



To Whom It May Concern:

The National Association of the Deaf (NAD) seeks to ensure that all public and charter schools understand their legal obligations with respect to serving deaf and hard of hearing students and companions. The Americans with Disabilities Act (ADA) has clear mandates requiring such entities to provide effective communication to students and companions who are deaf and hard of hearing. Schools that run afoul of such provisions are subject to legal action.

This letter contains the information necessary for public and charter schools to understand the ADA requirements regarding to deaf and hard of hearing students, including deaf or hard of hearing parents/guardians. The relevant provisions are found in Title II of the ADA, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulations, 28 C.F.R. §§ 35.101 *et seq.* These provisions show that:

- 1) Title II of the ADA applies to "public entities", or "any department, agency, special purpose district, or other instrumentality of a State or States or local government." *See* 42 U.S.C. § 12131(1)(B) *emphasis added.*
 - a) Public and charter schools are covered under this definition of public entity.
 - b) Public and charter schools may have additional obligations under federal and state law not discussed in this letter.
- 2) Title II covers anything the public entity does. *See* 28 C.F.R. Part 35, app. B.
 - a) This includes all programs, services and activities provided by public and charter schools to families and/or the public such as graduation ceremonies, PTA meetings, school plays, and school musical recitals. 56 Fed. Reg. 35696 (July 26, 1991).
- 3) Title II applies to both deaf and hard of hearing students and deaf and hard of hearing companions.
 - a) "A '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." 28 C.F.R. § 35.160(a)(2).



- 4) 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 individual. *See* 28 C.F.R. § 35.160(b).
 - a) Public and charter schools must give primary consideration to deaf and hard of hearing individuals' requests for particular auxiliary aids and services, meaning they must provide an opportunity for deaf and hard of hearing individuals to request preferred auxiliary aids and services, and they must honor the choice unless they can provide another equally effective means of communication. *See* 28 C.F.R. § 35.160(b)(2); *see also* 28 C.F.R. Part 35 App. B, Subpart E.
 - b) 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, and the effectiveness of any alternative used.
 - c) To be effective, an auxiliary aid must ensure that the deaf or hard of hearing individual can both understand presentations and participate in discussions.
 - d) Auxiliary aids and services must be furnished regardless of the number of individuals who have requested such services.
 - e) 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.
- 5) Auxiliary aids and services include qualified sign language interpreters, oral interpreters, cued speech transliterators, tactile interpreters for deafblind individuals with little to no vision, Certified Deaf Interpreters (CDIs), and text-based services such as Communication Access Realtime Transcription (CART). *See* 28 C.F.R. § 35.104.
 - a) Any interpreter provided must be qualified.
 - i) An interpreter need not hold a particular certification to be “qualified,” but 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) 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. § 35.160(c)(1).
- b) 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.”
- 6) Covered entities may not charge the individual requesting the auxiliary aid or service for the provision of these services. *See* 28 C.F.R. § 35.130(f).
 - a) The cost of providing auxiliary aids and services should be viewed as part of overhead. Thus, the school may increase charges for all individuals to cover the cost of an interpreter or CART provider, but may not bill the deaf or hard of hearing participant individually.
 - b) A public school or charter school may not require the deaf or hard of hearing participant to bring an interpreter with him or her.
- 7) Public schools or charter schools may not refuse a deaf or hard of hearing individual admission or otherwise limit the individual’s access to the event because of the need for auxiliary aids and services. *See* 28 C.F.R. § 35.130(b).
- 8) 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 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, including the resources of any parent company, and not just the resources designated for a particular location or department.



- b) That the cost of providing auxiliary aids and services exceeds the fee that the deaf or hard of hearing individual pays to attend the activity or course does not mean that providing them results in an undue burden.
- c) Under some circumstances, a lack of advance notice of the need for an auxiliary aid or service may excuse the failure to provide one. A lack of notice does not excuse the entity from making best efforts to secure the aid or service.

Another federal law, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, is considered virtually identical to Title II. *See Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1261 (D.C. Cir. 2008). Section 504 has specifically been recognized to require public schools to provide qualified sign language interpreters for the parents of public school students. *See Rothschild v. Grottenthaler*, 907 F.2d 286 (2d Cir. 1990). Further, the rights conferred and protected by Title II are distinct from the rights conferred and protected by the Individuals with Disabilities Education Act (IDEA). *See K.M. v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1101 (9th Cir. 2013).

Moreover, Title II and Section 504 both provide for compensatory damages, allowing plaintiffs to recover damages for the emotional pain and suffering they have experienced as a result of defendant's discriminatory acts. *See Hunter on behalf of A.H. v. D.C.*, F. Supp. 3d, No. CV 12-1960 (GK), 2014 WL 4071333, at *5 (D.D.C. Aug. 18, 2014). This liability can extend to the emotional suffering of minor children who have been used as interpreters. *See, e.g., Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 277 (2d Cir. 2009); *id.* 582 F.3d at 279 (Wesley, J., concurring). Thus, public entities and recipients of federal financial assistance who refuse to honor requests for interpreters expose themselves to liability for compensatory damages.

Please note that schools may have additional obligations under federal and state law not included in this letter.

Thank you for your attention on this important matter.

Sincerely,

The National Association of the Deaf
Law and Advocacy Center