

Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer

DATE: November 13, 2018

SUBJECT: Fiscal Impact Statement – Language Access for Education Amendment Act of 2018

REFERENCE: Bill 22-75, Committee Print dated October 2, 2018

Conclusion

Funds are not sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill. The bill will cost \$8.6 million in fiscal year 2019 and \$35.0 million over the four-year financial plan.

Background

The Language Access Act of 2004¹ (“the Act”) requires all District government agencies, public-facing contractors, and grantees to ensure that limited English proficient (“English Language Learners” or ELL) individuals access the full range of government services by offering translation and interpretation services.² Additional specific responsibilities are required of 39 agencies defined as covered entities with major public contact (“Covered Entities”).³ Oral translation must be provided to all agency customers and written translations of documents must be provided for any language spoken by a population that constitutes three percent of the District’s population or 500 individuals, whichever is less. Each Covered Entity must establish a biannual language access plan and designate a Language Access Coordinator. Under the Act, the overall coordination role is assigned to the Office of Human Rights (OHR), which monitors agency reporting and compliance,

¹ Effective June 19, 2004 (D.C. Law 15-167; DC Register Vol 51 and Page 4688).

² See District of Columbia Office of Human Rights Fiscal Year 2017 Language Access Program Annual Compliance Review for a summary of requirements and results of reporting from entities with major public contact.

³ There are 40 District agencies defined as covered agencies with major public contact. The initial 16 are in D.C. Official Code § 2-1931(3)(B). The remaining 14 were established via rulemaking. (4 DCMR Chapter 1206.2.)

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FIS: "Language Access for Education Amendment Act of 2018," Bill 22-75, Committee Print dated October 2, 2018.

provides technical support, and investigates complaints. OHR issues an annual report with statistics from agency reports, compliance, and OHR investigations.

The bill adds new responsibilities to OHR's coordination role. First, OHR must develop a repository of government documents that have been translated by Covered Entities and ensure they are translated into at least five of the commonly spoken languages in the District. These translated documents must be made available to any agency or school upon request. Second, OHR must develop and provide a training video or webcast to agencies and schools that provides guidance on the requirements of the Act. Third, OHR must monitor and investigate public complaints of language access violations at all Covered Entities, public schools, and public charter schools, and issue findings of language access failures and corrective action plans. The bill establishes a complaint process in which any person may file a complaint alleging violation of the Act. Within five business days, OHR must notify the agency or school of a complaint. The Covered Entity must respond to OHR within 10 days, and either admit or deny the complaint. If denied, OHR must attempt to resolve the complaint within 30 days by performing an investigation and working to find a resolution acceptable to the complainant and Covered Entity. If admitted, OHR will set a corrective action plan within 30 days.

Under the Act, the District of Columbia Public Schools (DCPS) is designated as a Covered Entity, but the District of Columbia Public Charter Schools are not. The bill amends the Act to add new requirements that will apply to all Local Education Agencies (LEAs) and individual schools- for both public and charter schools. First, each LEA must designate a Language Access Coordinator to oversee and monitor compliance with the Act. For public or public charter schools in which there are at least three percent of students with limited English proficiency or 500 individuals, the school must designate a Language Access Liaison ("liaison"). The liaison will work at the school level to ensure access to oral and written translations, implement programs and initiatives to account for the variety of cultural backgrounds, and ensure meaningful access to all curricular and extracurricular programs at the school for ELL students. Additionally, schools must notify all limited English parents in their primary language of health or safety issues at the school, even if the language doesn't meet the three percent threshold.

The bill also establishes a list of essential school documents that must be translated, upon request, into a language that meets the three percent threshold. Among the required documents are report cards and individual education plans.

Lastly, the bill adds 14 District agencies to the list of Covered Entities with major public contact. However, all 14 of these agencies are already designated Covered Entities via rulemaking⁴, and they provide annual reports on their compliance to OHR.

Financial Plan Impact

Funds are not sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill. The bill will cost \$8.6 million in fiscal year 2019 and \$35.0 million over the four-year financial plan.

The Office of Human Rights requires seven new positions, including full-time employees and contract employees, to fulfil the expanded role outlined in the bill. First, OHR will require three

⁴ 4 DCMR Chapter 1206.2.

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FTEs to directly monitor and support the new language access liaisons at each public and public charter school and to provide targeted training and assistance throughout the school systems. Second, OHR requires one FTE to create and maintain the repository of translated essential documents, as required by the bill. Third, OHR requires three FTEs – two investigators and an attorney – to conduct investigations and fulfill the new reporting, notification and appeal processes required by the bill. Lastly, OHR requires contract funding to develop the required database and repository of translated documents and create an online training module for schools and all covered entities.

To comply with the bill's requirement for language access liaisons in each school, DCPS requires 23 new positions for liaisons in schools with ELL populations. DCPS has determined that some schools will only need to name an existing employee as a coordinator, while other schools will require new personnel. Thirteen schools have more than 20 percent ELLs and will require a new full-time employee to meet the requirements of the bill. Five additional schools with higher rates of ELL families will require two positions at each school. The schools not requiring full time positions will require a \$5,000 stipend per liaison to compensate existing full-time employees adding the liaison function to their duties.

DCPS indicates that most of their existing translation service at the school level is oral translation, and that the agency will require significant funding for written translation of documents to meet the requirements of the bill. The agency assumes that the 1,200 ELL students with a variety of special education documents (including Individual Education Plans (IEPs) and behavioral plans) will require 17.5 pages of translation per year. For report cards, the agency assumes all 7,000 ELL students will require four pages of translation per year. They estimate 2,500 pages of additional translation will be required to cover other important documents such as school handbooks, registration, and field trip notices. Lastly, the agency estimates 200 health and safety notifications will need to be translated into an average of five languages annually.

The agency's estimate effectively amounts to translating all essential documents for the affected population. However, because the law only requires translation upon request, it seems unlikely that every ELL family will request or require a translation of every document. The Charter School Board indicated that they expect no increase in cost as a result of the bill, because they are already expected to meet these translation requirements.

However, the bill's mandate for language liaisons in every school, additional oversight by OHR, and defining specific documents as vital documents could result in a tighter focus on ELL families, increasing requests for translation. The extent to which requests will increase, is unclear. Given that DCPS already provides oral translations and the bill requires translation only upon request, we attribute a 20 percent increase in written translations to the bill.

Several agencies, including the Department of Transportation (DDOT), the Department of General Services, and the Department of Small and Local Business Development, have indicated that they require additional resources to comply with translation and interpretation requirements, because they are being added to the statutory list of Covered Entities. However, these agencies are already deemed subject to the requirements under Executive rulemaking, which was authorized by the Act. OHR issues an annual report confirming that these agencies function as covered entities with major public contact. Some, including DDOT, are deemed highly compliant in the report. So, we consider this codification a technical change and assume the bill adds no additional cost burden on these agencies than what already exists. A summary of all costs is in the chart below.

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Fiscal Impact of Bill 22-75 Language Access for Education Amendment Act of 2018					
Fiscal Year 2019 – Fiscal Year 2022					
(\$ thousands)					
	FY 2019	FY 2020	FY 2021	FY 2022	Total
Office of Human Rights Staffing	\$653	\$672	\$692	\$713	\$2,732
Office of Human Rights Document Repository and Training Module	\$160	\$160	\$160	\$0	\$480
DCPS School Language Access Liaisons	\$2,100	\$2,163	\$2,227	\$2,294	\$8,785
DCPS written translation estimate	\$1,780	\$1,780	\$1,780	\$1,780	\$7,120
Matching formula increase for Charter Schools ^(a)	\$3,880	\$3,943	\$4,008	\$4,075	\$15,905
TOTAL COST	\$8,573	\$8,718	\$8,868	\$8,863	\$35,023

(a) Charter school cost assumes DCPS costs will be funded through the Uniform Per Student Funding Formula.