

MICHIGAN DEPARTMENT OF CIVIL RIGHTS
DIVISION ON DEAF AND HARD OF HEARING
QUALIFIED INTERPRETER – GENERAL RULES

Filed with the Secretary of State June 5, 2014

These rules become effective 30 days after filing.

(By authority conferred on the division on deaf and hard of hearing by section 8a of the deaf persons' interpreters act, 1982 PA 204, MCL 393.508a, section 9 of the division on deafness act, 1937 PA 72, MCL 408.209, and ERO 1996-2, MCL 445.2001, ERO 2003-1, MCL 445.2011, and ERO 2008-4, MCL 445.2025.)

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 393.5029, R 393.5031, R 393.5032, R 393.5033, R 393.5041, R 393.5042, R 393.5045, 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 are added to the Michigan Administrative Code as follows:

PART 1. GENERAL PROVISIONS

R 393.5001 Scope.

Rule 1. These rules apply to a person who is hired to interpret for a proceeding for a deaf, deafblind, or hard of hearing person within this state.

R 393.5003 Definitions.

Rule 2. Terms used in these rules are defined as follows:

- (a) "Act" means the deaf persons' interpreters' act, 1982 PA 204, MCL 393.501 to 393.509.
- (b) "CEU cycle" means a 4-year period of time in which continuing education units are earned.
- (c) "CEU" means a continuing education unit.
- (d) "Complainant" means a person or entity who has filed a grievance with the division alleging that a person has violated the act or a rule promulgated under the act.
- (e) "Council" means the advisory council on deaf and hard of hearing established under MCL 408.205.
- (f) "Credential card" means an interpreter card, carrying the great seal of Michigan, issued by the division that verifies that an interpreter is a qualified interpreter within this state for a specific time period. The division may issue a credential card that incorporates a photograph.

(g) “D/DB/HH” means a deaf, deafblind and/or hard of hearing person and includes any person for whom an interpreter is required as an accommodation under state or federal law.

(h) “Deaf Interpreter” or “DI” means a deaf or hard of hearing person who holds a division recognized certification and interpreter training and/or experience in the use of gestures, mime, props, drawings, and other tools to enhance communication, as well as knowledge and understanding of deafness, the deaf community, and the deaf culture. The DI possesses native or near-native fluency in American Sign Language. The DI facilitates communication between a person using sign language and a deafblind person or between a qualified interpreter and D/DB/HH person when the communication between the qualified interpreter and the D/DB/HH person is not effective.

(i) “Director” means the director of the division on deaf and hard of hearing or his or her designee.

(j) “Division” means the division on deaf and hard of hearing in the Michigan department of civil rights.

(k) “Division recognized certification” means a certificate that the division will accept that indicates the person has passed an evaluation of his or her interpreting skills.

(l) “Effective communication” means that all involved parties understand each other for the exchange of visual and audio information about ideas, attitudes, emotions, or behavior that occurs between 2 or more persons, through a common system of language that is equally and fully understood by a deaf, deafblind, or hard of hearing person (D/DB/HH) and hearing persons. The interpreter must possess sign language to English – English to sign language skills and necessary vocabulary for the situation so that all parties have access to the same information.

(m) “Exception” means a written agreement between the division and an appointing authority, including, but not necessarily limited to, an educational program as described in R 393.5027(3), in which the appointing authority describes and attests to its efforts to provide a qualified interpreter, and in which the appointing authority asserts and the division agrees that the unfeasibility of doing so necessitates a variance from these rules.

(n) “EIPA” or “educational interpreter performance assessment” means a credential granted under the EIPA interpreter testing system that assesses the proficiency of interpreters in elementary and secondary educational environments.

(o) “Formal complaint” means a document that states the charges of each alleged violation and is prepared by the division after a complaint has been received.

(p) “Interpreter” means a person who engages in the practice of interpreting and meets the definition of MCL 393.502(h).

(q) “Interpreting” means the process of listening, watching, understanding, and analyzing signed, spoken, written word, facial expressions, and lip movements from a source language and re-expressing that message faithfully, accurately, and objectively in a target language, taking the social and cultural context into account. In the context of these rules “interpreting” generally involves signing to a D/DB/HH person what is being voiced by a hearing person, and voicing to a hearing person what is being signed by a D/DB/HH person.

(r) “Listed” or “listing” means full name, address, type of certification, expiration, and disciplinary actions appearing in the division interpreter database.

(s) “MI-BEI certification” means an interpreter certificate granted under the MI-BEI interpreter testing system.

(t) “Michigan BEI” or “MI-BEI” means the Michigan board for evaluation of interpreters test, which this state leases from the state of Texas to evaluate interpreters in this state.

(u) “NAD” means national association of the deaf.

(v) “National certification” means 1 of the following certificates recognized by the registry of interpreters for the deaf (RID) that assesses interpreter skills:

(i) RID CDI means certified deaf interpreter.

(ii) RID CI means certificate of interpretation.

(iii) RID CLIP-R means conditional legal interpreting permit-relay.

(iv) RID CSC means comprehensive skills certificate.

(v) RID CT means certificate of transliteration.

(vi) RID Ed: K-12 means educational certificate: k-12.

(vii) RID IC means interpretation certificate.

(viii) RID MCSC means master comprehensive skills certificate.

(ix) NAD III or IV or V means national association of the deaf certificate under RID.

(x) RID NIC means national interpreter certification (e.g., NIC, NIC Advanced, and NIC Master).

(xi) RID OTC means oral transliteration certificate.

(xii) RID RSC means reverse skills certificate.

(xiii) RID SC:L means specialist certificate: legal.

(xiv) RID TC means transliteration certificate.

(w) “Proceeding” means any meeting in which a D/DB/HH person participates that requires a qualified interpreter.

(x) “Proceedings interpreter” means a person who interprets in a court room all of the proceedings of the court, including all witness testimony.

(y) “Quality assurance certification” or “QA” means an interpreter certificate granted under the division’s quality assurance certification interpreter testing system.

(z) “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 and listed on the Michigan online interpreter system, available on the division website, and who holds all standard level, educational certification, and endorsement(s) required for the interpreting assignment in which he or she is engaging.

(aa) “Readily communicate” means that effective communication is achieved.

(bb) “Reasonable notice” means the minimum advanced notice required under the circumstances for the appointing authority to secure an interpreter.

(cc) “Respondent” means a person against whom a grievance has been filed alleging that the person has violated the act or a rule promulgated under the act.

(dd) “RID” means the national registry of interpreters for the deaf.

(ee) “SCAO” means state court administrative office.

(ff) “Secure call center” means a location with the physical and technological attributes to enable qualified interpreters to provide video remote interpreting in compliance with the act and any other applicable law.

(gg) “Sign language” means a visual language in which with signing, the brain processes linguistic information through the eyes. The shape, placement, and movement of the hands, as well as facial expressions and body movements, all play important parts in conveying information. American Sign Language (ASL) is a language with its own unique rules of grammar and syntax.

(hh) “Student intern” means a person who is formally enrolled in a course of study at a college, university, or trade school leading to a degree or certificate from an accredited institution in the field of interpreting.

(ii) “Superuser” means a system administrator, technician, or other authorized person who possesses the knowledge to connect, fix, or correct technical issues that arise during the use of VRI.

(jj) “Table interpreter” means an interpreter who sits at counsel’s table as a member of the litigation team, interprets privileged communications between counsel and client, and monitors the proceeding’s interpreters for accuracy.

(kk) “Team interpreting” means the utilization of 2 or more interpreters or deaf interpreter who rotate to provide simultaneous or consecutive interpretation. Team interpreters alternate interpreting duties to reduce mental and physical fatigue, reduce the potential for errors in the interpretation by monitoring and making adjustments as necessary to ensure accuracy, and assist with note-taking and monitoring the environmental logistics of the interpreted setting.

(ll) “Testing cycle” means the period of time between the time a certification is earned and retesting is required.

(mm) “Under-qualified interpreter” means a “qualified interpreter” who is certified through the national registry of interpreters for the deaf or certified through this state by the division and listed on the Michigan online interpreter system, but who does not hold 1 or more standard level, educational certification, or endorsement(s) required to interpret for a proceeding in which he or she is engaging.

(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.

(oo) “Video relay service” or “VRS” means a form of telecommunications relay service (TRS) that enables persons with hearing or speech disabilities who use American sign language (ASL) to communicate with voice telephone users through video equipment. The video equipment links the VRS user with an interpreter so that the VRS user and interpreter can see and communicate with each other in sign language while the interpreter relays the conversation back and forth with a voice caller.

(pp) “Video remote interpreting” or “VRI” means the use of video conference technology to deliver the services of a qualified interpreter between 2 or more people at the same location. VRI generally consists of video cameras and monitors, microphones and speakers, and a high speed internet or other connection.

(qq) “Waiver” means to give up the right to have a qualified interpreter. A “Limited Waiver” means to agree to accept an under-qualified interpreter for a particular proceeding.

R 393.5004 Reasonable notice.

Rule 4. An appointing authority may require that a person requesting an accommodation provide reasonable advance notice. A lack of reasonable advance notice of the need for an interpreter may relieve the legal obligation to make timely and appropriate attempts to provide one; but an appointing authority’s refusal to provide a legally required accommodation based only upon a notice requirement greater than what is reasonable under the circumstances is a refusal to provide the accommodation. A determination of reasonableness may, among other factors, include the local availability of interpreters, the frequency with which the appointing authority receives such requests, whether the appointing authority regularly utilizes VRI or an interpreter agency, the nature of the proceedings for which the interpreter is requested, any specific types endorsement or other interpreter expertise needed, the potential for harm if there is delay in the proceeding, and the ability of the D/DB/HH person to have foreseen the need. Notice is always reasonable when provided by a D/DB/HH as soon as a medical, legal, or emergency need is identified.

R 393.5005 Verification of interpreter qualifications.

Rule 5. The division shall assist an appointing authority or a member of the public to ensure that an interpreter is properly qualified by 1 or more of the following methods:

(a) Verifying through oral or written request that a credential provided by the division is current and valid.

(b) Accepting and referring requests for qualified interpreters channeled through the division under MCL 393.508 (1).

(c) Verifying the credential of qualified interpreters through an online listing provided by the division under MCL 393.508 (2).

(d) Providing consultation on required certification and standard levels.

PART 2. MINIMUM CREDENTIAL REQUIREMENTS AND LEVELS

R 393.5021 Acceptable certifications.

Rule 21. (1) All of the following certifications are recognized in this state:

(a) The following certification evaluated by this state:

(i) Michigan Quality Assurance (QA) I, II, III, until phase-out date being 90 days after the effective date of these rules.

(ii) Michigan BEI I.

(iii) Michigan BEI II.

(iv) Michigan BEI III.

(v) Deaf Interpreter (DI).

(b) EIPA as provided in R 393.5026.

(c) A certification from another state having a reciprocal agreement with this state.

(d) National certifications recognized by the RID.

(e) Equivalent certification recognized by the RID or the division.

(2) An EIPA shall only be accepted for use in elementary and secondary educational settings and shall not be recognized as acceptable certification outside of the stated school settings.

R 393.5022 Minimum standard levels.

Rule 22. (1) Standard levels shall include level 1, level 2, level 3, and an educational level. Standard levels are based upon the sign language interpreter's credentials, and are intended to illustrate a given level of expected proficiency. Each level is the minimum level established to protect the health, welfare, and safety of the D/DB/HH person and interpreters engaged in the specific environments identified under each standard level. Interpreters shall accept, refuse, or withdraw from proceedings, based upon their standard level, RID professional code of conduct tenets, experience, ability to readily communicate, mandated standards, and credentials.

(2) A person with a designated oral transliteration certificate may provide oral transliterating only. Sign language interpreter certification is required for a person to perform sign language interpreting. If oral transliterating is done under standard levels 2 and 3, then the interpreter shall also obtain medical and legal endorsements.

(3) The following certifications are not recognized by the division for the circumstances described:

(a) Beginning 90 days from the effective date of these rules, holders of certificates listed under standard level 1 and standard level 2 shall not provide legal interpreting.

(b) An interpreter holding a QA I certification shall not work in an educational environment beyond 90 days after the effective date of these rules.

(c) Endorsements are required to interpret in medical situations in legal situations, and for a proceeding involving a deafblind person. Endorsement requirements shall be required 2 years from the effective date of these rules.

(d) Adherence to standard levels will begin 90 days after the effective date of these rules.

R 393.5023 Standard Level 1; non-complex, low-risk environments.

Rule 23. (1) Interpreters at standard level 1 shall hold 1 of the following credentials:

- (a) MI-BEI I.
- (b) Michigan QA 1, until phased out as provided in R 393.5021 (l)(a)(i).
- (c) DI.
- (d) NAD 3.
- (e) RID IC (interpretation certificate).
- (f) RID TC (transliteration certificate).

(2) Interpreters assigned to standard level 1 may work in the following environments; effective communication is required to be achieved:

- (a) Workshops, meetings, and training or general presentations, except for topics related to health, mental health, law, employment, finance, and government.
- (b) VRS.
- (c) Post-secondary education or GED training.
- (d) Vocational training - post-high school and assessments.

R 393.5024 Standard level 2; moderately complex environments; medium to high-risk environments; health care; government; employment; finance.

Rule 24. (1) Interpreters at standard level 2 may work in moderately complex environments and hold 1 of the following credentials:

- (a) Michigan QA II, until phased out as provided in R 393.5021 (l)(a)(i).
- (b) Michigan QA III, until phased out as provided in R 393.5021 (l)(a)(i).
- (c) BEI II.
- (d) RID CI (certificate of interpretation).
- (e) RID CT (certificate of transliteration).
- (f) NAD 4.
- (g) RID NIC.
- (h) RID NIC advanced.
- (i) RID NIC master.
- (j) RID OTC.

(2) Interpreters assigned to standard level 2 may interpret for a proceeding. Effective communication is required to be achieved in health care, government, employment, finance, and including but not limited to, any of the following situations:

- (a) IEP (individualized education program) meeting involving D/DB/HH parent, staff member, or D/DB/HH professional.
- (b) Meetings with speakers, training, or workshops for post-secondary education topics, employment, finance, or government.
- (c) Interviews for jobs or job readiness and on-the-job training.
- (d) Employment grievances or disciplinary actions.

- (e) Employment related meetings, staff meetings, and sheltered employment.
- (f) Political events.
- (g) Financial, banking, and personal transactions.
- (h) Government meetings.
- (i) Presentations by dignitaries and public personalities.
- (j) Plays, concerts, and television news.
- (k) Tax assessment meetings and appeals.
- (l) Applications for state or federal services.
- (m) VRI services for all situations at this level.

(3) An interpreter shall hold a medical endorsement to interpret in a medical setting as prescribed in R 393.5028. Interpreters assigned to standard level 2 with a medical endorsement may interpret for a proceeding in the following environments and effective communication is required to be achieved:

- (a) All health care situations beyond basic first aid involving a health care practitioner, doctor, rehabilitation specialist, therapist, psychologist, or psychiatrist.
 - (b) All health care administered in an emergency room, trauma center, urgent care facility, hospital, nursing home, triage, hospice, rehabilitation center, dialysis center, inpatient facility, outpatient facility, or mental health facility.
 - (c) Health-related and mental health-related presentations by speakers, training, and workshops.
 - (d) Addiction treatment, counseling, and psychiatric evaluations.
- (4) Standard level 2 interpreters may interpret for a proceeding for standard level 1 environments. Effective communication is required to be achieved.

R 393.5025 Standard level 3; high risk, legal environments.

Rule 25. (1) Interpreters assigned to standard level 3 may work in high-risk environments and shall hold 1 of the following credentials and legal endorsement as prescribed in R 393.5028:

- (a) Michigan BEI III, plus 4 years of experience post initial certification.
- (b) DI, plus 4 years of experience post initial certification.
- (c) RID CSC.
- (d) RID MCSC.
- (e) RID Reverse Skills Certificate.
- (f) RID SC: L.
- (g) RID CDI, plus 4 years of experience post initial certification.
- (h) NAD 5.
- (i) RID CI and CT.
- (j) RID OTC.
- (k) RID NIC, plus 4 years of experience post initial certification.
- (l) RID NIC advanced, plus 4 years of experience post initial certification.
- (m) RID NIC master, plus 4 years of experience post initial certification.
- (n) RID CLIP-R.

(2) Interpreters assigned to standard level 3 with endorsements may interpret for a proceeding in the following environments; effective communication is required to be achieved:

- (a) Forensic psychiatric evaluations or evaluations of a legal nature.
- (b) Emergency broadcasts.
- (c) Legal workshops or legal training.
- (d) VRI legal subject matters.
- (e) An activity involving the police, prison, or prisoners.
- (f) An activity involving an attorney or the courts.
- (g) An activity involving children's protective services.
- (h) An activity involving probation or parole.

(3) An interpreter assigned to standard level 3 may interpret for a proceeding in standard level 1 and 2 environments. The interpreter shall achieve and obtain appropriate endorsements, and effective communication must be established and maintained.

(4) Criminal trials and police interrogations require the highest standard of interpreting and SC:L and/or CLIP-R certified interpreters shall be utilized when available. However, when a provider can document that no SC:L and/or CLIP-R is available and that all reasonable efforts to obtain one have been exhausted, an interpreter meeting the requirement for general legal endorsement as described in Rule 393.5028(5) may be used.

R 393.5026 Educational interpreter qualifications.

Rule 26. (1) An educational interpreter working in an elementary school environment (pre-kindergarten through 6th grade) shall, except as provided in subrule (8) of this rule, possess any of the following:

- (a) An EIPA performance score of 4.0, EIPA elementary endorsement. If the EIPA 4.0 is first obtained after August 31, 2016, a passing score on the EIPA written test or a similar written test adopted by the division in cooperation with MDE.
- (b) A division recognized certification that requires an equivalent child-based model testing instrument approved and certified by the division with advice from the department of education.
- (c) A deaf interpreter credential and certification by the division.

(2) An educational interpreter working in secondary school environment (grade 7 to age 26) shall possess at least 1 of the following:

- (a) An EIPA performance score of 4.0, EIPA elementary or secondary endorsement and, if the EIPA 4.0 is first obtained after August 31, 2018, a passing score on the EIPA written test or a similar written test adopted by the division in cooperation with MDE.
- (b) A Michigan BEI 2.
- (c) A minimum standard level 2 or 3.
- (d) A division recognized certification that requires an equivalent child-based model testing instrument approved and certified by the division with advice from the department of education.
- (e) A deaf interpreter credential and certification by the division.

(3) An interpreter meeting the certification requirements of subrule (1) or (2) of this rule may interpret for a proceeding for D/DB/HH children and youth only in the following situations, effective communication is required to be achieved:

- (a) Elementary or secondary classroom or secondary vocational training.
- (b) A 504 plan meeting or school based or transition setting in which the student is placed as determined appropriate by the IEP or 504 team.
- (c) School-related disciplinary situations including manifestation determinations that do not involve police.
- (d) Before- and after-school activities.
- (e) Class trips.
- (f) During an IEP (individualized education program meeting) for the student.
- (g) High school vocational training.
- (h) Another school-related activity.
- (i) Any auxiliary services located within the school or related services listed on the IEP.
- (j) As described in R 393.5051, an educational interpreter shall team with a standard level 2 or standard level 3 interpreter for medical, mental health, or legal situations including situations involving child protective services unless the educational interpreter also is qualified to interpret in the relevant situation.

(4) Upon absence of a regularly assigned educational interpreter, a long-term substitute interpreter shall be used in an elementary environment when an absence is expected to last more than 20 school days. A long term-substitute shall be qualified to be an educational interpreter as described in subrule (3) of these rules except:

(a) In an elementary environment a long term substitute interpreter may possess a Michigan BEI 2, or minimum standard level 2 or 3.

(b) In a secondary environment a long-term substitute interpreter may possess an EIPA 3.5.

(5) Upon absence of a regularly assigned educational interpreter, a short-term substitute interpreter shall be used if the absence is expected to last 20 school days or less. A short-term substitute shall be qualified to be a long-term substitute interpreter as described in subrule (4) of this rule except that in an elementary environment a short term interpreter may possess an EIPA 3.5.

(6) An educational interpreter with 1 of the following credentials who is employed by a school district on the effective date of these rules, may continue to perform work duties assigned on or before the effective date, but only until the conclusion of that school year, after which time he or she shall be qualified as described in subrule (3) of this rule to continue employment:

- (a) QA II or III.
- (b) NAD 3.
- (c) IC (Interpretation certificate).
- (d) TC (transliteration certificate).

(7) Compliance with subrules (1) to (5) of this rule shall be accomplished by September 1, 2016.

(8) Following the effective date of these rules and until August 31, 2016, in both elementary and secondary settings, interpreters must possess an EIPA certification indicating a performance score of not less than 3.5 or standard level 2, standard level 3, or a Michigan BEI I.

(9) An EIPA certified interpreter holding an EIPA certificate of 4.0 or above shall not be required to retest, unless the certification is expired or lapsed 90 days or more beyond the expiration date of the credential card, as required under R 393.5092.

R 393.5027 Exceptions; standard level designations.

Rule 27. (1) A troupe member of a theater company, performing artist, dignitary, or speaker that utilizes sign language as part of his or her repertoire is not required to be a qualified interpreter, as the person signing is there for artistic purposes and is not upon the request of a D/DB/HH person for reasonable accommodation.

(2) During a state or national emergency, a person facilitating communication between a D/DB/HH person and first responders is exempt from these rules until a qualified interpreter may be found.

(3) Following the implementation of 4.0 as the educational standard, the director shall grant an exception to the standard at the request of the school district when all the following factors exist:

(a) An educational program has exhausted all reasonable efforts to locate an interpreter possessing the required standard.

(b) The educational program has informed the division in writing describing its attempts and inability to locate a properly qualified interpreter and the division has failed for a period of 14 days to provide the program with an appropriate and employable candidate.

(c) The rule from which the exception is granted would otherwise result in a D/DB/HH child being without communication access for his or her education.

(d) Other educational options such as enrollment in a Michigan School for the Deaf, participation in a regional deaf education program, or enrollment in a remote educational program have been discussed, evaluated, and considered with the parent or parents of the D/DB/HH child by the IEP team.

(e) The requirements of subdivisions (a) to (d) of this subrule shall be reviewed annually by the division and if granted, an exception is only effective through the end of the applicable school year.

(4) An interpreter granted an exception under subrule (3) of this rule shall provide both of the following:

(a) Proof of having received an EIPA score of 3.5 or higher within the past 24 months.

(b) Documentation establishing acquisition of 12 additional hours of educational interpreting training within the last 12 months, and annual maintenance of CEUs for educational interpreting.

R 393.5028 Special endorsements; deafblind; medical and mental health; legal.

Rule 28. (1) Beginning 2 years following the effective date of these rules, an endorsement shall be required to interpret for a proceeding in any of the following environments:

- (a) Deafblind.
- (b) Medical or mental health.
- (c) Legal.

(2) A qualified interpreter seeking deafblind endorsement at any level shall complete not less than .8 CEUs per 4-year cycle in the subject area of deafblindness, deaf persons with low vision, and interpreting as it relates to the needs of this population for endorsement involving a deafblind or deaf low-vision persons.

(3) A qualified interpreter shall meet all of the following requirements for endorsement to interpret for a proceeding in medical or mental health settings:

- (a) Pass an English competency test or possess a minimum of bachelor's degree in any field from an accredited institution.
- (b) Qualify to interpret for a proceeding at standard level 2 or 3.
- (c) Complete not less than 2.0 medical or mental health CEUs per 4-year cycle.
- (d) Successfully complete a skills development course that focuses on sign language concepts and interpretation of medical vocabulary

(4) For an endorsement to interpret a proceeding in a legal setting, a qualified interpreter shall possess an SC:L or CLIP-R and complete not less than 2.0 legal CEUs per 4-year cycle.

(5) An interpreter who does not possess either a SC:L or CLIP-R certificate shall complete all of the following requirements to obtain an endorsement for interpreting in a legal proceeding:

- (a) Pass an English competency test administered by the division, SCAO, or another approved agency or possess a minimum of a bachelor's degree in any field from an accredited institution.
- (b) Obtain certification for 1 of the certificates listed under level 3 standards.
- (c) Successfully complete court orientation training offered by the division.
- (d) Complete not less than 2.0 legal interpreting CEUs per 4-year cycle.
- (e) Successfully complete a skills development course that focuses on sign language concepts and interpretation of legal vocabulary.

(f) Meet 1 of the following educational and mentoring selections:

(i) A bachelor's degree from an accredited institution in any field, or an associate's degree in interpreting from an accredited institution, and all the following additional education and experience:

- (a) Documentation of not less than 50 hours of legal interpreting or mentoring experience.
- (b) Documentation of not less than 30 hours of formal legal interpreter training.
- (c) Documentation of not less than 4 years of post-certification interpreting experience.

(ii) An associate's degree in any field from an accredited institution and all the following additional education and experience:

- (a) Documentation of not less than 75 hours of legal interpreting or mentoring experience.
- (b) Documentation of not less than 50 hours of formal legal interpreter training.
- (c) Documentation of not less than 4 years of post-certification interpreting experience.

- (iii) High school diploma and all of the following additional education and experience:
 - (a) Documentation of not less than 100 hours of legal interpreting or mentoring experience.
 - (b) Documentation of not less than 70 hours of formal legal interpreter training.
 - (c) Documentation of not less than 4 years of post-certification interpreting experience.

R 393.5029 Establishing temporary use of other means of communication in medical emergencies.

Rule 29. (1) In emergency situations, when the health and/or safety of a D/DB/HH person or person represented by a D/DB/HH person is in immediate danger and 1 or more of the provisions of these rules cannot be immediately complied with, an appointing authority may temporarily establish other means of communication, provided all of the following conditions are satisfied:

- (a) Attempts to locate a qualified interpreter comply with the rules and effective communication has begun, continues unabated, and all provisions are complied with as soon as possible.
- (b) An alternative and more effective means of communication is not available, and any such means that becomes available is immediately utilized.
- (c) The D/DB/HH person is informed of the temporary inability to provide compliant interpreting services, the status of efforts to obtain compliant interpreting services, and when compliant interpreting services are anticipated to become available.
- (d) The D/DB/HH person is made aware of all communication options presently available and is provided the opportunity to determine how to proceed. Such means of communication may include, but are not limited to, a person who signs, written notes, sign language pictographs, or other means. VRI that does not comply with R 393.5055 may also be temporarily used pursuant to this rule, but only to include a properly qualified interpreter.
- (e) All efforts to obtain compliant interpreting services and all temporary options discussed with the D/DB/HH person are documented and available for review.
- (f) A D/DB/HH person's determination of which available option comes closest to providing effective communication is determinative, and it shall be the means of communication temporarily utilized until effective communication can be properly established.
- (g) After a qualified interpreter arrives and effective communication is established, the appointing authority ensures that the D/DB/HH person has an understanding of the current situation before proceeding.

(2) Communication provided in subrule (1) of this rule may include, but is not limited to, a person who signs, VRI, written notes, sign language pictographs, or other means. The ability permitted by this rule for an appointing authority to temporarily establish other means of communication does not relieve it of any obligation to provide qualified interpreters in a timely manner as required by these rules. Nor does it 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 rely on this rule.

PART 3. PROCEDURES FOR APPLICATION, CERTIFICATION, AND LISTING

R 393.5031 Application for certification by division.

Rule 31. (1) The division shall certify and list an in-state or out-of-state applicant who submits 1 of the following to the division, as applicable:

(a) An application for recognition as a state-certified interpreter and all of the following:

(i) Acceptable passing scores on the state administered interpreter test or any other test accepted by this state or any other state that has a reciprocal agreement with the division for an appropriate level test.

(ii) Payment of the fee prescribed in MCL 393.508e.

(iii) Four years after the effective date of these rules, possession of an associate's or higher degree from an accredited institution.

(b) An application for recognition as a nationally certified interpreter and both of the following:

(i) A copy of the interpreter's RID membership card which shows the type of certification and a current expiration date.

(ii) Payment of the fee prescribed in MCL 393.508e.

(c) A holder of a current QA I, QA II, and QA III, an application, a copy of the interpreter's currently held professional credential, and payment of the fee prescribed in MCL 393.508e may be submitted for renewal until the QA I, QA II, and QA III are phased out.

(d) An application for state recognized EIPA certification and all of the following:

(i) Acceptable passing scores on the EIPA examination.

(ii) Modality utilized while taking the test.

(iii) Verification that the interpreter is certified at the elementary or secondary level.

(iv) Payment of the fee prescribed in MCL 393.508e.

(2) An interpreter possessing state or national certification before the effective date of these rules is exempt from degree requirements of subrule (1)(a)(iii) of this rule unless the certification has lapsed for more than 30 calendar days.

(3) Applications shall be submitted on original forms provided by the division, completed and signed by the applicant, and shall include all of the following:

(a) A copy of a valid state photo-identification.

(b) Evidence of attainment of 18 years of age at time of application.

(c) A statement signed by the applicant agreeing to comply with rules and regulations for state certification as an interpreter.

(d) A statement signed by the applicant verifying the truthfulness of information provided, and affirming that the applicant will comply with the NAD-RID code of professional conduct as provided in R 393.5052, will comply with the EIPA Guidelines of Professional Conduct for Educational Interpreters, Version August 1, 2007, and will conduct him or herself as required under these rules

(e) The application fee required under MCL 393.508e.

(f) Contact information for the applicant.

(4) The division may require additional documentation from the applicant if the division questions the accuracy or authenticity of submitted documentation, because of discrepancies or incomplete information, or because there is a need for clarification.

R 393.5032 Reciprocity.

Rule 32. An applicant for certification by reciprocity shall do all of the following:

(a) Supply all documentation as applicable and required under R 393.5031.

(b) Pay all associated fees.

(c) Hold a current, valid license or certificate in good standing to practice interpreting in a state with which this state has a reciprocal agreement.

(d) Not have a report of disciplinary action pending in another state, nor a certificate, registration, or license currently under disciplinary action.

(e) Agree to comply with all rules under the act.

R 393.5033 Good moral character.

Rule 33. (1) The division shall not issue certification, renew certification, nor test for certification, if the applicant lacks good moral character.

(2) The conviction for any of the following felonies by an applicant in a court of competent jurisdiction in any state, shall be evidence of a lack of good moral character:

(a) Homicide.

(b) Murder.

(c) Manslaughter.

(d) Criminal sexual conduct in any degree.

(e) Felonious assault or battery.

(f) Armed robbery.

(g) Extortion.

(h) Larceny.

(i) Embezzlement.

(j) Elder exploitation.

(3) This rule does not apply to an applicant with an expunged record or pardon.

(4) The division shall provide the applicant with written notice regarding the findings in subrule (1) of this rule as evidencing a lack of good moral character.

(5) An appeal may be granted only in either or both of the following circumstances:

(a) Inaccurate information was used in determining denial.

(b) A felony was considered that was committed as a minor.

PART 4. PROCEDURES FOR TESTING

R 393.5041 Testing; division issued certificate.

Rule 41. (1) The division shall schedule an applicant for testing who submits all the following:

(a) A fully completed application on forms provided by the division to take an appropriate level test.

(b) Evidence of graduation from high school or a GED.

(c) Four years after the effective date of these rules, a copy of an associate's or higher degree from an accredited institution, or proof of having maintained current state or national certification before the effective date of these rules.

(d) Valid state photo identification.

(e) Verification of attainment of 18 years of age at the time of the application for testing.

(f) Fees required for examination as required under MCL 393.508e.

(2) Upon achievement of acceptable passing scores on an interpreter test administered by this state or another state with which the division has a reciprocal agreement, the applicant may submit an application to the division for credentialing and listing as a qualified interpreter with an application as required in R 393.5031.

R 393.5042 Retesting; recertification; other tests required.

Rule 42. (1) A person tested under the state testing system for certification shall participate in a 4-year testing cycle and retest at the next higher level of certification until passing the MI BEI II or its equivalent. After passing the MI BEI II or its equivalent, the person is not required to retest every 4 years as long as the certification does not lapse.

(2) A person who is required to retest will retain his or her current level of certification.

(3) A person holding current national certification or the state-recognized EIPA certification of 4.0 shall not be required to retest to renew his or her certification.

R 393.5045 Accommodation; alternative pathway deaf interpreter certification.

Rule 45. The division shall create as a reasonable accommodation in the absence of a standardized testing tool an alternative pathway toward state certification for deaf and hard of hearing persons to become qualified. The alternative pathway shall be structured to give weight to a person's experience, training, non-institutional training, and innate skills, and shall be flexible so as to enable the deaf or hard of hearing person to demonstrate requisite knowledge and skills.

PART 5. MINIMUM STANDARDS OF PRACTICE

R 393.5051 Practice within standard level.

Rule 51. (1) A qualified interpreter shall interpret for a proceeding within his or her standard level, unless otherwise provided in these rules and the act.

(2) Before starting a proceeding, an interpreter shall show his or her current Michigan qualified interpreter credential card to the appointing authority and D/DB/HH person(s). If the credential

card does not include a photograph, the interpreter must present it along with valid government issued photo identification.

(3) An interpreter working within a school shall provide the school with a copy of his or her current credential card at least annually and shall ensure a copy of the credential card is maintained on file at the school and available for public review upon request.

(4) If there is a conflict between these rules and a local, state, or federal law, the interpreter shall comply with the law. All interpreters in this state must comply with all federal regulations established by the United States Department of Justice under title II and III of the Americans with Disabilities Act of 1990 or Americans with Disabilities Amendments Act of 2008. These rules are intended to supplement state and federal laws and shall be read to be consistent with state and federal law if more than 1 interpretation is possible.

(5) A qualified interpreter may interpret for a proceeding for a co-worker or peer during organizational meetings, workshops, seminars, union discussions, or when not a participant in the meeting, but shall not interpret for a co-worker or peer during a disciplinary meeting, conflict resolution, personal meeting, or employment dispute. A neutral qualified interpreter shall be used, upon request of the D/DB/HH person.

(6) A qualified interpreter shall not interpret for opposing parties and/or counsel in a legal proceeding.

(7) When the defendant in a criminal trial is a D/DB/HH person, separate proceedings interpreter(s) and table interpreter(s) shall be required. A table interpreter facilitating communication between a D/DB/HH person and his or her counsel shall not interpret for the court. Similarly a proceedings interpreter shall not work without a table interpreter being present in a criminal case. The roles of the interpreter at the table and the proceedings interpreter are neither adversarial nor compatible. The interpreter at the table is a member of the council team and an agent of the attorney. The proceedings interpreter is an officer of the court. In such instances, both of the following apply:

(a) The proceedings interpreter shall interpret the courtroom proceedings.

(b) The table interpreter shall interpret privileged and other communications between a D/DB/HH person and his or her attorney while monitoring the accuracy and effectiveness of the proceedings interpreter's interpretations on behalf of the defense.

(8) A qualified interpreter shall not accept assignments requiring him or her to be the sole interpreter in situations that require a team. A team shall be required if any of the following factors exist:

(a) A criminal case where the defendant is a D/DB/HH person as described in subrule (7) of this rule.

(b) D/DB/HH participants who are represented by opposing counsels or otherwise have incompatible interests or privacy concerns.

(c) A D/DB/HH youth of 18 years or younger is a witness, victim, or defendant.

(d) Police interrogations.

(e) The D/DB/HH participant has requested a deaf interpreter.

(9) The decision to utilize team interpreting involves ethical decision making and consideration of a variety of variables. These variables can impact effective communication as well as result in repetitive strain injury to the interpreter. An interpreter shall not be compelled to interpret alone if the request for a team is denied. The appointing authority is encouraged to consult with the division if doubt exists regarding the need for a team. An interpreter may request of the appointing authority a team if 1 or more of the following variables exist:

- (a) Multiple D/DB/HH participants and/or multiple hearing participants are present.
- (b) The subject matter requires a high degree of specialized vocabulary.
- (c) There is a high degree of interactivity among the participants requiring the interpreter to utilize both expressive and receptive skills.
- (d) A rapid pace of communication that cannot be easily modified is present.
- (e) Participants exhibit limited language proficiency.
- (f) The D/DB/HH participants use different modes of communication.
- (g) There are logistical considerations.
- (h) A proceeding exceeds 2 hours of continuous interpreting with no or only limited breaks.

(10) Medical, mental health, police, or legal situations, including situations involving child protective services that occur in school, shall include an educational interpreter holding a current EIPA credential who will team with an interpreter holding the appropriate medical or legal endorsement and is credentialed at a standard level 2 or 3.

(11) 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.

(12) A contract or regular employee, regardless of job title, whose essential job function is to interpret or to facilitate communication between a D/DB/HH person and a non-signing person through sign language or oral transliteration, must hold appropriate credentials and endorsements making him or her a qualified interpreter, as prescribed in the act.

R 393.5052 Adoption by reference; code of professional conduct; VRI auxiliary aids and services; privacy rules.

Rule 52. (1) NAD-RID “Code of Professional Conduct,” effective July 1, 2005, is adopted by reference. Copies may be obtained at no charge from National RID, 333 Commerce Street, Alexandria, VA 22314, 703/838-0030 (V), 703/838-0459 (TTY), or 703/838-0454 (Fax), www.rid.org. Copies are also available for review and distribution from the Division on Deaf and Hard of Hearing, 201 N. Washington SQ, STE. 150, Lansing, MI 48913 or dodhh@michigan.gov.

(2) Regulations promulgated under United States Department of Health & Human Services “The Health Insurance Portability and Accountability Act” (Public Law 104-191, including as applicable 45 CFR Parts 160, 162, and 164 (HIPAA) as amended through March 26, 2013, are adopted by reference and all privacy provisions apply to an interpreter working in a medical environment. Copies of the simplification version are also available for review and distribution

from the Division on Deaf and Hard of Hearing, 201 N. Washington SQ, STE. 150, Lansing, MI 48913 or dodhh@michigan.gov.

R 393.5053 Educational standards.

Rule 53. An interpreter possessing an EIPA certification shall not interpret for a proceeding for an adult D/DB/HH person in any setting. An EIPA certified interpreter working within an educational setting shall not interpret for a D/DB/HH colleague in any type of activity that occurs inside or outside of an educational situation described in R 393.5026.

R 393.5054 Supervision of student interpreter practicum experience.

Rule 54. (1) A qualified interpreter may supervise student interns in an interpreter education curriculum that is under the jurisdiction of a college or training program recognized by the United States Secretary of Education as being regionally or nationally accredited.

(2) A qualified interpreter shall at all times accompany and supervise student interns who are interpreting in a practical setting to gain experience and skills related to interpreting.

(3) A qualified interpreter shall obtain the consent of the D/DB/HH person and appointing authority before allowing the student to participate and before introducing the student to the D/DB/HH person. In the case of a minor, permission must be obtained from the minor's parents or legal guardian.

(4) A qualified interpreter supervising a student intern shall clearly identify the student as being an intern.

(5) A supervising qualified interpreter shall not at any time allow a student intern to be used as a substitute for a required qualified team interpreter or to work alone.

(6) Only qualified interpreters, as provided in the act, with a division recognized EIPA certification, national certification, or standards level 2 or above, may supervise student interns, and only for the proceedings for which the supervising interpreter is qualified.

(7) A qualified interpreter under disciplinary review or action shall not supervise student interpreters.

(8) A qualified interpreter shall not supervise a student accepting compensation for interpreting; however, a student stipend or formalized student apprenticeship is acceptable.

R 393.5055 VRI standards; usage, limitations, educational, legal, medical, mental health standards.

Rule 55. (1) A D/DB/HH person who in good faith asserts that VRI does not provide him or her with effective communication shall not be compelled or coerced to utilize VRI in place of an on-site interpreter. Good faith includes, but is not limited to, the assertion by a D/DB/HH person that similar equipment was ineffective in a previous experience, or that VRI technology does not result in effective communication because of his or her individual needs or abilities.

(2) A person using video remote interpreting to provide sign language interpreting services or translation services to D/HH person(s) for a proceeding in this state must be a qualified interpreter.

(3) A qualified interpreter may use VRI to interpret for a proceeding involving a D/HH person if effective communication is established and maintained at all times. VRI shall not be used to interpret for a minor without the express agreement of a parent or legal guardian indicating that doing so establishes effective communication, except that no parental consent or agreement to VRI is required in those medical situations where federal and/or state law or regulation provides that parental consent is not required for care.

(4) A person providing sign language interpreting services or translation services through video remote interpreting for a proceeding in this state shall not knowingly provide or attempt to provide VRI services to a person who is or is identified as being legally blind.

(5) An interpreter who believes that VRI is not providing effective communication shall immediately inform the D/HH person, the appointing authority, and parties involved in the conversation. The interpreter shall interpret on a temporary basis in a medical emergency pursuant to R 393.5029

(6) Notification by a D/HH person indicating that effective communication is not being achieved through the use of VRI shall cause an immediate halt of the proceedings. Proceedings shall not be resumed using VRI unless effective communication is achieved. VRI may be used on a temporary basis in a medical emergency pursuant to R 393.5029.

(7) A person providing sign language interpreting services or translation services to D/HH person(s) through video remote interpreting for a proceeding in this state shall provide evidence of training in videoconferencing protocols, training in the proper use of equipment, technical set-up, lighting, connectivity, and camera adjustments on a supplemental form provided by the division.

(8) To constitute effective communication and therefore permit the participation of qualified interpreters, VRI shall at a minimum include all of the following:

(a) Real-time, full-motion video and audio over a dedicated high-speed, T-1 or wider bandwidth video connection.

(b) High-quality video images without lags, choppy, blurry, or grainy images, or irregular pauses in communication.

(c) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating person's face, arms, hands, and fingers, regardless of his or her body position.

(d) A clear, audible transmission of voices.

(e) Adequate training to users of the technology and other involved persons so that they may quickly and efficiently set up and operate the VRI.

(9) To ensure privacy, a video remote interpreter shall only participate in VRI conducted from a dedicated and secure call center. A secure call center must be all of the following:

- (a) Situated in a private location where a person may reasonably expect to be free from casual or hostile intrusion, surveillance, and eavesdropping.
 - (b) Include 1 or more dedicated and separate rooms where video remote interpreters, supervisors, and others necessary to conduct the interpreting process and/or maintain the necessary video connection are permitted to be present while any interpreting is being provided. The suite or room shall have a solid core exterior door or doors that are locked during interpreting. Only persons performing or supporting the task of interpreting or supervising interpreters shall have keys or access to the room or suite.
 - (c) Video remote interpreting shall only be done from dedicated computers and equipment used only for the purpose of video remote interpreting.
 - (d) A video remote interpreter or call center providing medical interpreting must enter into HIPAA compliant business associate agreements with appointing authorities as required by omnibus regulations. Copies of the agreements shall be submitted to DODHH with an application to provide video remote interpreting and/or provided upon request of the DODHH.
- (10) To ensure the quality and continuity of interpreting services required to constitute effective communications when VRI is used, an appointing authority shall ensure, and a video remote interpreter shall not participate unless all of the following are satisfied:
- (a) All VRI is conducted from a dedicated and secure call center.
 - (b) A qualified interpreter shall not transfer a medical call to a different call center when interpreting for a single proceeding with a D/HH patient.
 - (c) To the greatest extent possible, qualified interpreters and appointing authorities shall provide continuity of interpreters by minimizing the number of call centers and/or interpreters who work with a single D/HH patient during multiple proceedings related to the course of an inpatient stay or the treatment of a single ailment.
 - (d) A qualified interpreter and appointing authority shall require a superuser to be on each site at all times before proceeding with VRI .
- (11) An interpreter in an educational setting using VRI shall comply with all educational interpreter standards and with both of the following:
- (a) A qualified interpreter shall not interpret for a proceeding using VRI for any D/HH child from birth through grade 5. VRI may be used for children 6th grade or above.
 - (b) The parents or legal guardians, IEP, or 504 team and the D/HH student shall all participate in the final determination of whether effective communication is achieved for a student using VRI services during parent meetings and for any child in a secondary educational setting.
- (12) An interpreter in a medical or legal setting using VRI shall comply with all medical and legal interpreter standards as required under R 393.5028.
- (13) Where an interpreter is requested as an accommodation more than 24 hours in advance of a medical appointment, an appointing authority must advise a D/DB/HH person of a desire to utilize VRI prior to the time of the appointment and must provide the D/DB/HH person with an opportunity to offer any good faith basis for believing VRI does not provide him or her with effective communication

- (a) An existing patient who is seen on a regular basis should be informed of the intent to begin utilizing VRI for future appointments during an appointment where an interpreter is present.
 - (b) A patient, existing or referred, known to be a D/HH person who has previously been provided an interpreter, should be informed of the desire to begin utilizing VRI at the time a new appointment is made.
 - (c) When VRI is the most frequent method of interpretation provided employed by a doctor, medical office, or hospital, a person requesting an interpreter shall be informed that VRI is likely to be utilized at the time the accommodation request is received.
 - (d) When VRI is utilized by a doctor, medical office, or hospital on a regular though less frequent basis, a person requesting an interpreter shall be informed that VRI may potentially be utilized at the time the accommodation request is received.
 - (e) In all other instances a person requesting an interpreter as an accommodation shall be informed of the intent to utilize VRI as soon as the desire not to provide an interpreter on site becomes known.
- (14) Unless there is informed consent of the D/HH person, VRI shall not be used in any of the following medical situations:
- (a) Initial meetings with a medical specialist.
 - (b) Highly sensitive communications, for example, diagnosis of a serious illness.
 - (c) Eye exams.
 - (d) Patient transport.
 - (e) With a D/HH person with a cognitive limitation.
 - (f) With a D/HH person with a secondary disability or condition that makes it difficult to use VRI or to view the VRI screen, for example, low vision.
 - (g) With a D/HH person with an injury or illness that impedes his or her ability to view the screen.
 - (h) With a D/HH person who indicates by sign or facial expression that communication is not being achieved.
 - (i) When consistent and continuous communication cannot be achieved due to equipment failure or poor connectivity.
 - (j) During surgery, under the influence of consciousness altering drugs or medication, childbirth, or end-of-life event.
- (15) Unless the D/HH person states in writing or on record at a court or administrative tribunal that effective communication is being achieved, it will be assumed that effective communication cannot be achieved through the use of VRI services in any of the following legal and mental health circumstances and it shall not be used:
- (a) Trials.
 - (b) Contested hearings.
 - (c) Guilty pleas.
 - (d) Mental health treatment in group settings, commitment evaluations and, hearing proceedings.
- A D/HH person who is unable to differentiate reality from delusions, whose competency is under

question, and/or who is under the age of legal consent is not considered competent to consent to the use of VRI

(e) Polygraph examinations.

(f) Witness testimony.

(g) Depositions.

(h) Preliminary hearings.

(i) Evidentiary hearings.

(j) Ex parte domestic proceedings.

(k) Cases with multiple deaf participants.

(l) Cases with pro se deaf participants.

(16) When utilizing VRI services, the D/HH person shall have access to the equipment at all times when communication is taking place and its usage shall not be restricted. The D/HH person shall retain the ability to be reconnected to VRI whenever the need for communication arises.

(17) When utilizing VRI, if there are 3 failed connectivity attempts, shutdowns, and/or unexpected equipment disconnects in a proceeding, a video remote interpreter in a medical setting shall report to the appointing authority that he or she cannot provide effective communication due to equipment failure. The video remote interpreter shall withdraw from the assignment, and an onsite interpreter shall be requested for the remainder of the proceeding and until the equipment failure is resolved.

(18) A D/HH person may file a complaint for failure to provide reasonable and effective communication against an appointing authority that does not comply with United States Department of Justice VRI standards and continues to have connectivity issues. The D/HH person may also file a complaint against the video remote interpreter who does not comply with subrule (15) of this rule by withdrawing from the assignment.

(19) Qualified interpreters meeting all level 3 interpreter standards may interpret for a proceeding using VRI, except for situations under subrule (14) of this rule. Effective communication is required to be achieved.

R 393.5056 Notification; prohibited conduct.

Rule 56. (1) A qualified interpreter shall do all of the following:

(a) Notify the division of a felony conviction within 30 days of the conviction, regardless of the jurisdiction where it occurred.

(b) Notify the division within 30 days after occurrence of any judgment or settlement of malpractice claim or action.

(c) Comply with an appearance request by the division and cooperate with an investigation.

(d) Comply with the terms of a division order or the terms of a settlement agreement or consent order issued or executed as resolution of a contested case proceeding.

(2) A qualified interpreter shall not engage in any conduct that subverts or attempts to subvert a division investigation.

R 393.5058 Waivers.

Rule 58. (1) As provided in MCL 393.503(3), the right of a deaf, deafblind, or hard of hearing person to a qualified interpreter shall not be waived except by a request for waiver in writing by the deaf, deafblind, or hard of hearing person.

(2) A D/DB/HH person shall not be coerced, threatened, or intimidated into signing a waiver or partial waiver to utilize a nonqualified or underqualified person who signs and any such agreement is void. A waiver, limited waiver, or other decision to proceed with an underqualified interpreter does not obviate or mitigate any responsibility for a failure to provide a qualified interpreter when required to do so.

(3) As provided in MCL 393.507(1), court appointed interpreter, qualified interpreter, intermediary interpreter, or deaf interpreter shall be paid a fee by the court that the court 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. An appointing authority is not required to compensate an unqualified or underqualified interpreter.

(4) The division shall create recommended waiver and limited waiver forms and make them available on its website. It shall also post explanatory information both in writing and in sign language format.

PART 6. GRIEVANCE AND COMPLAINT PROCEDURES

R 393.5061 Filing grievances and complaints.

Rule 61. (1) A person may file a grievance with the division for any of the following types of complaints:

(a) Complaints against an appointing authority for using an unqualified or underqualified interpreter in violation of the act.

(b) Complaints against a person providing interpreting services without being qualified as required by the act.

(c) Grievance against a qualified interpreter for violation of the act or these rules.

(2) A person with first-hand knowledge may file a grievance with the division within 90 calendar days of an alleged violation of 1 or more of the following:

(a) The act.

(b) A rule promulgated under the act.

(c) An order issued under the act.

(3) All complaints shall be filed in writing. As an accommodation, a D/DB/HH person may file a video request so that it may be translated by the division into writing.

(4) A D/DB/HH person, appointing authority, or other person involved in an interpreting situation that includes a team interpreter may file a grievance with the division against an interpreter who violates these rules.

(5) A team interpreter who files a grievance is not in breach of confidentiality.

(6) Complaints related to denial of reasonable accommodations may be filed with the Michigan department of civil rights under the persons with disabilities civil rights act, 1976 PA 220, MCL 37.1101 to 37.1607, or with the United States Department of Justice for violations under the Americans with Disabilities Act of 1990 or Americans with Disabilities Amendments Act of 2008.

R 393.5062 Investigation; correspondence file; acknowledgment of grievance.

Rule 62. The division, upon receipt of a grievance, shall immediately begin its investigation of the allegations and shall open a correspondence file. The division shall make a written acknowledgment within 21 business days after receipt of the grievance to the parties involved in the grievance.

R 393.5063 Reply by respondent; investigation.

Rule 63. (1) The respondent shall reply to the grievance within 35 calendar days after the respondent's receipt of the grievance. The reply shall be verified by date stamped on United States mail or other means indicated as acceptable by the division.

(2) The division shall conduct the investigation by reviewing the grievance and the respondent's reply to determine whether a violation of the act or these rules occurred. The division may request additional information from either party.

(3) The division may consult with experts in the field.

(4) At any time after respondent's receipt of the grievance, if all parties and the division agree, the matter may be submitted to mediation or other alternative dispute resolution process which shall toll all time periods provided by these rules for not more than 60 days.

R 393.5064 Investigation; closing grievance; formal complaint.

Rule 64. (1) If the division's investigation does not disclose a violation of the act or a rule promulgated under the act, the division shall close the grievance. The reasons for closing the grievance shall be forwarded to the respondent and complainant.

(2) If the division investigation discloses evidence of a violation of the act or a rule promulgated under the act, the division shall prepare a formal complaint against the respondent.

PART 7. PROCEDURES FOR REVOCATION, SUSPENSION, LIMITATION OF CERTIFICATION, REINSTATEMENT

R 393.5070 Violations; grounds for disciplinary action.

Rule 70. (1) The division may deny, revoke, suspend, or place a limitation on a qualified interpreter certification for 1 or more of the following reasons:

(a) Discrimination, harassment, or retaliation toward a person for filing a complaint about dissatisfactory interpreting services.

(b) Fraud, deceit, cheating, or misrepresentation in applying for or renewing a certificate under the act.

(c) Violation of any provision of the act or rules promulgated under the act.

(d) Failure of a certified interpreter to submit his or her application or renewal and who continues to work without listing.

(e) Incompetent practice under the act or negligence in the practice of interpreting.

(f) Knowingly aiding or assisting another person to violate any provision of the act or rule promulgated under the act.

(g) Fraud, deceit, cheating, or misrepresentation in the practice of interpreting.

(h) Failure to report to the division any adverse final action taken against him or her by another licensing jurisdiction, peer review body, professional deaf or hard of hearing interpreting association, governmental commission, law enforcement commission, or any court for a deaf or hard of hearing interpreting liability claim reasonably related to acts or conduct similar to acts or conduct that would constitute grounds for action as provided in this rule.

(i) Failure to report to the division the surrender of certificate, license, registration, or authorization to practice interpreting in another state or jurisdiction or surrender of the certificate, license, registration, or authorization to practice interpreting while under disciplinary investigation by any of those authorities or bodies for acts or conduct reasonably similar to acts or conduct that would constitute grounds for action.

(j) Failure to decline or offer to withdraw from an interpreting or transliterating proceeding when effective communication is not substantially achieved or when notified by D/DB/HH or hearing person of inability to consistently understand.

(k) Failure to decline subsequent proceedings with a D/DB/HH person after being informed by the D/DB/HH person, appointing authority and/or an agency acting on behalf of an appointing authority of an inability to achieve effective communication during a previous encounter with that D/DB/HH person.

(1) Offenses evidencing lack of good moral character as provided in R 393.5033.

(2) Notwithstanding subdivisions (j) and (k) of subrule (1) of this rule, an interpreter shall not be disciplined for violation of these rules when all the following conditions have been met:

(a) The interpreter has been first informed by a medical professional or sworn law enforcement officer that the medical professional/officer has determined that an emergency exists.

(b) The medical professional/officer reasonably believes that the health of 1 or more persons is at immediate and time-sensitive risk.

(c) The medical professional/officer is actively seeking a qualified interpreter.

(d) The medical professional/officer indicates the interpreter being utilized is the closest to effective method of communication available.

(e) In addition to documenting subdivisions (a) to (d) of this subrule, in order to claim this protection the interpreter shall personally verify that the D/DB/HH person has been informed of any other reasonably available alternative option and that no such available alternative option is being requested by the D/DB/HH person.

(3) Nothing in this rule shall mitigate a medical professional, law enforcement officer, or appointing authority's responsibility for failure to meet a legal duty which contributed to the necessity to proceed with other than a qualified interpreter and/or less than effective communication.

R 393.5072 Formal complaint and notice; service; informal conference; methods of settlement; representation; summary suspension.

Rule 72. (1) After an investigation has been conducted and a formal complaint prepared, the division shall serve the formal complaint upon the respondent through certified mail with a return receipt requested and provide a copy to the complainant.

(2) A respondent upon whom service of a formal complaint has been made has 28 calendar days to reply.

(3) After the issuance of a formal complaint, the division may assemble together the complainant and the respondent for an informal conference or mediation. At the informal conference or mediation, the division shall attempt to resolve issues stated on the complaint and may assist the parties in reaching a formal settlement or stipulation.

(4) If a respondent fails to file an answer to the complaint with the division within 28 days after receipt of the formal complaint, a default shall be entered by the division. A default may result in a reprimand, suspension, revocation, or limitation of a certificate as provided for in the act.

(5) An informal conference may result in a settlement, consent order, waiver, default, or other method of settlement agreed upon by the parties and the division.

(6) If the informal conference does not result in a resolution of the formal complaint, the matter shall be referred to the Michigan administrative hearing system or its successor for an administrative hearing.

(7) An authorized employee or agent of the division may represent the department in a contested case.

(8) A respondent may be represented at a hearing by an authorized representative or legal counsel at the respondent's own expense.

(9) At any time after a formal complaint is filed involving public health, safety, or welfare requiring emergency action, the department may file a petition in circuit court for the county in which the subject of the formal complaint occurs, or the county in which a respondent resides or transacts business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings, including an order or decree restraining the respondent. The court may grant temporary relief or a restraining order as it deems just and proper.

(10) The division shall issue an order summarily suspending a certification based upon the holder of the certificate having been convicted of a felony.

R 393.5073 Certification; limitations; duration of suspension; standards and procedures for reinstatement after revocation or suspension.

Rule 73. (1) The division may impose sanctions, including limitations, suspension, or revocation of a certification. These sanctions on the certification shall continue until the expiration of the period in the order or until the certification is reinstated pursuant to this rule, whichever is later.

(2) A petition for reinstatement of a certification that has been suspended or revoked shall be made in accordance with this rule.

(3) A certification may be suspended for a period of 10 calendar days, 30 calendar days, 60 calendar days, 90 calendar days, 6 months, 1 year, 2 years, or completely revoked, depending on severity of the violation or the frequency of violations.

(4) If a certification has been suspended, it is presumed that the respondent meets the requirements of reinstatement unless any of the following occurs:

(a) Another complaint has been filed and is pending at the end of the minimum suspension period.

(b) A subsequent disciplinary order has been entered.

(c) A petition with supporting affidavit has been filed by a complainant alleging that the respondent has failed to fulfill a term of the suspension order.

(5) The certification shall not be reinstated until the division finds that the respondent meets the following requirements of reinstatement:

(a) The respondent files a petition for reinstatement not sooner than 60 calendar days before the end of the minimum suspension period. The petition shall be accompanied by supporting affidavits that the terms of the sanction have been met.

(b) Within 30 calendar days after the petition has been filed, a complainant may file a response to the petition. If the complainant opposes the reinstatement, an informal conference shall be scheduled. If the complainant fails to appear at the scheduled conference, the complainant shall be deemed in default. If a response is not filed, or if the complainant does not oppose reinstatement, the division shall review the petition with supporting affidavits and shall determine whether the requirements of the reinstatement have been met. The division shall notify the respondent if it finds that the requirements have not been met.

(6) A petition for reinstatement of a revoked certification shall be considered in accordance with subrule (4) of this rule. The division shall not accept the petition sooner than 2 years after the effective date of the revocation, except where the certification was revoked for a felony conviction.

(7) Before reinstating a certification, the division shall consider all of the following in assessing a respondent's ability to practice and the public interest:

(a) Whether the respondent has complied with the terms of the revocation.

(b) If the division's final order included corrective measures, remedial education, or training as a condition of reinstatement, the extent of the respondent's compliance with the conditions in the final order. In addition, the division may impose other requirements for reinstatement as deemed appropriate, including additional training, education, or supervision.

(c) If the final order of the division does not address corrective measures, remedial education, or training as a condition of reinstatement, the division, in determining a respondent's ability to practice safely and competently, may consider the need for additional training and education in determining if the petitioner has met the criteria established for reinstatement.

(8) After a conference has been completed, the division shall determine whether the respondent has satisfied conditions for reinstatement. The division may deny the petition or grant the petition subject to terms and conditions that it deems appropriate.

(9) A subsequent petition for reinstatement may not be filed with the division for at least 1 year after the effective date of the order denying reinstatement.

R 393.5074 Compliance with act, rule, or order.

Rule 74. This rule does not prevent a person against whom a grievance has been filed from showing compliance with the act, or a rule or an order promulgated or issued under the act.

R 393.5075 Hearings.

Rule 75. (1) Hearings shall be held pursuant to administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) Appeal decisions provided in R 393.5033(5) shall be made by the director of the division on deaf and hard of hearing and include a review of the documents submitted.

(3) The director shall within 10 business days of receiving a request for an appeal, review any additional documentation provided by the appellant and render a decision.

(4) Judicial review of a final decision or order shall be available as provided by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

R 393.5076 Appointing authorities; allegations of violations.

Rule 76. (1) If the division believes that an appointing authority has used an unqualified person for purposes requiring a qualified interpreter under the act, the division shall notify the appointing authority, in writing, of the allegation.

(2) The division may refer the information described in subrule (1) of this rule to the Michigan department of civil rights or a federal agency for civil enforcement of relevant disability law or laws.

(3) The division may refer subsequent substantiated instances of the same allegations to a local prosecutor for action pursuant to MCL 393.508b.

(4) The division shall educate appointing authorities about the provisions of the act and these rules.

R 393.5077 Public inquiries.

Rule 77. (1) Details regarding unsubstantiated grievances shall be immediately purged from the interpreter's file.

(2) Formal complaints, disciplinary actions, and the number of substantiated violations shall be available to the public. Information regarding violations shall be placed in the person's records with the division, indicating the nature of the violation and the conditions imposed. Substantiated violations will be listed as part of public record on the interpreter database.

(3) Complaints that result in an administrative hearing or disciplinary action, or both, are public information, and the files maintained according to retention and disposal schedules of the department.

PART 8. CONTINUING EDUCATION

R 393.5081 Professional development; continuing education.

Rule 81. (1) All state-certified qualified interpreters shall complete 8.0 CEUs during each 4-year cycle established at the time the first state credential is issued to the qualified interpreter. The CEUs shall consist of all the following:

- (a) A minimum of 5.0 CEUs in professional studies.
- (b) A minimum of 2.0 CEUs in ethics.
- (c) A minimum of 1.0 CEU in general studies or electives.

(2) One CEU equals 10 clock hours of professional development activity. After completion of the initial CEU hour, credit may be given in ¼-hour increments. Lunch hours, social programs or events, and breaks do not count toward CEUs.

(3) A RID sponsored CEU activity shall automatically be eligible for professional development credit in this state, provided the applicant provides proof that an event has been approved for CEUs by RID.

(4) CEUs used to satisfy the CEU requirements of another jurisdiction shall be applied to fulfill the state CEU requirements at the applicant's request if the CEUs meet additional requirements outlined in this rule, and if appropriate documentation is provided.

(5) CEUs offered for other professions may be accepted as general studies or electives.

(6) Proof of successful completion of coursework from an accredited university, college, or other education institution shall be granted CEUs as follows:

- (a) Semester system: 1 credit hour = 15 clock hours.
- (b) Quarter system: 1 credit hour = 10 clock hours.

(7) CEUs in excess of 8.0 shall not carry over from a 4-year cycle to the next.

(8) Qualified interpreters may earn either of 2 types of CEUs as follows:

(a) Professional studies consisting of units that deal specifically with topics of interpreting or skill development, deafness, deaf culture, or active involvement (presenting, teaching, and planning). At least 2.0 professional CEUs shall include topics related to ethics.

(b) General studies or electives units that deal with general topics of interest and passive involvement related to deafness or interpreting, or a deafness-related activity that is primarily listening.

(9) If there is a question regarding the CEU described in subrule (8) of this rule, the division director or assigned designee shall make a final determination.

R 393.5082 Division records; professional development; continuing education.

Rule 82. (1) The division shall maintain a database that includes a record of each state-certified interpreter's attained CEUs and each nationally certified interpreter with endorsements. The applicant shall ensure that his or her hours are properly documented.

(2) Qualified interpreters shall submit a division CEU reporting form with documents attached to verify his or her participation in activities earning CEUs at renewal time.

(3) Supporting documents will not be returned. Documentation shall include all of the following on a certificate of attendance or letter of participation, or on a professional development transcript:

- (a) Name of sponsoring organization.
- (b) Program date.
- (c) Title of program.
- (d) Start and stop time.
- (e) Signature of sponsor verifying that the participant was present and stayed for the length of the training.
- (f) Number of CEUs issued.

(4) A qualified interpreter who fails to maintain appropriate CEUs is not eligible for renewal or reapplication until he or she has satisfied all continuing education requirements.

R 393.5083 CEU requirements; medical; legal; deafblind; educational.

Rule 83. (1) An interpreter qualified to interpret for a proceeding in standards level 2 and 3 shall meet the following requirements when fulfilling continuing education requirements for each cycle, as applicable:

(a) Acquire a minimum of 2.0 CEUs on health care and mental health interpreting related subjects for every 4-year cycle in medical and mental health environments and maintain medical endorsement.

(b) Acquire a minimum of 2.0 CEUs related to legal interpreting and related subjects for every 4-year cycle in legal environments and maintain legal endorsement.

(2) Acquire a minimum of .8 CEUs in educational interpreting related subjects for every 4-year cycle in educational settings.

(3) In deafblind environments and to maintain deafblind endorsement, a qualified interpreter shall complete not less than .8 deafblind CEUs per 4 year cycle.

(4) Interpreters certified by RID shall submit to the division only the CEUs needed for endorsement purposes.

R 393.5084 CEU activities; automatic approval.

Rule 84. College credit or successfully audited college courses documented by a transcript that shows the name of the institution, number of hours, name of participant, date completed, and evidence of successful completion, shall receive automatic approval.

R 393.5085 Sponsored activities.

Rule 85. (1) At least 4 weeks in advance of the activity, a person, firm, association, corporation, or group, other than those addressed in R 393.5084, seeking pre-approval as a CEU sponsor shall submit a sponsorship application to the division for approval along with all of the following:

- (a) Completion of DODHH CEU event sponsorship request form available on the division website or through the division office.
 - (b) A detailed and timed training outline, a description of course materials, and the presenter's name and short biography including credentials.
 - (c) Copies of advertisements, flyers, or registration forms.
 - (d) Measurable objectives for the program.
 - (e) Agreement to display the division approval language and logo.
 - (f) Assurance that the sponsor has verification of the expertise of the trainer or workshop presenter in the topics presented.
 - (g) The number of contact hours for each program, the date, and the place of the workshop/event.
- (2) The sponsor shall verify attendance at each program and provide a signed certificate of attendance only to interpreters who successfully complete the activity or course.
- (3) Upon request, the sponsor shall allow division staff or a designee access to observe a sponsored event for compliance review without cost.
- (4) A sponsor shall provide a mechanism for evaluation of the program by the participants.
- (5) If a sponsor fails to comply with any of the requirements of this rule, then the division shall notify the sponsor that it will not accept attendance at, or participation in, any of that sponsor's CEU programs until the division receives assurance of compliance with this rule.
- (6) The division may decline to sponsor an activity that does not enhance professional development or that may present a conflict of interest for the division.

R 393.5086 Independent study.

Rule 86. All workshops, study groups, professional conferences, or other mentoring activities that are self-directed shall be submitted for preapproval by the interpreter to the division at least 4 weeks before the activity. An interpreter shall submit all of the following documentation, as appropriate:

- (a) An independent study form provided by the division with an application fee, as required in R 393.5094.
- (b) A timed, detailed agenda or advertisement.

(c) A certificate of attendance received after participation, or a letter of verification on official letterhead of the sponsor, stating the name of the participant, time attended or spent in participation, and the topic.

PART 9. PROCEDURES FOR RENEWAL

R 393.5091 Renewal; expiration; renewal of credentials.

Rule 91. (1) An interpreter desiring to interpret for a proceeding for D/DB/HH persons residing in this state shall maintain current certification and listing as a qualified interpreter in this state.

(2) The state-issued credential issued to RID certificate holders and EIPA certificate holders expires on June 30 of the year following the initial certification.

(3) An interpreter holding an EIPA or RID credential shall annually submit a renewal application on forms provided by the division, along with professional development documentation and appropriate fee, so that it is postmarked on or before June 30. Each nationally certified interpreter shall also submit a valid copy of his or her interpreter card issued by RID or receipt showing certification maintenance payment and certification level(s).

(4) An application submitted by the postmark date of June 30 is exempt from late fees; however, the postmark does not guarantee processing of the applications mailed less than 10 business days before June 30.

(5) An EIPA or RID certified interpreter who fails to renew his or her qualified interpreter certificate in this state by June 30 of the year in which his or her credential expires shall pay a late fee equal to $\frac{1}{2}$ the renewal fee as provided under R 393.5094, in addition to the regular renewal fee.

(6) An EIPA or RID certified interpreter who fails to submit his or her renewal within 45 calendar days following the date that the credential expired shall pay a reinstatement fee in addition to late fees.

R 393.5092 Renewal for state-certified qualified interpreters; retesting.

Rule 92. (1) The state-issued credential of every qualified interpreter holding state issued certification by examination shall meet the renewal requirements of R 393.5091 (1).

(2) The state-issued credential to BEI certificate holders shall expire annually on the date of the initial certification.

(3) The state issued credential to DI certificate holders shall expire annually on the date of the initial certification.

(4) An interpreter holding a state issued certification shall annually submit a renewal application on forms provided by the division, along with professional development documentation and appropriate fee, so that it is postmarked on or before its individualized date.

(5) A qualified interpreter who fails to renew his or her qualified interpreter certificate in this state by the due date in which his or her credential expires shall pay a late fee equal to $\frac{1}{2}$ the renewal fee as provided under R 393.5094, in addition to the regular renewal fee.

(6) A state-certified qualified interpreter who allows his or her credential to lapse shall be required to retest, unless the fully completed renewal is submitted within 90 calendar days following the date that the credential expired.

(7) An interpreter's 4-year testing cycle begins upon achieving a MI BEI. At the end of each 4-year testing cycle, a qualified interpreter with a MI BEI I certificate on the state-administered examination MI BEI shall continue to retest for a higher certification in addition to meeting all other renewal requirements. An extension will not be granted for failure to successfully complete testing before the end of the testing cycle. A reinstatement fee plus testing will be required.

(8) The holder of a MI BEI I shall submit his or her CEU requirements annually.

(9) Upon passage of the MI BEI II test or higher level, an interpreter qualified through the state-certification process shall not be required to test every 4 years. The interpreter may submit 2.0 CEUs requirements annually or 4.0 CEUs every other year. Renewal fees are due annually.

(10) The division may prorate the number of CEUs due from a person that is transitioning from a lower standard level certification to a higher level standard level certification. Prorated CEUs shall be rounded to the nearest whole number.

R 393.5093 Notification; change of address; renewal.

Rule 93. (1) A qualified interpreter shall notify the division of any change of address or contact information within 30 days of the occurrence of the change.

(2) Failure to receive a renewal notification from the division does not constitute an excuse for failure to submit a renewal application to the division with the appropriate documentation and fees by the due date.

R 393.5094 Fees.

Rule 94. The following fees shall be paid to the division, as appropriate:

(a) Renewal or application fees provided under MCL 393.508c.

(b) Testing fees provided under MCL 393.508e

(c) Fees for other services provided by the division to carry out the provisions of MCL 408.204 as follows:

(i) A \$45 renewal fee that includes the late fee prescribed in R 393.5091, if a person fails to renew on or before the expiration date prescribed by the division.

(ii) A \$10 duplicate credential fee, if the person applying for a duplicate credential signs a statement verifying that the original document has been lost, stolen, or destroyed.

(iii) A \$10 fee for providing written verification that a person is or is not certified with the division at the time of the request for verification.

(iv) A \$35 fee to provide specific detailed information in addition to and including the information described in paragraph (iii) of this subdivision.

(v) A \$10 fee for correcting division records and issuing a new credential when a person notifies the division of a change of name, address, or employer. If the change does not require the issuance of a new credential, no charge shall be made for correcting the division's records.

(vi) A \$20 fee for an assessment of English skills for interpreters who have not already passed an equivalent assessment, when required for medical and legal designations, or as an English proficiency proctoring fee.

(vii) A \$25 fee for organizational sponsorship of professional development units (CEUs).

(viii) A \$125 reinstatement fee as described in R 393.5091(6) and R 393.5092(7).

R 393.5095 Refunds; conditions; rescheduling examinations.

Rule 95. (1) The division shall issue refunds if it cancels an examination or service that was paid for and not received due to cancellation or error by the division, except for events that will be rescheduled.

(2) If approved by the division, a refund shall be issued if the testing candidate or his or her immediate family experiences death, serious illness, a call to active duty, or another situation beyond his or her control. The person shall notify the division of the circumstance as soon as possible before the event for which the fee was paid. Proof shall be provided not later than 30 days after the occurrence.

(3) Failure to appear for a performance examination on a scheduled date, or arriving more than 15 minutes late for a confirmed performance examination, shall result in forfeiture of the examination fee, unless waived by the division.

(4) The fee is subject to forfeiture if the candidate for Test of English Proficiency fails to arrive or arrives after the testing door has closed.

(5) Consideration shall be given for severe weather conditions if the conditions cause an applicant to fail to appear or to be late in arriving to the examination.

(6) The division shall follow school closure notification in determining severe weather to cancel events or testing. If the school district is closed, testing shall be cancelled and rescheduled. No refunds shall be given if an event is rescheduled.

(7) The division shall offer an opportunity to the applicant to reschedule an examination as soon as possible after the cancellation of the examination. If the person does not complete the examination within 1 calendar year of the cancellation, then the fee shall be forfeited.