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ADA Best Practices Tool Kit for State and Local Governments

Chapter 3

General Effective Communication Requirements Under Title II of the ADA

In this chapter, you will learn about the requirements of Title II of the ADA for effective communication. Questions answered include:

- What is effective communication?
- What are auxiliary aids and services?
- When is a state or local government required to provide auxiliary aids and services?
- Who chooses the auxiliary aid or service that will be provided?

A. Providing Equally Effective Communication

Under Title II of the ADA, all state and local governments are required to take steps to ensure that their communications with people with disabilities are as effective as communications with others.¹ This requirement is referred to as “effective communication”² and it is required except where a state or local government can show that providing effective communication would fundamentally alter the nature of the service or program in question or would result in an undue financial and administrative burden.

What does it mean for communication to be “effective”? Simply put, “effective communication” means that **whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people who do not have disabilities**. This is important because some people have disabilities that affect how they communicate.

How is communication with individuals with disabilities different from communication with people without disabilities? For most individuals with disabilities, there is no difference. But people who have disabilities that affect hearing, seeing, speaking, reading, writing, or understanding may use different ways to communicate than people who do not.

The effective communication requirement applies to ALL members of the public with disabilities, including job applicants, program participants, and even people who simply contact state or local government agencies seeking information about programs, services, or activities.

¹ Department of Justice Nondiscrimination on the Basis of State and Local Government Services Regulations, 28 C.F.R. Part 35, § 35.160 (2005). The Department's Title II regulation is available at www.ada.gov/reg2.htm.

² See Department of Justice Americans with Disabilities Act Title II Technical Assistance Manual II-7.1000 (1993). The Technical Assistance Manual is available at www.ada.gov/taman2.html.

1. Providing Equal Access With Auxiliary Aids and Services

There are many ways that you can provide equal access to communications for people with disabilities. These different ways are provided through “auxiliary aids and services.” **“Auxiliary aids and services” are devices or services that enable effective communication for people with disabilities.**³

Title II of the ADA requires government entities to make appropriate auxiliary aids and services available to ensure effective communication.⁴ You also must make information about the location of accessible services, activities, and facilities available in a format that is accessible to people who are deaf or hard of hearing and those who are blind or have low vision.⁵

Generally, the requirement to provide an auxiliary aid or service is triggered when a person with a disability requests it.

³ 28 C.F.R. §§ 35.104, 35.160.

⁴ 28 C.F.R. Part 35.160(b)(1).

⁵ 28 C.F.R. § 35.163 (a).

2. Different Types of Auxiliary Aids and Services

Here are some examples of different auxiliary aids and services that may be used to provide effective communication for people with disabilities. **But, remember, not all ways work for all people with disabilities or even for people with one type of disability. You must consult with the individual to determine what is effective for him or her.**

- qualified interpreters
- notetakers
- screen readers
- computer-aided real-time transcription (CART)
- written materials
- telephone handset amplifiers
- assistive listening systems
- hearing aid-compatible telephones
- computer terminals
- speech synthesizers
- communication boards
- text telephones (TTYs)
- open or closed captioning
- closed caption decoders
- video interpreting services
- videotext displays
- description of visually presented materials
- exchange of written notes
- TTY or video relay service
- email
- text messaging
- instant messaging
- qualified readers
- assistance filling out forms
- taped texts
- audio recordings
- Brailled materials
- large print materials
- materials in electronic format (compact disc with materials in plain text or word processor format)

B. Speaking, Listening, Reading, and Writing: When Auxiliary Aids and Services Must be Provided

Remember that communication may occur in different ways. Speaking, listening, reading, and writing are all common ways of communicating. When these communications involve a person with a disability, an auxiliary aid or service may be required for communication to be effective. The type of aid or service necessary depends on the length and complexity of the communication as well as the format.

1. Face-to-Face Communications

For brief or simple face-to-face exchanges, very basic aids are usually appropriate. For example, exchanging written notes may be effective when a deaf person asks for a copy of a form at the library.

For more complex or lengthy exchanges, more advanced aids and services are required. Consider how important the communication is, how many people are involved, the length of the communication anticipated, and the context.

Examples of instances where more advanced aids and services are necessary include meetings, hearings, interviews, medical appointments, training and counseling sessions, and court proceedings. In these types of situations where someone involved has a disability that affects communication, auxiliary aids and services such as qualified interpreters, computer-aided real-time transcription (CART), open and closed captioning, video relay, assistive listening devices, and computer terminals may be required. Written transcripts also may be appropriate in pre-scripted situations such as speeches.

Computer-Aided Real-Time Transcription (CART)

Many people who are deaf or hard of hearing are not trained in either sign language or lipreading. CART is a service in which an operator types what is said into a computer that displays the typed words on a screen.

2. Written Communications

Accessing written communications may be difficult for people who are blind or have low vision and individuals with other disabilities. Alternative formats such as Braille, large print text, emails or compact discs (CDs) with the information in accessible formats, or audio recordings are often effective ways of making information accessible to these individuals. In instances where information is provided in written form, ensure effective communication for people who cannot read the text. Consider the context, the importance of the information, and the length and complexity of the materials.

When you plan ahead to print and produce documents, it is easy to print or order some in alternative formats, such as large print, Braille, audio recordings, and documents stored electronically in accessible formats on CDs. Some examples of events when you are likely to produce documents in advance include training sessions, informational sessions, meetings, hearings, and press conferences. In many instances, you will receive a request for an alternative format from a person with a disability before the event.

If written information is involved and there is little time or need to have it produced in an alternative format, reading the information aloud may be effective. For example, if there are brief written instructions on how to get to an office in a public building, it is often effective to read the directions aloud to the person. Alternatively, an agency employee may be able to accompany the person and provide assistance in locating the office.

Don't forget . . .

Even tax bills and bills for water and other government services are subject to the requirement for effective communication. Whenever a state or local government provides information in written form, it must, when requested, make that information available to individuals who are blind or have low vision in a form that is usable by them.

3. Primary Consideration: Who Chooses the Auxiliary Aid or Service?

When an auxiliary aid or service is requested by someone with a disability, you must provide an opportunity for that person to request the auxiliary aids and services of their choice, and you must give primary consideration to the individual's choice.⁶ "Primary consideration" means that the public entity must honor the choice of the individual with a disability, with certain exceptions.⁷ The individual with a disability is in the best position to determine what type of aid or service will be effective.

The requirement for consultation and primary consideration of the individual's choice applies to aurally communicated information (i.e., information intended to be heard) as well as information provided in visual formats.

The requesting person's choice does not have to be followed if:

- the public entity can demonstrate that another equally effective means of communication is available;
- use of the means chosen would result in a fundamental alteration in the service, program, or activity; or
- the means chosen would result in an undue financial and administrative burden.

Video Remote Interpreting (VRI) or Video Interpreting Services (VIS)

VRI or VIS are services where a sign language interpreter appears on a videophone over high-speed Internet lines. Under some circumstances, when used appropriately, video interpreting services can provide immediate, effective access to interpreting services seven days per week, twenty-four hours a day, in a variety of situations including emergencies and unplanned incidents.

On-site interpreter services may still be required in those situations where the use of video interpreting services is otherwise not feasible or does not result in effective communication. For example, using VRI / VIS may be appropriate when doing immediate intake at a hospital while awaiting the arrival of an in-person interpreter, but may not be appropriate in other circumstances, such as when the patient is injured enough to have limited mobility or needs to be moved from room to room.

VRI / VIS is different from Video Relay Services (VRS) which enables persons who use sign language to communicate with voice telephone users through a relay service using video equipment. VRS may only be used when consumers are connecting with one another through a telephone connection.

⁶ 28 C.F.R. Part 35.160(b)(2).

⁷ See Title II Technical Assistance Manual II-7.1100.

4. Providing Qualified Interpreters and Qualified Readers

When an interpreter is requested by a person who is deaf or hard of hearing, the interpreter provided must be qualified.

A “qualified interpreter” is someone who is able to sign to the individual who is deaf what is being spoken by the hearing person and who can voice to the hearing person what is being signed by the person who is deaf. Certification is not required if the individual has the necessary skills. To be qualified, an interpreter must be able to convey communications effectively, accurately, and impartially, and use any necessary specialized vocabulary.⁸

Similarly, those serving as readers for people who are blind or have low vision must also be “qualified.”⁹ For example, a qualified reader at an office where people apply for permits would need to be able to read information on the permit process accurately and in a manner that the person requiring assistance can understand. The qualified reader would also need to be capable of assisting the individual in completing forms by accurately reading instructions and recording information on each form, in accordance with each form’s instructions and the instructions provided by the individual who requires the assistance.

Did You Know That There are Different Types of Interpreters?

Sign Language Interpreters

Sign language is used by many people who are deaf or hard of hearing. It is a visually interactive language that uses a combination of hand motions, body gestures, and facial expressions. There are several different types of sign language, including American Sign Language (ASL) and Signed English.

Oral Interpreters

Not all people who are deaf or hard of hearing are trained in sign language. Some are trained in speech reading (lip reading) and can understand spoken words more clearly with assistance from an oral interpreter. Oral interpreters are specially trained to articulate speech silently and clearly, sometimes rephrasing words or phrases to give higher visibility on the lips. Natural body language and gestures are also used.

Cued Speech Interpreters

A cued speech interpreter functions in the same manner as an oral interpreter except that he or she also uses a hand code, or cue, to represent each speech sound.

8 28 C.F.R. § 35.104.

9 28 C.F.R. § 35.104.

5. Television, Videos, Telephones, and Title II of the ADA

The effective communication requirement also covers public television programs, videos produced by a public entity, and telephone communications.¹⁰ These communications must be accessible to people with disabilities.

a. Public Television and Videos

If your local government produces public television programs or videos, they must be accessible. A common way of making them accessible to people who are unable to hear the audio portion of these productions is closed captioning. For persons who are blind or have low vision, detailed audio description may be added to describe important visual images.

b. Telephone Communications

Public entities that use telephones must provide equally effective communication to individuals with disabilities. There are two common ways that people who are deaf or hard of hearing and those with speech impairments use telecommunication. One way is through the use of teletypewriters (TTYs) or computer equipment with TTY capability to place telephone calls. A TTY is a device on which you can type and receive text messages. For a TTY to be used, both parties to the conversation must have a TTY or a computer with TTY capability. If TTYs are provided for employees who handle incoming calls, be sure that these employees are trained and receive periodic refreshers on how to communicate using this equipment.

A second way is by utilizing telephone relay services or video relay services. Telephone relay services involve a relay operator who uses both a standard telephone and a TTY to type the voice messages to the TTY user and read the TTY messages to the standard telephone user. Video relay services involve a relay operator who uses both a standard telephone and a computer video terminal to communicate voice messages in sign language to the computer video terminal user and to voice the sign language messages to the standard telephone user.

Public employees must be instructed to accept and handle relayed calls in the normal course of business. Untrained individuals frequently mistake relay calls for telemarketing or collect calls and refuse to accept them. They also may mistakenly assume that deaf people must come into a government office to handle a matter in person even though other people are allowed to handle the same matter over the telephone.

¹⁰ 28 C.F.R. §§ 35.104, 35.160, 35.161.

C. Planning Ahead to Provide Effective Communication

Even before someone requests an auxiliary aid or service from your public entity, plan ahead to accommodate the communication needs of persons with disabilities. Prepare for the time when someone will request a qualified interpreter, Braille documents, video relay, or another auxiliary aid or service.

- **Identify local resources for auxiliary aids and services.** Even if you do not think there is anyone with a disability in your community, you need to be prepared.
- **Find out how you can produce documents in Braille or acquire other aids or services.** Technology is changing, and much of the equipment needed to ensure effective communication is less expensive than it once was. Consider whether it makes sense to procure equipment or obtain services through vendors. If your needs will be best met by using vendors, identify vendors who can provide the aids or services and get information about how much advance notice the vendors will need to produce documents or provide services.
- **Contract with qualified interpreter services and other providers so that interpreters and other aids and services will be available on short notice.** This is especially critical for time-sensitive situations, such as when a qualified interpreter is necessary to communicate with someone who is arrested, injured, hospitalized, or involved in some other emergency.
- **Use the checklist included in this Chapter to assess your agency's ability to provide effective communication and to figure out the next steps for achieving ADA compliance.**
- **Train employees about effective communication and how to obtain and use auxiliary aids and services. All employees who interact with the public over the telephone or in person need to know their role in ensuring effective communication.**

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February 27, 2007