

Agency Report to the  
**JOINT COMMITTEE ON ADMINISTRATIVE RULES**

This form must be completed by the department/agency that has the statutory authority for promulgating the rules. Please send an electronic copy of this form to the Office of Regulatory Reinvention (ORR) at [orr@michigan.gov](mailto:orr@michigan.gov). The ORR will review the document, the newspaper advertisements, and the corresponding rules prior to completing the legal certification of the rules. Please be sure to send to the ORR proofs of publication for the three newspaper advertisements required by MCL 24.242(1). You may mail them or send them as a scanned attachment.

**Department**

Michigan Department of Civil Rights

**Division/agency/bureau:**

Division on Deaf and Hard of Hearing

**Rule set number (as assigned by ORR)**

R 393.5001, R 393.5003, R 393.5004, R 393.5005, R 393.5021, R 393.5022, R 393.5023, R 393.5024, R 393.5025, R 393.5026, R 393.5027, R 393.5028, R 393.5031, R 393.5032, R 393.5033, R 393.5041, R 393.5042, R393.5045, R 393.5051, R 393.5052, R 393.5053, R 393.5054, R 393.5055, R 393.5056, R 393.5058, R 393.5061, R 393.5062, R 393.5063, R 393.5064, R 393.5070, R 393.5072, R 393.5073, R 393.5074, R 393.5075, R 393.5076, R 393.5077, R 393.5081, R 393.5082, R 393.5083, R 393.5084, R 393.5085, R 393.5086, R 393.5091, R 393.5092, R 393.5093, R 393.5094, and R 393.5095

**Title of rules:**

Qualified Interpreter – General Rules

**1. Name, address, FAX and phone numbers of agency contact person:**

Daniel M. Levy Capital Tower Building  
110 W. Michigan Ave., Suite 800  
Lansing, MI 48933  
Phone: (313) 456-3812  
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**2. Purpose for the proposed rules and background:**

The proposed rules include establish standards for Sign Language interpreters serving Deaf, hard of hearing and deaf-blind persons in Michigan. The 2007 amendments to the Deaf Persons' Interpreter Act require these procedures. The rules are designed to achieve the following overarching goals:

- a. Protect consumers of interpreting services by ensuring effective communication
- b. Set standards and acceptable guidelines for usage of interpreters in areas of low, medium and high risk situations
- c. Keep abreast of technology innovations in the interpreting field and ensure its meets effective communication requirements.

d. Establishes procedure for filing grievance for violations.

**3. Summary of proposed rules:**

These rules govern procedures for application, testing, revocation, suspension or limitation of certification, continuing education, renewals, and grievances, minimum credential requirements and levels, and minimum standards of practice. These rules are proposed to take effect upon filing with the Secretary of State.

**4. Name of newspapers and date of publication in newspapers (minimum 3 newspapers of general circulation, representing different parts of the state, one of which must be located in the Upper Peninsula):**

Grand Rapids Press 2/22/13  
Marquette Mining Journal 2/24/13  
Flint Journal 2/26/13  
Michigan Register 3/1/13

**5. Time, date, location and duration of public hearing:**

**Wednesday March 6, 2013, 6:00 - 9:00 P.M.**

Grand Valley State University  
Pew Campus Eberhard Center – 2nd Floor Conference Room  
301 West Fulton  
Grand Rapids, MI

**Friday, March 8, 2013, 6:30 – 9:30 P.M.**

Cadillac Place - Room L-150  
3054 W. Grand Blvd  
Detroit, Michigan

**Saturday, March 9, 2013, 9:00 A.M. – Noon**

Michigan School for the Deaf - Gym  
1235 W. Court Street Flint, Michigan

**6. Date of publication of rules and public hearing notice in *Michigan Register*:**

Issue No. 3 – 2013 (Published March 1, 2013)

**7. Agency representative(s) attending hearing (include agency name and title of representative[s]):**

Emery, Sheryl (MDCR) Director Division on Deaf and Hard of Hearing  
Hill, Christine (MDCR) DODHH Executive Secretary  
Fritz, Leslee (MDCR) Director of Public Affairs  
Levy, Daniel (MDCR) Director of Law and Policy  
McLellan, Mary (MDCR) Commission and Division Liaison  
Niven, Amanda (MDCR) Rights Representative  
Robinson, Ron (AG) Assistant Attorney General  
Woolridge, Kimberly (MDCR) Attorney-Disability Specialist

**8. Persons submitting letters, comments and testimony of support:**

Facundo Element  
Interpreters currently working in the profession  
Madonna University Director – with modifications  
Madonna University Students – Video Comments  
Majority of deaf, hard of hearing, and deaf blind persons that will be impacted by the standards  
Michigan Deaf Association  
Michigan Department of Education - suggested some modifications  
Mott Community College Faculty – Video comments  
National Association of the Deaf – suggested some modifications  
National Center for Deaf Advocacy  
Oakland Community College (OCC) students  
Parents of children that will be impacted by these rules  
Registry of Interpreter for the Deaf

**9. Persons submitting letters, comments and testimony of opposition:**

Deaf and Hearing Impaired Services of Farmington Hills  
Gratiot Isabella RESD  
Intermediate School Districts (Various form letters)  
Interpreters requesting provisional certification  
Lansing Community College Interpreting Education program – friends and family members  
Select few deaf and hard of hearing individuals  
Select few interpreters  
Sign Language Services of Michigan

**10. Summary of suggestions to modify proposed rules:**

The Division received hundreds of testimonies and written comments. It is therefore impossible to list all of the suggested modifications within this document, and respond to each individually. The Division has included in this summary the following:

- a. Comments that resulted in changes
- b. Comments that were shared by multiple commenters.
- c. Comments from individuals who object to regulation.

**Rule 21 Acceptable certifications**

Written comments were received from several individuals requesting a provisional certificate while they transition to the BEI or the RID certificate. The QA phase out period was lengthened to give these individuals more time to transition to a different certificate and maintain their commitments. However some related limitations were placed on court interpreting in rule 22.

**Rule 22 Minimum standard levels**

Objections were received from Sign Language services of Michigan opposing the minimum standard level for medical interpreting and legal interpreting. Ms. McClain suggests that no standard level be imposed on individuals who are nationally certified. This comment was also shared by a few other nationally certified individuals. **Response:** The legislature required

standards be adopted and applied to all interpreters practicing in Michigan, not merely those who elect to take their tests here. The act indicates: “393.508a Rules. Sec. 8a.(1) The division, with the advice of the department of education, shall promulgate rules, under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that govern procedures for application, testing, revocation, suspension or limitation of certification, continuing education, renewals, and grievances, minimum credential requirements and levels, and minimum standards of practice.” The endorsement objected to is the minimum standard level specific to medical and legal interpreting and general interpreting skills are insufficient in these specialized areas.

Ms. McCain further raises concerns related to the cost of obtaining CEUs. It should be noted that interpreters are already obtaining general CEUs. The division is not requiring any additional CEUs. Instead of general CEUs, interpreters who desire to do medical and legal interpreting have CEUs that are directly related in practicing in these specialized areas. No interpreter is required to obtain the endorsement unless they desire to perform medical or legal interpreting. There are no additional cost related to obtaining the endorsement.

**Action:** R 393.5022(3)(a)(d) An effective date was added to begin the standard levels that was not previously indicated and fixed a consistency error listing certificates instead of a level.

### **Rule 23 Standard Level 1; non-complex, low risk environments**

Comments were received in writing from VRS interpreters regarding the placement of VRS in standard level 1. Interpreters felt it should be in a higher level as sometimes it can become complex and high risk. Response: VRS remains at level 1 as the Division reviewed many factors relating to VRS. Among them were:

- a. A consumer that is not satisfied with the interpreter may disconnect the call.
- b. VRS calls come from all over the USA if a higher standard were applied it would only serve to limit what VRS interpreters located in Michigan could do and would be a standard unfairly applied.
- c. The federal communications commission does impose some quality standards on VRS already.

The National Association for the Deaf also noted that effective communication is required to be achieved under the American’s with Disability Act. Therefore the language was slightly edited to reflect consistency with ADA language.

### **Rule 25 Standard level 3; high risk, legal environments.**

Katie Prins agency Director suggested that the Division should only focus on BEI certification, and believes there should be experience required for BEI holders in standard level 3.

**Response:** In order to achieve a BEI 3 an individual must have already attained a BEI 1 and a BEI 2. Attaining those levels requires roughly two years. Nevertheless the issue needs clarification. The Division has modified the requirement so that the rule now mandates 4 years of post-initial certification experience for both the NIC and the BEI. All other certificates in that level already have more than 4 years of experience as those certifications are older.

NAD and RID suggested use of only their Specialist Certificate: Legal (SC:L) for legal interpreting and / or trials involving a felony.

**Response:** There are currently only 4 SC:L certified individuals in the state of Michigan. They cannot possibly meet the need. The effect would be that out of state interpreters would be required for such cases. The Division has no authority to require this. The purpose for the legal endorsement is to assure highly qualified interpreters are provided to D/HH/DB individuals in legal situations, not to limit legal access. In addition the courts have the ability to impose higher requirements for all, or in individual, cases. NAD also suggested other minor wording modifications that have been included to clarify effective communication and ADA requirements.

### **Rule 26 Educational interpreter qualifications**

Substantial comment focused on educational interpreter standards.

The majority of the comments focused on the following issues:

- a. Desire for a lower 3.5, as opposed to 4.0, minimum performance standard
- b. Permanently grandfathering persons with 3.5 EIPA performance standard
- c. Allowing interpreter education students to practice on D/HH/DB children
- d. Insufficient supply of persons at the 4.0 performance standard.

The parents of D/HH/DB children support the 4.0 performance standard and oppose permanently grandfathering interpreters that failed to reach an EIPA performance score of 4.0. The majority of comments received from D/HH/DB individuals, as well as from Madonna University also opposed retaining 3.5 permanently. As one parent pointed out, their child only has one opportunity to complete a grade level. If the standard was adopted at 3.5 it is possible the child may never have a highly qualified interpreter (Flint public hearing comments). Among current working interpreters support and opposition was mixed.

Michigan Assoc. of Administrators of Special Education opposed the 4.0 performance standard. They are concerned about supply and thus argue that persons with 3.5-3.9 EIPA score should be given 4 years to obtain 4.0 performance standards. A particularly large number of form letter comments from friends and relatives of students attending the Interpreter Training Program (ITP) at Lansing Community College (LCC) opposed the 4.0 standard as they felt it was too hard for interpreting education students to achieve. They also often requested a “transition period” where they could work with a 3.5 while improving their skills to meet the minimum standard.

**Response:** It is significant that almost nobody contested that 4.0 was an inappropriate minimum qualifying standard, or that a person at 3.5 was fully capable. Instead the argument was that scoring 4.0 was tough, and that the state should therefore provide interpreters additional time working with students in the classroom so that they could improve their skills in the hopes of becoming able to meet the minimum qualifications for the position. The Division understands the concerns expressed, but does not believe they are sufficient to warrant providing under-qualified interpreters to today’s Michigan D/HH/DB students, even in the hopes they may become qualified for tomorrow’s students.

Additionally, the test developer has indicated a score of 3.5 is not sufficient to allow an interpreter to work independently of supervision. The majority of school districts in Michigan do not have experienced interpreters supervising persons with low EIPA scores or interpreter

education students. Therefore, an interpreter having a score of 3.5 places the education of the D/HH/DB students in public education settings at risk. Furthermore, under the No Child Left Behind Act, students with disabilities are required to have highly qualified teachers. In order for students to benefit from highly qualified teachers, they must have highly qualified interpreters. Furthermore three (3) years are given before this standard is required. The Michigan Department of Education referent group recommended this standard 5 years ago, The information was shared with special education administrators, thus 8 years will have passed since this standard was first recommended.

**Action:** The Division has modified this provision. Individuals scoring 3.5 - 3.9 on the performance test may work for 3 years, before the new standard is imposed. This will give those individuals and school districts time to improve the skills of those who are currently working and to implement programs that focus on enhancing skills of students in the interpreter education programs. At the end of those 3 years individuals will be required to obtain 4.0 score. Language changed for clarity and conciseness.

The Division however has added a safeguard in Rule 27 to ensure that schools can provide a child with communication access that meets their educational needs even if the supply of EIPA interpreters be insufficient to meet the demands after the standard is implemented.

The Michigan Department of Education requested multiple minor fixes in of language, such as changing wording for individual education plan to individual education program and combining some statements as related to 504 plan and transition activities. They also requested that Rule 51 be referenced in this section. Many persons also asked for clarification of the word semester and clarification of substitute interpreter requirements.

**Response:** These modifications have been added. EIPA interpreters are also paired with interpreters who have medical and legal endorsement when those situations are encountered at school.

**Rule 27 Exceptions; standard level designations.**

Concerns relative to rule 26 regarding supply were addressed by the addition of subsections (4) and (5) to R 393.5027.

**Rule 28 Special endorsements; deaf-blind; medical and mental health; legal.**

(4): Multiple concerns were received regarding the clarity of Rule 28. It was re-written to clear up confusion regarding the requirement of both an SC:L certification and a test of English proficiency. The test of English proficiency is not required for those who have the SC:L.

**Rule 29 Temporary non-compliance in emergencies; allowance does not excuse.**

See summary for Rule 55

**Rule 33 Good moral character.**

Janet Jurus and Susan Lundy (Flint public hearing) recommended background checks be required. **Response:** The Division initially included background checks. However the Division was told it was not the intent of the legislature to make certification equal to the requirements of

licensure and we were instructed to remove the provision. It is worth noting that schools, medical facilities and other providers are not prohibited in any way from having their own employee requirements in this regard, and in some such instances background checks may already be required by law. It is also worth noting that appointing authorities should be aware background checks are not done as part of the certification process and due diligence should be exercised.

Rule 33(6) Was added to allow for procedural error, felonies committed as a minor and due process.

#### **Rule 51 Practice within standard level**

- (2)(a) Michigan Department of Education requested this addition as it would be impractical for interpreters in the school to display their certification before each proceeding.
- (3) References the American's with Disability Act and consistency of these laws with the act.
- (6)(d) Several persons requested modification to this rule to allow for more flexibility.
- (7) Clarified language for standard level 2 and 3 requiring endorsement for medical and legal interpreting including protective services.

#### **Rule 54 Supervision of student interpreter practicum experience**

Lansing Community College, IEP Director, addresses and opposes the standard of who can supervise interpreter education students. Argues it is outside of the scope of the Division. Oakland Community College (OCC) also comments on this issue as well as suggest lowering the requirement for an endorsement on a certificate for health care interpreting and legal interpreting. OCC suggest that those lacking a degree will be penalized.

**Division response:** It is completely within the scope of the Divisions responsibility to regulate certified interpreters, and to protect the D/HH/DB individuals relying upon them. Interpreters with minimum skills need to focus their attention on their own performance, without additional responsibilities and/or distractions. This rule does not pose limitations on the interpreter education program, nor infringe on academic authority. However it does pose limitations on newly certified interpreters. The concern of the Division is that newly certified interpreters are still testing and learning their own boundaries. They may or may not have developed strong ethical standards, decision making skills, and interpretation skills. Risk exists in allowing these individuals to potentially pass on undeveloped traits which negatively impact D/HH/DB individuals.

Health care and legal interpreting constitute two of the most high risk areas for a D/HH/DB individual. Interpreters in this area need to be well versed in spoken language. Two options are given, pass a test of English proficiency or obtain a degree. There is no penalty for those lacking a degree. Other comments have been addressed with some slight modifications in the rule set that request clarification.

#### **Rule 55 VRI Standards**

Multiple comments were received regarding VRI standards some were positive, however; many deaf individuals indicated dissatisfaction with VRI services. Others indicated they had been provided with VRI services when it was inappropriate to do so, specifically low vision and

mobility issues were cited by Warren Coryell and his wife (Flint public hearing). A request was also made by Warren to not allow VRI services to be provided from an interpreter's residence based on concerns for privacy. **Response:** The Division has modified Rule 55 to indicate that VRI shall not be provided from a residence. The Federal Communications Commission which oversees similar video relay services has similarly prohibited video relay services from residences indicating that at-home working conditions are more prone to eavesdropping, random interruptions, and violations of a caller's confidentiality. <http://www.fcc.gov/document/video-relay-service-program-structure-and-practices>

Concerns were also expressed by a number of hospitals that the proposed provisions, specifically as related to the use of VRI, but also as to medical emergencies more generally, were not sufficiently clear. In particular:

They indicated that as then proposed, 55(2) implied that VRI could be refused for any reason, when it should require that an objection be based only upon effectiveness. **Response:** The rule was re-written to provide that a person who "in good faith asserts VRI is not effective communication" may not be compelled to use it.

It was maintained that 55(6) was confusing and did not adequately anticipate that even with good preparation and unequivocal commitment to provide qualified interpreters in every instance, emergencies would arise where it would (at least temporarily) not be possible to do so. It was agreed that while a hospital was engaged in efforts to secure a qualified interpreter as soon as possible, the rules should also permit emergency medical needs to be dealt with using the best means of communication then available. There was additional discussion noting that the emergency situation needed to be dealt with in the same manner irrespective of why a qualified interpreter could not be provided – but also that temporarily allowing otherwise legally insufficient interpreting would not excuse any failure to have met a legal responsibility which necessitated its use. **Response:** 55(6) was both re-written and separated to become Rule 29.

**Rule 58 Waivers.** Representative Tom McMillin raised questions regarding the scope of the Division in regard to waivers. **Response:** The rules were re-written to better reference the law and provide clarity.

**Rule 61(6) Filing Grievances.**

Clarifies where to file a discriminatory complaint with regard to denial of reasonable accommodations.

**Rule 70**

Interpreters, along with the hospitals as discussed under rule 55, expressed concerns about interpreting in emergency situations that they would otherwise not be qualified to do. The concerns were that the interpreter needed to be able to rely on others and could not independently assess whether a medical emergency really existed, that rules needed to ensure that the interpreter would not later face discipline for interpreting under such circumstances, but also that temporarily allowing otherwise legally insufficient interpreting would not excuse any failure to

have met a legal responsibility which necessitated its use. **Response:** Subsections 70(2) and 70(3) were added.

**Non-specific rule citation:** Deaf Hearing Impaired Services (DHIS) recommends suspending the entire rule set citing lack of interpreters. **Response:** Such action as suspending the rule set would be to deny D/HH/DB individuals qualified interpreters and effective communication as well as to dispose of quality standards in favor of quantity as opposed to quality. The purpose of the rule set is to instill quality standards. The number of interpreters has increased substantially since the law was amended. In 2005 there were only 233 interpreters listed in the DODHH Directory. As of the date of this writing there are 531 individuals listed.

Scot Pott (Grand Rapids hearing) and several other written commenters requested provisional certification. **Response:** While many states do include provisional certification the Division cannot do so as it is not cited within the law. The law only allows individuals whom have passed an assessment by the state or by RID. The rules committee discussed provisional certification in-depth however we were told it was outside of our scope. A provisional certification would address the needs of students in interpreter education programs but unfortunately it is not something covered by the Act.

Bill Hartl and several other form letter writers from ISDs tried to invoke the Headlee Amendment. **Response:** The American's with Disability Act requires reasonable accommodations, this is not a new service requirement nor does it impact taxes.

Deaf Link – expressed neither support nor opposition, however; the Director is concerned that appointing authorities though mandated by law to provide reasonable accommodations continue to indicate they have no funding to cover the cost of interpreter services and that funding continues to be an issue that must be addressed by the legislature.

**Response:** The Division concurs. However ADA mandates accommodations and not this act. The Division does intend to address funding for deaf communication access.

Several individuals commented where the term deaf interpreter should be included in a rule. This has been corrected for team interpreter and VRI interpreting.

**Name of person completing this report:**

Sheryl Emery, Director Division on Deaf and Hard of Hearing

**Date report completed:**

06/05/2013