



MEMORANDUM

DATE: September 7, 2016

FROM: Division on Deaf, DeafBlind and Hard of Hearing

SUBJECT: **Schools not able to find fully qualified educational interpreters**

The beginning of the 2016-2017 school year has shown us that there is some misunderstanding of the basic principles of the Michigan Interpreter Rules and how they should be applied when a school district is genuinely unable to employ a fully qualified interpreter for a student who is deaf, deafblind or hard of hearing. The Division hopes this brief explanation will help to clarify the Rules and provide guidance to those faced with this situation:

First, whenever looking at applying the Rules (whether in an educational setting or not) one should consider one of the fundamental principles on which the Rules are based; they should **NEVER** be read in a way that would **FORCE A PERSON WHO IS ENTITLED TO A QUALIFIED AND EFFECTIVE INTERPRETER TO PROCEED WITHOUT ANY ACCOMMODATION AT ALL**. A fully qualified interpreter must be provided as an accommodation whenever possible to do so, and when it is not possible, then the accommodation that will establish the most effective communication for the person receiving the accommodation must be provided instead.

For administrators in the educational setting this means that, if they believe they can legally establish that there was nothing else they could reasonably have done to provide a fully qualified interpreter to a student, then they must determine what the most effective accommodation is *for that student*. If the school meets the requirements of Rule 27(3) and it can locate a Substitute Educational Interpreter (SEI), it can seek an exception to the Rule requiring a Fully Qualified Interpreter from the Division. When a school has an exception naming the SEI they will be employing, it represents the Division's finding that the school did exhaust all reasonable possibilities before hiring the SEI. In such an instance, if a complaint is filed against the school district, the person making the complaint will have the burden of proving the accommodation provided was not effective, which is the same burden as when a fully qualified interpreter is used. An exception can only be applied to an SEI who has a 3.5-3.9 EIPA Score and meets the other requirements of Rule 27(4).

When a school district proceeds without an exception, either because they chose not to obtain one or because they believe they were forced to employ an interpreter who could not meet the SEI requirements, then the school district has the burden of proof. If a complaint is filed, the school will first have to prove that the interpreter who was provided was the most effective accommodation possible under the circumstances, and that the circumstances were not themselves a product of the school not acting reasonably in order to find a fully qualified interpreter.

Thus, the fact that an underqualified interpreter is being used does not necessarily mean that the school district is violating Michigan law, but it does mean that the school district should be prepared to legally establish that it could not reasonably have done otherwise.

For interpreters who are offered an interpreting position for which they are not fully qualified, this means that they cannot accept the position until they ensure that somebody has made the legal determination that they will provide the most effective communication possible. An interpreter is not in a position to make this determination themselves, he or she can only ensure that they know who made it and that the person who did so has acknowledged their legal responsibility. For this reason, it is highly recommended that any such interpreter obtain a signed acknowledgement of responsibility from the providing authority for whom s/he will be working. A recommended form for this purpose is available on the Division's website.