Can the District Keep Its Promises?

A Study of Language Access in Washington, DC

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Introduction

A non-English-speaking, low-income worker living in the District of Columbia has limited options for carving out a livelihood in our nation's capital. The quantity and quality of these options may increase or decrease, depending on the quantity and quality of the caveats he or she can claim. Does the worker have a high school diploma or GED? His or her chances for success improve. Is the worker an immigrant? Does he or she live in Wards 1, 5, 7, or 8? In DC, the likelihood of the worker fitting those categories and the likelihood of his or her continued unemployment are high.

As of 2011, 18.6% of people in America reported speaking a language other than English at home. Over 57% reported speaking English "very well," while 21.2% said "well," 15.6% said "not well," and 6.0% said "not at all."[1] Further, as of 2009, 17.2% of non-English-speaking households were linguistically isolated; in other words, each individual over the age of 14 in the home is limited or non-English proficient, or LEP/NEP.[2] In the early 2000s, several community-based advocacy and civil rights organizations and government agencies in Washington, DC worked with DC Councilmember Jim Graham to pass the Language Access Act of 2004 in response to the growing LEP/NEP population.[3] Ostensibly, the goal of the Act is to guarantee universal access to government services and promote the participation, integration, and upward mobility of immigrant populations experiencing the unique isolation of a language barrier.[4]

The Language Access Act calls on 34 government agencies to adapt their linguistically exclusive services to a more inclusive model; this obligation has proven challenging throughout the ten years since the Act's inauguration. For the LEP/NEP

working poor, some of the Act's promises to prevent the kind of exploitation in the workplace and at the hands of the DC government against people with restricted language skills have fallen short. In an effort to understand the root causes of impediments to language access, this paper will explore DC's system of language access; analyze the legal, political, and institutional deficiencies this system encounters; and address the ways the DC Government can improve its application. Ultimately, language access implementation in DC suffers from institutional inertia due to a lack of centralized authority within an excess of bureaucracy.

The Language Access Act of 2004: A Promise

DC's Language Access Act of 2004 seeks to counter one of the many obstacles facing non-English-speakers in the District. By DC law, "covered entities" must provide services that prevent tacit discrimination against those with limited or no-English proficiency by offering their services in any non-English language spoken by 3% of the population or 500 individuals, whichever is less. Covered entities are, as the Act defines them, "any District government agency, department, or program that furnishes information or renders services, programs, or activities directly to the public or contracts with other entities, either directly or indirectly, to conduct programs, services, or activities." Covered entities include 34 government agencies and services such as the Department of Human Services (DHS), the Department of Motor Vehicles (DMV), DC Public Schools (DCPS), and the Department of Employment Services (DOES). Each entity must provide both "oral language services," or the hiring and training of interpreters and bilingual staff, and translations of "vital documents," or documents that

inform individuals about their rights and eligibility requirements for benefits and participation. In addition, covered entities must appoint a language access coordinator, keep records of the use of their multilingual services, and use United States Census Bureau data, local census data, and other relevant English proficiency and sociolinguistic studies, "at least annually," to improve their performance in the area of language access. Finally, covered entities must devise and biannually update a language access plan, in consultation with city officials and monitoring organizations involved in the Act's system of responsibility for implementation.[5]

This system of implementation includes the DC Council, the Office of Human Rights, the Mayor's Office, the Office on Latino Affairs (OLA), the Office on African Affairs (OAA), the Office on Asian and Pacific Islander Affairs (OAPIA), and the DC Language Access Coalition (DCLAC). The Office of Human Rights provides oversight, central coordination, and technical assistance to covered entities through the position of Language Access Director, who also serves to ensure each entity implements the provisions of the Act to acceptable standards and supervise the language access coordinators. Each consultative agency (the OAA, OLA, and OAPIA) also appoints a language access coordinator to act as an intermediary between the covered entities, the various populations under their purview, and the Office of Human Rights. The language access coordinators deal directly with the covered entities on issues involving their associated languages and help the OHR to assess the entities' performance and process language access violation claims.[6] For example, Cecilia Castillo, the language access coordinator at the Office on Latino Affairs, helps covered entities hire and train Spanish-speaking interpreters.[7]

Forty-one community-based and civil rights advocacy organizations comprise the DC Language Access Coalition, which helps the Office of Human Rights and the three consultative agencies understand the specific needs of LEP/NEP individuals in the District.[8] The member organizations created DCLAC in 2002 to ensure universal access to programs, services and activities regardless of native language or national origin, and, together with the OHR, OAA, OLA, OAPIA, and DC City Council Member Jim Graham, worked to pass a comprehensive program for the promotion and protection of language access in 2003, effective April 21, 2004.[9] DCLAC consults with the Language Access Director on language access plans and the designation of new covered entities and helps monitor DC government agencies' compliance and implementation of the Act as a third party. According to DCLAC's website, their work currently concerns widening their advocacy capacity for individual cases, advocating for language policy improvements, educating people and conducting outreach about language access in the communities they serve, and

Figure 1: *Bureaucracy and Language Access*

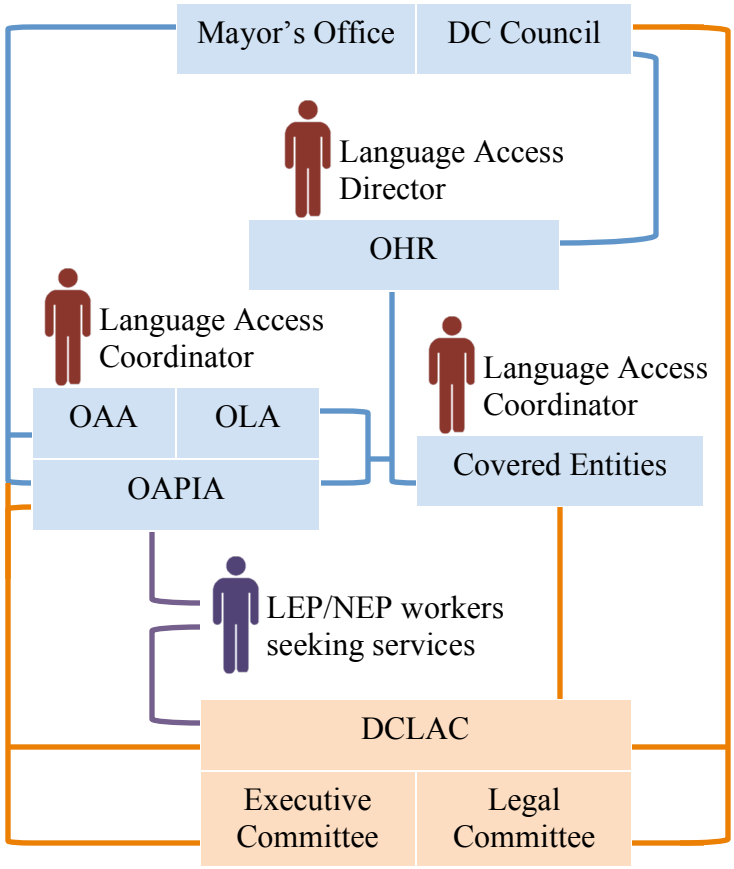

Figure 1 depicts the system of language access implementation. Blue lines indicate official oversight, orange lines indicate an unofficial advisory relationship, and purple lines indicate avenues of advocacy for individual LEP/NEP cases.

improving internal processes for the coalition's effectiveness.[10]

To that end, DCLAC formed the Executive Committee and the Legal Committee. The Executive Committee includes representatives from seven of the largest and most influential member organizations and coordinates interactions between member organizations and DC government offices; the representatives rotate hosting the coalition and acting as executive officer. Multiple Languages, One Voice (MLOV) is the current host of the DC Language Access Coalition, and Sapna Pandya, MLOV's executive director, acts as DCLAC's executive officer.[11] The Legal Committee includes the member organizations that specialize in legal aid; in the past, these organizations have worked to provide legal testimony to the DC City Council and DC Government about covered entities, the OHR and subsidiary consultative agencies' performances concerning language access.[12] The Legal Committee also works toward proposing amendments to the 2004 Language Access Act to improve the issues plaguing its implementation and helping DCLAC advise OHR in recommending organizations with major public contact—those whose primary responsibility requires meeting, contracting, and dealing with the public—to the Mayor's Office as candidates for designation as a covered entity.[13]

Accountability and the Office of Human Rights

DC's overall system of language access boils down to a complex, bureaucratic game of passing the buck. The DC Council directs the Language Director at the Office of Human Rights to provide oversight for the three consultative agencies—the Office on Latino Affairs, the Office on African Affairs, and the Office on Asian and Pacific

Islander Affairs[14]—who look to the Language Access Coalition to connect with the populations directly. Because many of DCLAC's member organizations are community-based, they observe problems with the covered entities' enactment of language access policy firsthand.[15] If the problem is more of a general trend than an individual case, DCLAC then collaborates with the consultative agencies to investigate the issue, and the consultative agency adds it to a comprehensive performance report for the government agency in question, which it then submits to the Office of Human Rights. OHR assesses the situation and takes whatever action they deem appropriate to correct systemic faults.[16] Appropriate action tends to mean including the issue in OHR's periodic report on language access implementation for the DC Council's consideration of an update to the law.[17] The most recent example of systemic change was the 2014 Notice of Proposed Rulemaking, which the case study on the Department of Employment Services will discuss in greater detail.[18] If the problem takes the form of an individual claim to OHR, the process is more complicated.

An individual wishing to make a language access claim against a covered entity must begin filing a discrimination complaint within one year of the discriminatory act by submitting an intake questionnaire, either online or in person, according to OHR policy. Within two to four weeks, OHR determines whether it has jurisdiction and, if so, schedules an intake appointment with the complainant. Following this appointment, OHR conducts an initial investigation and attempts to mediate between the complainant and the accused party—in this case, the covered entity—but if mediation efforts fail, either due to the severity of the discriminatory act or to failure by the covered entity to cooperate, the OHR launches a full investigation, which, in the case of a covered entity, can take up to

five months or more.[19] The covered entity in question must provide evidence of the viability and accessibility of translated services and the competence of employees with major public contact relevant to the case. However, the burden of proof requires the complainant to produce documented evidence of language access discrimination, which can discount cases of failure to provide oral translation services, especially if the LEP/NEP complainant cannot recall the exact wording of the refusal. OHR usually tries to avoid a full investigation due to the length of the process and the imposition on covered entities and complainants.[20] After the full investigation, the OHR's legal team reviews the case and makes a recommendation to the Director of OHR, who approves and issues the final letter of determination. Either party may request appeal within 15 days of the final determination.[21]

The District of Columbia is unique in this process because it has only the municipal and federal governments, and the line between the two is not always clear. In any other city in the US, if an individual felt the municipal authority had failed to deliver an adequate determination, he or she would then file a complaint with the state government; there would be a process for private right of action and judicial review for the case within the state judicial system. The individual could also sue the covered entity directly for damages, and, if found responsible, the entity would have to compensate the complainant and improve their implementation of the law, or be held in contempt of the court.[22] However, in DC, there is no intermediary step between the local and federal level, and, as a result, both DC's Office of Human Rights and the U.S. Equal Employment Opportunity Commission share an equal stake in discrimination complaints within the District.[23] In the case of DC government employees, the employee must file a

complaint with the Office of Equal Employment Opportunity (the DC subsidiary of EEOC through the Department of Employment Services) within 6 months of the discriminatory act; the counselor attempts to informally resolve the issue and, failing that, issues an exit letter, after which the employee must submit an intake questionnaire to OHR within 15 days. An EEOC complainant has the option to petition the DC Court of Appeals, as per section 2-1403.14 of the 1977 Human Rights Act, but an OHR complainant does not.[24]

Three components to this process are significant for low-income workers requiring the services guaranteed through language access.

First, the process requires at least two to three months, but it may take as long as eight months. If, after all that time spent grappling with several different government agencies, the OHR makes an unfavorable determination, the Language Access Act does not contain a provision for a low-income LEP/NEP worker to file civil suit of appeal against a government organization – there is no legal recourse if OHR decides against the individual.[25] David Steib, a lawyer with the Office of Public Interest at American University Washington College of Law and a member of DCLAC's Legal Committee, testified to that effect at the Agency Performance Oversight Hearings before the DC Council's Committee on Aging and Community Affairs on March 3, 2011. Steib cited an example of a monolingual Korean-speaking dry cleaner owner who wanted to take a steam-engineering license exam; the Department of Consumer and Regulatory Affairs (DCRA) administers the exam, and while Korean is one of four languages OAPIA covers (along with Mandarin, Vietnamese, and Bengali), DCRA refused to translate the exam into Korean and further communicated with the dry-cleaner owner in English, not

Korean. When the dry cleaner owner filed a complaint with OHR, the final determination showed that DCRA did not have to translate the documents into Korean. The Language Access Act does not include a provision for judicial review of a final determination, so, "unfortunately," Steib testified, "the owner of the dry cleaner has no choice but to accept the determination issued by the Office of Human Rights."[26]

The problem, Steib concludes, is that the Language Access Act does not itself provide an adequate legal apparatus for the judicial review of language-based discrimination claims.[27] Since the goal of the Act was to set up a system specifically for the prevention of discrimination on the basis of native language and national origin among government agencies and services, there is little logic, legal or otherwise, in lacking a system to properly enforce accountability when prevention fails. Further, because OHR does not make a distinction between general civil rights violation claims and language access claims, the Language Access Act relies on previous legislation, such as the DC Council's 1977 Human Rights Act and Title VII of the 1964 US Civil Rights Act, to ensure consequences if covered entities do not implement language access.[28] Another problem, Steib points out, is that the Language Act does not provide an alternate avenue to OHR for individuals to report violations of their rights, so if the OHR does not follow through on its promise to enforce language access rights, the Act has no other method of compelling covered entities to respect the law.[29] While individuals can report through the EEOC, the complainant then only has 180 days or 6 months after the discriminatory act – the window for reporting is cut in half.[30] Furthermore, neither the consultative agencies nor DCLAC has the same working relationship with the EEOC as they do with the OHR.[31] In other words, an individual may file his or her claim either

with the OHR, with small chance of success but with the support the Language Access Act provides, or the EEOC, with slightly higher chance of success but without any support.

The second component to the claim process embodies this conundrum: the OHR is in charge of monitoring covered entities to ensure they do as the law prescribes, so failing to implement language access is unlikely to result in a negative consequence for these entities if OHR does not punish their transgressions. Recall the Korean-speaking dry cleaner owner; when DCRA refused to translate documents that would have been available to an English speaker, OHR did not find DCRA responsible for translating the documents on the grounds that not enough Korean-speakers request steam-engineering license exams, so the Language Access Act does not require DCRA to provide a translation. In fact, according to the DCLAC Legal Committee, the Office of Human Rights tends not to find covered entities responsible for translating documents into languages other than Spanish, because monolingual Spanish speakers are the most common LEP/NEP individuals in the district, and it would be difficult to pretend that any covered entity does not anticipate the necessity for a Spanish translation.[32]

It would appear that OHR can easily pretend that the Language Access Act does not expressly require covered entities to be prepared for contact with LEP/NEP speakers under the jurisdiction of the OAA or the OAPIA. By law, the Department of Consumer and Regulatory Affairs must keep records and make inquiries into the populations of LEP/NEP speakers via census data, and, based on this data, amend their services accordingly.[33] However, DCRA has failed to fulfill these obligations to the appropriate extent, if at all. In Steib's opinion, "the Office of Human Rights is currently unable or

unwilling to recognize that each agency has an obligation to determine the languages into which it must translate documents."[34] If OHR does not hold covered entities accountable, even solely for determining the extent to which the law requires them to provide services in other languages, then it cannot possibly hope to hold these entities accountable for following through with their assessment of their obligations. Further, according to DCLAC's Legal Committee, OHR investigations into language access violations do not sufficiently examine the populations the entity is likely to serve, as the Language Access Act directs, via the wide body of information OHR has at its disposal, such as US Census Bureau data, local census data, and data collected by the consultative agencies and DCLAC.[35]

In an interview on May 9, 2014, Steib also highlighted the reality of the benefits of pursuing a language access claim with OHR. In the event of a claim finding a covered entity in violation of the Act, OHR issues a recommendation for improvements to the covered entity with its determination. Hopefully, the complainant can return to the covered entity and receive the service they had been denied and know that no one else will experience similar discrimination. For some, such assurance is enough, provided it proves valid. For low-income LEP/NEP workers, however, who have faced wage theft or denial of housing, a license to work in their field, or their right to public education, the Office of Human Rights cannot provide compensational damages for discrimination; there is little incentive for covered entities, then, to obey the law or to report their violations. Moreover, OHR cannot necessarily guarantee the covered entities' compliance with its directives. According to Steib, after the issuance of a final determination, LEP/NEP individuals often return to the covered entity to find that nothing has changed.

DCLAC representatives and advocates then bring the issue to OHR's attention on these individuals' behalf, OHR agrees to look into it, and generally, that's the extent of the action against the entity in question.[36]

Third, and finally, the discrimination claim process exhibits the difficulties plaguing language access in DC: if determining the validity of discrimination claims hinges on forces like the Office of Human Rights's capacity or willingness to enforce their ruling and, by extension, the Language Access Act itself, where do OHR's interests ultimately lie? The pattern DCLAC's Legal Committee has observed suggests that OHR may be unable or unwilling to enforce the law.[37] However, since the Act clearly identifies the Office of Human Rights as the principal responsible party for language access, and OHR advocated for passing the act in the first place, the success of the language access program ought to be in OHR's interests. Further, the Act cites DCLAC as a third party monitor for the covered entities' compliance, so any intentional circumvention of language access on the part of OHR would not make sense, given the system's structure.[38]

The Office of Human Rights fully admits it struggles to monitor the covered entities to the level to which the Language Access Act intended. According to OHR's 5-year benchmark report to the Mayor's Office in 2009, compliance monitoring between 2004 and 2009 consisted only of a "legislative checklist," placing "less emphasis on the quality and outcomes of programs and services agencies are prescribed to provide,"[39] and resulted in a full compliance rate of 32% in oral language services, 44% in written services, 28% in outreach, and 6% in training.[40] Before the 2008-2009 fiscal year, OHR derived the vast majority of its understanding of agencies' and services' performances

from the covered entities' self-reporting. However, recognizing that simply fulfilling a checklist is not necessarily an adequate representation of the quality of language access programs, OHR reduced self-reporting to 60% of the entities' score and increased public accommodations testing to 40%. Public accommodations consisted of three testing areas: "face-to-face" testing, telephone calls, and US mail correspondence; an OHR representative would request services in another language via one of the aforementioned channels and evaluate the covered entity based on the quality of its real-time service.[41]

The new monitoring methods resulted in the greatest jump in the category of oral language services, from 32% to 85%; training also increased greatly, from 6% to 52%, but remains, along with outreach, which increased from 28% to 48%, the lowest of the categories. The covered entities continue to struggle with written language services, with the smallest increase, from 44% to 58%. The government agencies also increased the amount of data kept about the language populations they serve; monolingual Spanish-speakers remain far and away the largest population, leading to the assumption that the covered entities only have to provide services in Spanish and English. Nevertheless, the Office of Human Rights, the Language Access Coalition, and the consultative agencies agree that the language access program will never reach full compliance in all categories until the DC Council amends the Language Access Act to allocate funding for a greater budget for each government agency to cover the costs of fully observing the law.[42]

According to the Language Access Act, if a covered entity requires additional personnel to provide oral language services, the entity must hire bilingual staff "within existing budgeted vacant positions."[43] These government agencies and services must also include "a description of the funding and budgetary sources upon which the covered

entity intends to rely to implement its language access plan."[44] In other words, covered entities must appropriate resources for their compliance with the Language Access Act from within their preexisting budget. Many of these entities serve millions of people, and, from the perspective of a government agency with a tight budget and a long list of priorities, finding the time, money, and personnel to provide oral language services and translate vital documents into seven separate languages, conduct outreach and training, and research LEP/NEP populations for the sake of 500 individuals or less seems like a lot to ask.[45] When we consider that the Office of Human Rights does not severely punish covered entities for failing to respect the law, we should not be surprised to see these entities dragging their feet.

The Department of Employment Services: A Case Study

DOES came under the purview of the Language Access Act on June 19, 2004, the date of its enactment, during the first of three waves of phased implementation, alongside OHR, DCPS, the Department of Health, the Department of Human Services, the Metropolitan Police Department, the Office of Planning, and Fire and Emergency Medical Services. The agency's obligations as per the Act begin with the creation of a Biennial Language Access Plan, or BLAP, which must be updated every two fiscal years.[46]

First, a BLAP requires a summary of DOES's mandate, including a list of departments, a description of the function of any department with major public contact, and contact information for any employee who interfaces with the public. Second, DOES must provide the following information: the number of LEP/NEP individuals encountered

and served, descriptions of language access services offered, a disaggregated budget afforded for those services, and a list of bilingual employees in positions of public contact. Third, the BLAP must detail DOES's process for addressing five major objectives, which include the collection of data by language spoken on the effectiveness of language access services on a quarterly basis, the translation of vital documents, the provision of oral services and hiring of a bilingual workforce, the provision of language-access and cultural-competence training to agency staff, and the undertaking of outreach to LEP/NEP populations served.[47] Finally, the BLAP as a whole must "establish clear goals and a realistic strategy" for the covered entity to provide language access services, "provide sufficient budget" for maintaining those services, and "include an evaluation process for the Language Access Director to track and monitor progress."[48] In other words, while the BLAP must offer a comprehensive plan for serving LEP/NEP workers, DOES must implement the plan using preexisting funding and human capital, and the BLAP system allows DOES to choose its method of self-evaluation, and there is no standard assessment that every covered entity must use for monitoring language access compliance. Further, OHR instituted staggered submission of BLAPs across agencies, so not every agency has a BLAP for every fiscal year since 2004.[49] The goal was to give covered entities enough time to adjust to the Act, but the result of this staggered approach is a lack of consistency in the assessment of language access services. According to a 2006 BLAP, program managers at DOES track and report language assistance usage on a quarterly basis via Language Line usage data (Language Line is an outside company that provides live interpretation and document translation services[50]), especially to assess the future need for bilingual staff. However, DHS records language data from its intake

forms and compiles the results in an online database used for monitoring language access progress, while the DC Housing Authority collected language data from housing applicants to ensure the inclusion of existing as well as new clients.[51]

Recall that the Act requires covered entities to draw data from a wide variety of sources for monitoring purposes, including United States Census Bureau data, local census data, and other relevant English proficiency and sociolinguistic studies.[52] However, DOES self-evaluates using data from a significantly more limited set of sources than the Act mandates. Therefore, accountability through self-reporting is limited, because DOES only holds itself accountable for a section of language access services, and any broad understanding of the realities of getting translated services from DOES is fundamentally incomplete. Without comprehensive, standardized reporting, LEP/NEP workers do not have the ability to point to broad trends in the way they deal with DOES, so their only method of addressing language access concerns is through an individual complaint with OHR, which requires a lengthy and almost certainly futile process. Further, because the only course of action for LEP/NEP workers to seek redress is individually, they remain marginalized and isolated; therefore, the system of evaluation prevents LEP/NEP workers from effectively organizing to demand better services.

In 2014, OHR proposed a change in the Act to address the issue of adequate monitoring with the Notice of Proposed Rulemaking, on which the DC Council will vote once in session.[53] The Notice hopes to "provide assistance with data collection," "provide assistance and guidance… on reporting requirements for all covered entities," and "set forth guidelines for the investigation of complaints filed under the act and for enforcement of the Act." While there are no major changes to the spirit of the Act,

proposed changes pertaining to data collection and reporting would require the covered entities to cite data from the sources mentioned in the original Act. Each covered entity must report "the number or proportion of LEP/NEP persons of the population served or encountered," "the frequency with which LEP/NEP individuals come into contact with the covered entity," "the importance of the service provided by the covered entity," and "the resources available to the covered entity."[54]

Further, the Notice highlights the different types of reports required for full compliance. First, covered entities must submit baseline assessments before and after the completion of a two-year BLAP period in collaboration with the Language Access Director. Second, covered entities must submit quarterly reports, which must provide "the status of all tasks required of the entity in accordance with the entity's BLAP and requirements of the Act," as well as "the number of complaints received during the quarter in question and the steps taken to resolve such complaints." Third, covered entities must submit annual reports, which must include total number of LEP/NEP persons served, a list of translated vital documents, oral language services offered through the entity, the names of outside translation service providers (such as Language Line), an itemized budget for language access services, a list of bilingual staff, a list of contractors and grantees, and the number of language access complaints and steps taken to address those complaints. Finally, the Notice provides for an appeals process to language access complaint investigations that could give complainants more leverage over OHR's decisions.[55]

The Notice helps to clarify the process for reporting and adds separate specific reports—baseline assessments, quarterly reports, and annual reports—that require more

comprehensive data, and the emphasis on language access complaints helps to enfranchise LEP/NEP populations struggling to get translated services. However, because the Notice still does not require standardized reporting methods, a comprehensive picture of language access in DC is either incomplete or too broad to highlight specific areas needing improvement.[56] For example, OHR's benchmark reports do not include information about specific covered entities, so while we have a picture of language access from 2004-2009, the picture does not allow us to take action to accelerate progress.[57]

We do, however, have a realistic understanding of DOES's performance as a language access provider. Several anecdotes are encouraging: for example, one LEP immigrant from Togo, who applied for unemployment benefits after losing her job in 2011, described a positive experience at DOES.

> "I called the Department of Employment Services (DOES) to speak to a social worker," she said. "I never knew about the law in DC that gives me rights to an interpreter if I needed one. So, I tried my best speaking English, but the social worker hardly understood me. She asked me if I spoke French, and I said yes. She then transferred me to an interpreter who spoke French and this helped a lot to ease the rest of the conversation. I was able to get the information I needed. It was great! Thank you to the officials who care about those of us who don't speak English when we arrive in the United States."[58]

Her story shows DOES's potential as a language access provider; however, DOES's track record is a mix of different experiences. During a series of OHR spot tests in which speakers of different covered languages called different covered entities and asked for

services in their language, only 40% of the testers received services. DOES was one of two agencies to successfully provide services in Chinese and Bengali out of six tested, but failed to provide adequate services in French, Amharic, Spanish, Vietnamese, and Korean during the test. Further, DOES seems to share the general bias that Spanish-speakers are the only individuals who need interpretation services: in 2008, DOES reviewed the need for translated posters and vital documents but reported in 2012 that vital documents had been translated into Spanish, but only forms and letters for hearings had been translated into other languages.[59]

One DCLAC activist described another issue with DOES's language access compliance: while the services might exist, an LEP/NEP worker would not know immediately if interpretation were available. In the activist's experience with DOES's Wage and Hour Division, of three investigators who speak Spanish, one is a native speaker, and the other two have lower proficiency. However, the activist has never seen a Spanish-speaker at the front desk of DOES, and in order to receive interpretation services, the LEP/NEP individual would have to check in, show ID, get a badge, go through security, and go upstairs with a staff member. To make a claim, workers then speak with the investigator and fill out a form (available in Spanish). The activist typically interprets at the front desk while accompanying workers to DOES, so an unaccompanied Spanish-speaking worker would be unlikely to know how to begin the complex process of receiving services in Spanish. Further, when accompanying an Amharic speaker, the activist saw the Wage and Hour Division investigator use Language Line for interpretation, but did not see written materials in Amharic.[60]

For LEP/NEP workers, employment services are particularly important; linguistic

isolation can leave workers vulnerable to unfair treatment in the workplace, such as wage theft, unsafe work conditions, and harassment. For example, DC Mayor Vincent Gray conducted a door-to-door drug paraphernalia search in a neighborhood of shops owned predominantly by LEP/NEP Amharic speakers. At the first shop Gray visited, he encountered a language barrier with an Ethiopian shopkeeper, who did not understand when Gray asked, "You know what K-2 is? You don't know what spice is? You know what synthetic marijuana is? You don't know what marijuana is either?" Gray, clearly frustrated, began to ridicule the shopkeeper, asking the police officers and drug-free youth advocates with him if they knew what marijuana is. The clerk asked Gray to translate, but Gray had only brought a Spanish-speaking interpreter, and said it was "irrelevant" whether or not he was being insensitive to the clerk. "He communicates with the public every day, or attempts to communicate with the public every day," Gray said. "People will come in just like me and ask for certain things. We were asking about something that affects so many children and I would expect him to be in a position to be able to address that, and he wasn't."[61] Apparently, Washington, DC's mayor can harass a shopkeeper for being LEP/NEP, regardless of the fact that the shopkeeper has the right to an Amharic interpreter while interfacing with Metro Police Department, that both MPD and the Office of the Mayor are covered entities and bound by law to respect the basic human dignity of LEP/NEP workers, and that the mayor has an Office on African Affairs.[62] Unfortunately, while Gray's incumbency will end in January 2015, the system that allows such blatant disregard for the law will continue.[63]

Washington, DC: Advocacy and Bureaucracy

The issue of language access exemplifies the kind of collective action problem common to Washington, DC. A typical city has a strong, integrated central municipal government under the direct authority of the state government, which is, in turn, under the direct authority of the federal government. The District, however, is neither city nor state, and the authority of the federal government has fluctuated throughout DC's history. Until 1973, when the US Congress passed the Home Rule Act allowing DC to elect its own mayor and city council, the nation's capital was exclusively under federal control; home rule changed the power structure in the District to permit limited local autonomy, although Congress retains the final word on the city's annual budget.[64]

In DC today, the mayor and five members of the DC Council are elected at large, and each of the eight wards elects its own council member; in addition, each small neighborhood district elects members of 37 separate Advisory Neighborhood Commissions, or ANCs, which provide the city council with information and recommendations on neighborhood-specific issues.[65] The DC Council has the power to enact local codes and ordinances, but, as per the Home Rule Act, any legislature passed by the DC government is subject to Congress's approval.[66] Further, the DC government may not pass certain types of legislature, including commuter taxes or any similar tax on individuals who work in DC but live elsewhere, taxes on property federally mandated as tax-exempt, changes in the composition or jurisdiction of the local courts, or enactments of an unbalanced budget.[67] For example, around 50% of the real property within the city limits is exempt from property tax, and around 66% of the income earned in the city comes from non-residents who pay income tax to Maryland or Virginia.[68] Additionally,

Congress has the power to restrict locally generated revenues at its discretion, resulting in a Congressionally-mandated balanced budget that forces organizations to provide more services without providing more funding.[69] DC's budget may look balanced, but in reality, the city's institutions end up cutting corners on programs like Language Access to save money. While Congress could pass a Constitutional Amendment that would grant DC residents full voting rights, Republican Party representatives would be unlikely to support such a measure, given the fact that 75% of these potential new voters identify as Democrats.[70]

A crucial step towards improving language access is increasing funding for covered entities to adhere to the 2004 Language Access Act. Because DC's funding comes from Congress, the likelihood that the city council will allocate additional funding for the purposes of language access is slim. The Home Rule Act specifically designates tax restrictions that the DC government does not have the authority to change, and covered entities understand that there will likely never be enough money to completely cover the implementation of the language access program.[71] Therefore, the Office of Human Rights understands that it does not have the resources to positively incentivize proper adherence to the Language Access Act. Since OHR answers to the DC council, and the DC council does not have the authority to control its own sprawling institutions (because the DC government answers to the US Congress), the Office of Human Rights understands that it does not have the political clout to negatively incentivize proper adherence to the Language Access Act.

The Home Rule Act transformed DC from a district under the official sole control of the US Congress to a district under the de facto sole control of the US Congress, and,

as a result, the city of Washington does not have the strong central government necessary to coordinate its institutions efficiently.[72] Stephen D. Krasner, an international relations professor at Stanford University, describes the globalized world as a variety of entities, each with some measure of power, but without one governing authority competent enough to deal with public, global goods like monetary policy or environmental responsibility.[73] DC has become a microcosm for Krasner's model, in which entities safeguard control by walking away from issues they cannot resolve; for example, the Office of Human Rights is hesitant to monitor covered entities and punish transgressions because it cannot do so to the full extent prescribed by the Language Access Act. OHR also prioritizes Spanish, because the significant LEP/NEP Spanish population allows the office to maximize its utility. DC struggles with the implementation of a public good like language access because there are a variety of entities, each with some measure of power, and the only real authority, the United States Congress, has too long a list of priorities to properly care about the city that houses it.

Top-Down Solutions

In the past ten years, efforts to improve the Language Access Act's implementation have focused predominantly on working to maximize the covered entities' efficiency and capacity for compliance.[74] However, the DCLAC's Legal Committee and the Office of Human Rights continue to advocate for changes in the law itself, especially changes in the law's funding, and most organizations and advocates agree that without top-down change, the covered entities' maximum capacity will remain insufficient for full compliance with the law.[75]

There is certainly something to be said for broad-stroke policy changes; the addition of a right of private action to the Act would allow complainants to sue for compensation and provide another option for LEP/NEP individuals to report noncompliance outside the Office of Human Rights' purview. Judicial review would legally bind the covered entities with more authority than OHR can offer because failing to observe verdicts from the DC Court of Appeals results in contempt of the court and carries a stricter punishment than OHR can deliver.[76] An influx of lawsuits would align compliance with the Language Access Act with the covered entities' interests; in other words, obeying the law would become cheaper than disobeying it.

However, even if DC Council were to add a right of private action to the Act, DCLAC would lose the connections with the covered entities that allow the coalition to serve as a bridge between the LEP/NEP population and the government, because the entities would fear expensive lawsuits. As is, during my experience speaking to some of the government agencies involved, I found that few employees were comfortable discussing language access. Many employees refused to speak on record, asked not to be quoted directly, or chose to remain anonymous.

Language Access is not a controversial issue in and of itself; the Act passed unanimously in 2003 in both its first and final reading to the DC Council,[77] and part of the consultative agencies' role regarding language access is raising awareness of the Act's existence.[78] Discussing the issue should not be dangerous for District employees, but the power dynamics among the stakeholders mean talking openly about OHR's management of language access, the covered entities' compliance, or the consultative agencies' relationship with the LEP/NEP population and DCLAC to an outside

researcher could carry more loss than gain.

Talking to someone who could make Language Access an issue in the public consciousness is a recipe for creating a media problem for city government agencies and carries the danger of damaging a career.[79] While a media problem, like a lawsuit problem, might be a way to force accountability from government stakeholders, is forcing accountability really the best way to get it? If there were a right of private action, talking to a DCLAC advocate would become a liability risk, and covered entities would work harder to avoid lawsuits than they would to improve language access for LEP/NEP populations. Covered entities do not have the resources to properly comply with the Language Access Act, and they have little incentive to risk their major priorities for 3% or 500 individuals, so an influx of lawsuits only adds another liability. From the perspective of the Department of Employment Services, OHR has already mandated translators and translated documents from a budget that is too small to cover their priorities, let alone programs for language access. DCLAC members who advocate for a right of private action would certainly be the people who encourage and enable LEP/NEP workers to sue for damages. For a low-income LEP/NEP worker, the DCLAC's Legal Committee would be the only viable option for finding pro bono representation, either from the committee itself or from the committee's connections. For covered entities, the cheapest and easiest protection from lawsuits would be to stonewall the coalition and not comply with the Language Access Act.

Perhaps the solution is to create a public relations problem; however, without creating an adequate incentive, adding another deterrent is unfair to the covered entities, and any existing transparency in the DC government that allows DCLAC to effectively

serve LEP/NEP workers would disappear. A right of private action and public accountability are each important components of a democratic society, but, ultimately, the District of Columbia is not a democratic society. Washington, DC's Home Rule differs from federalism because its autonomy is neither unlimited nor constitutionally guaranteed; examples of Home Rule include Ireland and India, circa British imperialism.[80] The District of Columbia will continue to fail to provide public goods like language access as long as Congress exercises absolute fiscal control over the DC government. Institutions like the Department of Employment Services are not allowed to run a budget deficit; a public relations problem cannot change that fact, so, instead, we should reframe the context by shifting the financial burden from the covered entities to the DC government, who enacted the law, and giving power to the DC government to pay for the services it requires.

Congress is unlikely to appropriate more money to DC due to political gridlock, and DC is not allowed to tax around 50% of the buildings and public infrastructure within the city limits.[81] One of Home Rule's further stipulations is the prohibition on taxing non-District residents who work in DC as they enter or leave the city.[82] In other words, DC cannot generate the toll revenue or property tax revenue that supports many American major cities. For example, in 2014, around 12% of New York City's Metropolitan Transportation Authority's $13.5 billion budget (or around $1.65 billion) came from toll revenue[83], and around 28% of the city's $69.8 billion Executive Budget (or around $19.5 billion) came from property tax revenue.[84] Under the same tax restrictions on toll revenue and property tax as DC, New York City would face a budget gap of around $11.4 billion, increasing the projected budget gap in 2015 from $2.1 billion to $13.5 billion, or 18% of

the projected $74.8 billion budget. Though the city would be unable to pay for about a fifth of its public services, under DC conditions, New York would have to stretch $61.3 billion to fit a $74.8-billion-need; while the budget would be technically balanced, public goods would still be grossly underfunded.

Finding money for public goods therefore concerns the availability rather than the sufficiency of existing funding. If the root cause of DC's institutional inertia is its lack of autonomy, the ideal solution to the underfunding of public programming like Language Access in America's capital is to give DC statehood. A new state, New Columbia, would have two seats in the Senate and one in the House of Representatives, giving the city political leverage over its funding, and the District of Columbia would become a small area including the White House, the Capitol, the Supreme Court, and the National Mall.[85] Covered entities would improve their programming, including language access services, and the DC government would have legal and political authority to hold its institutions accountable to the public interest, while DC's citizens could hold Congress accountable to the city's welfare. Further, Washington is allowed two shadow senators and one shadow representative—members of Congress who may not vote—but statehood activists feel that citizens of the District deserve equal federal representation if they pay equal federal taxes.[86] However, the September 2014 Senate Homeland Security Committee Hearing on DC Statehood showed that Washington's political realities will bar the District from statehood for the foreseeable future.[87]

Between its accession to Home Rule in 1973 and the latest attempt, both serious efforts to achieve statehood failed; in 1978, Congress approved the constitutional amendment required to change the District's status, and in 1982, DC residents approved a

constitution for the new state of New Columbia, but only 16 of the 38 requisite states ratified the amendment.[88] In 1993, a statehood bill stalled in the House of Representatives. According to statehood activist Josh Burch, previous attempts failed because DC's institutions were not ready to assume the responsibility of statehood, but now, the system's failings are due to Congress's control over the District, not because the District itself lacks competence.[89] To that end, the District government was barred from spending the limited money it has on lobbying Congress for statehood until May 2008, and in today's political climate, the initiative acts primarily to raise awareness of DC's plight at a national level.[90] Senator Tom Carper, Chairman of the Homeland Security Committee, does not have enough support to bring the bill to the Senate floor from fellow Democrats facing close midterm election races, and a Republican House of Representatives is unlikely to approve a measure that will enfranchise 480,000 Democratic voters.[91]

From changing the District's political system as a whole to changing the Language Access Act itself, top-down solutions alone to impediments to improving the lives and livelihoods of low-income LEP/NEP workers in DC will either exacerbate the problems or fail to take effect. If DCLAC challenges the covered entities with large-scale legal problems or increased media attention, it will alienate both the individual institutions and the DC government at large, and the LEP/NEP populations will face the repercussions. If the covered entities ask the DC government for the necessary resources to provide the services set down in their mandates, the DC government will point to the letter of the law and tell the covered entities to make do with the budgets they have. If the DC government asks Congress for the power to govern, Congress will say no.

A Call to Action

According to David Steib of the Language Access Coalition's Legal Committee, many of the LEP/NEP individuals who file language access complaints with the Office of Human Rights do so to protect others from the injustices they have experienced, not because they expect reparations or compensation.[92] However, they are often unsuccessful, or even if they are successful, there is no change in the covered entity's practices.[93] Top-down solutions, while ideal, are impossible in the current systemic context. How, then, can LEP/NEP populations create the bottom-up change that will reframe the system?

In general, the group that tends to receive services more readily is the largest: LEP/NEP Spanish speakers.[94] The Office on Latino Affairs has the advantage of engaging with one language, unlike the Office on African Affairs and the Office on Asian and Pacific Islander Affairs, both of which cover smaller and more linguistically diverse groups.[95] In DC Council hearings regarding the Act, the Coalition criticized the covered entities' prevailing assumption that language access extends only to Spanish speakers.[96] If the Spanish-speaking LEP/NEP community has enjoyed relative success because it is larger and more cohesive than speakers of other languages, perhaps the solution is to make the broader LEP/NEP community larger and more cohesive. The DC government must recognize that non-Spanish speaking LEP/NEP individuals are a valid constituency, because covered entities will not provide language access services if OHR continues to see non-Spanish speakers as too small and ignorable to warrant equal rights.[97] While Spanish speakers remain the majority by a significant margin, speakers of the other six

languages entitled to multilingual services comprise about 40% of DC's LEP/NEP population.[98] Non-Spanish-speaking LEP/NEP individuals only look like small groups because the DC government considers each language group to be a separate entity.

To create momentum for greater language access, LEP/NEP speakers of all covered languages – Spanish, French, Amharic, Mandarin, Vietnamese, Korean, and Bengali – must become more unified and more vocal in the public consciousness. Advocacy for the LEP/NEP population struggles with bureaucracy because the system in Washington is characterized by stratified entities that work against each other.[99] As we see in the case of LEP/NEP Spanish-speakers, a large, integrated unit is much more difficult for the system to marginalize than a collection of isolated groups.[100] Current advocacy efforts tend to divide the affected populations based on language.[101] The consultative agencies deal primarily with their assigned demographics, and while 17 of the 41 members are not affiliated with a specific language group, only seven of those organizations are involved with DCLAC's Executive or Legal Committees, and only MLOV is dedicated solely to language access advocacy, outreach, and organizing.[102] Given their network among LEP/NEP populations and their interactions with the covered entities and the consultative agencies, DCLAC has the opportunity to help connect the many stakeholders and form a cohesive grassroots movement.[103]

So far, however, DCLAC's work has focused more on engaging with language access methodically than comprehensively; different facets of the network seem to focus exclusively on different stakeholders.[104] The efforts of other DCLAC member organizations such as the DC Employment Justice Center and the Equal Rights Center to help LEP/NEP workers access services are indispensable for dealing with the affected

population's immediate needs.[105] DCLAC's Legal Committee's work in lobbying for top-down change and helping file language access claims with OHR is a crucial component of long-run progress.[106] MLOV's work with government compliance and advocacy aims to liaise with the consultative agencies and address the problems fellow DCLAC members encounter in their beneficiaries' dealings with covered entities.[107] A methodical approach, though, is not enough to deal with language access on a systemic level in a city where leverage over one stakeholder does not mean leverage over another.

First, I propose a dramatic increase in outreach and community organizing on the part of the LEP/NEP population and the Language Access Coalition. MLOV's present organizing programs focus on health and education justice.[108] For example, the DC Nail Salon Project, spearheaded by community organizer Tina Pham in partnership with the Vietnamese American Community Service Center (VACSC), a fellow member of DCLAC, seeks to organize low-income LEP/NEP Vietnamese-speaking nail salon workers in DC.[109] According to the Project, 42% of nail salon workers nationwide are Asian/Pacific Islander, and 39% of those workers are of Vietnamese descent. The DC Nail Salon Project works to help connect DC's Vietnamese-speaking nail salon workers with the services they need from entities such as DOES, the Department of Health, and Fire and Emergency Medical Service to deal with the numerous health problems ranging from dermatitis to respiratory issues due to working in hazardous or unsanitary conditions.[110] Pham said of the DC Nail Salon Project, "I think the overall aim of this project is through outreach, through organizing, and through advocacy, and reaching out to everyone, not just workers but business owners, and not dividing people or dividing communities, but bringing people together to create healthier communities."[111]

Three important elements make DC Nail Salon Project a partial model for organizing LEP/NEP workers. First, Pham and the Vietnamese American Community Service Center began collaborating in 2009, before Pham joined MLOV in 2011.[112] The Project began as an inclusive grassroots movement, led by community members in partnership with an organization with strong ties to the group in question.[113] As much as possible, the LEP/NEP community needs to organize on its own behalf; the effort must come primarily from the community, not from the consultative agencies or the Coalition, because hearing directly from the affected population affords the narrative a greater sense of legitimacy. Second, MLOV was able to help the Project expand through its connection to VACSC, a fellow DCLAC member, and its relationship with OAPIA, creating a partnership that includes a language-access focused organization and a language-specific organization.[114] Because DCLAC includes many different types of activist groups, the coalition has a network that reaches all levels of DC's language access stakeholders, from LEP/NEP community to the DC government. The coalition needs to leverage its network to building more extensive organizing efforts. Third, the Project addresses language access in conjunction with another issue—the creation of safe and healthy workplaces—giving it the potential for expansion as part of a greater movement and accessibility to a broader audience. A broader organizing effort would have to include a larger set of issues and use language access as the focal point for addressing those issues.

However, to complete a community-organizing model for broad language access in DC, the model has to be accessible to multiple language and ethnic groups. Another of MLOV's organizing projects lends itself to the need for a bridge across language-speaking communities: SMART, or Student Multiethnic Action Research Team, includes

English Language Learner (ELL) youth and educators from various high schools across DC and works to create quality education for ELL students in DCPS.[115] After community mapping, discussion, and research, SMART identified core issues with ELL education, proposed actions to address those issues, and created a petition to Kaya Henderson, Chancellor of DCPS to implement their suggestions.[116] SMART successfully brings together ELL students from different language groups to advocate for their education.

The first step to affecting bottom-up change is a combination of SMART and the DC Nail Salon Project, applied to a larger collection of issues than health and education. For LEP/NEP workers struggling to receive language access services, filing a complaint and looking for reparations from OHR is unlikely to protect others from discrimination and marginalization in the future. These workers should go to an organization from DCLAC with which they feel comfortable and ask to connect with as many people with similar experiences from as many different language groups as possible. That organization should then reach out to fellow coalition members to help solidify the movement and connect LEP/NEP workers with consultative agencies, legal services, and community organizers. In addition to helping connect different stakeholders into one organized body, the coalition should work to ensure workers feel safe speaking out about their stories, especially because LEP/NEP individuals already experience linguistic and often economic isolation. After identifying the issues it will address and goals for taking action, the movement should become as vocal as possible on social and conventional media. Right now, LEP/NEP workers are invisible in the public consciousness, and to get quality language access, DC's voters have to know they exist, care that they face bureaucratic injustice and ineptitude, and make the issue a legislative priority for DC

Government officials.

Second, DCLAC needs to show the covered entities that in the long run, working with the LEP/NEP population will make fulfilling their mandates easier, not harder. Part of successfully engaging with the covered entities is creating a unified, visible LEP/NEP community—for a strong partnership, covered entities need a clear partner. For bottom-up change to eventually lead to top-down change, however, DCLAC and the LEP/NEP community must transform contention with the covered entities to collaboration in lobbying the DC Council and Congress for change in the way DC's municipal programs receive funding. In the current system, the consultative agencies help the covered entities maximize their limited resources to implement language access. However, the disconnect between the issuing and the implementing of OHR decisions about language access complaints suggests that the system restricts the consultative agencies from performing their duties to the fullest.

Currently, the BLAPs for the covered entities are most easily accessible through request via DC's Freedom of Information Act. While BLAPs are supposed to be available on the DC Register Archive, none have been posted for public viewing, and finding a covered entity's BLAP requires an extensive search and request via DC's Freedom of Information Act.[117] Covered entities should make their BLAPs more readily available, to estimate the extra funding and capital they would need to correctly implement language access laws, then address their needs to the DC Council in combination with stories and suggestions for improving the system from the grassroots movement. While it would be difficult to convince the covered entities to sidestep OHR oversight directly, they ignore OHR's prescriptions without consequence anyway. The distribution system for public

goods puts the covered entities in an impossible position, and a public gesture surrounded by media presence may create the momentum the covered entities need to change the system. If DC has no strong central authority, its institutions will gain more in the long run using their autonomy to ask for the resources they need than skating by on the resources they have.

However, the covered entities will not move unless a large, united grassroots movement prompts them to move. In language access today, the LEP/NEP community is the only group of stakeholders that is not limited by the bureaucratic structure. While the DC government has the resources to conduct outreach to organize LEP/NEP communities, any government-affiliated group (such as the covered entities or the consultative agencies) also has an incentive to keep these communities isolated and out of the public eye, because the status quo is easier to maintain than change. DCLAC has the advantage of greater trust and connection in the community, but in order to effectively advocate for LEP/NEP individuals, the coalition must maintain positive relations with the covered entities and the consultative agencies. Further, many DCLAC organizations receive funding from the DC government in some capacity and therefore balk at pressuring the covered entities or the DC council without the support of a large constituent base.[118]

Full language access compliance in DC is not an impossible goal. Efforts to improve the system of language access continue to make headway: DCLAC and the consultative agencies have worked to advocate for OHR's Notice of Proposed Rulemaking to begin the process of updating the legislature, and several of DCLAC's organizing projects have the potential to create grassroots campaigns to improve

language access. However, until the issue has exposure and unified support from all LEP/NEP populations, full compliance under the stratified distribution of authority in Washington remains out of reach. Language access is only part of the story; the District today cannot keep the promises made to its citizens, but its citizens can help the District deliver on promises of public goods in the future. Through organizing and partnerships across advocates, agencies, and members of the community, language access can become a model for making a broken system work.

List of Acronyms and Abbreviations:

The Act: The DC Language Access Act of 2004

BLAP: Biennial Language Access Plan

Consultative Agencies: The Mayor's Offices on African Affairs (OAA), Asian and Pacific Islander Affairs (OAPIA), and Latino Affairs (OLA)

Covered Entities: As the Act defines them, "any District government agency, department, or program that furnishes information or renders services, programs, or activities directly to the public or contracts with other entities, either directly or indirectly, to conduct programs, services, or activities."

DCLAC: DC Language Access Coalition

DCPS: District of Columbia Public Schools

DCRA: Department of Consumer and Regulatory Affairs

DHS: Department of Human Services

DMV: Department of Motor Vehicles

DOES: Department of Employment Services

EEOC: US Equal Opportunity Commission

EJC: DC Employment Justice Center

ELL: English Language Learner

LEP/NEP: Limited English Proficiency/No English Proficiency

MLOV: Many Languages, One Voice

The Notice: OHR's Notice of Proposed Rulemaking

OAA: The Mayor's Office on African Affairs

OAPIA: The Mayor's Office on Asian and Pacific Islander Affairs

OHR: Office of Human Rights

OLA: The Mayor's Office on Latino Affairs

SMART: Student Multiethnic Research Team

VACSC: the Vietnamese American Community Service Center

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