

The Americans with Disabilities Act Changes Regarding Effective Communication

Title II of the ADA applies to public entities, which generally include all non-federal government entities. The original Title II regulations were issued in 1991, the new regulations went into effect March 15, 2011.

<p>28 C.F.R. §35.104 (auxiliary aids and services)</p>	<p><i>Auxiliary aids and services</i> includes—</p> <ul style="list-style-type: none"> • (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; • (2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;
<p>28 C.F.R. § 35.104 (direct threat)</p>	<p><i>Direct threat</i> means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, <u>or by the provision of auxiliary aids or services as provided in § 35.139.</u> <i>[emphasis added]</i></p>
<p>28 C.F.R. § 35.104 (qualified interpreter)</p>	<p><i>Qualified interpreter</i> 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.</p>
<p>28 C.F.R. § 35.104 (qualified reader)</p>	<p><i>Qualified reader</i> means a person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.</p>

<p>28 C.F.R. § 35.104 (service animals)</p>	<p><i>Service animal</i> means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.</p>
<p>28 C.F.R. § 35.104 (video remote interpreting)</p>	<p><i>Video remote interpreting (VRI) service</i> 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 § 35.160(d).</p>
<p>28 C.F.R. § 35.160(a)(1)-(2)</p>	<p>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.</p>
<p>28 C.F.R. § 35.160(b)(1)-(2)</p>	<p>1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford qualified 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</p>

	timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.
28 C.F.R. § 35.160(c)	<p>1) A public entity shall not require an individual with a disability to bring another individual to interpret for him or her.</p> <p>2) A public entity shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication except—</p> <ul style="list-style-type: none"> (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. <p>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.</p>
28 C.F.R. § 35.160(d)	<p><i>Video remote interpreting (VRI) services.</i> A public entity that chooses to provide qualified interpreters via VRI services shall ensure that it provides—</p> <p>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;</p> <p>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;</p> <p>3) A clear, audible transmission of voices; and</p> <p>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.</p>
28 C.F.R. § 35.16a	<p>(a) Where a public entity communicates by telephone with applicants and beneficiaries, text telephones (TTYs) or equally effective telecommunications systems shall be used to communicate with individuals who are deaf or hard of hearing or have speech impairments.</p> <p>(b) When a public entity uses an automated-attendant system, including, but not limited to, voice mail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with</p>

	<p>individuals using auxiliary aids and services, including TTYs and all forms of FCC-approved telecommunications relay system, including Internet-based relay systems.</p> <p>(c) A public entity 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.</p>
<p>September 15, 2010 DOJ Guidance 75 Fed. Reg at 56222-56223</p>	<p><i>Communication.</i></p> <p>Several large disability advocacy organizations commented on the 2004 ADAAG section 232.2.2 requirement that at least 2 percent of the general holding cells and housing cells must be equipped with audible emergency alarm systems. Permanently installed telephones within these cells must have volume control. Commenters said that the communication features in the 2004 ADAAG do not address the most common barriers that deaf and hard-of-hearing inmates face. They asserted that few cells have telephones and the requirements to take them accessible is limited to volume control, and that emergency alarm systems are only a small part of the amplified information that inmates need. One large association commented that it receives many inmate complaints that announcements are made over loudspeakers or public address systems, and that inmates who do not hear announcements for inmate count or other instructions face disciplinary action for failure to comply. They asserted that inmates who miss announcements miss meals, exercise, showers, and recreation. They argued that systems that deliver audible announcements, signals, and emergency alarms must be made accessible and that TTYs must be made available.</p> <p>Commenters also recommended that correctional facilities should provide access to advanced forms of telecommunications. Additional commenters noted that few persons now use TTYs, preferring instead to communicate by email, texting, and videophones. The Department agrees with the commenters that correctional facilities and jails must ensure that inmates who are deaf or hard of hearing actually receive the same information provided to other inmates. The Department believes, however, that the reasonable modifications, program access, and effective communications requirements of title II are sufficient to address the needs of individual deaf and hard of hearing inmates, and as a result, declines to add specific requirements for communications features in cells for deaf and hard of hearing inmates at this time. The Department notes that as part of its ongoing enforcement of the reasonable modifications, program access, and effective communications requirements of title II, the Department has required correctional facilities and jails to provide communication features in cells serving deaf and hard of hearing inmates.</p>

Bold indicates the changes in the ADA.