



National Consortium of Interpreter Education Centers

## **FACT SHEET**

### **Deaf Interpreters as Reasonable Accommodation**

Most of the time, the sign language interpreter encountered by a court will be a person who can hear. At times, however, a different kind of interpreter is required to provide effective and accessible interpreting services – a Deaf Interpreter who cannot hear. Typically, Deaf Interpreters are used in situations where communication issues are complex and/or high risk because they possess a unique mastery of American Sign Language (ASL) and use of visual-gestural language features. Deaf Interpreters usually work in collaboration with sign language interpreters who can hear. The purpose of this document is to briefly describe the circumstances in which the use of a Deaf Interpreter as an accommodation is necessary to ensure a fundamentally fair proceeding.

Generally, sign language interpreters who can hear sufficiently can interpret in a courtroom proceeding involving a deaf person who uses ASL to communicate. In these instances, courts have little difficulty in locating an appropriate interpreter. However, a significant number of deaf people do not use standard ASL and require additional accommodations. Social scientists have described the characteristics of individuals who can benefit from the services of the Deaf Interpreter to include deaf people who:

- Have secondary disabilities such as vision impairment or cognitive impairments;
- Are foreign born or recent immigrants and who may or may not have knowledge of a foreign sign language;
- Have mental/cognitive difficulties as a result of substance abuse or inappropriate diagnosis;
- Are youths who have not yet fully developed language (See Fact Sheet, Working with Sign Language Interpreters in Juvenile Matters Involving Deaf Participants); or
- Have little or no contact with native users of ASL or have never been exposed to ASL.

When a court interpreter encounters a deaf person who presents these characteristics or a combination of these characteristics, she should inform the court of the need for a Deaf Interpreter. The court interpreter may have access to a network of interpreters and be able to assist in locating a Deaf Interpreter.

Many state court interpreting statutes recognize the need for Deaf Interpreters, often termed in the statutes as an intermediary interpreter or certified Deaf Interpreter. Statutory standards for the provision of a Deaf Interpreter allow for the provision of a Deaf Interpreter when: 1) a court interpreter

indicates difficulty with communication; and 2) a Deaf Interpreter would assist, improve or enhance the communication.<sup>1</sup>

Because many Deaf Interpreters do not work full time in court and because there currently is no court certification for Deaf Interpreters, the court should conduct a short *voir dire* with the Deaf Interpreter to ascertain the reasons they are present and to determine whether they have any familiarity with the parties. It is highly likely that the Deaf Interpreter will have had prior contact with the deaf individuals involved in the proceedings due to the close knit culture of deaf people within a community. While such contact is not fatal to the proceedings, the Deaf Interpreter, like any other interpreter, should be instructed to abide by their oath and the court interpreters code of ethics.

When a Deaf Interpreter works with a court interpreter who can hear, the physical placement is different, but logical. The Deaf Interpreter will stand in the well facing the deaf person in the proceeding because of the visual nature of the language. The court interpreter who can hear will stand behind the deaf person needing the service and away from their sightline so as not to be distracting. This interpreter will interpret to the Deaf Interpreter in the well, who will convey the information to the deaf person needing the service. Interpreters should arrive early to discuss interpreter placement with courtroom personnel.

As well, because inclusion of the Deaf Interpreter is typically the result of complex factors impacting communication with a deaf litigant, the amount of time needed for the interpretation process may be extended. This too is a matter that the court and interpreters should discuss in advance so that the court is prepared to instruct the attorneys regarding any accommodations that may be necessary to allow for accurate and effective interpretation.

When Deaf Interpreters are used in conjunction with sign language interpreters who can hear, the court can feel confident that the interpreting team will provide equal access to those deaf individuals who are in need of these unique arrangements. Should you have more questions, further information is available from the NCIEC at [www.nciec.org](http://www.nciec.org), on the Consortium's Work on Legal Interpreting subpage under the Legal Specialization link.

*The contents of this Fact Sheet were developed under grant funds from the Department of Education. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.*

*The National Consortium of Interpreter Education Centers is funded from 2010 – 2015 by the U.S. Department of Education, Rehabilitation Services CFDA #84.160A and B, Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf- Blind. Permission is granted to copy the materials enclosed herein, provided that National Consortium of Interpreter Education Centers is credited as the source and referenced appropriately on any such copies.*

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<sup>1</sup> See *Deaf Interpreters in Court: An Accommodation That is More Than Reasonable* on the NCIEC website for a full discussion of state laws and case law relating to the use of qualified deaf individuals as interpreters for some deaf litigants and the factors that impact the need for this accommodation in order to ensure effective communication.