

## MEMORANDUM

DATE: October 2, 2008

TO: Mr. Scott Vien,  
MV Services Manager, CDL Program  
Division of Motor Vehicles

FROM: Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: DMV Driver License Testing Procedures

The State Council for Persons with Disabilities (SCPD) has reviewed the September 4, 2008 version of the Division of Motor Vehicles' (DMV) draft driver license testing procedures. Council truly appreciates the opportunity to provide comments and has the following observations and recommendations.

1. As the SCPD noted in its comments on the underlying proposed regulations, "since the Delaware DMV allows non-Deaf applicants to supply their own interpreters, Deaf applicants must be offered this option to avoid discrimination". This option was incorporated into the regulatory note in Section 2.0 of the final regulation adopted at 12 DE Reg. 77 (July 1, 2008). In contrast, the draft procedures literally limit interpretation services to Division-provided interpreters. There is no mention of the applicant's option to provide an interpreter. This option should be affirmatively incorporated into the standards.

2. The proposed standards categorically disallow the interpreter for the Deaf to travel in the vehicle during the road test:

For safety reasons, the interpreter will not be allowed to accompany the applicant in the vehicle during the road test portion. There is no feasible way for an interpreter to safely instruct the applicant from the backseat of the test vehicle while that applicant is operating that vehicle.

There are several problems with this approach.

First, the protocol discriminates based on disability. Translators for non-Deaf applicants are

permitted to accompany applicants and relay instructions from within the vehicle. Disallowing similar translation support for the Deaf is less effective and imposes a burden on the Deaf not imposed on applicants who are not Deaf. This is inconsistent with 28 C.F.R. 35.130(b)(1)(ii)(iii)(iv) and (b)(3).

Second, it is ostensibly dangerous to have a technician driving with an applicant with no means of effective communication. The applicant cannot even ask for clarification of simple questions. Common sense suggests that it is inherently more dangerous to have an applicant and technician in a vehicle with no means of effective communication than to have an interpreter in the vehicle. The “script” envisions the technician “pointing in the appropriate direction and showing (you) the appropriate hand signals and signs”. This process lends itself to misunderstanding and confusion. SCPD believes that it would be safer to have an interpreter someplace in the vehicle rather than have no interpreter in the vehicle. It is SCPDs understanding that interpreters accompany students in vehicles as part of a driver’s education course. This practice supports inclusion of an interpreter in the vehicle during DMV testing. The DMV may wish to contact some driver’s education teachers to get feedback on how this has worked in practice.

Third, a reasonable accommodation could be to allow the translator to sit in the passenger seat. With a front air bag and seat belt, and traveling at relatively low speeds, any safety risk is attenuated. The proposed DMV policy recites that “the applicant will have the choice between using hand signals or signs during the road test.” This means that the applicant will have to look at and respond to the hand signals of the DMV technician in the passenger seat while operating the vehicle. If that protocol is deemed acceptable and non-dangerous, it would seem preferable to have the interpreter in the passenger seat providing the “hand signals”.

Fourth, if DMV is adamant about the policy in this context, other reasonable accommodations could also be considered:

A. The DMV could train a few technicians in basic ASL which is the predominant form of communication for the Deaf. The test is fairly repetitive so the level of ASL sophistication could be modest.

B. The DMV could hire or contract with 1-2 individuals who are proficient in ASL and train them to be technicians.

C. The DMV could consider using a dashboard-sited GPS system with a turn-by-turn directional display. For example, the September 21, 2008 Circuit City sale flyer lists a TomTom model with such a turn-by-turn display for \$149.99.

3. In the context of non-English speaking standards, SCPD recommends including a reference to Title VI standards on p.1 in the “Purposes” section. There is a reference to the ADA regulation but no analogous reference to Title VI considerations. Parenthetically, as noted in the Council’s commentary on the proposed regulations in May, other Delaware State agencies (e.g. DSS) provide free interpreters for non-English speaking applicants. The DMV could consider emulating other State agencies in this context.

4. Page 1 includes the following sentence: “All fees associated with the non-English driver license applicant using a translator shall be the responsibility of the applicant requesting the service and paid for in full by the applicant.” SCPD recommends the following substitute: “Any fees associated with a non-English driver license applicant using a translator shall be the responsibility of the applicant.” The DMV should not be regulating actual payment by the applicant.

5. Page 1 includes the following sentence: “Translators may read the questions and multiple choice answers to the applicant as shown on the Division’s automated test system but may not provide any other assistance during the test.” SCPD recommend inserting “unless directed to do so by the Division technician”. This authorization is the same as that adopted in the next paragraph in the context of the road test.

6. In the DMV’s commentary on the final regulations in July, it noted that it currently “provides a driver license written test in Spanish and is in the process of providing the written test in three more languages.” There is no reference to using this option in the proposed standards. They only contemplate a translator reading the questions to the applicant. The DMV may wish to mention the option of using a foreign–language based version of the automated test if available.

7. The script for the Deaf applicant inadvertently refers to Georgetown.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations and recommendations on the draft policy.

cc: Mr. Jack Eanes, DMV  
Mr. Brian Hartman, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

P&I/dmv testing policy 9-08