

Frequently Asked Questions (FAQs) and Answers on the Rules' INTENT AND METHODOLOGY (IM)

(Updated 7/3/2014)

IM 1) Is there another document that provides an outline of the overarching intent of the rules and the way they were drafted and structured?

Yes. When the Division/Department submitted the rules to the legislature's Joint Committee on Administrative Rules (JCAR) for review, we also submitted an agency report. The first ten pages provide a narrative outline of the "foundational principles" that guided the drafting of the individual rules. As the agency report itself stated, "It is hoped that this foundation will . . . provide a framework under which any future question about the intent of a particular rule can be addressed." (see: [Agency Report, Narrative Excerpt \(foundational principles/intent\)](#))

A review of this document should help the reader place individual rules into context, and hopefully provide additional clarity. Further, because the document was presented to the legislature prior to and as part of the adoption of the rules, it is hoped that it will serve as the directional compass under which specific rules are examined in the future.

IM 2) Do these rules guarantee that I will always get a qualified interpreter?

No. The rules are not intended to ever require the impossible. Neither the supply of, nor the demand for, qualified interpreters are subject to regulation by an administrative rule. While we hope these rules will reduce the frequency, there will always be occasions where it is not possible to fully provide a qualified interpreter, or effective communication. In such instances, the rules have been drafted to require the appointing authority to get as close as is possible, and to recognize that an appointing authority who can show it worked with the d/db/hh person requesting equal communication access to provide the best possible accommodation, is not violating the rules.

IM 3) How do the interpreter standards work?

At their core, the rules are intended to ensure:

- Standards are set at a level where they guarantee that an interpreter has sufficient ability to enable a deaf, deafblind or hard of hearing person (as well as all other participants and interested parties) to rely on the interpreter's services.
- Whenever a fully qualified interpreter is available, he or she must be provided.
- When it can be established that it is not possible to provide a fully qualified interpreter, then the best possible interpreter must be provided.

IM 4) Who does an interpreter serve, and who needs to be concerned about an interpreter's qualifications or effectiveness?

Everyone. It is a common mistake to think of an interpreter as being important only to the d/db/hh person who is being provided with an accommodation in order to have equal access to communication. Communication is always a two-part, and almost always a two-way, process. Hearing people may recall trying to communicate as children using two tin cans and a string, or repeating a whispered message from one person to another. The effectiveness of any communication always depends on whether the communication sent is the same as the one received. Both the sender and receiver have a stake in the accuracy and effectiveness of the process. A caring doctor cannot accurately diagnose a patient's problem if the doctor does not accurately understand how the patient described their symptoms, and he or she will not let a patient leave without knowing the patient accurately understands any necessary follow up that the patient must do.

IM 5) Don't higher interpreter standards exacerbate the 'interpreter shortage' in Michigan?

The intent in drafting the rules was to seek a fair balance between two conflicting needs. The first need was to establish standards sufficient to ensure that all interpreters who are provided in Michigan are fully qualified, thereby ensuring effective communication for *all* parties to a communication and guaranteeing d/db/hh individuals the equal communication access to which they are legally entitled. The second need was to recognize the reality that due to interpreter shortages and a host of other reasons, there may always be instances where a fully-qualified interpreter is not available. The rules are intended to recognize this reality by requiring that an authority who is truly unable to provide a qualified interpreter as an accommodation must work with the d/db/hh individual to provide the most effective accommodation possible. The rules' higher standards do not worsen any interpreter shortage because alternatives are provided if the standards cannot be met. Further, by mandating the use of an interpreter who meets the higher standards whenever one is available, the rules provide all interpreters with market-driven incentives to hone and improve their skills in order to qualify for more and perhaps better paying appointments. The rules also eliminate any financial incentive an appointing authority might have if it were permitted to decide between appointing an interpreter who is fully qualified and one who is not.

IM 6) I am currently being provided with an interpreter who the rules say is not qualified. Does this mean I will lose the interpreter and be left with nothing?

Absolutely not. These rules require establishing effective communication using qualified interpreters whenever possible, and coming as close as possible in all other instances. These rules should never be misconstrued to prohibit implementing the best available alternative to a qualified interpreter unless a qualified interpreter can be (or could have been) provided. If these rules do require terminating any existing accommodation, it can only be because a more effective communication accommodation is being provided.

IM 7) How were the interpreter standards determined?

Standards defining qualifications are set at a level where they guarantee an interpreter's ability sufficiently to enable the deaf, deafblind or hard of hearing person (as well as all other participants and interested parties) to rely on the interpreter's services. There are three standard levels for interpreters outside the area of education (through grade 12). The first level includes interpreters qualified for general purposes, and levels two and three reflect the greater qualifications necessary as the complexity of the interpreting and/or the

potential for harm to a participant if communication is not effective, go up. In other words, the levels allow an appointing authority, who may have no personal knowledge about interpreting or interpreters, to determine which interpreters are qualified in any particular instance.

IM 8) Does a qualified interpreter guarantee effective communication?

No. While the interpreter qualifications and standard levels are intended to assure an interpreter has the necessary skills to interpret in a particular type of setting, there are still factors that may cause a particular qualified interpreter to be ineffective in a particular instance. For example, there are different dialects and styles within American Sign Language that may make it difficult for two signers to communicate with each other, or a conversation being interpreted may include particular terms or an especially large vocabulary.

IM 9) Does Michigan law require that an interpreter be qualified, or does it require that effective communication take place?

Both! Ultimately the goal is effective communication. A d/db/hh person is legally entitled to the same level of communication access to public institutions as everyone else, and this means that the accommodation provided to enable communication must be effective. A qualified interpreter is one who has the ability to establish effective communication in a specific type of setting, but this does not guarantee they will be effective in a particular instance. A university, for example, may employ a number of different interpreters who are all fully qualified to interpret in the classroom setting. While all may technically be qualified, they may not all possess sufficient vocabularies to provide effective communication for some graduate students. If a student informs a university that an interpreter lacks the terminology needed to provide effective communications for the student's anatomy lab class, it is not sufficient for the university to point to the interpreter's qualifications.

IM 10) I've seen the rules referred to as establishing a "three tiered" process. What does this mean?

One useful way of looking at how the rules apply to the selection of an interpreter in any given situation is to think of the selection process as having three successive benchmarks tiered such that the second is reached only if the first cannot be, and the third only if the second is also impossible.

- ✓ The first benchmark requires that *whenever a fully qualified interpreter is available, a fully qualified interpreter must be used*. This not only protects equal communication access for d/db/hh individuals, it provides incentive for interpreters to upgrade their skills. Furthermore, it protects appointing authorities by creating what in effect is a presumption that a fully qualified interpreter will place them in full legal compliance, and that absent an indication of interpreter ineffectiveness they will have met their legal obligation to provide an accommodation.
- ✓ The rules also provide for instances when a fully qualified interpreter is not available, but a lesser qualified interpreter is. These processes (exceptions in schools, waivers elsewhere), ensure that all parties are aware that the interpreter provided is generally qualified, but lacks a level of skill, experience or training that ensures that they are qualified to establish effective communication in the particular instance. Decisions about

how to proceed in the absence of a fully qualified interpreter must be made with input from the d/db/hh person for whom the accommodation is being made, thus ensuring that his or her interests are protected. This benchmark can also provide an appointing authority with confidence that they are in legal compliance, but meeting it requires a greater emphasis on collaborating to ensure effectiveness and a greater responsibility to monitor the situation to ensure the interpreter provided does establish effective communication.

- ✓ The third tier covers instances when an appointing authority asserts an inability to provide even a lesser qualified interpreter who the d/db/hh person agrees will establish effective communication. In such instances, the appointing authority is still required to provide an accommodation, but because the accommodation will not be a “qualified” interpreter, these “Qualified Interpreter” Rules essentially cease to be directly applicable. This does not in any way relieve the appointing authority of their legal obligation to provide the most effective accommodation possible. To the contrary, it alerts them to the increased burden they will need to meet in order to defend their assertion that they could not provide a qualified interpreter, and they know meeting this benchmark requires they show an event greater effort to engage in an interactive process with the person seeking an accommodation in order to demonstrate that the most effective accommodation possible was offered.

IM 11) Are you saying that the new rules don’t apply if an appointing authority says they can’t find a qualified interpreter?

First, no. What the appointing authority says can always be challenged under the rules. An appointing authority that claimed no qualified interpreter was available could be subject to sanction under the Qualified Interpreter Rules and/or Act, as well as under other disability laws like the ADA, if the claim is demonstrably false and they knew that a qualified interpreter was available. The same may be true if they failed to look for a qualified interpreter, didn’t exercise a reasonable effort to locate one, waited too long before trying, or for other reasons. Even if a d/db/hh signs a waiver agreeing to proceed with a lesser-qualified interpreter, that person may file a complaint if he or she believes the problem was created by the appointing authority’s unreasonable action or failure to act in response to the accommodation request.

Second, while it is true that the rules relating to qualified interpreters may not apply to some situations because they did not involve qualified interpreters, this is not the end of the question. The Deaf Persons’ Interpreters Act and Qualified Interpreters Rules apply only when other laws require that an interpreter be provided as an accommodation. If no interpreter can be provided, those laws do not require doing the impossible and providing one anyway, but they do provide that the Appointing Authority provide the most effective accommodation possible instead.

Thus the Division has the ability to investigate a complaint, even when the appointing authority asserts that it could not provide a qualified interpreter. The Division typically would investigate both the authority’s claim a qualified interpreter was not available and any complaint that it refused to consider or improperly denied the most appropriate accommodation under the circumstances.