

## **Q & A: Effective Communication for People with Disabilities**

### **Do people with disabilities have the right to effective communication?**

Yes. Title II of the American with Disabilities Act (the ADA) requires state and local government entities like public schools and municipal courts to provide people with disabilities the means to communicate effectively. Title III of the ADA states that businesses open to the public and nonprofit organizations must also provide effective communication to people working with them. If you have a communication-related disability, Title II and III entities cannot force you to assume the burden of providing the technology or people necessary to effectively communicate.

### **What kinds of disabilities impact communication?**

- Visual disabilities, including blindness
- Being D/deaf or hard of hearing
- Speech-related disabilities

### **What are common auxiliary aids and services you can request for your communication-related disability or disabilities?**

People with vision loss commonly use third-party readers, large print text, Braille writing, screen-reading computer programs, and audio recordings.

People who are D/deaf or hard of hearing may need American Sign Language (ASL) interpreters, notetakers, oral interpreters, CART real-time captioning, tactile interpreters, a printed script of stock phrases, Telecommunication Device for the Deaf (TDD) teleprinters,<sup>1</sup> or a cued-speech interpreter.

People with speech-related disabilities may require trained speech-to-speech transliterators who understand and repeat unclear speech.

People with speech and hearing disabilities can freely access TRS (telecommunication relay service) by calling 7-1-1. TRS operators receive texts from users with speech or hearing disabilities. They then contact third parties, read the messages to those third parties, hear their replies, and type those replies to whoever sent the original text. An equally free alternative to TRS is Video Relay Service (VRS), which lets subscribers with video communication technology remotely sign messages in ASL to operators who then place calls for them. It is illegal for ADA-covered entities to refuse to accept TRS or VRS calls, although they may demand that the services' operators tell them how the system works.

Video remote interpreting (VRI) provides fee-based on-site or real-time off-site ASL or oral interpreters. VRI feeds must be wide enough to display all the body parts needed for ASL

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<sup>1</sup> Which are often compared to telegraphs but send more words per minute.

and be free of sporadic pauses, unclear images, or distorted audio. An isolated VRI failure is unlikely to be considered a willful denial of effective communication. However, regular visual and audio problems that a covered entity fails to fix can deny someone important aids and services unless they are given an alternate aid such as an in-person interpreter.<sup>2</sup>

Keep in mind that these are merely examples and not an exhaustive list of options.

### **What qualifies an interpreter to assist with effective communication?**

Your interpreter must be able to accurately and thoroughly give you information and convey information from you to a third party.

- Competent interpreters should be prepared to ask you to repeat or write down words they do not initially understand.
- Your interpreter must know any specialized vocabulary necessary for the interaction.
- Your interpreter cannot have a personal interest in a conflict's outcome (such as a spouse interpreting to the police during a spousal abuse investigation or a creditor acting as a translator during a loan application), even if you chose that person to interpret for you.

### **How should you & the covered entity you are working with pick an aid or service?**

It is essential to consider each communication's length, nature, complexity, and content. For instance, testifying in court will be prolonged, emotional, and complex for a person with speech difficulties compared to requesting information about a cellphone on sale. You may not need anything more than a notepad and some hand gestures for the retail transaction, but the testimony will almost certainly need an interpreter.

Your usual communication methods will affect the message's length, clarity, and complexity. Some D/deaf individuals who use ASL as their primary form of communication are familiar with lip-reading but have no experience following an entire conversation this way. In such scenarios, if the entity you are dealing with still insists on lip-reading despite the fact that it is not effective for you, they may deny you the opportunity to receive and convey information, thus violating the ADA.

Covered entities cannot ask you to use anyone accompanying you as your interpreter, especially if your companion is a child. However, this rule does not apply when there is an imminent danger to either safety or welfare, and no other qualified interpreter is available. Furthermore, you may want your companion to translate for you and make that request without being prompted by the entity. In such a scenario, it is acceptable for your companion to translate unless they have an interest in the outcome of the discussion that will keep them from being objective.

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<sup>2</sup> *Juech v. Children's Hospital and Health System, Inc.*, 353 F.Supp.3d 772, 782 (E.D. Wisc. 2018).

### **Do I need to request my auxiliary aid or service in advance?**

It is a good idea to request what you need to effectively communicate in advance. A covered entity may not be able to provide your specific aid or service without advance notice. However, even without notice, they still must provide immediate aids and services to the extent they can.

### **What do titles II and III require of public and private entities?**

It is discriminatory to prevent people with disabilities from fully accessing or experiencing covered entities' goods and services. For instance, because audio information like referee decisions, emergency announcements, advertisements, and music are necessary to fully enjoy a visit to a sports stadium, D/deaf spectators need conspicuous captioning to get that complete access.<sup>3</sup> Another example is if a store has prices marked for sighted customers. Store employees should be prepared to read those prices to customers who cannot read price tags themselves.

The ADA requires the covered business or government organization to find a way to effectively communicate with you unless doing so would result in an undue burden or fundamentally alter the service they provide.

Businesses open to the public do not have to give primary consideration to the aid or service you request, but the alternative aid or service they offer must be equally effective. State and local government entities must give primary consideration to your requested aid or service before they can deny it. If they do deny your request, they too must propose an equally effective alternative aid or service.

It is also important for you to know that the ADA applies to services and not just locations. For example, if you are blind, you may use screen-reading technology to order takeout from fast-food restaurants' websites. If one restaurant's website is not compatible with screen-reading technology, then the restaurant owner may be violating your ADA rights even though you have not physically visited the restaurant.<sup>4</sup>

### **What is and is not an undue burden and how is this decided?**

An undue burden is excessive costs "in relation to the benefits of the modification or to the [entity's] financial survival or health."<sup>5</sup> Larger companies and small companies owned by

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<sup>3</sup> *Feldman v. Pro Football, Inc.*, 419 Fed.Appx. 381 (4th Cir. 2011).

<sup>4</sup> The Ninth Circuit cited this reasoning as part of their refusal to rule in favor of Domino's Pizza when a customer sued them over their website's inaccessibility, although the case was ultimately settled out of court. *Robles v. Domino's Pizza, LLC*, 913 F.3d 898, 905 (9th Cir. 2019). However, the Eleventh Circuit subsequently found that maintaining a website that was inaccessible to customers with disabilities but did not offer direct access to goods and services did not violate the ADA, although that case was then vacated as moot. *Gill v. Winn-Dixie Stores, Inc.*, 993 F.3d 1266, 1283 (11th Cir. 2021)

<sup>5</sup> *Vande Zande v. Wisconsin Dep't of Admin.*, 44 F.3d 538, 554 (7th Cir. 1995). It is not an effective communications case but does define an undue burden.

large parent companies are less likely to successfully claim that the cost of providing an auxiliary aid or service is an undue burden.

- If you are a visually impaired restaurant customer, you may request that the staff read the menu to you out loud. If the staff not only refuse to read the menu but will not provide a menu in braille or large print after you request a modified menu, then this could be an ADA violation. If they read part of the menu but not all of it, that may also be an ADA violation because they are still not letting you learn all the options the way a sighted customer could, even though it would not burden them to do so.<sup>6</sup>
- While the Federal Communications Commission (FCC) requires most television programs and digital television receivers to use closed captioning, they make exceptions in several scenarios. Notable exceptions to the captioning requirement include when the programs are in languages besides Spanish or English, are primarily textual or non-vocal, or only play during late hours of the night.<sup>7</sup>

### **What is a fundamental alteration?**

Fundamental alterations change the nature of a service, program, or activity that other people want to enjoy.

- For example, it may be a fundamental alteration to request that a movie theater greatly amplify the lights inside the theater so you could see the screen more clearly when you have limited vision. If the theater granted this accommodation, customers with more sensitive vision would have their movie-going experience negatively and significantly altered by the bright lights.
- On the other hand, having an ASL tactile interpreter sign you information about the movie's plot through touch would not fundamentally alter the moviegoing experience for the other customers. It is also closely tied to the theater's normal business and service of showing films where people can follow the story. Consequently, you may request that aid and it may be granted, depending on your individual circumstances.<sup>8</sup>

### **Must you personally receive goods or services to receive ADA accommodations?**

No. If you have a communication-related disability and are acting on behalf of a family member or associate who seeks goods or services you yourself do not want, you still have a right to receive auxiliary aids and services, especially in healthcare and educational environments.

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<sup>6</sup> *Camarillo v. Carrols Corps*, 518 F.3d 153, 157 (2d. Cir. 2008).

<sup>7</sup> (47 C.F.R. §79.1(d))

<sup>8</sup> *McGann v. Cinemark USA, Inc.*, 873 F.3d 218, 231 (3d Cir. 2017).

- For example, if your partner is undergoing a medical procedure, such as a cesarian section, you have the right to communicate with medical professionals about your partner's status throughout the procedure.
- If you are a visually impaired parent who cannot read Individualized Education Program (IEP) documents about your child during a Parent Teacher Conference, the school district may have to give you copies of the plan written in braille or accessible with screen reading technology, or by a third-party reader.

### **Do employers need to train employees to comply with the ADA's requirements?**

Yes. A single case of employees not knowing how to communicate with you effectively may not violate the ADA. However, a pattern of such behavior may give rise to the implication that the entity does not provide ADA training to employees, in violation of the law.<sup>9</sup>

### **Does the ADA apply in custodial settings?**

Yes. You can demand auxiliary aids or services to communicate under both the ADA and Due Process Clause while you are being arrested or detained by police officers or other government officials.

- If you are D/deaf or hard-of-hearing and are suspected of a crime, the police may have to get an interpreter in order to get your permission to conduct a warrantless search<sup>10</sup> or question you, even when they can conduct other parts of the conversation with written notes. However, the authorities may be permitted to act without an interpreter if there are exigent circumstances, there is no immediately available interpreter, and written communication can convey your rights.<sup>11</sup>
- You are unlikely to be entitled to an interpreter when you are pulled over for a field sobriety test and require ASL or lip-reading services.<sup>12</sup> Field sobriety stops typically don't involve lengthy and complex communication and have a degree of exigency due to the threat posed by intoxicated drivers and the limited time available to accurately determine how inebriated a driver is.<sup>13</sup>
- If you are D/deaf, then the police may be violating your rights by refusing to give you a TDD or interpreter to make a phone call.<sup>14</sup>

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<sup>9</sup> Restaurant chain employees regularly mistreating a customer with impaired vision and refusing her requests to read the entire menu can indicate inadequate training. *Camarillo v. Carrols Corps*, 518 F.3d 153, 157 (2d. Cir 2008).

<sup>10</sup> *Sengupta v. City of Monrovia*, No. CV0900795ABCSJHX, 2010 WL 11515299, at \*4 (C.D. Cal. July 28, 2010)

<sup>11</sup> *Schultz v. Utah County*, 966 F.Supp.2d 1246, 1250 (D. Utah 2013).

<sup>12</sup> Even if you read lips, you may be unable to read a particular individual's lips because of factors like an accent, facial hair, or the lighting, causing you to want someone else whose lips you can read to relay their words.

<sup>13</sup> *Bircoll v. Miami-Dade County* 480 F.3d 1072, 1086 (11th Cir. 2007).

<sup>14</sup> *Hanson v. Sangamon County Sheriff's Dept.*, 991 F.Supp.1059, 1062 (C.D.Ill. 1998).

### **Where can I find more information about effective communication?**

- [ADA Requirements - Effective Communication | ADA.gov](#)
- Call 800-514-0301 to speak to an ADA specialist, or 1-833-619-1264 to talk through texts. The phones are operated 9:30 a.m.-12:00 p.m. and 3:00-5:30 p.m. Eastern time on Monday, Tuesday, Wednesday, and Friday, and 2:30 p.m.-5:30 p.m. Eastern Time on Thursdays.
- Contact the [Rocky Mountain ADA](#) Center for technical assistance.
- File a complaint with the U.S. Department of Justice: [File a Complaint | ADA.gov](#)
- File a complaint with the Colorado Civil Rights Division: [The Complaint Process | Colorado Civil Rights Division](#)<sup>15</sup>

\*\*\* DISCLAIMER: This is not intended as legal advice, but rather for informational purposes only. Always consult a lawyer if you have questions about your legal rights. \*\*\*

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<sup>15</sup> The Colorado Civil Rights Division (CCRD) does not enforce the ADA, but enforces the Colorado Anti-Discrimination Act, which prohibits discrimination based on disability (and other protected classes). Complaints against public accommodations must be filed with CCRD within 60 calendar days.