Effective Communication for the Deaf and People who are Hard-of-Hearing

The Americans with Disabilities Act (ADA)

The Americans with Disabilities Act (ADA) is a law that makes it illegal to discriminate against people with disabilities, including the Deaf and people who are Hard-of-Hearing (Deaf/HH). The ADA requires that Title II entities (State and local government) and Title III entities (businesses and nonprofit organizations that serve the public) communicate effectively with people who are Deaf/HH. Specifically, the ADA states:

“No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.”

Additionally, discrimination includes:

“…a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services…”

Auxiliary Aids and Services

The ADA definition of “auxiliary aids and services” includes “qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments.” Examples of auxiliary aids and services for the Deaf/HH include, but are not limited to:

- Video Relay Service (VRS)
- Open and closed captioning
- Transcription services
- Written materials
- Telephone handset amplifiers
- Assistive listening devices
- Qualified interpreters
- Qualified note takers
- Video text displays
- Computer-aided transcription services
- Telephone compatibility with hearing aids
- Any other effective means

The auxiliary aid requirement is a flexible one. The goal is to find an effective means of communication that is...
appropriate for the particular circumstance. In some cases, the ADA specifies that an effective form of communication may consist simply of a written note, however, if a conversation is more complicated—such as explaining a patient’s symptoms, or a medical procedure—a qualified ASL interpreter may be necessary.

**Effective Communication**

Appointments with much communication, or new/complex information, may require a sign language interpreter to assure that the information is communicated effectively. For example, your doctor should use a sign language interpreter to explain a new medication, treatment, or procedure, or to obtain your informed consent. However, a sign language interpreter may not be necessary to refill prescriptions or for follow-up and routine appointments. The ADA also extends beyond medical settings to cover legal, education, law enforcement, and employment systems.

**Use of Interpreters**

If effective communication is provided through an interpreter, it is important to remember that the interpreter must be qualified. A “qualified” interpreter means someone who is able to interpret effectively, accurately, and impartially, both receptively (i.e., understanding what the person with the disability is saying) and expressively (i.e., having the skill needed to convey information back to the person) using any necessary specialized vocabulary.

(28 C.F.R. Sec. 36.160 for Title II entities and 28 C.F.R. Sec. 303(c)(ii) for Title III)

NOTE: If a family member or friend can sign, it does not make them a qualified interpreter. There may also be issues of emotional involvement and confidentiality to consider.

**Companions**

In many situations, covered entities communicate with someone other than the person who is receiving their goods or services. For example, school staff usually will talk to a parent about a child’s progress; hospital staff often talk to a patient’s spouse, other relative, or friend about the patient’s condition or prognosis. The rules refer to such people as “companions” and require covered entities to provide effective communication for companions who have communication disabilities.

(28 C.F.R. Sec. 35.160(a) Title II, 28 C.F.R. Sec. 36.303(c) Title III)

**Responsibilities**

According to ADA standards, it is usually up to the institution in question to provide—and pay for—any necessary auxiliary aids and services. However, it is the responsibility of the individual who is Deaf/HH to inform the entity that they need an interpreter, or auxiliary aid/service. When choosing an aid or service, Title II entities are required to give primary consideration to the choice of aid, or service requested, by the person who has a communication disability. Title III entities are encouraged to consult with the person with a disability to discuss what aid or service
is appropriate.

(28 C.F.R. Sec. 35.104 Title II, 28 C.F.R Sec. 104 Title III)

The key phrase used by the ADA when it comes to individuals who are Deaf/HH, is “effective communication.” Whatever is necessary to ensure effective communication is required, by law, to be done. However, what is “necessary” depends on many factors, including the context, complexity, and purpose of the interaction.
The Disability Law Center (DLC) is a private, non-profit organization, designated by the governor as Utah's Protection and Advocacy agency. The DLC believes in a society where abilities, rather than disabilities, are recognized; all people have an equal opportunity to participate; and where all people are treated with equity, dignity, and respect. We work toward our vision by enforcing and advancing the legal rights, choices, and opportunities of Utahns with disabilities. DLC services are available free of charge statewide, regardless of income, legal status, language, or place of residence.

If you have further questions, please contact us. Even though our focus is on cases that can help as many people as possible - because time and resources are limited - we at least offer information and/or referral options to everyone who contacts us. Materials are also available in alternative formats such as audio, large-print, Braille and Spanish. Call (800) 662-9080 or apply for help online, and our staff will contact you within 1-3 business days.

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