

ADMINISTRATIVE MEMORANDUM

SUBJECT Interpreters for Hearing Impaired Persons
in Certain Procedures

NUMBER 162

DATE January 21, 1982

I enclose a copy of Chapter 937 of the 1981 Session Laws, which rewrites Chapter 8A of the General Statutes to provide for the furnishing of qualified interpreters for hearing impaired persons in a variety of adjudicative and other contexts. This new Chapter appears consistent with prior obligations imposed by federal regulation under Section 504 of the Rehabilitation Act of 1973. Section 8A-2(c), which encompasses "administrative proceedings," applies to University grievance and hearing proceedings undertaken pursuant to the Code, institutional tenure documents, SPA and EPA grievance systems, and student judiciary systems, and to any similar proceedings. The Department of Human Resources recommends that state agencies contact the regional Community Service Centers within the North Carolina Council for the Hearing Impaired for assistance in locating qualified interpreters. Please note that Section 8A-8(e) provides for reimbursement by DHR for state agency expenses incurred pursuant to this Chapter; questions concerning reimbursement should be directed to the Deputy Secretary of DHR.

Please provide copies of this memorandum and of the accompanying legislation to those persons at your institutions who chair, supervise, or direct proceedings which appear subject to Section 8A-2(c). Any questions concerning this matter may be directed to Jeffrey Orleans of my staff.


William Frida

Enclosure

cc: Institutional Section 504 Officers

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1981
RATIFIED BILL

CHAPTER 937

HOUSE BILL 427

AN ACT TO REWRITE GENERAL STATUTES CHAPTER 8A PROVIDING
INTERPRETERS FOR DEAF PERSONS IN CERTAIN JUDICIAL, LEGISLATIVE,
AND ADMINISTRATIVE PROCEEDINGS, AND FOR RELATED PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 8A of the General Statutes, titled
"Interpreters for Deaf Persons", is rewritten to read:

"Chapter 8A.

"Interpreters for Deaf Persons.

"§ 8A-1. Definitions.--As used in this Chapter:

(1) 'Deaf person' means a person whose hearing impairment is
so significant that the individual is impaired in processing
linguistic information through hearing, with or without
amplification.

(2) 'Qualified interpreter' means an interpreter certified as
qualified under standards and procedures promulgated by the
Department of Human Resources. If the appointing authority finds
that an interpreter possessing these qualifications is not
available, an interpreter without these qualifications may be
called and used as a qualified interpreter if the interpreter's
actual qualifications have otherwise been determined to be
adequate for the present need. In no event will an interpreter
be considered qualified if the interpreter is unable to

communicate effectively with and simultaneously and accurately interpret for the deaf person.

A deaf person who does not utilize sign language may request an aural/oral interpreter. Before this interpreter is appointed, the appointing authority shall satisfy itself that the aural/oral interpreter is competent to interpret the proceedings to the deaf person and to present the testimony, statements, and any other information tendered by the deaf person.

(3) 'Appointing authority' means the presiding judge or clerk of superior court in a judicial proceeding, or a hearing officer, examiner, commissioner, chairman, presiding officer or similar official in a legislative or administrative proceeding.

"§ 8A-2. Interpreters provided in certain judicial, legislative, and administrative proceedings; circumstances; timing; removal.--(a) When a deaf person is a party to or a witness in any civil or criminal proceeding in any superior or district court of the State, including juvenile proceedings, special proceedings, and proceedings before the magistrate, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret the deaf person's testimony, if any.

(b) When a deaf person is a witness before any legislative committee or subcommittee or legislative research or study committee or subcommittee or commission authorized by the General Assembly, the appointing authority conducting the proceeding shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret the deaf person's

testimony.

(c) When a deaf person is a party to or a witness in an administrative proceeding before any department, board, commission, agency or licensing authority of the State, or of any county or city of the State, the appointing authority conducting the proceeding shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret the deaf person's testimony, if any.

(d) If a deaf person is arrested for an alleged violation of criminal law of the State, including a local ordinance, the arresting officer shall immediately procure a qualified interpreter from the appropriate court for any interrogation, warning, notification of rights, arraignment, bail hearing or other preliminary proceeding, but no arrestee otherwise eligible for release on bail under Article 26 of Chapter 15A of the General Statutes shall be held in custody pending the arrival of an interpreter. No answer, statement or admission taken from the deaf person without a qualified interpreter present and functioning is admissible in court for any purpose.

(e) Whenever a juvenile whose parent or parents are deaf is brought before a court for any reason whatsoever, the court shall appoint a qualified interpreter to interpret the proceedings and testimony for the deaf parent or parents, and to interpret any statements or testimony the deaf parent or parents may be called upon to give to the court.

(f) A qualified interpreter shall not be appointed until the appointing authority makes a preliminary determination that the

interpreter is able to communicate effectively with and to interpret accurately for the deaf person. If no qualified interpreter can be found who can successfully communicate with this person, he may select his own interpreter without regard to whether the interpreter is 'qualified' within the meaning set forth under this statute.

(g) The appointing authority may, on its own motion or on the request of the deaf person, remove an interpreter for inability to communicate or because his services have been waived.

"§ 8A-3. Waiver.--(a) A deaf person entitled to the services of an interpreter under this Chapter may waive these services. The waiver must be approved in writing by the person's attorney. If the person does not have an attorney, approval must be made in writing by the appointing authority.

(b) A deaf person who has waived an interpreter under this section may provide his own interpreter at his own expense, without regard to whether such interpreter is qualified under this Chapter.

"§ 8A-4. Notice of need for interpreter; proof of deafness.--A deaf person entitled to an interpreter under this Chapter shall, if practicable, notify the appropriate appointing authority of his need prior to his appearance. A failure to notify or to request an interpreter is not a waiver of the right to an interpreter. Before appointing an interpreter, an appointing authority may require satisfactory proof of the requesting person's deafness if he has reason to believe the person is not hearing impaired.

"§ 8A-5. Privileged communications.--If a communication made by the deaf person through an interpreter is privileged, the privilege extends also to the interpreter.

"§ 8A-6. List of interpreters; coordination of interpreter services.--The Department of Human Resources shall prepare and maintain an up-to-date list of qualified and available interpreters. A copy of the list shall be provided to each clerk of superior court. When requested by an appointing authority to provide an interpreter the N. C. Council for the Hearing Impaired shall assist in arranging for an interpreter at the time and place needed through its program of Community Services for the Hearing Impaired.

"§ 8A-7. Oath.--Before acting, an interpreter shall take an oath or affirmation that he will make a true interpretation in an understandable manner of the proceedings to the person for whom he is appointed and that he will convey the statements of the person in the English language to the best of his skill and judgment.

"§ 8A-8. Compensation.--(a) An interpreter appointed under this Chapter is entitled to a reasonable fee for his services, including waiting time, and reimbursement for necessary travel and subsistence expenses. The fee shall be fixed by the appointing authority who shall consider any fee schedule for interpreters recommended by the Department of Human Resources. Reimbursement for necessary travel and subsistence expenses shall be at rates provided by law for State employees generally.

(b) The fees and expenses of interpreters who serve before any

superior or district court criminal and juvenile proceeding are payable from funds appropriated to the Administrative Office of the Courts.

(c) The fees and expenses of interpreters who serve in civil cases and special proceedings are also payable from funds appropriated to the Administrative Office of the Courts.

(d) Fees and expenses of interpreters who serve before a legislative body described in this Article are payable from funds appropriated for operating expenses of the General Assembly.

(e) Fees and expenses of interpreters who serve before any State administrative agency are payable by that agency. The agency shall, upon application to the Department of Administration, be reimbursed for payments made.

(f) Fees and expenses of interpreters who serve before city or county administrative proceedings are payable by the respective city or county. During the fiscal biennium 1981-83, the city or county shall, upon application to the Department of Administration, be reimbursed for payments made.

(g) The Department of Administration and the Office of State Budget and Management shall report to the 1983 General Assembly on the satisfactoriness of the funding of this act by special reserve funds and shall recommend whether this funding be continued and new appropriations made or whether continued reserve funding is unnecessary."

Sec. 2. Responsibility for payment of funds to implement this act rest with the particular entity specified in G.S. 8A-8 whose procedure required the service.

Sec. 3. G.S. 7A-450(a) is amended by adding the following sentence to read:

"An interpreter is a necessary expense as defined in Chapter 8A of the General Statutes for a deaf person who is entitled to counsel under this subsection."

Sec. 4. This act shall become effective October 1, 1981, and applies to all trial court, legislative, or administrative proceedings initiated or in process on or after that date.

In the General Assembly read three times and ratified, this the 10th day of July, 1981.

JAMES C. GREEN

James C. Green

President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey

Speaker of the House of Representatives