Resources or, for covered entities with independent hiring authority, the individual or department responsible for hiring by the covered entity.

**Public complaint** – an administrative complaint filed with OHR or a covered entity alleging violation of the Act by a covered entity.

**Public contact position** – an employment position in a covered entity for which the primary responsibilities include greeting, meeting, serving, or providing information or services to the public. Public contact positions are positions that require personal contacts with the public.

**Respondent** – the agency against which a public complaint has been filed.

**Translation** – the written conversion of texts in the source language into texts written in another language, retaining the meaning and intent of the original source text and producing a culturally competent product.

**Vital documents** – applications and their instructions, notices, complaint forms, legal contracts, correspondence, and outreach materials published by a covered entity in a paper or electronic format including but not limited to those which inform individuals about their rights and responsibilities or eligibility requirements for benefits and participation, as well as documents that pertain to the health and safety of the public. The term “vital documents” shall include tax-related educational and outreach materials produced by the Office of Tax and Revenue, but shall not include tax forms and instructions.