



To Whom it May Concern:

The National Association of the Deaf (“NAD”) seeks to ensure that all parole and probation offices understand their legal obligations with respect to serving deaf and hard of hearing individuals. The Americans with Disabilities Act (“ADA”) has clear mandates requiring parole and probation offices to provide effective communication to individuals who are deaf and hard of hearing. Parole and probation offices 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. City of Henderson*. Settlement Agreement, *United States v. City of Henderson, Nev.* (2013), No. 204-46-167.

This letter contains all the information necessary for parole and probation offices to understand the requirements for ADA compliance with regard to serving deaf and hard of hearing individuals. The relevant provisions are found in Title II of the ADA and its implementing regulations. *See* Americans with Disabilities 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 “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. Police departments and other law enforcement entities, including parole and probation offices, are covered under this definition of public entity.
 - b. The number of employees in a parole or probation office is irrelevant to whether it must follow Title II.
 - c. Parole and probation offices that receive federal financial assistance may have additional obligations under federal and state law not included in this letter.
- 2) Parole and probation offices must furnish (that is, obtain and pay for) any auxiliary aid or service that is necessary to achieve effective communication with deaf or hard of hearing individuals. *See* 28 C.F.R. § 35.160(b).
 - a. Parole and probation offices must give primary consideration to deaf and hard of hearing individuals' requests for particular auxiliary aids and services. *See* 28 C.F.R. § 35.160(b)(2).



- b. Parole and probation offices 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, App'x. B, Subpart E.
 - c. The deaf population varies greatly in its ability to read lips and/or to communicate in written English. Therefore, a short or simple interaction may still require a sign language interpreter if the deaf or hard of hearing individual communicates successfully only through sign language.
 - d. Ultimately, the key inquiry is whether the communication was effective, that is, could the police communicate with the deaf or hard of hearing individual as thoroughly and effectively as he or she could with a hearing person.
- 3) Auxiliary aids and services include qualified sign language interpreters. *See* 28 C.F.R. § 35.104.
- a. Auxiliary aids and services include qualified sign language interpreters on-site or remotely via Video Remote Interpreting (“VRI”). Auxiliary aids and services 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”).
 - 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. The following individuals are not “qualified” interpreters: (1) an office employee or staff member or volunteer who knows basic sign language; (2) family members, adult companions, and minor children, except in certain cases of emergency; (3) any interpreter who does not communicate proficiently with the deaf or hard of hearing individual in question. *See* 28 C.F.R. §§ 35.104, 35.160(c)(2), (3).



- iii. 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 police department 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 office 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).
- 4) Parole and probation offices may not charge the individual requesting the auxiliary aid or service for the provision of these services, nor require such an individual to bring their own interpreter. *See* 28 C.F.R. § 35.130(f).
- 5) Deaf or hard of hearing companions of recipients of services or activities of parole and probation offices have an identical entitlement to auxiliary aids and services. *See* 28 C.F.R. § 35.160(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.
 - b. This definition includes spouses, children, parents, and other associated individuals, so long as the police would typically communicate with such a person.
- 6) Although the ADA does not require parole and probation offices to furnish auxiliary aids and services where doing so would create an undue burden, such a situation is unlikely to arise in the context of a single or a handful of interactions. *See* 28 C.F.R. § 35.164.
 - a. The nature of the burden is measured against the office’s overall resources.
 - b. The last-minute nature of the need for an interpreter or other auxiliary aid or service is never an excuse to abandon efforts to secure one.



- 7) Parole and probation offices must place and accept calls placed through Video Relay Services (“VRS”) or text-based telecommunications relay services (“TRS”) in the same manner that they place and accept direct telephone calls. *See* 28 C.F.R. § 35.161(c).
 - a. The office incurs no additional charge for placing or accepting calls placed through relay services.
 - b. The Federal Communications Commission prohibits the use of VRS as a substitute for in-person interpreting services. Public Notice, 20 FCC Rcd 1471, DA 05-2417 (2005).

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

The DOJ has issued a technical assistance manual and a model policy specific to law enforcement and their obligation to ensure effective communication. The manual is available online at: <https://www.ada.gov/lawenfcomm.htm>. The model policy is available at: <https://www.ada.gov/lawenfmodpolicy.htm>.

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) of Title 49).

§ 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 services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

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

SUBPART A- GENERAL

28 C.F.R. § 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;
- (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;
- (3) Acquisition or modification of equipment or devices; and
- (4) Other similar services and actions.

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.

28 C.F.R. § 35.105 SELF-EVALUATION.

(a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.

(b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.

SUBPART B- GENERAL REQUIREMENTS

28 C.F.R. § 35.130 GENERAL PROHIBITIONS AGAINST DISCRIMINATION.

(a) No qualified individual with a disability shall, on the basis of 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 public entity.

- (b) (1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—
 - (i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
 - (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
 - (iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
 - (iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;
 - (v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;
 - (vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;
 - (vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.
- (2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.
- (3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:
 - (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;
 - (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or
 - (iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.
- (7) (i) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

(8) A public entity shall not impose or apply 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 service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

(d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e) (1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.

(f) A public entity may not place 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 or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

(g) A public entity shall not exclude or otherwise deny equal services, programs, or activities 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.

(h) A public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

SUBPART E- COMMUNICATIONS

28 C.F.R. § 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 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 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.

§ 35.161 TELECOMMUNICATIONS.

- (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.
- (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 individuals using auxiliary aids and services, including TTYs and all forms of FCC-approved telecommunications relay system, including Internet-based relay systems.
- (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.

§ 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.

APPENDIX B TO PART 35, SUBPART A—GENERAL

The scope of Title II's coverage of public entities is comparable to the coverage of Federal Executive agencies under the 1978 amendment to section 504, which extended section 504's application to all programs and activities "conducted by" Federal Executive agencies, in that Title II applies to anything a public entity does. Title II coverage, however, is not limited to "Executive" agencies, but includes activities of the legislative and judicial branches of State and local governments. All governmental activities of public entities are covered, even if they are carried out by contractors.

APPENDIX B TO PART 35, SUBPART E—COMMUNICATIONS

Section 35.160 requires the public entity to take such steps as may be necessary to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

Paragraph (b)(1) requires the public entity to furnish appropriate auxiliary aids and services when necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, the public entity's service, program, or activity. The public entity must provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice. This expressed choice shall be given primary consideration by the public entity (§ 35.160(b)(2)). The public entity shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 35.164.

Deference to the request of the individual with a disability is desirable because of the range of disabilities, the variety of auxiliary aids and services, and different circumstances requiring effective communication. For instance, some courtrooms are now equipped for "computer-assisted transcripts," which allow virtually instantaneous transcripts of courtroom argument and testimony to appear on displays. Such a system might be an effective auxiliary aid or service for a person who is deaf or has a hearing loss who uses speech to communicate, but may be useless for someone who uses sign language.

Although in some circumstances a notepad and written materials may be sufficient to permit effective communication, in other circumstances they may not be sufficient. For example, a qualified interpreter may be necessary when the information being communicated is complex, or is exchanged for a lengthy period of time. Generally, factors to be considered in determining whether an interpreter is required include the context in which the communication is taking place, the number of people involved, and the importance of the communication.