

Effective Communication

Rosaline Crawford
Director
Law and Advocacy Center
National Association of the Deaf
August 18, 2009

Effective Communication

- **Introduction**
- **Laws**
 - Rehabilitation Act of 1973
 - Americans with Disabilities Act of 1990 (ADA)
- **Definitions**
- **Resources and Contact Information**

Introduction

- What is the NAD?
 - Since 1880
 - Membership Organization
 - Affiliates – State Associations
 - Described and Captioned Media Program (DCMP)
 - Biennial Conference
- What does the NAD Law and Advocacy Center do?
 - Educate, advocate, and litigate on behalf of and to empower deaf and hard of hearing people.
 - Clearinghouse for general legal information about deaf-related issues.
 - Advocate on public policy issues of concern to the deaf and hard of hearing community, particularly at the national level and often in collaboration with other national organizations.
 - Represent deaf and hard of hearing individuals in disability discrimination civil rights cases that are carefully selected to establish powerful legal principles of equality and equal access.

Laws

- Rehabilitation Act of 1973
- Americans with Disabilities Act of 1990 (ADA)

Rehabilitation Act of 1973

- Title I Vocational Rehabilitation Services
- Title V Federal Activities

Rehabilitation Act of 1973 – Title V

- **Section 501** Federal Employment
- Section 502 Federal Buildings
- Section 503 Federal Contractors
- **Section 504** Federally-funded Programs
- Section 508 Federal Information and Technology

Rehabilitation Act of 1973 – Title V – Section 501

- Section 501 – Federal Employment and Affirmative Action
 - Requires the federal government to employ and advance in employment qualified individuals with disabilities.
 - Requires the federal government to provide reasonable accommodations to employees and applicants with disabilities.
 - Complaints – time limits and process.

Rehabilitation Act of 1973 – Title V – Section 504

- Section 504 – Federally-funded Programs and Activities
 - Prohibits discrimination by federal agencies and programs and activities that get money from the federal government.
 - Requires recipients of federal funds to provide auxiliary aids and services when necessary to ensure effective communication, unless it would result in an undue burden or fundamental alteration.
 - Complaints – time limits and remedies.

Americans with Disabilities Act (ADA)

- **Title I** **Employment**
- **Title II** **State and Local Governments**
- **Title III** **Public Accommodations**
- Title IV Relay Services
- Title V Miscellaneous

ADA Title I – Employment

- 15 or more employees
- Qualified individual with a disability
- Reasonable accommodations
- Interactive process –
 - consult with employee/applicant about accommodation
 - employer can choose
 - choice must be effective
- Complaints – time limits and remedies

ADA Title II – State and Local Governments

- Public entities, agencies, programs, and services
- Must provide auxiliary aids and services when necessary to ensure effective communication, unless it would result in an undue burden or fundamental alteration.
- Complaints – time limits and remedies

ADA Title II – State and Local Governments

- Regulation 28 C.F.R. § 35.160:
 - (a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.
 - (b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.
 - (2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.

ADA Title III – Public Accommodations

- Private businesses – profit and non-profit
- Must provide auxiliary aids and services when necessary to ensure effective communication, unless it would result in an undue burden or fundamental alteration.
- Complaints – time limits and remedies

ADA Title III – Public Accommodations

- Regulation 28 C.F.R. § 36.303 requires:
 - Effective communication. A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.
 - Auxiliary aids and services must be provided . . . unless doing so would fundamentally alter the nature of the service or would result in an undue burden.
 - If providing a particular auxiliary aid or service would result in a fundamental alteration or an undue burden . . . then the business must provide an alternative, if one exists, that would ensure, to the maximum extent possible, receipt of the business service.

ADA Title III – Public Accommodations

- Department of Justice guidance:
 - *consult* with an individual before providing a particular auxiliary aid or service.
 - “It is not difficult to imagine a wide range of communications involving areas such as health, legal matters, and finances that would be sufficiently lengthy or complex to require an interpreter for effective communication.”

Definitions

- Auxiliary aids and services (29 C.F.R. § 35.104 and 29 C.F.R. § 36.303(b)):
 - (1) Qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
 - (2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;
 - (3) Acquisition or modification of equipment or devices; and
 - (4) Other similar services and actions.
- Qualified interpreter

An interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

Definitions (continued)

- Title II: Fundamental Alteration / Undue Financial and Administrative Burdens (29 C.F.R. § 35.164):
 - 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.

Definitions (continued)

- Title III: Undue burden

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.

Resources

- NAD website – www.nad.org
Issues & Resources – information and advocacy memos
- <http://www.ada.gov/publicat.htm>

Contact Information

Rosaline Crawford
Director, NAD Law and Advocacy Center
Rosaline.Crawford@nad.org
301-587-7730 (Voice and TTY)
Videophone (VP) by Appointment