

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

DRAFT

TO: All Councilmembers

FROM: Chairman Phil Mendelson
Committee of the Whole

DATE: October 2, 2018

SUBJECT: Report on Bill 22-75, “Language Access for Education Amendment Act of 2018”

The Committee of the Whole, to which Bill 22-75, the “Language Access for Education Amendment Act of 2018” was referred, reports favorably thereon with amendments, and recommends approval by the Council.

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I. BACKGROUND AND NEED

The purpose of Bill 22-75, the “Language Access for Education Amendment Act of 2018,” is to put forth several requirements that will provide both limited-English proficient students and parents a greater ability to interact with and obtain information, where provided, from the District of Columbia Public Schools (DCPS) or from public charter schools in the District. Specifically, Bill 22-75 amends several portions of D.C. Law 15-167, the “Language Access Act of 2004.” First, the bill various definitions in D.C. Official Code §2-1931, including adding several District agencies to the list of agencies that have “major public contact,” defining the phrase “essential information,” and clarifying the definition of the term “local education agency.” Additionally, the bill puts forth the various responsibilities that DCPS schools and public charter schools must comply with in terms of providing adequate language access services both to limited-English proficiency students and parents. Further, it requires the Office of Human Rights (OHR) to develop and make to covered entities, public schools, and public charter schools a training video with regard to the requirements under the Language Access Act, as well requires OHR to publish in the DC Register each finding on non-compliance, final determination order, final order on a

request for OHR reconsideration, or corrective action plan within 45 days of issuance of the aforementioned findings. The bill also requires OHR, in consultation with multiple agencies, to create and maintain a repository of translated documents, which will be available to any DCPS school or public charter school. If an issue is one of health or safety, the school is required to notify all parents of students who attend the school regardless of how many students or parents at that school speak a particular language. In addition, the bill puts forth the requirements of each language access liaison and clarifies OHR's timeline and procedure for resolving a language access violation. Finally, the bill amends the School Reform Act to allow the Public Charter School Board to enter into a contract with one or more public charter schools in order to provide the public charter schools with language access services.

The introduced version of Bill 22-75 reflects amendments that both the Committee on Education and Committee on Judiciary made to Bill 21-66, the "Language Access for Education Amendment Act of 2016." Bill 21-66 was introduced on February 3, 2015 and was sequentially referred as follows: section 2 was referred to the Committee on Education, sections 3 and 4 to the Committee on Judiciary, and then the entire bill to the Committee of the Whole. The Committee on Education marked up Bill 21-66 on November 10, 2015, and the Committee on Judiciary marked up the bill on September 22, 2016. The Committee of the Whole was not able to move Bill 21-66 before the end of Council Period 21, so the bill died in committee. However, right after Council Period 22 began, Councilmember Grosso, along with six other Councilmembers introduced Bill 22-75.

Despite holding a hearing on Bill 21-66, the Committee chose to hold another hearing on the bill on April 24, 2017. Testimony at that hearing reiterated the need for Bill 22-75 but also reminded the Committee of the cost and restrictions that the introduced version of Bill 22-75 placed on DCPS and public charter schools. Fundamentally, the Committee believes that schools have a mandate to teach every child, and this includes ensuring that both non or limited-English proficient students and parents are able to interact and communicate effectively with schools. Parents should know what is occurring at school and should have the ability to speak with the teachers, administrators, and other faculty and staff at their child's school. Implicit in this is the need for schools to provide adequate language access resources.

Thus, while the Committee agrees with the sentiment behind Bill 22-75, the Committee found that the introduced version of Bill 22-75 was overly prescriptive in dictating the staffing requirements. In addition, the definition of "essential information" in the introduced version was overly broad, and the fines included raised several concerns, particularly when it comes to fining schools for violations. Monica Palacio, Director of the Office of Human Rights, testified at the April 24, 2017 hearing that compliance and filling the gaps in language access services that are provided are better solutions to addressing the language access needs in the District as opposed to a fine structure. Moreover, schools have raised concerns that fining them would remove funds that are generally used toward education and that the bill did not provide a solution as to help schools comply with the Language Access Act. The Committee agrees with Director Palacio and the concerns about the fine structure and thus eliminated the fines in Bill 22-75. Instead, Bill 22-75 focuses on stronger compliance, greater transparency, clearer requirements with regard to the requirements of schools under the Language Access Act, and stronger enforcement.

In terms of the other concerns raised the April 24, 2017 hearing, the Committee believes that codifying in local law the requirements schools and local education agencies are supposed to comply with per a joint January 2015 letter from the US Department of Justice and US Department of Education is a better route to take when compared to the introduced version of Bill 22-75. At the hearing, individuals indicated that because the January 2015 guidance had come from federal agencies that could change their compliance requirements at any time and that have shown to be less than friendly to the immigrant community, they were hesitant to rely on this letter with regard to language access compliance. Given this concern, the Committee believes that the best way to address this issue is to codify relevant portions of that letter into local law. Specifically, the Committee uses the definition of “essential information” provided for in the guidance letter, as well as spelling out the requirements of a language access liaison to ensure that their duties were clear.

Further, the Committee decided that using a 3%, or 500 individuals, whichever is fewer, threshold is better than the one in the introduced version of Bill 22-75. Currently, District law requires DCPS, as an agency with major public contact, to comply with the 3%, or 500 fewer, threshold. To change it to 5% instead of the 3% would cause confusion and would result in less students being served, as several schools have more than 3% but less than 5% of their students and families who are English Language Learners (ELL).

The committee print also requires OHR to provide training to both DCPS and public charter schools. As noted above, stronger compliance with the Language Access Act will lead to stronger services for ELL students and their families. Moreover, the Committee believes that regardless of how many students or parents at a school are ELL and whether the threshold for language access services has been met, a school needs to inform all parents of issues related to health and safety. Thus, the committee print requires such.

In addition, the committee print addresses the needs raised by public charter schools, mainly that because they are numerous LEAs and not considered government entities, they are not able to use the language access lines or translation contracts to which DCPS has access. This results in public charter schools having documents translated over and over again, increasing the cost to the school, and potentially leading to less compliance with the Language Access Act because of the increased costs. Thus, the committee print requires OHR, in consultation with several other agencies and LEAs in the District to create a bank of translated forms that both DCPS and public charter schools can access. Additionally, the bill allows the Public Charter School Board to contract with public charter schools to provide language access services to the schools.

Finally, one would be remiss not to address the fiscal impact of Bill 22-75 as introduced. The need for such resources must be weighed against the cost. If the costs of Bill 22-75 are so large that the bill will sit unfunded for years, such legislation helps no one. During the spring of 2017, the Committee asked the Office of the Chief Financial Officer (OCFO) to provide the Committee with an estimate of how much it would cost to implement the introduced version of Bill 22-75. The OCFO estimated, at that time, that the annual cost of the bill would be over \$16 million dollars and that the cost over the four-year plan would be over \$65 million. Notably, these costs were calculated using a five percent threshold for determining which schools would have to comply with this bill. If the threshold is lowered to three percent, as advocates have asked for, the

costs of Bill 22-75 would be even higher. Such costs are prohibitive. Hence, the Committee has struck a balance between the language access services that are needed, stronger compliance, greater transparency, clearer requirements with regard to the requirements of schools under the Language Access Act, and stronger enforcement. The Committee recommends that the Council adopt Bill 22-75 as amended by the Committee.

II. LEGISLATIVE CHRONOLOGY

- January 24, 2017 Bill 22-75, the “Language Access for Education Amendment Act of 2018” is introduced by Councilmembers Grosso, Allen, Gray, McDuffie, Nadeau, Silverman, and R. White. and is referred to the Committee of the Whole.
- January 27, 2017 Notice of Intent to Act on Bill 22-75 is published in the *District of Columbia Register*.
- March 31, 2017 Notice of a Public Hearing on Bill 22-75 is published in the *District of Columbia Register*.
- April 24, 2017 The Committee of the Whole holds a public hearing on Bill 22-75.
- October 2, 2018 The Committee of the Whole marks-up Bill 22-75.

III. POSITION OF THE EXECUTIVE

Monica Palacio, the Director of the Office of Human Rights (OHR), and Brian Pick, Chief of Teaching and Learning at District of Columbia Public Schools (DCPS), provided testimony on behalf of the Executive. **Director Palacio** testified about the work that OHR has done with regard to language access in the District. Additionally, she noted that using a 5%, or 500 individuals, whichever is fewer threshold creates issues, as it conflicts with the 3%, or 500 individuals, whichever is fewer standard that is currently law in the District. Further, Director Palacio stated that clarifying language was needed to distinguish the functions of language access liaisons versus those of a language access coordinator. With regard to the fine structure in the introduced version of Bill 22-75, Director Palacio testified that from OHR’s perspective, “gaps in compliance could be best addressed by increasing the capacity of agencies to better meet the needs of LEP/NEP customers,” as opposed to putting fines in place for violations of the Language Access law.

Mr. Pick testified that DCPS agreed with the general premise of Bill 22-75 – to amend the law in order to identify ways to eliminate barriers that English language learners and their families encounter when attempting to access educational services – but DCPS had four large concerns with Bill 22-75 as introduced. Specifically, DCPS was concerned that the staffing mandates required in the introduced version had large fiscal implications, that the definition of culturally competent staff was still ambiguous, that the definition of “essential information” in the introduced version was incredibly expansive, and that the fine structure could create a more adversarial

atmosphere between families and DCPS as opposed to a more collaborative relationship that DCPS tries to foster with its students and their families.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee received no testimony or comments from any Advisory Neighborhood Commission.

V. SUMMARY OF TESTIMONY

The Committee of the Whole held a public hearing on Bill 22-75 on Monday, April 24, 2017. The testimony summarized below is from that hearing. Copies of written testimony are attached to this report.

Irene Holtzman, Executive Director, FOCUS, raised various concerns about Bill 22-75 as introduced.

Hannah Groff, Language Access Coordinator, Center City Public Schools, testified about the benefits that her school has seen from having a language access coordinator.

Sapna Pandya, Executive Director, Many Languages One Voice, testified in support of Bill 22-75.

David Steib, Language Access Director Ayuda, testified in support of Bill 22-75.

Jayesh Rathod, Director, Immigrant Justice Legal Clinic, testified in support of Bill 22-75.

Sylvie Bello, President, Cameroon America Council, testified in support of Bill 22-75.

Andrea Tacconi, Bilingual Program Coordinator, Teaching for Change, testified in support of Bill 22-75.

Allison Miles-Less, Senior Supervising Attorney, Bread for the City, testified in support of Bill 22-75.

Scott Pearson, Executive Director, Public Charter School, voiced concerns about the bill and offered suggestions as to how to improve the bill.

VI. IMPACT ON EXISTING LAW

Bill 22-75 amends several portions of D.C. Law 15-167, the “Language Access Act of 2004.” First, the bill varies definitions in D.C. Official Code §2-1931, including adding several District agencies to the list of agencies that have “major public contact,” defining the phrase

“essential information,” and clarifying the definition of the term “local education agency.” Additionally, the bill puts forth the various responsibilities that DCPS schools and public charter schools must comply with in terms of providing adequate language access services both to limited-English proficiency students and parents. Further, it requires the Office of Human Rights (OHR) to develop and make to covered entities, public schools, and public charter schools a training video with regard to the requirements under the Language Access Act, as well requires OHR to publish in the DC Register each finding on non-compliance, final determination order, final order on a request for OHR reconsideration, or corrective action plan within 45 days of issuance of the aforementioned findings. The bill also requires OHR, in consultation with multiple agencies, to create and maintain a repository of translated documents, which will be available to any DCPS school or public charter school. If an issue is one of health or safety, the school is required to notify all parents of students who attend the school regardless of how many students or parents at that school speak a particular language. In addition, the bill puts forth the requirements of each language access liaison and clarifies OHR’s timeline and procedure for resolving a language access violation. Finally, the bill amends the School Reform Act to allow the Public Charter School Board to enter into a contract with one or more public charter schools in order to provide the public charter schools with language access services.

VII. FISCAL IMPACT

According to the

VIII. SECTION-BY-SECTION ANALYSIS

<u>Section 1</u>	Short title.
<u>Section 2</u>	Amends various definitions in D.C. Official Code §2-1931, including adding several District agencies to the list of agencies that have “major public contact,” defining the phrase “essential information,” and clarifying the definition of the term “local education agency.” Additionally, Section 2 puts forth the various responsibilities that DCPS schools and public charter schools must comply with in terms of providing adequate language access services both to limited-English proficiency students and parents. Further, this section requires the Office of Human Rights (OHR) to develop and make to covered entities, public schools, and public charter schools a training video with regard to the requirements under the Language Access Act, as well requires OHR to publish in the DC Register each finding on non-compliance, final determination order, final order on a request for OHR reconsideration, or corrective action plan within 45 days of issuance of the aforementioned findings. The section also requires OHR, in consultation with multiple agencies, to create and maintain a repository of translated documents, which will be available to any DCPS school or public charter school. If an issue is one of health or safety, the school is required to notify all parents of students who attend the school regardless of how many

students or parents at that school speak a particular language. In addition, the section puts forth the requirements of each language access liaison and clarifies OHR's timeline and procedure for resolving a language access violation.

Section 3 Allows the Public Charter School Board to enter into a contract with one or more public charter schools in order to provide the public charter schools with language access services.

Section 4 Adopts the Fiscal Impact Statement

Section 5 Establishes the effective date by stating the standard 30-day Congressional review language.

IX. COMMITTEE ACTION

On October 2, 2018, the Committee met to consider Bill 22-75, the "Language Access for Education Amendment Act of 2018." The meeting was called to order at _____, and Bill 22-75 was item VI-E on the agenda. After ascertaining a quorum (Chairman Mendelson and Councilmembers Allen, Bonds, Cheh, Evans, Gray, Grosso, McDuffie, Nadeau, Silverman, Todd, R. White, and T. White present), Chairman Mendelson moved the committee print for Bill 22-75 with leave for staff to make technical and conforming changes. After an opportunity for discussion, the vote on the print was _____. Then, Chairman Mendelson moved the committee report for Bill 22-75 with leave for staff to make technical, editorial, conforming changes. After an opportunity for discussion, the vote on the report was _____ (Chairman Mendelson and Councilmembers Allen, Bonds, Cheh, Evans, Gray, Grosso, McDuffie, Nadeau, Silverman, Todd, R. White, and T. White voting _____). The meeting adjourned at _____.

X. ATTACHMENTS

1. Bill 22-75 as introduced.
2. Written Testimony.
3. Fiscal Impact Statement for Bill 22-75.
4. Legal Sufficiency Determination for Bill 22-75.
5. Comparative Print for Bill 22-75.
6. Committee Print for Bill 22-75.