



INTERPRETIVE STATEMENT

2012-1

An Interpretive Statement does not have the force and effect of law.

It is merely an explanatory document intended to convey the Michigan Civil Right Commission's interpretation of the law as it exists at the time the statement is issued. Interpretive Statements are intended to convey general guidance that will assist the public by indicating the Commission's current analysis and conclusion(s) related to issues that are neither case nor fact specific that may come before it at some time in the future.

DATE: May 21, 2012

The requirement in MCL 393.503a that “the interpreter shall be a qualified interpreter” may under certain conditions be met by a qualified interpreter acting in unison with a student enrolled in an interpreter education program; when the qualified interpreter directly monitors the student and remains solely responsible for ensuring that effective communication is provided.

BACKGROUND

The Division on Deaf and Hard of Hearing (Division or DODHH) was transferred to the Michigan Department of Civil Rights (Department or MDCR) by Executive Order 2011-4. Included in the transfer was the Division's “authority, powers, duties, functions” generally, and in particular “the statutory authority, powers, duties, functions, and responsibilities set forth in 1937 PA 72, as amended, MCL 408.201 through 408.210 (Division on Deafness Act), and 1982 PA 204, Sections 393.501 through 393.509 (Deaf Persons' Interpreters Act).” MDCR was established by Public Act 380 of 1965, Section 475 (MCL 16.575 et. seq.) to provide a staff complement to the policy-making responsibilities of this body, the Michigan Civil Rights Commission (Commission or MCRC).

Subsequent to the above transfer, the Division indicated to the Department that there was a longstanding question about the ability of students enrolled in interpreter education programs to enter into supervised clinical experiences (practicum) before graduating the program and becoming eligible to apply for certification as qualified interpreters. The Division stressed the importance of providing students practical experience and requested MDCR provide a means to allow practicum. Following examination of the issue and applicable law, the Department recommended we issue this interpretive statement in order to provide clarity and uniformity in the application of existing law and regulation.

INTERPRETING AND INTERPRETERS

It is important at the outset to understand what is meant by the terms interpreting and interpreter. Interpreting is not the same as signing, which indeed is only one part of the interpreting process. Interpreting for the deaf, and in particular the use of American Sign Language, is very much like interpreting for an American diplomat communicating in a foreign language. The interpreter is not only responsible for translating the foreign language into English so the diplomat can understand; he or she must also translate the diplomat's English into the other language so that the diplomat will be understood. As in the diplomatic setting, inaccurate or incomplete interpreting results in miscommunication and misunderstanding that can affect all parties.

The Registry of Interpreters for the Deaf (RID), a professional organization representing more than 12,000 Sign Language Interpreters describes "Sign Language/spoken English interpreters" as;

"...highly skilled professionals that facilitate communication between hearing individuals and the deaf or hard-of-hearing. They are a crucial communication tool utilized by all people involved in a communication setting. Interpreters must be able to listen to another person's words, inflections and intent and simultaneously render them into the visual language of signs using the mode of communication preferred by the deaf consumer. The interpreter must also be able to comprehend the signs, inflections and intent of the deaf consumer and simultaneously speak them in articulate, appropriate English."

The Commission adopts this description of an interpreter's function and responsibility. An interpreter is responsible for ensuring effective communication between hearing individuals and those who are deaf or hard of hearing.

THE ISSUE

The Deaf Persons' Interpreters Act (DPIA) is silent on the question of student practicum, making no specific provision for, or even mention of, students training to become interpreters. Additionally, while the administrative rules required by the DPIA have yet to be adopted, they will not include provisions for certifying students involved in clinical programs in the absence of legislative authority for doing so.

In the absence of clear statutory or administrative direction, MCRC has determined that students, interpreter education programs, interpreters, providers, interpreter referral agencies and deaf and hard of hearing persons as well as the public with whom they interact will all benefit from a clear statement regarding the application of existing law. This will have the effect of ensuring a common understanding of what is currently permissible. Additionally, if the Commission's interpretation is not consistent with the legislature's intent, the Commission hopes that this statement will cause them to enact legislation clarifying their intent by providing specifically the requirement for student practicum.

ANALYSIS

The question essentially boils down to whether the legislature by not specifically addressing interpreter education programs indicated that schools could continue to offer interpreter training programs in the manner they determined would best prepare interpreter students for their chosen careers, or if the legislature's silence should be interpreted to limit a school's ability to do so. The Commission believes the former to be more persuasive, and specifically rejects the argument that the legislature's inaction be given the effect of making profound changes to previous practice.

The DPIA provides at:

MCL 353.502(f): "Qualified interpreter" means a person who is certified through the national registry of interpreters for the deaf or certified through the state by the division.

353.503a: If an interpreter is required as an accommodation for a deaf or deaf-blind person under state or federal law, the interpreter shall be a qualified interpreter.

Thus it is clear that prior to being certified as qualified, a student cannot him or herself be appointed as an interpreter. This does not, as some have questioned, foreclose a situation in which a student is acting together with, and under the direct supervision of, a qualified interpreter who is fully responsible for ensuring the accuracy of the service provided. Under such conditions, when neither the qualified interpreter nor any other party gains or loses any direct benefit as a result of the student's involvement, the interpreting service is in all legally substantive ways being provided by the qualified interpreter.

This reading of the DPIA gains further support from the section describing when the Act is violated.

MCL 353.508b(1): A person who knows that he or she does not meet the definition of qualified interpreter under this act and misrepresents himself or herself as a qualified interpreter is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than \$500.00 or more than \$1,000.00, or both.

The Act thus allows for a situation in which a person who knows they are not a "qualified interpreter" plays some role in the provision of interpreter services under the act, but does not "misrepresent" himself or herself as being qualified. A student and qualified interpreter should not be permitted to work together to provide interpreting services as part of an educational practicum except with the express agreement of the appointing authority and the person receiving the interpreting service. But where all parties are in agreement that the qualified interpreter is solely and equally responsible for the accuracy and effectiveness of the interpreting irrespective of the student's involvement, there is no violation of the act, and no public interest would be served by finding otherwise.

Student practicums can, and must, be constructed so as to be fully consistent with the DPIA's provision requiring compensation.

MCL 353.508e(1): A court appointed interpreter, qualified interpreter, intermediary interpreter, or deaf interpreter shall be paid a fee by the court that it determines to be reasonable. A qualified interpreter, intermediary interpreter, or deaf interpreter appointed by an appointing authority other than a court shall be paid a fee by the appointing authority. In addition, a qualified interpreter, intermediary interpreter, or deaf interpreter shall be paid for his or her actual expenses for travel, meals, and lodging.

Because the qualified interpreter is legally the person providing the service, he or she must be compensated by the appointing authority as would be the case had the student not been involved in any way. Any discount or other reduction in fee provided to the appointing authority would indicate that the parties regard the service provided to be something less than would be the case if the qualified interpreter acted alone. It is in fact the qualified interpreter's responsibility to personally monitor the entire process to ensure the quality of service provided. A qualified interpreter also must not provide any portion of his or her compensation to the student (or student's school). The qualified interpreter is not being assisted by the student; he or she is assisting the student.

Similarly, a qualified interpreter working with a student doing a practicum cannot provide additional interpreting service beyond what the qualified interpreter would do alone. Here again, the appointing authority is retaining and providing the qualified interpreter. If the qualified interpreter elects to provide a student enrolled in an interpreter training program with a closely monitored clinical experience, it is a mentor/mentee relationship between the two of them (though it does require the consent of others). The qualified interpreter is still responsible to the providing authority as well as the deaf person who is being provided the interpreting service. They must remain actively involved in ensuring that the interpreting performed results in effective communication, as their personal responsibility is no different than if they were doing the interpreting alone.

A qualified interpreter working with a student in this way may permit a student to perform all, or any part of, the service that the interpreter would otherwise have provided by him or herself. What cannot be permitted, however, would be to allow the student and qualified interpreter working together to do more. Thus, for example, if interpreter services are being provided for an event that would otherwise require two or more qualified interpreters in order to prevent interpreter fatigue, the qualified interpreter working with the student may still not do any more than they would do alone. The student may not be utilized to enable the qualified interpreter to do work the interpreter would not be able to do without the student and the appointing authority cannot reap the benefit of not needing to provide an additional interpreter, as doing so would result in a portion of the interpreting services being provided without fee.

The provision of the statute related to the required oath is also relevant to this discussion.

MCL 353.506(1): Before a qualified interpreter participates in any action or other proceeding because of an appointment under this act, the qualified interpreter shall make an oath or affirmation that the qualified interpreter will make a true interpretation in an understandable manner to the deaf or deaf-blind person for whom the qualified interpreter is appointed and that the qualified interpreter will interpret the statements of the deaf or deaf-blind person in the English language to the best of the interpreter's skill. The appointing authority shall provide recess periods as necessary for the qualified interpreter when the qualified interpreter so indicates.

As contemplated above, the qualified interpreter not only continues to take this oath, they take it alone. The student is acting in concert with the interpreter in order to gain the real world clinical experience, but it remains the interpreter who is responsible for making “a true interpretation in an understandable manner.” A qualified interpreter’s obligation to ensure they provide a true interpretation is owed “to the deaf or deaf-blind person for whom the qualified interpreter is appointed.” It is the qualified interpreter’s responsibility to ensure that a student has received sufficient training prior to being offered the practicum opportunity, and to step in and relieve the student if at any time it becomes necessary.

While it is the qualified interpreter’s responsibility to ensure a student is sufficiently prepared in advance of any practicum experience, the Commission recognizes that without some guidance this may be a difficult assessment for them to make. For this reason, the Commission strongly recommends that prior to any practicum experience occurring, the DODHH, in cooperation with schools offering interpreter education programs, develop a process, outlining the appropriate use of students, expectations and boundaries of the practicum experience, and mentor and student qualifications. The process should also provide a means by which others can verify whether a student has met the agreed upon qualifications and is therefore practicum eligible. The practicum eligibility process should be in the form of an MOU or other written agreement and made available to the public. A qualified interpreter could then be assured that a student deemed practicum eligible pursuant to the process is sufficiently prepared to enter into a practicum experience. Similarly, the interpreter should understand the risk they would be taking by working with a student who is not.

The statute also provides at MCL 393.503(3) that a person requiring an interpreter may make a written request to waive the right to a qualified interpreter. The waiver is subject to the approval of the appointing authority and the person’s counsel when applicable. An argument can be made that this waiver provision should be used to permit student practicum, but there is an appropriate reluctance to do so. The waiver is used primarily when a deaf person utilizes an interpreter (often a friend or family member) even though the interpreter is not legally “qualified.” The waiver thus assures that the person for whom the interpreter is being provided fully understands that there can be no assurance of the quality of the interpreter’s service, but also permits the appointing authority to honor that person’s expressed wishes. A person signing such a waiver is thus accepting the consequences that may result from using an interpreter who is not qualified, including that they may not receive a “true interpretation.”

The use of a waiver of this sort in a practicum setting where a student is working with a qualified interpreter is not merely unsuitable; it is fundamentally at odds with the obligation to construct practicum in a way that protects the interests of all. No waiver of rights should be signed where no rights are being waived. Under the safeguards discussed above, a qualified interpreter is provided and is solely responsible for ensuring the interpretation they are providing with the student is a “true interpretation.” Because it is the quality of service being waived, overuse of the waiver provision also opens the door to possible abuses by an appointing authority seeking to save on the costs of providing a “qualified interpreter” every time. However, while the waiver provision may not be applicable here, it is another strong indication that the legislature did not intend the Act to be inflexible.

Because the waiver provision is not applicable, there is no provision mandating that the person requiring an interpreter agree in writing to a student’s involvement under the direction of the qualified interpreter providing the interpreting service. However, the Commission cannot contemplate why a qualified interpreter or appointing authority would not wish to document the agreement. We thus recommend that the DODHH prepare and make available a model agreement. This form could also be used to ensure that all those involved not only agree to the student’s involvement, but also understand that the qualified interpreter remains responsible for the service provided.

Finally, the Commission believes this interpretation is in full accord with the Code of Professional Conduct adopted by both the National Association of the Deaf (NAD) and the Registry of Interpreters for the Deaf, Inc. (RID). The Code specifically covers not only professionals already engaged in interpreting, but also “interns and students of the profession.”

The code is structured around seven tenets or guiding principles. It provides in its preamble that “It is the obligation of every interpreter to exercise judgment, employ critical thinking, apply the benefits of practical experience, and reflect on past actions in the practice of their profession. The guiding principles in this document represent the concepts of confidentiality, linguistic and professional competence, impartiality, professional growth and development, ethical business practices, and the rights of participants in interpreted situations to informed choice. The driving force behind the guiding principles is the notion that the interpreter will do no harm.”

Of particular note, the Code encourages interpreters to “Assist and encourage colleagues by . . . serving as mentors when appropriate.” It also provides that interpreters must obtain the consent of both consumers and colleagues before bringing an intern to an assignment. Most important, the code describes what it means to “make a true interpretation in an understandable manner” as provided in the Michigan statute. It indicates that interpreters must “Assess consumer needs and the interpreting situation before and during the assignment and make adjustments as needed. “ and “Render the message faithfully by conveying the content and spirit of what is being communicated, using language most readily understood by consumers, and correcting errors discreetly and expeditiously.” The requirement to make adjustments and correct errors remains with the interpreter at all times.

CONCLUSION

The Commission sees no public interest that would be served by reading a prohibition on supervised clinical experiences (practicum) into the legislature's requirement that interpreters be qualified. To the contrary, a qualified interpreter acting together with a student is still the person providing the service when:

- the student has received sufficient training and is doing a practicum as part of an interpreter education program, and
- the student only acts when under the continuous direct personal observation and supervision of the qualified interpreter, and
- the student acts only with the continuing agreement of all parties, including the qualified interpreter, provider, interpreter referral agency, and most important the person being provided the interpreting service.
- the interpreter remains responsible for providing a “a true interpretation in an understandable manner to the deaf or deaf-blind person for whom the qualified interpreter is appointed.”
- the interpreter will relieve the student if at any time the obligation to provide a true interpretation is not being met, and
- the appointing authority is not receiving any financial or other benefit that would suggest the service being tendered is less than that provided by a qualified interpreter, and

MCL 353.503a's requirement that whenever “an interpreter is required as an accommodation for a deaf or deaf-blind person under state or federal law, the interpreter shall be a qualified interpreter” can be met by a qualified interpreter and a student when the qualified interpreter is personally responsible and appropriately compensated for the service provided.

IMPACT

It is almost as difficult to overstate the importance of supervised clinical experiences as it would be to contemplate any reason the legislature would have had for eliminating them. Interpreting for the deaf, (sign language interpreting) is a human service field and more particularly a “practice profession.” It is, in other words, a profession in which skill is not simply technical knowledge, but also the ability to adapt/apply that knowledge in practice. Requiring students in interpreter education programs to graduate and then become certified as qualified interpreters before they can practice in a “real world” situation would be much like doing the same with psychologists, surgeons, or teachers. The DPIA is intended to ensure that individuals who require it as an accommodation are provided qualified interpreters, and only by providing practicum experience can educational institutions ensure the qualifications of the interpreters of the future.

There is only one body providing accreditation to interpreter education programs, the Commission on Collegiate Interpreter Education (CCIE). The CCIE application form lists three prerequisites for educational institutions seeking to apply for accreditation: “1) being housed in a nationally accredited institution, 2) having a practicum, and 3) having graduated at least three classes (of students).”

The CCIE was founded in 2006 to promote professionalism in the field of sign language interpreter education through the process of accreditation and it is a member of the Association of Specialized and Professional Accreditors (ASPA). It is a collaborative effort involving many of the most influential Deaf and interpreter groups, including the National Association of the Deaf, National Registry of Interpreters for the Deaf, Conference of Interpreter Trainers, and the American Sign Language Teachers Association. The CCIE has developed accreditation standards designed to “identify the knowledge, skills, and perspectives students need to gain in order to enter the field of professional interpreting. The Standards give students, faculty, curriculum developers, administrators, employers, and consumers a common set of expectations about what basic knowledge and competencies interpreting students should acquire.”

CCIE Standard 5 is “Curriculum” and in the section on “Curriculum Design” it provides specifically that:

The curriculum design shall provide the basis for program planning, implementation, and evaluation. It shall be based on a course of study that includes a broad foundation of liberal arts, sciences, professional education, research, and practicum. The liberal arts and social and behavioral sciences content shall be a prerequisite to, or concurrent with, professional education.

Later, the first item in the section entitled “Practicum and/or Internship Experiences” provides:

Supervised practicum shall be an integral part of the educational program. The experience shall provide the student with the opportunity for carrying out professional responsibilities under appropriate supervision and professional role modeling.

SUMMARY

As previously indicated, the Michigan Civil Rights Commission is only looking at this question in the absence of legislative direction. Nothing in this Interpretive Statement should be understood to suggest that the legislature cannot mandate, provide conditions for, or even prohibit practicum experiences as part of interpreter education programs in Michigan. The legislature could also provide rulemaking authority over such programs or students to the Division on Deaf and Hard of Hearing, Department of Civil Rights, Department of Education, or another agency. Until such time as there may be other controlling direction, the MCRC believes this Interpretive Statement will provide all concerned parties with a common understanding of the current state of the law upon which they may rely.

The Michigan Legislature passed the Deaf Persons Interpreters Act in 1982, and amended it in 2007. It has to date not expressly prohibited, restricted, or permitted providing supervised clinical experiences to students enrolled in interpreter education programs. The MCRC interprets this silence as permitting such student practicum under the supervision and control of a “qualified interpreter” who remains personally responsible for providing (with or without the presence of the student), that all the requirements of the Act are fully met.

Where a “qualified interpreter” provides supervised clinical experience to a student enrolled in an interpreter education program, the interpreter is identically compensated for and performs the same interpreting services for an appointing authority with the student as would be the case without the student, and the interpreter at all times personally monitors and remains fully responsible for the interpreting being provided, the services provided by the interpreter and student acting in unison are for the purposes of the Deaf Persons Interpreters Act being provided by the “qualified interpreter.” The qualified interpreter is not being assisted by the student; he or she is assisting the student.

The responsibility to “make a true interpretation in an understandable manner” at all times remains with the qualified interpreter appointed for this purpose. This responsibility includes (but is not limited to), ensuring a supervised student has received sufficient training to be prepared for the practicum experience, ensuring the deaf or deaf-blind person(s) for whom the interpretation is being provided understands and agrees with the student’s involvement, ensuring the accuracy of all interpreting done by the student, and taking over immediately if at any time it becomes evident the student’s interpreting is not both accurate and understandable.

A student is not misrepresenting himself or herself as a qualified interpreter when all parties involved are aware of the practicum and have agreed to permit the student to participate under the direct supervision of a qualified interpreter who is responsible for assuring the accuracy and effectiveness of the interpreting services provided. Where neither the appointing authority, interpreter referral agency, nor any other party gains any tangible benefit beyond the real world experience of the student and the satisfaction of having contributed to his or her educational efforts, the appointing authority has fulfilled its duty to ensure the required interpreting is being provided by a “qualified interpreter.”

This statement focuses on ensuring the quality of the interpreting service being provided, and thus on ensuring the student is both properly prepared and supervised. Still, the purpose of practicum is to develop the talent of the next generation of interpreters. The quality of the practicum experience for the student is second only to the quality of the interpreting service being provided. While ensuring the quality of the interpreting falls most heavily on the qualified interpreter, it is hoped that all parties involved will support the process.

When acting consistent with the above; a qualified interpreter fulfills his or her legal and professional responsibilities; a provider has met the obligation to provide an accommodation, and a student has not in any way misrepresented himself or herself. Incidents would have to be investigated and assessed individually, but a person or entity acting contrary to the above would be presumed not to be compliant with applicable law and/or professional standards and therefore subject to appropriate sanction.

Thus, the requirement in MCL 393.503a that “the interpreter shall be a qualified interpreter” may be met when a student enrolled in an interpreter education program acts together with a qualified interpreter who remains personally responsible for all aspects of the service provided.

Adopted by the Michigan Civil Rights Commission on May 21, 2012