



To Whom it May Concern:

The National Association of the Deaf (“NAD”) seeks to ensure that all entities offering courses and examinations understand their legal obligations with respect to serving deaf and hard of hearing participants. The Americans with Disabilities Act (“ADA”) has clear mandates requiring such entities to provide effective communication to individuals who are deaf and hard of hearing. Entities that violate such provisions are subject to legal action and have been the focus of litigation by the United States Department of Justice (“DOJ”), as was the case in *United States v. Robin Singh Educational Services, Inc.* Consent Order, *United States v. Robin Singh Educ. Servs., Inc.* (C.D. Cal. 2006), No. CV06-3466 ABC.

This letter contains the information necessary for entities offering courses and examinations to understand the ADA requirements regarding deaf and hard of hearing participants. The relevant provisions are found in Title III of the ADA and its implementing regulations. See Americans with Disabilities Act tit. 3, 42 U.S.C. §§ 12181-12189 (2020); 28 C.F.R. §§ 36.101-36.607 (2016). These provisions show that:

- 1) Title III of the ADA applies to “[a]ny person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or post-secondary education, professional, or trade purposes.” 42 U.S.C. § 12189.
  - a. The number of employees associated with the entity, the nature of the examination(s) or course(s), and the entity’s size or status as a non-profit are irrelevant to whether the entity must follow Title III of the ADA.
  - b. Public accommodations that provide training related to applications, licensing, certification, or credentialing for secondary or post-secondary education, professional, or trade purposes may have additional obligations under federal disability law. See 42 U.S.C. § 12189.
  - c. Entities operated by state or local governments and entities that receive federal financial assistance may have additional obligations under federal and state law not included in this letter.
- 2) Covered entities must furnish (that is, obtain and pay for) any auxiliary aid or service that is necessary to achieve effective communication with a deaf or hard of hearing participant. See 42 U.S.C. § 12182(b)(A).



- a. Whether a particular auxiliary aid or service, such as a sign language interpreter, is necessary depends on a variety of factors, including the length and complexity of the interaction with the deaf or hard of hearing participant, and the effectiveness of any alternative used.
  - b. To be effective, an auxiliary aid must ensure that the deaf or hard of hearing participant can both understand and participate in discussions or other interactions.
  - c. Auxiliary aids and services must be furnished regardless of the number of participants who have requested such services.
  - d. The deaf and hard of hearing population varies greatly in its ability to use sign language and to communicate in spoken or written English. Do not assume that an auxiliary aid or service that is effective for one participant will be effective for another participant.
- 3) Auxiliary aids and services include qualified sign language interpreters, oral interpreters, cued speech transliterators, tactile interpreters, Certified Deaf Interpreters (“CDIs”), captioning of audio-visual materials, and text-based services such as Communication Access Realtime Transcription (“CART”). *See* 28 C.F.R. § 36.303(b).
- a. Any interpreter provided must also be qualified.
    - i. To be “qualified”, an interpreter must be able to “interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.” 28 C.F.R. § 36.104.
    - ii. The following individuals are not “qualified” interpreters: (1) an employee or staff member who knows basic sign language; (2) family members, adult companions, and minor children of the deaf or hard of hearing individual, except in limited circumstances, including certain types of emergencies. *See* 28 C.F.R. § 36.303(c).
    - iii. It is important to ensure that the interpreter provided is properly licensed as many states require sign language interpreters to obtain state licenses.



- b. Realtime transcription services, such as CART, must be provided by trained professionals.
  - i. It is unlikely that an untrained individual can type quickly enough to ensure effective communication during a presentation or group discussion.
  - ii. Voice recognition software currently is not accurate enough to ensure effective communication, unless used by a trained professional “voice writer.”
- c. Computer-generated automatic captioning generally is inaccurate and unreliable, and, as a result, does not ensure effective communication. Best practice dictates that quality captioning for effective communication should be done by qualified captionists and must be:
  - i. Accurate, matching the spoken words or lyrics in their original language in the order spoken, providing nonverbal information that is not observable (e.g. identity of speakers, sound effects), and legible with appropriate font size and spacing between words for readability as well as providing appropriate capitalization and punctuation;
  - ii. Synchronous, coinciding with the corresponding spoken words and sounds to the greatest extent possible;
  - iii. Complete, running from the beginning to the end of the program to the full extent possible; and
  - iv. Adequately positioned, viewable, and not blocking other visual content on the stage or screen (e.g. graphics and credits). *See 47 C.F.R. § 79.1 (2003); see also Web Content Accessibility Guidelines 2.1 (2018).*
- d. A PowerPoint presentation, presenter’s notes, or frozen transcript does not satisfy ADA requirements for a live or taped event.
- e. Seating arrangements and lighting must ensure that there is a clear line of sight to the interpreter or captioning, the interpreter or captioning is clearly visible by all deaf or hard of hearing participants, and the deaf or hard of hearing participants’





view of the program is unobstructed (e.g. view of the stage is not blocked by objects such as columns or sound equipment or by the interpreter or captioning).

- 4) Covered entities may not charge the individual requesting the auxiliary aid or service (e.g., the deaf or hard of hearing individual) for the provision of these services. *See* 28 C.F.R. § 36.301(c).
  - a. The cost of providing auxiliary aids and services should be viewed as part of overhead. Thus, the provider of the course or examination may increase charges for all participants to cover the cost of an interpreter or CART provider but may not bill the deaf or hard of hearing participant exclusively.
- 5) Entities offering courses or examinations may not refuse the participant admission or otherwise limit a participant's access to the course or examination because of the need for auxiliary aids and services. *See* 42 U.S.C. § 12182(b)(1)(A)-(C).
  - a. Deaf and hard of hearing participants may not be required to participate in a course or examination in an alternative manner because of their need for auxiliary aids and services.
  - b. A course or examination with multiple sessions must ensure that the deaf or hard of hearing participant can participate in any session that a hearing participant would be able to attend.
  - c. A course or examination involving breakout sessions or study groups may inquire in advance as to which sessions or groups the deaf and hard of hearing participants wish to attend, but may not otherwise limit deaf and hard of hearing individuals' access to such sessions or groups.
- 6) Although the ADA does not require covered entities to furnish auxiliary aids and services when doing so would create an undue burden, such a situation is unlikely to arise in the context of a single session or even a series of sessions, especially if such sessions are scheduled in advance. *See* 28 C.F.R. § 36.104.
  - a. The nature of the burden is measured in the context of the entity's overall resources, including the resources of any parent company.



- b. That the cost of providing an auxiliary aid or service exceeds the fee that the deaf or hard of hearing participant pays to attend does not mean that providing auxiliary aids and services results in an undue burden.
  - c. A lack of advance notice does not excuse the entity from making best efforts to secure the aid or service.
  - d. To ensure that certain auxiliary aids and services (e.g., sign language interpreters) can be secured, the aid or service must be procured as soon as the deaf or hard of hearing individual makes their request.
  - e. Covered entities are encouraged to consult a tax advisor regarding available tax credits and other positive tax consequences of providing auxiliary aids and services. *See IRS Tax Credits and Deductions, ADA.GOV, <http://www.ada.gov/taxcred.htm>.*
- 7) Under some circumstances, multiple entities may have the obligation to provide auxiliary aids and services. When the law does not specify which entity has the sole obligation to provide auxiliary aids and services, any covered entity may be held liable if they are not provided.

Please note that entities offering courses and examinations may have additional obligations under federal and state law not included in this letter.

In most areas, local agencies provide the needed auxiliary aids and services on a fee basis. Your entity can locate such services by conducting a basic internet search for the particular aid or service needed. For example, searching for “American Sign Language interpreter Washington, DC” will bring up a list of interpreting agencies in Washington, DC.

Thank you for your attention to this important matter.

Sincerely,

The National Association of the Deaf  
Law and Advocacy Center

## **Relevant Sections of Title III of the Americans with Disabilities Act**

### **§ 12189. EXAMINATIONS AND COURSES.**

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or post-secondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

### **§ 12182. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.**

(a) General rule. 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.

(b) Construction.

(1) General prohibition.

(A) Activities.

(i) Denial of participation. It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit. It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit. It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) Individual or class of individuals. For purposes of clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) Integrated settings. Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate. Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) Administrative methods. An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association. It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) Specific prohibitions.

(A) Discrimination. For purposes of subsection (a), discrimination includes—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) 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, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

## **Relevant Sections of the Implementing Regulations of the Americans with Disabilities Act**

### 28 C.F.R. § 36.301. ELIGIBILITY CRITERIA.

(b) Safety. A public accommodation may impose legitimate safety requirements that are necessary for safe operation. Safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

(c) Charges. A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

### 28 C.F.R. § 36.303. AUXILIARY AIDS AND SERVICES.

(b) Examples. The term "auxiliary aids and services" includes—

(1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

(c) Effective communication.

(1) A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. This includes an obligation to provide effective communication to companions who are individuals with disabilities.

(i) For purposes of this section, "companion" means a family member, friend, or associate of an individual seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation, who, along with such individual, is an appropriate person with whom the public accommodation should communicate.

(ii) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. A public accommodation should consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, but the ultimate decision as to what measures to take rests with the public accommodation, provided that the method chosen results in effective communication. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.



(2) A public accommodation shall not require an individual with a disability to bring another individual to interpret for him or her.

(3) A public accommodation shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication, except--

(i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or

(ii) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

(4) A public accommodation shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

(d) Telecommunications.

(3) A public accommodation may use relay services in place of direct telephone communication for receiving or making telephone calls incident to its operations.

(4) A public accommodation shall respond to telephone calls from a telecommunications relay service established under title IV of the ADA in the same manner that it responds to other telephone calls.

28 C.F.R. § 36.104. DEFINITIONS.

Qualified interpreter means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

Video remote interpreting (VRI) service means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in § 36.303(f).

Undue burden means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include--

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.