



501 3rd Street, NW · 8th Floor
Washington, DC 20001
T 202.467.4900 · F 202.467.4949
www.childrenslawcenter.org

Testimony Before the District of Columbia Council
Committee on Public Works and Operations
February 21, 2024

Public Hearing:
Performance Oversight Hearing
Office of Human Rights

Mariatu Okonofua
Public Service Legal Policy Fellow
Children's Law Center

Introduction

Good morning, Councilmember Nadeau and members of the Committee. My name is Mariatu Okonofua and I am a Public Service Legal Policy Fellow at Children's Law Center. Children's Law Center believes every child should grow up with a strong foundation of family, health, and education and live in a world free from poverty, trauma, racism, and other forms of oppression. Our more than 100 staff – together with DC children and families, community partners, and pro bono attorneys – use the law to solve children's urgent problems today and improve the systems that will affect their lives tomorrow. Since our founding in 1996, we have reached more than 50,000 children and families directly and multiplied our impact by advocating for city-wide solutions that benefit hundreds of thousands more.

Thank you for the opportunity to testify regarding the Office of Human Rights. Through our medical-legal partnership, Healthy Together, CLC represents families seeking special education services for their children.¹ Some of these families have limited English proficiency, and struggle to receive routine communications and vital information about their children's educational services in their preferred language. This lack of proper language access results in unequal access to federally mandated services and opportunities for our clients as well as the isolation and exclusion of limited English proficient (LEP) caregivers during key educational meetings.²

The District acknowledged the need for better language access services by passing the Language Access Act of 2004 (the Act).³ The Act requires the Office of Human Rights (OHR) to monitor the accessibility of programs and services offered by covered entities including District of Columbia Public Schools (DCPS) and the Office of the State Superintendent of Education (OSSE) to ensure that they meet acceptable standards of translation or interpretation.⁴ To achieve this, OHR established the Language Access Program (LAP) which oversees enforcement, compliance monitoring, and technical assistance to covered entities.⁵ Though the LAP has made strides in providing accountability for language access violations within the District, we continue to see gaps in language accessibility, especially for children with special education needs. For these students and their families, the intersection of language access and special education presents a unique set of challenges and needs that often remain unmet by covered education entities.

My testimony today will focus on improvements OHR and the LAP must make to address crucial areas of non-compliance within the District. Specifically, I will discuss: (1) the continued prevalence of language access violations faced by LEP students with disabilities and their families; (2) the necessary coordination between OHR, the LAP, and OCTO in selecting a better language interpretation servicer; (3) the LAP's limited capacity to enforce the Act; and (4) the gaps in current law and how they leave charter school students without OHR support when their language access needs are not met.

The Language Access Rights of Students with Disabilities and Their Families are Repeatedly Violated During the IEP Process and in School Transportation Communications

For years, CLC clients have experienced several issues with individual DCPS schools not abiding by the language access rights of limited or non-English Proficient (LEP/NEP) students and their families.⁶ First, clients with disabilities face a lack of translation of vital documents such as disability evaluation reports. The translation of these documents is essential in ensuring that caregivers are kept abreast of what diagnoses their student has received from the evaluators, the implications of the diagnosed disability, and how student needs are impacted by their diagnoses.⁷ Equally concerning, LEP/NEP families of students with disabilities often experience extended wait times in receiving translated Individualized Education Programs (IEPs), a key legal document that guides what services a student will receive, how educational progress is measured, and the student's educational goals.^{8 9} We have also had several cases where schools have outright denied the translation of IEPs for LEP/NEP families when requested, leaving families without the ability to understand and approve the IEP. These delays in access to crucial documents prevent students from receiving educational instruction catered to their present learning needs and impede their ability to make appropriate progress as required under the Individuals with Disabilities Act (IDEA).^{10 11}

Second, school officials occasionally interfere with the oral interpretation of special education meetings or fail to include families in the decision-making process. As several

CLC clients have experienced, when interpreters are present at IEP Team Meetings, school officials sometimes tell these interpreters to omit parts of the conversation when communicating with the families or fail to give interpreters enough time to translate what is being said. Some schools also fail to engage LEP/NEP caregivers in the IEP decision-making process and instead tell parents (via oral interpretation) what the next steps will be without asking or waiting for family input. This conduct by individual schools not only causes LEP/NEP families and caregivers to feel isolated during IEP meetings but also prevents them from being meaningful participants in the IEP process as is required under the IDEA and DC special education law.¹²

Third, OSSE DOT has also historically failed to provide communication regarding busing routes, delays, and updates in the native or preferred language of LEP/NEP families. In 2022 and 2023, LEP/NEP families regularly failed to receive translated messages regarding the status of their student's bus leading to confusion and worry about the whereabouts of their disabled children. In late 2023, CLC raised this issue with the Language Access Director, who took CLC's concerns on this issue to OSSE DOT and worked with them to develop short and long-term plans to better support these students and families.

While we appreciate OSSE DOT and the LAP for taking some initial steps to address this gap in language access, more extensive systemic change is needed to ensure that the language access needs of District students and their families are met. One crucial

step would be for the Language Access Program to provide guidance for DCPS on how to better standardize its procedures across all schools. Under the Language Access Act, the Office of Human Rights is charged with aiding covered entities in their implementation of the Act in order to ensure that the services offered by these entities meet acceptable standards of translation or interpretation.¹³ Establishing a standard procedure falls squarely within these powers of the Language Access Program and will ensure that individual schools know how to support LEP/NEP families (e.g. what to do when a parent comes in that does not speak English or is asking for an interpreter), especially in schools where they have a high concentration of LEP/NEP students. This would also reduce the variation in knowledge, support, and resources schools provide to LEP/NEP families across the school system and curb the violations of these families' language access rights.

Furthermore, the LAP should utilize its oversight powers under the Act to urge DCPS to modify its language access policy regarding the timeframe for IEP translations.¹⁴ Under its current policy, DCPS allows schools to translate an IEP into the preferred language of an LEP/NEP caregiver within 45 days of receipt of the English-language IEP.¹⁵ This timeframe delays access to the IEP due to the LEP/NEP parent's inability to read the English version and hinders their involvement during special education meetings. In order to create a more equitable policy, the LAP should work with DCPS to shorten this timeframe and close any loopholes that would enable schools to repeatedly postpone

meetings regarding the new IEP (e.g. meetings to discuss the delivery of services to the student) as a means of delaying compliance with this requirement.¹⁶ We urge the Committee to support these recommended measures by requiring OHR and the LAP to collaborate with DCPS to improve its language access policies and ensure equity across its schools.

OHR and the LAP Should Work with OCTO to Identify a New Language Interpretation Servicer

Schools seeking to support the language access needs of their students and families frequently face challenges with the Language Line, a free service provided to all District employees and residents for oral language interpretation, such as inconsistency and lack of quality interpretation.¹⁷ For example, schools occasionally struggle to have Language Line pick up when called for oral interpretation, making it impossible in some scenarios to effectively communicate with parents.¹⁸ When schools do reach a Language Line interpreter, they often experience inaccurate interpretations provided by someone unfamiliar with special education terminology and the IEP process.¹⁹ These inaccurate translations are especially concerning because of the risk they create for parents to reject beneficial aspects of a student's proposed IEP due to misunderstandings of what is being offered by the school. In a recent case, a student's IEP was almost rejected because the Language Line interpreter inaccurately translated the school's suggestion for the student to receive necessary occupational therapy as psychological therapy, which the student

did not require. Had the CLC attorney present not intervened and properly translated the school's suggestion, the parent would likely have rejected the service.

Fortunately, OHR and the LAP will soon have the opportunity to rectify the challenges faced by District residents seeking interpretation services. The Office of the Chief Technology Officer's (OCTO) contract with Language Line Solutions will terminate in September of this year.²⁰ In the past, OCTO has consulted with OHR and the LAP when securing its telephonic interpretation services contracts for the District.²¹ In keeping with past precedent, when OCTO seeks input on its next telephonic interpretation services contract, OHR and the LAP should work with OCTO to select vendors who will provide more consistent and accurate services. We also urge the Committee to ensure that considerable weight is given to OHR and the LAP's expertise during this contract renewal process and in future language interpretation services contracts for the District.

OHR Must Increase the Language Access Program's Capacity to Enforce the Act

To address the shortcomings of the LAP and ensure students' and families' language access needs are met, OHR must expand the capacity of the LAP. Currently, the Program has only three (3) permanent staff members and a seasonal intern. Among the permanent staff, only one person oversees training and compliance for the entire city.²² This is not enough to effectively train and monitor compliance for every agency and covered entity nor sufficient for the government to meet its burden of ensuring that the rights of District residents are upheld. With an expansion to its staff, the Language Access

Program would be able to employ staff members dedicated to monitoring and providing support to agencies as they develop corrective actions for their areas of non-compliance, to conducting foreign language field testing, and to reviewing and analyzing trends in agency compliance violations and other key data points.²³ Increased capacity would also allow the LAP Director to focus on broader language access priorities, engage more regularly with City executives and administrators to develop systemic solutions for pervasive language access violations, and foster deeper relationships with the advocate community. To this end, the Committee should instruct OHR to analyze the cost and potential impact of increasing the number of permanent staff in the Language Access Program.

Gaps in the Law Leave Students Enrolled in Charter Schools Without OHR Support When Their Language Access Needs are Not Met

The Language Access in Education Amendment Act of 2018 extended language access protections to students enrolled in charter schools and required charters to meet the same requirements as OSSE and DCPS such as hiring a language access coordinator.²⁴ Despite passing unanimously, this Act remained unfunded for nearly 2 years before being repealed in 2021 by an Emergency Act.²⁵ Consequently, District charter schools remain outside the scope of the 2004 Act and are therefore not required to meet the language access needs of their LEP/NEP students and families apart from those requirements imposed by special education regulations.²⁶

This lack of LAP oversight leaves students and families with limited remedies when their rights are violated by their charter schools and creates disparity in protections and accessibility between public and charter schools. Furthermore, without key language access requirements, such as a language access coordinator to oversee school language access policies and ensure compliance with applicable law, schools can decide whether and how they will address the needs of non-English speaking students and families.²⁷

While many bilingual charter schools have worked to provide consistent translation of documents and communications with families, other charter schools often require consistent prompting and requests from parents and their attorneys to translate documents or communicate with families in their native language. In several CLC cases, bilingual staff attorneys have been forced to provide interpretation for their clients to ensure that they are included in conversations with school representatives. In another case, a charter school utilized a bilingual advocate from the community as an unofficial interpreter who then attempted to mediate the conversation between our client and the school personnel instead of translating the conversation. These types of occurrences lead to caregiver confusion regarding student learning needs and parental distrust that schools will be able to meet them.

To rectify these issues, legislation must be passed to expand the current language access law. As a member of the DC Language Access Coalition (DCLAC), CLC is aware that the Coalition is presently advocating for an amendment to the 2004 Act that would

impose fines against agencies and covered entities for language access violations.²⁸ We strongly support the creation of an enforcement mechanism for the Act in order to curb the violations faced by District families and students. We also urge this committee and the Council to further amend the Act by enshrining the language access rights of all DC students and include charter schools as covered entities under the Language Access Act.

Thank you for this opportunity to testify and I welcome any questions.

¹ Healthy Together is Children’s Law Center’s innovative medical-legal partnership which places attorneys at pediatric primary care health centers in collaboration with Children’s National, Unity Health Center, and Mary’s Center. We receive referrals from medical staff where our attorneys can help address a non-medical barrier to a child’s health and well-being.

² See 34 CFR § 300.322 (requiring local education agencies to provide opportunities for parent participation in IEP Team Meetings and throughout the IEP process); 34 CFR § 300.34 (a) (describing the services to which services a student may be entitled based on their disability including interpreting services)

³ The Language Access Act of 2004 requires most D.C. government agencies, governmentally funded entities, all covered entities with major public contact to provide oral interpretation services and written translation of all vital documents for any non-English language spoken by 500 individuals within or 3% of the population served or encountered, or likely to be served or encountered by the entity. See D.C. Code §2–1933 (a) (2004)

⁴ See D.C. Code § 2–1935(a) (2004)

⁵ See DC Office of Human Rights, Language Access Program (n.d.), *available at*: <https://ohr.dc.gov/page/language-access-program-information>

⁶ While our clients experience issues with language access at both DCPS and charter schools, the latter is not bound by the Act due to a legal loophole discussed later in our testimony.

⁷ See 34 CFR § 300.304 (c)(6)

⁸ See 34 CFR § 300.320

⁹ See District of Columbia Public Schools, Language Access Policy (2020), *available at*: https://dcps.dc.gov/sites/default/files/dc/sites/dcps/page_content/attachments/Language-Access-Policy-Final-12-28-2020.pdf

¹⁰ The Individuals with Disabilities Education Act (IDEA) is a law that makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children. The IDEA governs how states and public agencies provide early intervention, special education, and related services to more than 7.5 million (as of school year 2020-21) eligible infants, toddlers, children, and youth with disabilities. See U.S. Dept. Of Edu., About IDEA (n.d.)

available at: <https://sites.ed.gov/idea/about-idea/#:~:text=The%20Individuals%20with%20Disabilities%20Education,related%20services%20to%20those%20children>.

¹¹ See *Andrew F. v. Douglas Cnty. Sch. Dist.* 580 U.S., 386, 399 (2017) finding that to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

¹² See D.C. Mun. Regs. tit. 5A, § 3009.7 (a) (2022) requiring the LEA to “take whatever action is necessary to ensure that the parent understands the proceedings and materials provided at the IEP Team meeting, including...arranging for an interpreter for a parent with deafness or whose native language is other than English”

¹³ D.C. Code §2–1935(a)

¹⁴ See D.C. Code §2–1935(a)

¹⁵ District of Columbia Public Schools, Language Access Policy, 1, 9 (2020), available at: https://dcps.dc.gov/sites/default/files/dc/sites/dcps/page_content/attachments/Language-Access-Policy-Final-12-28-2020.pdf

¹⁶ For example, a proposed policy could require that a translated IEP be provided at least five (5) business days prior to an IEP meeting of which the untranslated IEP is the subject or within fifteen (15) business days of receipt of the English version, whichever occurs first. Such measures would ensure that the LEP/NEP parent is able to review the IEP prior to the meeting and can meaningfully participate in discussions about the services prescribed in the IEP.

This proposed policy mimics the timelines already present for English-speaking parents who are entitled to receive their student’s new IEP no later than five (5) business days after the IEP meeting and requires the LEA to provide a copy of the new IEP to the parent no later than fifteen (15) business days after the IEP Team meeting if additional time is required to complete the IEP. See D.C. Mun. Regs. tit. 5A, § 3009.8 (2022)

¹⁷ District of Columbia Department of Human Resources, Language Access (n.d.), available at: <https://dchr.dc.gov/service/language-access-1#:~:text=Language%20Line%20Solution%20is%20a,your%20agency's%20Language%20Access%20Coordinator>

¹⁸ internal communication on file with Children’s Law Center

¹⁹ *Id.*

²⁰ internal conversation on file with Children’s Law Center

²¹ *Id.*

²² internal conversation on file with Children’s Law Center

²³ *Id.*

²⁴ See D.C. Code § 2–1935.01(a) (2)(A) [repealed]

²⁵ D.C. Act 24-159, §7171 (2021)

²⁶ See D.C. Act 24-159, §7171 (2021); D.C. Mun. Regs. tit. 5, §3009 (2022)

²⁷ See Sapna Pandya, Many Languages One Voice, Testimony Before the District of Columbia Council Committee of the Whole, (April 24, 2017), available at:

https://lms.dccouncil.gov/downloads/LIMS/37276/Hearing_Record/B22-0075-HearingRecord1.pdf?Id=56248;

See Hannah Groff, Center City Public Charter Schools, Testimony Before the District of Columbia Council Committee of the Whole, (April 24, 2017), available at:

https://lms.dccouncil.gov/downloads/LIMS/37276/Hearing_Record/B22-0075-HearingRecord1.pdf?Id=56248

²⁸ The DC Language Access Coalition has proposed the adoption of the Language Access Enforcement Act of 2024, which has not yet been introduced by any Council member.