

May 1, 2016

Dear Committee Members;

I am writing this letter to address two items of importance to me.

I am in full support of all the changes made to remove offensive language from the different legislative documents and replacing them with appropriate verbiage of Deaf, Hard of Hearing and DeafBlind. I would like to take this time to express my thanks for your hard work in pushing for the changes and the support given to the Deaf, DeafBlind and Hard of Hearing communities.

Complaints filed by Deaf individuals are often disregarded or dismissed by the Department of Civil Rights. I recently received a letter from Dan Levy, Director of Law and Policy under the Department of Civil Rights which was forwarded to me via email from Ann Urasky, Director of DODDBHH. I have shared my outrage regarding the contents of the letter to the Director of Department of Civil Rights, Agustin Arbulu and the Commission on Civil Rights Council members at their meeting in Flint on March 29, 2016. Key points I brought to their attention were:

- **"...one of the individuals that questioned and/or expressed displeasure"** felt like he was belittling of my complaint about the inappropriately credentialed interpreter who was hired by DODDBHH for the meeting with Commission on Civil Rights meeting in January of 2016. The standards under PA 204 amended 2007 which requires a BEI II for this type of meeting. DODDBB utilized the services of BEI I interpreter.
- **"Department did what was reasonable in order to try and provide BEI II interpreter"** DODDBHH never called Communication Access Center (CAC) or DeafCAN for assistance in finding qualified credentialed interpreter for that meeting.
- **"An interpreter at a lower standard level may interpret in a higher standard level setting if he or she is in a supervised, division-approved mentoring experience with a higher standard level interpreter"** the law clearly states standards of where credentialed interpreters can and cannot work. There was no mention that this interpreter was being "mentored" until I saw it mentioned in the letter. If the interpreter received payment, she was not mentored but actually a working interpreter. The appointing authority is supposed to ask the Deaf person(s) for permission to use a mentored interpreter before the assignment. No one asked me if I would accept a "mentored" interpreter.
- **"...nobody was ever given or asked to sign a waiver"**- DODDBHH asked two of the deaf individuals if they would sign a waiver because they could not find a BEI II interpreter for this assignment several days before the event. Waivers are supposed to be asked by the deaf consumer not initiated by DODDBHH.

Issues like this causes mistrust and loss of faith in the Department of Civil Rights and DODDBHH to enforce and ensure that compliance of PA 204 amended 2007. Like most people, I expected DODDBHH and Department of Civil Rights to enforce PA 204 amended 2007 not circumvent it or bend it to fit their agenda.

Sincerely yours,

Diana McKittrick



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF CIVIL RIGHTS
DETROIT

DR. AGUSTIN V.
ARBULU
DIRECTOR

April 20, 2016

Diana McKittrick

Dear Mrs. McKittrick,

You are receiving this because you are one of the individuals who questioned and/or expressed displeasure about the use of a BEI-I interpreter at the last meeting of the Michigan Civil Rights Commission. We have reviewed this matter at length and have determined that there was no violation of the Michigan Deaf Persons' Interpreters Act, the Michigan Qualified Interpreter - General Rules, the Michigan Persons With Disabilities Civil Rights Act, or of the Americans with Disabilities Act.

Pursuant to the Qualified Interpreter-General Rules, the Commission meeting was a setting for which interpreters qualified at Standard Level 2 were to be provided. For the meeting in question, the Department of Civil Rights did provide a team of two interpreters. While one interpreter was qualified at Standard Level 3, the other was qualified at Standard Level 1 and thus did not meet the minimum standard level requirement. However, the Rules also recognize and provide for situations when an appointing authority is unable to find a fully qualified interpreter. Because the Department did what was reasonable in order to try and provide Standard Level 2 interpreters, and because when that failed, the Department did all that was reasonable in an effort to provide the most effective communication possible, no violation of Michigan law occurred.

Please be advised that while we have determined that the Department's actions were appropriate, and we consulted with the Office of the Attorney General who concurred, nothing in this document prevents you from filing a complaint with the US Department of Justice if you disagree with our conclusion. You may also formally file a "failure to accommodate" complaint and appeal its dismissal by seeking judicial review of the final decision as provided by the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

The Michigan Rules specifically provide, in Sect. 393.5003(nn), that:

(nn) "Variance" means any failure by an appointing authority to provide a qualified interpreter and establish effective communication that does not take place pursuant to a "waiver" or "exception" and which is not otherwise prohibited by law or these rules. A variance may, for example, be necessitated because compliance would cause an appointing authority undue hardship or fundamental alteration as those terms are used in the Americans with Disabilities Act of 1990 or Americans with Disabilities Amendments Act of 2008. An agreement to accept interpreting provided in variance shall not include, or be deemed to include, any express or implied agreement to lessen legal responsibility for malfeasance, misfeasance, or other failure to reasonably predict and prepare to meet a legal requirement to provide a properly qualified interpreter, or which would have otherwise reasonably have prevented the need to provide the variance.

The Rules thus recognize there will be occasions that necessitate proceeding without fully

qualified interpreters. The Rules indicate that when a proceeding held in variance of the Rules (as the Commission meeting in question was), the appointing authority may still be found to have violated the law, if the variance resulted from the "malfeasance, misfeasance, or other failure to reasonably predict and prepare..." In other words, the question is the same one that applies elsewhere in ADA law. Did the person or entity reasonably make the effort to provide effective communication?

There are a number of factors that establish the Department did everything that could reasonably be expected, and that it provided the most effective communication possible under the then existing circumstances:

Efforts to secure Standard Level 2 interpreters began as soon as the meeting date was set, more than a month prior to the meeting.

Standard Level 2 interpreters who could interpret for the meeting were contacted but were either unavailable or uninterested. (There are interpreters who have indicated to the Division that they do not do interpreting for public meetings of this sort.)

When searching for a second interpreter, the Division contacted Standard Level 1 interpreters who were known to have been effective in settings like this public meeting, and who had a reputation of both high quality and trust.

The Standard Level 1 interpreter who was provided has been practicing primarily in Canada and is a member of the Association of Visual Language Interpreters of Canada (AVLIC). She holds a Certificate Of Interpretation (CIO). (The Ontario Association of Sign Language Interpreters indicates that "[t]he AVLIC COI is the highest level of accreditation available to ASL-English Interpreters in Canada.")

The Standard Level 1 interpreter was also teamed to work with a Standard Level 3 interpreter. While a Standard Level 3 interpreter does not alleviate the need for the paired interpreter to be Standard Level 2, in this situation the pairing ensured that the Standard Level 1 interpreter was being monitored for accuracy (and would have been assisted if the need arose). In fact Rule 393.5051 on "Practice within standard level" provides in section 11 that: "An interpreter at a lower standard level may interpret in a higher standard level setting if he or she is in a supervised, division-approved mentoring experience with a higher standard level interpreter."

When the Division became aware that a second Standard Level 2 interpreter could not be provided, it tried to contact the individual who had requested an interpreter as an accommodation. This individual was asked whether they believed the pair of interpreters being provided would be effective, and if not whether there was something that could be reasonably done to improve effectiveness.

The Department thus met its legal requirements. Although necessitated to proceed in "variance" to the Qualified Interpreter-General Rules, the need for variance was not the result of any wrongdoing, all reasonable efforts were taken to avoid and then redress the variance, and effective communication was in fact established.

Additionally, there was some confusion about the appropriate use of waivers, but no violation of the Rules occurred. When objections to the Standard Level 1 interpreter were first raised at the meeting, someone suggested that attendees would be asked to sign "waivers." While a waiver

might previously have been appropriate in instances like this one, it was not appropriate here. The Rules provide for two types of waivers. A full waiver is applicable to instances where the person requesting the accommodation specifically requests something less than what would otherwise be provided. A limited waiver is appropriate where more than one option is offered in lieu of a fully qualified interpreter, and is limited only to the options offered but not chosen. Here, there were no alternate accommodations being offered at the time of the meeting, so it was an error to suggest anyone would be asked to sign a waiver. The error was, however, immediately corrected and nobody was ever given or **asked to sign a waiver**.

For all the above reasons, the Department of Civil Rights does not believe that any violation of the Deaf Persons' Interpreters Act or Rules occurred. Nor was there any violation of either the Michigan Persons With Disabilities Civil Rights Act, or the Americans with Disabilities Act. If you wish to challenge our determination you may do so as described above.

Respectfully,


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