

Language Access Investigations Standard Operating Procedures

I. Filing

Complainant submits in writing, online via the Office of Human Rights' (OHR) website, verbally to an OHR staff member by telephone or in person, or through a covered entity, a questionnaire concerning the Language Access Act complaint. A 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.

II. Jurisdiction

- a) The OHR Language Access Director ("LA Director"), within **two (2) business days** after receipt of the complaint, shall determine, based on the face of the complaint, whether the following jurisdictional requirements have been met:
 1. The Complaint has been filed with the 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;
 2. The respondent is identified as a covered entity; and
 3. The complaint alleges a violation of the Act.
- b) If the LA Director determines that the jurisdictional requirements 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. No complaint shall be assigned to an investigator until the jurisdictional review required by this section has been completed.

III. Intake

Intake for Language Access (LA) cases and companion cases (See IV. Companion Cases), **except housing cases**, shall occur **after** the Pre-Investigation period, **45 Days**, has lapsed and the Pre-Investigation did not resolve. (See VIII. Pre-Investigation).

IV. Companion Cases¹

- a) If it appears, that in addition to an LA case a companion case can be filed (i.e. denial of public accommodation based on national origin), a separate charge of discrimination shall be drafted. When drafting the companion case, the intake officer will make sure:
 1. To obtain relevant additional information necessary to determine if the *prima facie* elements for the new claim are met; and
 2. To include only the relevant facts supporting of that *prima facie* case. The intake officer will exclude facts that are only relevant to the LA case.
- b) A case considered a companion case to the LA case (except housing cases) will not have an intake meeting until after the **forty-five (45) day** Pre-Investigation period has lapsed.
- c) Housing/HUD cases shall follow will follow standard OHR procedures outlined for such cases.

V. Motions to Dismiss

- a) Respondent may challenge OHR's authority to fulfill this administrative process, to exercise jurisdiction over the Respondent, or to investigate the timeliness of the public complaint by submitting a Motion to Dismiss to the OHR Office of General Counsel.
- b) A Motion to Dismiss should not address the allegations of the public complaint.
- c) A Motion to Dismiss suspends the pre-investigation or investigation of the public complaint but should not be utilized to delay OHR's administrative procedure.
- d) As a result of OHR's Order issued in response to the Motion to Dismiss, the matter may proceed to pre-investigation or investigation and respondent may be assigned a new position statement due date, or the matter may be administratively dismissed.
- e) Motions to Dismiss should be submitted to the ohr.ogc@dc.gov **within ten (10) calendar** days of receipt of the charge letter.

VI. Withdrawal of Complaint, Reopening of Withdrawn or Administratively Dismissed Complaints

¹ A case brought by the same Complainant against the same Respondent based on the same set of facts filed under a law, other than the Language Access Act law, enforced by OHR.

- a) A complaint may be voluntarily withdrawn at the request of the complainant at any time before a final decision and order is issued. The request to withdraw a complaint must be made in writing. The circumstances of a withdrawal may be investigated by the LA Director.
- b) A complainant may request that a complaint previously dismissed for an administrative reason or voluntarily withdrawn be reopened, provided that:
 - 1. 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.
 - 2. The LA Director may reopen the case for good reason or in the interest of justice. The decision of the LA Director to reopen a complaint shall be served on all parties to the complaint.
- c) The LA Director shall dismiss a Complaint without prejudice for the following administrative reasons:
 - 1. The complainant has failed to respond or cannot be reached, and OHR does not have sufficient information from the complainant to pursue an investigation; or
 - 2. The complaint fails to state a claim of noncompliance with the Act.
- d) 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.

VII. Mediation

- a) Language Access cases will not be mediated by OHR's Mediation Unit; rather the LA Director will engage in the pre-investigation resolution process detailed below.
- b) Companion cases (except housing/HUD cases) will be sent to mediation **after the forty-five (45) day** Pre-Investigation period has ended.
- c) Companion housing/HUD cases will be sent to mediation in accordance with OHR standard procedures.

VIII. Pre-Investigation

- a) In an attempt to resolve a public complaint before assigning the complaint for investigation: the LA Director will communicate with the respondent to ensure the complainant receives any

immediate information and language access services allegedly sought from the Respondent. The Respondent shall have **ten (10) days** to respond to the LA Director.

1. If respondent acknowledges non-compliance with the Act rather than being subject to an investigation, the LA Director shall find the covered entity in noncompliance, and use the information acquired during the OHR's intake procedure to fashion and issue an Order.
 2. Alternatively, the LA Director will work to develop a solution that is acceptable to the complainant, the covered entity, and the LA Director.
- b) If a complaint is not resolved pursuant to (1 or 2) above **or** within **forty-five (45) days** after the complaint was filed, the LA Director shall transfer the case to the Investigation Unit.
- c) In transferring a complaint to the Investigations Unit, the LA Director shall complete the LA Pre-Investigation Report to be made available to the OHR Investigation Unit via MATS.

IX. Investigation (OHR Investigation Unit)

- a) Once the Investigation Unit receives the Pre-Investigation Report from the LA Director, the intake meeting will take place as scheduled and the case will subsequently be assigned to an Investigator.
- b) Upon assignment of the case to an Investigator, a copy of the complaint shall be served 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 ("Respondent").
- c) The Respondent must provide the assigned Human Rights Officer with a written and notarized position statement responding to each allegation in the charge of discrimination **within ten (10) days** of receipt of the charge.
- d) 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.
- e) The Investigator shall provide Complainant with an opportunity to rebut information submitted by the Respondent.
- f) At the completion of the investigation, the investigator shall prepare a report setting forth his or her findings.

X. Determination

- a) After receiving the Investigator's report, the LA Director shall review and analyze the case and prepare a preliminary decision and order.
- b) The LA Director shall submit the final decision and order to the General Counsel for review.
- c) After consultation with the LA Director, the Director of the OHR shall issue a final decision and order that includes findings of fact and conclusions of law.
- d) The final decision and order shall be issued **within six (6) months** of the date the complaint is filed.

XI. Post-Determination

- a) In the event the final decision and order includes a finding of noncompliance with the Act, the LA Director shall:
 1. Within **sixty (60) days**, schedule a meeting with Respondent to discuss the final decision and order and appropriate corrective actions; and
 2. Within **sixty (60) days** of the meeting with Respondent, issue an order enumerating required corrective actions.
- b) 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.
- c) Each final decision and order shall state the parties' right to reconsideration and specify any relevant filing deadlines.

XII. Reconsideration

- 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 OHR Director within **fifteen (15) calendar days** after the moving party receives the LA Directors final decision and order. The reconsideration shall be filed with the LA Director specifically stating the grounds upon which the request for reconsideration is based.

- b) 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.
- c) 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.
- d) 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.
- e) 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.
- f) 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.

XIII. Appeal

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). The moving party must file an appeal **with OAH within thirty (30) calendar days** of receipt of OHR's final decision and Order or final decision and Order on reconsideration. OAH shall adjudicate the appeal consistent with its own policies, procedures, and standards of review.