



To Whom it May Concern:

The National Association of the Deaf (“NAD”) seeks to ensure that all state, county, municipal, administrative, and other courts understand their legal obligations with respect to serving deaf and hard of hearing individuals. The Americans with Disabilities Act (“ADA”) has clear mandates requiring state and local courts to provide effective communication to individuals who are deaf and hard of hearing. For state and local courts, the relevant provisions are found in Title II of the ADA and its implementing regulations. *See* Americans with Disabilities Act tit. 2, 42 U.S.C. §§ 12131-12165 (2020); 28 C.F.R. §§ 35.101-35.190 (2016). These provisions show that:

- 1) Title II of the ADA applies to all “public entities,” including courts. *See* 42 U.S.C. § 12131(1).
 - a. Public entities include “any State or local government;” and “any department, agency, special purpose district, or other instrumentality of a State or States or local government.” 42 U.S.C. § 12131(1)(A), (B).
 - b. Public entities may have additional obligations under state law not included in this letter.
- 2) Public entities must furnish (that is, obtain and pay for) any auxiliary aid or service that is necessary to ensure that its communication with deaf and hard of hearing individuals is as effective as its communication with others. *See* 28 C.F.R. § 35.160(a), (b).
 - a. “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.” 28 C.F.R. § 35.160(b)(2).
 - b. “In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities.” 28 C.F.R. § 35.160(b)(2).
 - c. The public entity must provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice. The public entity shall honor the choice unless it can demonstrate that another equally effective means of



communication exists or that use of the means chosen would constitute an undue burden or fundamental alteration. *See* 28 C.F.R. § 35, app'x. A at 580 (2009).

- d. To be effective, an auxiliary aid must ensure that the deaf or hard of hearing individual can both understand aural information and participate in discussions.
 - e. Auxiliary aids and services must be furnished regardless of the number of individuals who have requested such services.
 - f. The deaf 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 individual will be effective for another individual.
- 3) Deaf and hard of hearing individuals have an equal right to auxiliary aids and services, regardless of their role in court proceedings. *See* 28 C.F.R. § 35.160(a)(1), (b)(1).
- a. Regulations expressly apply to “applicants, participants, members of the public, and companions with disabilities.” 28 C.F.R. § 35.160(a)(1).
 - b. Federal courts have interpreted this provision to apply to deaf attorneys and deaf spectators, in addition to deaf defendants, jurors, witnesses, and judges.
- 4) Auxiliary aids and services include but are not limited to qualified sign language interpreters. *See* 28 C.F.R. § 35.104
- a. Auxiliary aids and services can also include 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. § 35.104.
 - b. 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. § 35.104.
 - ii. Individuals who have not had extensive training on how to interpret in legal settings are not qualified to interpret for court proceedings.



- iii. The following individuals are not “qualified” interpreters: (1) a court employee who knows basic sign language; (2) family members, adult companions, and minor children of the deaf or hard of hearing individual, except in certain cases of emergency; (3) any interpreter who does not communicate proficiently with the deaf or hard of hearing individual.
- iv. It is important to ensure that the interpreter provided is properly licensed as many states require sign language interpreters to obtain state licenses.
- c. If a deaf or hard of hearing individual does not communicate effectively through standard American Sign Language, the court may be required to furnish an additional interpreter with expertise in the deaf individual’s particular communication style in order to achieve effective communication.
 - i. For some deaf and hard of hearing individuals, effective communication can only be achieved with the use of a CDI. CDIs are deaf interpreters who have been trained to interpret for deaf or hard of hearing individuals who have a limited knowledge of ASL, use a mixture of gesture or home signs, or may have psychological or physical challenges preventing them from using ASL fluently. A CDI works in tandem with a hearing ASL interpreter.
- d. 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.”
- e. 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 in the courtroom or on the screen (e.g. graphics and credits). *See* 47 C.F.R. § 79.1 (2003); *see also* Web Content Accessibility Guidelines 2.1 (2018).
 - f. A PowerPoint presentation, presenter's notes, or frozen transcript does not satisfy ADA requirements for a live or taped event.
 - g. 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 courtroom is unobstructed (e.g. view of the judge is not blocked by objects such as columns or equipment or by the interpreter or captioning).
 - h. Due to the sensitive nature of court proceedings, it is imperative that courts use highly trained personnel to provide interpreting or captioning services.
- 5) Public entities may not charge the individual requesting the auxiliary aid or service for the provision of these services or otherwise rely on this individual to provide auxiliary aids and services. *See* 28 C.F.R. §§ 35.160(c).
- a. The public entity is responsible for furnishing auxiliary aids and services. *See* 28 C.F.R. § 35.160(a).
 - b. The public entity may not require the deaf or hard of hearing individual to bring their own interpreter. *See* 28 C.F.R. § 35.160(c)(1).



- c. The public entity may not rely on an adult companion or minor child of a deaf or hard of hearing individual for communication except under certain cases of emergency. *See* C.F.R. § 35.160(c)(2), (3).
- 6) Although the ADA does not require public 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 event or even a series of events, especially if such events are scheduled in advance. *See* 28 C.F.R. § 35.164.
 - a. The nature of the burden is measured in the context of the entity's overall resources. *See* 28 C.F.R. § 35.164.
 - b. A lack of advance notice does not excuse the entity from making best efforts to secure the aid or service.
 - c. 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.
 - d. Any decision to deny auxiliary aids and services on the basis of undue burden or fundamental alteration must be made in writing by the head of the public agency or their designee. *See* 28 C.F.R. § 35.164.
- 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 state and local courts may have additional obligations under federal and state law not included in this letter.

Thank you for your attention to this important matter.

Sincerely,

The National Association of the Deaf
Law and Advocacy Center

Relevant Sections of Title II of the Americans with Disabilities Act

§ 12131. DEFINITIONS.

As used in this subchapter:

(1) Public entity. The term “public entity” means—

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) [1] of title 49).

(2) Qualified individual with a disability. The term “qualified individual with a disability” means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

§ 12132. DISCRIMINATION.

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

**Relevant Sections of the Implementing Regulations of
Title II of the Americans with Disabilities Act**

§ 35.104. DEFINITIONS.

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;

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.

§ 35.160. GENERAL.

- (a) (1) A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.
- (2) For purposes of this section, “companion” means a family member, friend, or associate of an individual seeking access to a service, program, or activity of a public entity, who, along with such individual, is an appropriate person with whom the public entity should communicate.
- (b) (1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.
- (2) 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. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. 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.
- (c) (1) A public entity shall not require an individual with a disability to bring another individual to interpret for him or her.
- (2) A public entity 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.

(3) A public entity 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) Video remote interpreting (VRI) services. A public entity that chooses to provide qualified interpreters via VRI services shall ensure that it provides—

(1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;

(2) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;

(3) A clear, audible transmission of voices; and

(4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

§ 35.164. DUTIES.

This subpart does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this subpart would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.