

OFFICE OF HUMAN RIGHTS

NOTICE OF PROPOSED RULEMAKING

The Director of the Office of Human Rights ("Director"), pursuant to the authority set forth in Section 6(b)(6) (D.C. Official Code § 2-2-1935(b)(6)) (2007 Repl.) of the Language Access Act, effective June 19, 2004 (D.C. Law 15-167, D.C. Official Code §2-1931 *et seq.* (2007 Repl.)) ("Language Access Act" or "Act"), and Mayor's Order 2007-127, dated May 31, 2007, hereby gives notice of an amendment to Title 4 (Human Rights and Relations) of the District of Columbia Municipal Regulations. A new Chapter 12 (Language Access Act) has been added to Title 4 to provide guidance and assistance to District agencies with the implementation of the Language Access Act for individuals with Limited English Proficiency/No English Proficiency ("LEP/NEP") being served by the District of Columbia Government.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

A new Chapter 12 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 Act. (D.C. Official Code § 2-1931(2) and § 2-1931(3)).

1201 PURPOSE

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

- (a) To define the roles and responsibilities of parties assigned to oversee and implement the Act;
- (b) To provide assistance with data collection on the languages spoken by a limited or non-English proficient ("LEP/NEP") population as required under the Act;
- (c) To provide assistance and guidance to covered entities with major public contact in implementing a biennial language access plan ("BLAP") and on reporting requirements for all covered entities; and

- (d) To 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 (OHR)

- 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 Contracts and Procurement (OCP) to assist in the development of a quality procurement process.
- 1202.3 OHR shall collect and publish statistical information regarding Language Access public complaints received by OHR over which OHR has jurisdiction, including those not assigned to an investigator, on an annual basis.

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 a Language Access Director to coordinate activities under the Act. The Language Access 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 with the implementation of the Act.
- 1203.2 OHR shall ensure that staff members of covered entities in public contact positions are trained regarding their legal obligations for serving LEP/NEP customers under the Act. These trainings shall also include resources 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.
- 1203.3 The OHR Director shall prepare an annual Language Access Report and deliver it to the Mayor, and the Office of the City Administrator (“OCA”) on the deficiencies found, progress made, and overall compliance with the Act for each covered entity. OHR shall include a summary of the results of the annual surveys of covered entities designated as non-major public contact in the Annual Language Access Report.

1204 ROLE OF THE LANGUAGE ACCESS DIRECTOR

- 1204.1 The Language Access (LA) Director shall oversee the Language Access complaint procedures for the OHR.

- 1204.2 The LA Director shall conduct education and outreach to covered entities and community providers on their legal obligations under the Act.
- 1204.3 The LA Director shall provide training resources to personnel in public contact positions for covered entities regarding compliance with the Act. The 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.
- 1204.4 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.
- 1204.5 The LA Director shall issue an annual survey to all covered entities that are designated a non-major public contact. The survey shall request information regarding agency encounters with LEP/NEP constituents consistent with Section 1205.7.
- 1204.6 The LA Director shall review and monitor each Biennial Language Access Plan (BLAP) for compliance with the Act.
- 1204.7 If a BLAP should fail to comply with the Act, the LA Director shall assist the agency in revising the BLAP and shall set a deadline for resubmission of the revised BLAP.
- 1204.8 The LA Director's responsibilities include reviewing covered entities' implementation reports and providing an annual synopsis to the OHR Director on the deficiencies found and progress made in implementing the Act.
- 1204.9 The LA Director") shall monitor the performance and responsibilities of the Language Access Coordinators (LACs) as described in §1207 and the Language Access Points of Contact, as described in § 1205.19.
- 1204.10 The LA Director shall produce a final Annual Compliance Report at the end of each fiscal year and provide copies to the Executive Office of the Mayor, the Office of the City Administrator, the Office on African Affairs (OAA), the Office on Asian and Pacific Islander Affairs (OAPIA), the Office on Latino Affairs (OLA), and the D.C. Language Access Coalition. Annual reports shall also be made available to the public within thirty (30) days of a request.
- 1204.11 The LA Director shall consult with the D.C. Language Access Coalition, the Mayor's Office on OAA, OAPIA, and OLA regarding the implementation of the Language Access Act.

1204.12 The LA Director shall advise the District's Department of Human Resources (DCHR) 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 contracts with other entities, either directly or indirectly, to conduct programs, services or activities to the public are covered entities.

1205.2 The covered entity shall ensure that contractors hired to carry out services, programs or activities directly to the public are required to comply with the same requirements of covered entities.

1205.3 The covered entity shall ensure that any grantee that provides services under a covered entity's mandate complies with the requirements of the Act.

1205.4 The covered entity shall require that contractors and grantees, as described in §§ 1205.2 and 1205.3, certify in writing that the same compliance requirements will be satisfied by their subcontractors and sub-grantees.

1205.5 The 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.

1205.6 Annual reporting requirements for covered entities:

(a) Each covered entity shall make a determination of each non-English language spoken by a population that constitutes 3% or 500 individuals, whichever is less, of the population served or encountered, or likely to be served or encountered, by the covered entity. This determination shall be provided to the Language Access Director.

(b) Each covered entity shall also submit the data it relied on to make the determination of each non-English language spoken by a LEP/NEP population that constitutes 3% or 500 individuals, whichever is less, 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 § 2-1931 (c) (1)).

- (c) The Language Access Director shall evaluate whether the data submitted by the covered entity supports the entity's determination, and whether the data relied upon by the entity is sufficient and appropriate. If the Language Access Director concludes that an entity's determination is not supported by sufficient and appropriate data, the Language Access Director may make a revised determination of any non-English language spoken by a population that constitutes 3% or 500 individuals, whichever is less, or likely to be served or encountered, by the covered entity. In making this determination the Language Access Director shall rely upon resources cited in Section 3(c)(1) of the Act (D.C. Official Code § 2-1932(c)(1)). The covered entity may appeal a determination of the Language Access Director to the Director of the Office of Human Rights.

1205.7 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 entity, based on the following factors and as determined by § 1205.6 and Section 3(c)(1) of the Act:

- (a) The number or proportion of LEP/NEP persons of the population served or encountered, or likely to be served 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.

1205.8 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 The 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 and District staff in a variety of languages.

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 entity shall provide qualified and experienced in-person interpretation services to LEP/NEP customers

1205.11 The covered entity shall ensure that the telephone interpretation service assists in providing access to customers who are both within and outside of LEP/NEP target languages as determined under § 1205.7.

- 1205.12 The covered entity will work closely with OHR and the Language Access 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 The covered entity shall place appropriate signs/posters communicating the availability of language accessible services at all conspicuous points of entry and other public locations at the covered entity. The signs or posters shall be in the language(s) identified as those spoken by 3% or 500 individuals, whichever is less, of the population served or encountered, or likely to be served or encountered, by the covered entity.
- 1205.14 The covered entity shall provide oral language services to LEP/NEP customers who seek to access or participate in public meetings and administrative hearings conducted by the covered entity. The 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.
- 1205.15 Requests for oral language services in advance of public meetings shall be made directly to the entity's Language Access Coordinator or other designated point of contact, as described in § 1207, in person, via phone, or by electronic mail.
- 1205.16 The covered entity shall provide written translation of vital documents into any non-English language spoken by a 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.
- 1205.17 The covered entity shall ensure that all vital documents that are translated into any non-English language spoken by a LEP/NEP population are widely distributed within the agency, accessible at points of entry, and available online.
- 1205.18 The covered entity must also obtain written acknowledgment from each LEP/NEP customer who waives his/her rights to interpretation or translation services prior to the individual accessing the entity's services.
- 1205.19 Each covered entity that is not designated as an agency with major public contact shall designate a Language Access Point of Contact (LAPOC). The LAPOC shall serve as an information coordinator and assist in implementing all of the requirements for non-major public contact covered entities under the Act and these regulations. The LAPOC person 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 survey or report for the covered entity consistent with the requirements in Section 1205.6; and
- (c) Attend an annual training on Language Access Act obligations and resources made available by OHR.

1205.20 Each covered entity shall respond to an annual survey issued by the Language Access Director regarding compliance with the Act.

1205.21 Covered entities are distinguished from covered entities with major public contact, as described in § 1206. Covered entities with major public contact have additional obligations under the Act as described in § 1206.

1206 ROLES OF COVERED ENTITIES WITH MAJOR PUBLIC CONTACT

1206.1 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) Agencies listed in Section (2)(3)(B) of the Act, which are as follows:

- Alcoholic Beverage Regulation Administration;
- Department of Health;
- Department of Mental Health;
- Department of Human Services;
- Department of Employment Services;
- Fire and Emergency Medical Services;
- District of Columbia Housing Authority;
- District of Columbia general ambulatory and emergency care centers;
- Homeland Security and Emergency Management Agency;
- Metropolitan Police Department;
- District of Columbia Public Schools;
- Department of Motor Vehicles;
- Department of Housing and Community Development;
- Department of Public Works;
- Department of Corrections;
- Office on Aging;
- District of Columbia Public Library;
- Department of Parks and Recreation;
- Department of Consumer and Regulatory Affairs;
- Child and Family Services Agency;

Office of Human Rights;
Department of Human Resources;
Office of Planning;
Office of Contracting and Procurement;
Office of Tax and Revenue; and
Office of the People's Counsel.

- (b) Agencies designated by the LA Director under the direction of the OHR Director, which are as follows:

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

1206.3 Each covered entity with major public contact must meet all of the responsibilities for covered entities under the Act and these regulations, and in addition shall:

- (a) Establish and implement a complete BLAP that is approved by the LA Director and published in the *D.C. Register* every two (2) years;
- (b) Designate a Language Access Coordinator;
- (c) In accordance with goals set forth in the BLAP, have all staff members in public contact positions attend trainings, either web-based training or in-person, provided by OHR, on the requirements for serving LEP/NEP customers under the Act and on the usage of professional and qualified multilingual telephonic interpretation services and how to appropriately direct LEP/NEP customers to such services; and
- (d) Develop a plan to conduct outreach to LEP/NEP communities to disseminate information about the benefits and services offered by the entity as well as LEP/NEP goals stated in the entity's BLAP.

1206.4

Each covered entity with major public contact shall develop a plan to conduct outreach to LEP/NEP communities to disseminate information about the benefits and services offered by the entity as well as LEP/NEP goals stated in the entity's BLAP. Outreach activities may include, but are not limited to, the following:

- (a) Conducting annual public meetings, at least one of which shall be a public meeting as defined in Section 1228 that shall be held in consultation with the LA Director, with reasonable advance notice to the public in a location where LEP/NEP populations are known to congregate such as a school, community center or place of worship;
- (b) Organizing events in LEP/NEP communities (including fairs, community meetings, forums, educational workshops);
- (c) Deploying entities' mobile unit/truck/van to visit specific community centers, community based organizations or schools;
- (d) Disseminating information through LEP media outlets (including local TV, newspapers, and radio);
- (e) Deploying outreach personnel to visit and/or perform regular "walk throughs" within the various 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 entities' websites;
- (i) Issuing press releases in diverse languages and directing those press releases to media outlets serving the LEP/NEP community;
- (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 LEP/NEP community based organizations;
- (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 THE LANGUAGE ACCESS COORDINATORS (LACs)

- 1207.1 LACs shall report directly to their agency director, and consult with the agency director on budgeting issues for the delivery of language access services as required by the Act.
- 1207.2 The LAC must also establish and implement the agency's BLAP pursuant to § 1213.
- 1207.3 The LAC shall coordinate and assist in implementing all of the requirements for covered entities with major public contact under the Act and these regulations.
- 1207.4 On a quarterly basis, the LAC shall submit a report to the LA Director regarding the agency's implementation of its BLAP.
- 1207.5 The LACs shall receive reports of alleged violations of the Language Access Act from individuals, consultative agencies or other organizations, and shall report them to the Language Access Director as they are received.

1208 ROLE OF AGENCY DIRECTORS

- 1208.1 The Directors shall ascertain that all applicable agency contracts and grants fully comply with all provisions of the Act.
- 1208.2 For each covered entity, the Directors shall designate a LAPOC. In the case of covered entities with major public contact, the Directors shall designate a LAC.

1209 ROLE OF LANGUAGE ACCESS COALITION

- 1209.1 The D.C. Language Access Coalition ("LA Coalition") shall serve in an external non-governmental role consulting on the implementation of the Act. The LA Coalition shall have no authority to make final decisions.
- 1209.2 The 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 named under the Act as "covered entities with major public contact;" and
 - (d) Overall implementation of the Language Access Act.
- 1209.3 Consultation pursuant to § 1209.2 requires that the LA Director 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 give reasonable consideration to the LA Coalition's input, which may, where appropriate, lead to changes or modifications in decisions.

1210 ROLES OF MAYOR'S OFFICE ON AFRICAN AFFAIRS, THE MAYOR'S OFFICE ON ASIAN AND PACIFIC ISLANDER AFFAIRS, AND THE MAYOR'S OFFICE ON LATINO AFFAIRS (CONSULTATIVE AGENCIES)

1210.1 OAA, OAPIA, and OLA (collectively referred to as "consultative agencies") shall serve as consultative bodies to the LA Director and the OHR Director to develop and update covered entities' BLAPs, and assist in the implementation of the Act.

1210.2 The consultative agencies shall furnish demographic data on their respective communities to covered entities.

1210.3 The consultative agencies shall also provide outreach to LEP/NEP communities in the District on the Act and assist the LACs to develop and implement outreach efforts.

1210.4 The consultative agencies shall assist OHR in the development of quality control instruments in their respective languages.

1210.5 The consultative agencies shall provide technical assistance to the DCHR and the personnel authorities of covered entities who have independent hiring authority (collectively "personnel authority") regarding issues related to the recruitment and hiring of bilingual public contact personnel.

1210.6 The consultative agencies shall assist their constituents with language access concerns by first referring the concern to the LAC of the entity in question. If the concern is not addressed by the entity, the consultative agency shall refer the allegation to the attention of the LA Director.

1211 ROLE OF PERSONNEL AUTHORITIES FOR COVERED ENTITIES

1211.1 The personnel authority for each covered entity shall provide central coordination and technical assistance to the entity in its implementation of the provisions of the Act and shall report accordingly to the LA Director, OHR and OCA.

1211.2 The personnel authority shall develop strategies for recruiting and maintaining bilingual personnel, including assessing the non-English language abilities of all future and current District personnel who self-identify as bilingual, and who apply for or currently fill a "bilingual" or "bilingual preferred" position.

1211.3 Pursuant to § 1205.8, the personnel authority shall assess the covered entity's budgeted vacant public contact positions and classify identified positions as "bilingual" or "bilingual preferred" to satisfy the requirement.

1211.5 In consultation with the LA Director and consultative agencies, the personnel authority shall create a linguistic and cultural competency training curriculum that will be made available through DCHR.

1212 BASELINE ASSESSMENTS

1212.1 Each covered entity with major public contact shall complete baseline assessments at the beginning of their implementation phase to provide data for comparison or as a control prior to creating and implementing its first BLAP.

1212.2 Upon the completion of the two-year plan cycle, each covered entity with major public contact shall update the information in the assessments with current information, which shall be included in the entity's BLAP.

1212.3 The 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 as required in § 1212.1.

1212.4 The LA Director shall meet with each LAC and respective agency director to review agency responses to the baseline assessments.

1213 BIENNIAL LANGUAGE ACCESS PLAN

1213.1 A covered entity with major public contact shall establish a biennial language access plan ("BLAP") by regulation. Each BLAP shall be established in consultation with:

- (a) The Language Access Director;
- (b) The D.C. Language Access Coalition;
- (c) The entity's Language Access Coordinator;
- (d) The entity's Director; and
- (e) Consultative agencies.

1213.2 Each BLAP shall be updated every two (2) fiscal years and shall set forth, at a minimum, the following:

- (a) The types of oral language services that the entity will provide and how the determination was reached;
- (b) Which languages are spoken by a LEP/NEP population that constitutes 3% or 500 individuals, whichever is less, of the population served or encountered, or likely to be served or encountered by the entity; and how the entity made this determination;
- (c) The titles and types of each translated document that the entity will provide and how the determination was reached;
- (d) The total number of public contact positions in the entity and the number of bilingual employees in public contact positions, including languages spoken;
- (e) The number, position, and location of bilingual employees the entity plans to hire in public contact positions;
- (f) An evaluation of the language access services provided, of the language access data collection systems in place, and of whether the goals stated in the previous BLAP were met; a description of the budgetary sources specifying the various resources and expenditures upon which the covered entity intends to implement its BLAP;
- (g) A plan to conduct outreach to the District's LEP/NEP communities served or likely to be served by the covered entity; and
- (h) A plan to conduct training on the entity's legal obligations under the Act, resources for ensuring access to services for LEP/NEP customers, and cultural competency training within the designated BLAP period for the entity's staff who fill public contact positions. New hires who do not attend agency-wide training will be required to attend an alternative training made available by OHR.

1213.3 The LA Director shall meet with each LAC and respective agency director to review agency plans 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 to verify the identification of the languages which are spoken by a LEP/NEP population that constitutes 3% or 500 individuals, whichever is less, of the population served or encountered, or likely to be served or encountered by the entity.

1213.4 BLAPs shall be completed by the covered entity with major public contact and approved by the LA Director upon completion of the baseline assessments.

1213.5 BLAPs shall be completed by the covered entity with major public contact, within a reasonable deadline established and approved by the LA Director. Failure to submit BLAPs in a timely manner shall be reported to the Director of OHR and shall be included in the Director's annual report to the OCA. Failure to fulfill the criteria set forth by 1213.2 may also be reported to the Director OHR.

1214 QUARTERLY REPORTS

1214.1 Each covered entity with major public contact shall submit to the LA Director a quarterly report on the entity's BLAP at the end of each official quarter of the fiscal year or as otherwise required by the LA Director.

1214.2 Quarterly reports shall provide the status of all tasks required of the entity in accordance with the entity's BLAP and requirements of the Act. In addition, each quarterly report shall report the number of complaints received during the quarter in question and the steps taken to resolve such complaints.

1214.3 Quarterly reports submitted in the last quarter of a fiscal year shall contain:

- (a) Information on progress made during the quarter; and
- (b) A summation of all activity performed within the fiscal year; including a self-assessment of what objectives were unmet with explanation.

1214.4 Failure to submit quarterly reports in a timely manner shall be reported to the Director of OHR, and such failure shall be included in the Director's annual compliance report to the OCA.

1215 ANNUAL REPORT

1215.1 Each covered entity with major public contact shall furnish a narrative report on progress made in the implementation of the Act at the end of each fiscal year to the LA Director. The report shall be included on a form designated by the LA Director and shall contain summary data on the following:

- (a) Total number of LEP/NEP individuals served or encountered from the total population served by the entity within the fiscal year (delineated by language);
- (b) A list of translated vital documents;
- (c) Oral language services offered through the entity's services and programs;

- (d) The names of all organizations to which the entity provides grants or contracts to provide services to its LEP/NEP customers.
- (e) An itemized budget allocated for Language Access purposes;
- (f) A comprehensive list of the entity's bilingual staff employed in public contact positions;
- (g) The list of contractors and grantees, as described in §§ 1205.3 and 1205.4, and the status of their compliance with the Act; and
- (h) The number of language access complaints received during the course of the fiscal year, and the steps taken to resolve those complaints.

1215.2 Annual reports shall be submitted to the LA Director by a deadline designated by the LA Director. Failure to fulfill the criteria set in Section 1214.1 may also be reported to the OHR Director.

1215.3 The LA Director shall provide copies of the annual report to the OCA, the LA Coalition, OAA, OAPIA, and OLA.

1215.4 Annual reports shall be made available to the public within thirty (30) days of a request.

1216 LANGUAGE ACCESS INQUIRIES AND PUBLIC COMPLAINTS OF NONCOMPLIANCE WITH THE LANGUAGE ACCESS ACT

1216.1 OHR shall receive and track all inquiries and requests for assistance or information concerning language access. These may be submitted in writing or verbally by a LEP/NEP customer or an individual acting on their behalf. These inquiries will be addressed and resolved by the Language Access Director and documented in accordance with the protocols and procedures of the OHR Standard Operations Manual.

1216.2 OHR shall accept information concerning alleged violations of the Act through the filing of a public complaint.

1216.3 If any covered entity receives a public complaint regarding an alleged violation of the Act, the entity shall report it to the LA Director.

1216.4 By filing a public complaint, any person or organization may request an investigation into individual or systemic noncompliance with the Act.

- 1216.5 The LA Director, under the direction and supervision of the OHR Director, shall coordinate the investigation and resolution of public complaints filed under this section, and adhere to the investigatory protocols and procedures of the OHR Standard Operations Manual.
- 1216.6 The filing of a public complaint does not supersede or preclude the filing of a complaint by any person or organization alleging intentional illegal discrimination under the D.C. Human Rights Act of 1977, as amended, 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 Chapter 7 and Chapter 1 of Title 4 of the District of Columbia Municipal Regulations.

1217 FILING OF PUBLIC COMPLAINTS

- 1217.1 The procedures in this section apply to the filing of a public complaint as described in § 1216.
- 1217.2 Any person or organization may file with OHR a public complaint of violation of the provisions of the Language Access Act. If a complainant lacks capacity, the public complaint may be filed on his/her behalf by a person or organization with an interest in the welfare of the complainant.
- 1217.3 The public complaint may be submitted in writing on a pre-complaint questionnaire obtained from the OHR or online via the OHR's website, relayed verbally to an OHR staff member by telephone or in-person, or communicated through a covered entity. The public complaint must be recorded in writing.
- 1217.4 The LA Director may initiate an investigation whenever he or she has reason to believe that any agency covered under the Act or its employee has committed an act of noncompliance with the Act.
- 1217.5 A public complaint shall be deemed filed when OHR receives from the complainant a written statement sufficiently precise to identify the parties, and to describe generally the action or practice complained of.
- 1217.6 A public complaint shall be processed by OHR in accordance with intake procedures set forth in OHR's Standard Operating Procedures ("SOP") Manual.
- 1217.7 The LA Director shall attempt to resolve the alleged violation with the covered entity in question prior to assigning the complaint for investigation.
- 1217.8 If a proposed resolution is reached, the LA Director must notify both the complainant and the covered entity of the proposed resolution and ensure that both are satisfied with the outcome before determining that the complaint has been successfully resolved prior to a formal investigation.

1217.9 If the LA Director has jurisdiction to investigate the complaint and if the complaint has not successfully been resolved as described in § 1221, or otherwise withdrawn from the investigation procedure by OHR or the complainant, it shall be assigned to an OHR investigator.

1218 DISMISSAL FOR LACK OF JURISDICTION

1218.1 Under the Supervision of the OHR Director, the LA Director has the statutory authority to receive, investigate, and seek an appropriate remedy for allegations of noncompliance with the Act's provisions, provided that the following requirements are met:

- (a) The public complaint is filed with the OHR within one year of the occurrence of the alleged act of noncompliance, or the discovery thereof; whichever occurs later;
- (b) The alleged act of noncompliance occurred within the District of Columbia; and
- (c) The respondent is identified as a covered entity, a covered entity with major public contact or a grantee or contractor.

1218.2 If the LA Director determines, on the face of the public complaint, that the complaint lacks jurisdiction, pursuant to Section 6(b)(2) of the Act or fails to state a noncompliance claim under the Act, an order dismissing the complaint shall be issued without an investigation two business days from the time of intake. No cases shall be assigned to an investigator until this process is completed.

1219 ADMINISTRATIVE DISMISSALS

1219.1 The LA Director shall dismiss a public complaint without prejudice if the complainant submits a written request to withdraw the complaint, or for the following administrative reasons:

- (a) The complainant is absent and has failed to contact or cannot be contacted by the Office;
- (b) The complainant fails to state a claim of noncompliance; or
- (c) After preliminary investigation, the LA Director determines that he or she lacks jurisdiction over the matter pursuant to the Act.

1219.2 An Order dismissing a complaint for administrative reasons shall be in writing and served on the parties stating the reasons for dismissal.

1219.3 A complainant may request that a complaint previously dismissed for administrative reasons or voluntarily withdrawn be reopened, provided that the complainant submits a written request within thirty (30) days of receipt of the order dismissing the complaint and stating specifically the reasons why the complaint should be reopened.

1219.4 The LA Director, upon receipt of a request to reopen a complaint, may, within his or her discretion, reopen the case for good reasons or in the interest of justice.

1219.5 The decision of the LA Director to reopen a complaint shall be served on all parties to the complaint.

1220 WITHDRAWAL OF COMPLAINTS

1220.1 Complaints filed with the OHR under the provisions of the Act may be voluntarily withdrawn at the request of the complainant at any time prior to the completion of the LA Director's investigation and findings, except that the circumstances accompanying a withdrawal may be fully investigated by the LA Director.

1221 INVESTIGATION

1221.1 When a public complaint is filed, the LA Director shall:

- (a) Facilitate access to required services. The cited covered entity shall evaluate the complaint and either resolve to provide immediate access to the required services. If resolution is not possible, the covered entity will propose a solution that is acceptable to the complainant, the covered entity, and the LA Director within a reasonable period of time. If the covered entity does not meet these requirements the LA Director shall assign the complaint to an investigator within thirty days of the filing of the complaint;
- (b) Allow the Respondent to acknowledge its non-compliance with the Act rather than be subject to an investigation. In such cases, the LA Director shall find the entity in noncompliance, and shall use the information acquired during the Office's intake procedure to fashion and issue an Order as described in Section 1223; and
- (c) Supervise and monitor the investigation of the public complaint according to the protocols and procedures of the OHR SOP Manual; and

- 1221.2 If the alleged act(s) of noncompliance was committed by OHR, the complaint shall be brought before the OCA for investigation.
- 1221.3 Upon assignment of the case to an investigator, the investigator shall serve via electronic mail on the Respondent a copy of the public complaint.
- 1221.4 Under the direction of the LA Director, the investigation shall include, but not be limited to, site visits, interviews of witnesses, and inspection of Respondent's records.
- 1221.5 After the receipt of all requested documents from the Respondent, the investigator shall provide the complainant with an opportunity to rebut relevant information submitted by the Respondent.
- 1221.6 After the completion of the investigation, the LA Director will review and analyze the case and then submit initial findings to the General Counsel and OHR Director for review.

1222 DETERMINATION

- 1222.1 Upon receipt of a report and recommendation from the investigator, and OHR's Legal Unit, the LA Director, in consultation with the OHR Director shall determine whether respondent is in compliance with the Act.
- 1222.2 The LA Director shall mail the written findings to both parties. All reports and findings shall be forwarded to the OCA.

1223 FINDINGS

- 1223.1 If there is a finding of noncompliance with the Act, the OHR Director, through the LA Director, shall issue an Order containing terms and conditions to the Respondent to provide the services in question within a reasonable timeframe to the complainant and other LEP/NEP individuals. This Order of noncompliance shall be issued within no more than six months of the filing of the complaint. If Respondent does not provide the services required by the Order within the designated timeframe, respondent's actions will be reported to the OCA for further action.
- 1223.2 If the OHR Director determines that no violation against the Act has taken place, a letter shall be issued to the parties stating the Respondent was found in compliance with the Act.

1224 RIGHTS AND RESPONSIBILITIES OF PARTIES

- 1224.1 All parties are entitled to, and shall receive, a fair and impartial investigation by the LA Director.
- 1224.2 All parties have a duty to cooperate with and furnish OHR with the following:

- (a) All documents, records, names of witnesses and any other necessary information needed to investigate the complaint; and
- (b) Current contact information.

1224.3 Failure by both parties to perform any of the duties described in § 1224 may adversely affect the outcome of the case, up to and including dismissal.

1224.5 Respondent and the complainant shall comply with all requests from the LA Director or OHR during the investigation of the complaint. Noncompliance by the parties shall be reported to the OCA for further action.

1225 AUDITS

1225.1 The OHR shall conduct audits on covered entities, as deemed necessary, to ascertain the level of compliance with the Act.

1225.2 Upon the completion of an audit, results will be issued to the entity being audited, the LA Director and the OCA. Failure to meet audit standards may result in being reported in the OHR's annual compliance report.

1225.3 The LA Director shall investigate and make a determination in accordance with §§ 1221 through 1223 on any instance of noncompliance cited in the audit.

1226 RECONSIDERATION

1226.1 A complainant seeking reconsideration of a finding of compliance, or a respondent seeking reconsideration of a non-compliance determination shall submit an application for reconsideration to the OHR Director in writing, stating specifically the grounds upon which the request for reconsideration is based.

1226.2 A request for reconsideration shall be filed with the LA Director's office, in writing, within fifteen (15) calendar days from the receipt of the OHR Director's Determination of Compliance.

1226.3 Upon receipt of an application for reconsideration, the LA Director shall send letters acknowledging receipt of the application to both the complainant and the respondent. The non-moving party shall also receive a copy of the grounds upon which the moving party bases the request for reconsideration, and shall be given ten (10) calendar days from receipt of the information to file a response.

1226.4 If, after review of a timely-filed application for reconsideration by a complainant and the response thereto, the OHR Director concludes that the complainant has not presented evidence that would warrant change, modification, or reversal of the prior

finding of compliance, the OHR Director shall affirm the original compliance finding.

1226.5 If the OHR Director concludes that the complainant's application for reconsideration has provided sufficient evidence to raise a genuine issue of law or fact, the complaint shall be reopened for further investigation or a finding of non-compliance shall be issued.

1226.6 If the respondent adequately presents evidence in its application for reconsideration to show compliance, and complainant fails to adequately rebut respondent's application for reconsideration, the OHR Director will reverse the finding of non-compliance and find the agency in compliance with the Act.

1226.7 The OHR Director, through the LA Director, can reopen the complaint for further investigation.

1226.8 If, at the end of further investigation and after considering the record as a whole, the OHR Director concludes that the complainant has not presented sufficient evidence to warrant a change of the finding of compliance, the prior determination of compliance shall be affirmed, and the parties shall be notified in writing.

1226.9 If the OHR Director determines, after further investigation, that a prior finding of compliance should be reversed, the Director shall find non-compliance, and the parties shall be served with a detailed written basis for the reversal and the respondent shall be notified of the corrective actions required to become in compliance with the Act.

1227 APPEALS

1227.1 An appeal from the final determination of compliance or non-compliance under this chapter may be filed with the District of Columbia Office of Administrative Hearings (OAH).

1227.2 The moving party must file an appeal with the OAH within thirty (30) calendar days after the date of the OHR's Letter of Determination is issued.

1227.3 OAH may adjudicate the appeal consistent with its own policies, procedures and the standard of review established for this process.

1228 DEFINITIONS

1228.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Act – The Language Access Act of 2004

Administrative Hearing - a hearing before any governmental or administrative agency, or before an administrative law judge.

Agency -a designated District of Columbia entity which has specified functions and/or provides particular services to the public.

Baseline Assessment - a collection of data regarding specific characteristics of a covered entity as of the date the Language Access Act becomes effective for that entity.

Biennial Language Access Plan (BLAP) - a two-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 entity.

Bilingual Employee- an employee who is assessed and certified as “proficient” in both the English language and a language other than English by the DC Department of Human Resources (DCHR) or the personnel authority of the entity in which he/she is employed should the entity not fall under DCHR’s purview.

Complainant –an individual, group of individuals, or organization(s) who brings or files a public complaint alleging violations of the Language Access Act against an agency, generally titled the respondent.

Consultative Agencies-is a collective term used to refer to the Mayor’s Offices on African Affairs, Asian Pacific Islander Affairs, and Latino Affairs. These agencies are referred to in the Act as government offices that conduct outreach to communities with LEP/NEP populations.

Covered Entity – all District government agencies, departments, or programs that furnish information or render services, programs, or activities directly to the public or contracts with other entities, either directly or indirectly, to conduct programs, services or activities to the public.

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

Limited English Proficient (LEP) - means individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

Linguistic and Cultural Competency Training- training that educates, informs, instructs or guides agency staff 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) - persons who cannot speak or understand the English language at any level.

Oral Language Services- the provision of oral information necessary to enable LEP/NEP individuals to access or participate in programs or services offered by a covered entity. The types of oral language services include:

- (a) Commercial Interpretation Services: Professional businesses that offer oral interpretation as part of their array of services.
- (b) Community Interpretation Services: Community interpreters are members of a given language community who serve as liaisons between monolingual speakers of their native language and English.
- (c) Multilingual Telephonic Interpretation Services: An over-the-phone interpretation service that provides professionally trained and qualified interpreters in various languages.
- (d) Staff Interpreter: An employee who has been trained and proven competence in interpretation. Certification, training, or assessments indicate the employee's proficiency as an interpreter.

(e) Bilingual employee.

Party- the individual, group of individuals, or organization(s) named in a public complaint charging noncompliance with the Language Access Act, and is generally the complainant or the respondent.

Personnel Authority -The District of Columbia's Department of Human Resources or individual departments within covered entities with independent hiring authority responsible for human resource matters, including, but not limited to hiring, compensation and promotion.

Public Complaint -an administrative complaint filed under the rules of procedure established by Section 6(b)(2) of the Act, the LA Director or OHR, and § 1217 of the Language Access Act municipal regulations, which is filed by a person or organization claiming lack of access to a covered entity(ies) services due to significant language barriers posed by the entity(ies) in violation of the Language Access Act.

Public Contact Position - position in a covered entity for which the primary responsibilities include greeting, meeting, serving or providing information or services to the public. These are positions that require personal contacts with the public, community and civic organizations, or any combination of these groups.

Public Meeting- a meeting scheduled by a covered entity and a LEP/NEP community to allow for input or feedback from community members on issues of interest relating to the Language Access Act and service(s) provided by the entity. Such meetings shall take place at locations where LEP/NEP communities are known to congregate, including but not limited to, community centers, places of worship, etc.

Respondent-The respondent agency against whom the complainant files a public complaint charging noncompliance with the Language Access Act.

Translation- the written conversion of texts in the source language into texts written in the LEP/NEP customer's language, retaining the meaning and intent of the original source text and producing a culturally competent product. All translators providing translation services to the District must be certified and/or otherwise qualified.

Vital documents – applications and their instructions, notices, complaint forms, legal contracts, correspondence, and outreach materials published by a covered entity in a tangible 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.

Persons desiring to comment on these proposed rules should submit comments in writing to the Office of Human Rights, Language Access Director, 441 4th Street, N.W., Suite 570N, Washington, D.C. 20001, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of these proposed rules may be obtained between 8:30 A.M. and 5:00 P.M. at the address stated above.