



To Whom it May Concern:

The National Association of the Deaf (“NAD”) seeks to ensure that all private businesses and public entities offering guided tours<sup>1</sup> understand their legal obligations with respect to serving deaf and hard of hearing individuals. The Americans with Disabilities Act (“ADA”) and the Rehabilitation Act of 1973 have clear mandates requiring such entities to ensure effective communication with individuals who are deaf or hard of hearing. Covered entities 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. Palm Springs Art Museum* and *United States v. The International Spy Museum. Settlement Agreement, United States v. Palm Springs Art Museum* (2018), No. 202-12C-523; Settlement Agreement, *United States v. The International Spy Museum* (2008), No. 202-16-130.

- 1) Title III of the ADA applies to all “places of public accommodation.” 42 U.S.C. § 12182(a). Places of public accommodations include privately-owned businesses offering tours, exhibits, public displays, and other similar programs and activities. 42 U.S.C. § 12181(7)(H).
  - a. The number of employees associated with the public accommodation, the nature of the event(s), and its size or status as a non-profit, are irrelevant to whether the entity must follow Title III of the ADA.
- 2) Entities operated by state or local governments must comply with 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).
  - a. 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.” 42 U.S.C. § 12131(1)(B) *emphasis added*.
- 3) Entities, regardless of whether they are covered by Title III or Title II of the ADA, that receive federal financial assistance are also governed by Section 504 of the Rehabilitation Act (“Section 504”) which provides that “[n]o otherwise qualified individual with a disability in the United States, . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to

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<sup>1</sup> For purposes of this letter, "guided tour" refers to any sightseeing tour or visit of an educational establishment, historical site, tourist attraction, and other similar venues during which information is provided by a tour guide or via an audio device.



discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency.” Rehabilitation Act § 504, 29 U.S.C. § 794(a) (2020).

- a. Section 504 is considered virtually identical to Title II of the ADA. *See Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1261 (D.C. Cir. 2008).

The following provisions are found in the implementing regulations of Titles II and III of the ADA:

- 1) 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)(1); 28 C.F.R. § 36.303(c)(1).
  - a. 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 with the deaf or hard of hearing individual, and the effectiveness of any alternative used.
  - b. To be effective, an auxiliary aid must ensure that the deaf or hard of hearing individual can both understand and participate in discussions or other interactions.
  - c. Auxiliary aids and services must be furnished regardless of the number of individuals who have requested such services.
  - d. The deaf and hard of hearing 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.
- 2) Auxiliary aids and services include qualified sign language interpreters, 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. § 36.303(b); 28 C.F.R. § 35.104.
  - a. Any interpreter provided must 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. § 36.104; 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. § 36.303(c)(3), (4); 28 C.F.R. § 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.
  - b. 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 complex interactions with deaf and hard of hearing individuals.
    - ii. Voice recognition software currently is not accurate enough to ensure effective communication, unless used by a trained professional “voice writer” or operated by a trained captioning professional who monitors and assists the voice recognition software for accuracy purposes.
  - c. 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 on the stage or screen (e.g. graphics and credits). *See* 47 C.F.R. § 79.1 (2003); *see also* Web Content Accessibility Guidelines 2.1 (2018).
  - d. A PowerPoint presentation, presenter's notes, or frozen transcript does not satisfy ADA requirements for a live or taped event.
  - e. 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 attendees, and the deaf or hard of hearing attendees' view of the program is unobstructed (e.g. view of the stage is not blocked by objects such as columns or sound equipment or by the interpreter or captioning).
- 3) The entity may not charge the individual requesting the auxiliary aid or service for the provision of these services. 28 C.F.R. § 36.301(c); 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 entity may increase the price of admission for all visitors to cover the cost of an interpreter or CART provider but may not bill the deaf or hard of hearing visitor exclusively.
  - b. The entity may not require the deaf or hard of hearing visitor to bring an interpreter or other auxiliary aid or service with them.
- 4) The ADA does not require covered entities to furnish auxiliary aids and services when doing so would create an undue burden, which requires proof of specific factors. *See* 28 C.F.R. § 36.104; 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 entity.



- b. That the cost of providing auxiliary aids and services exceeds the fee that the deaf or hard of hearing visitor pays for admission does not mean that providing them results in an undue burden.
- c. A lack of advance notice does not excuse the entity from making best efforts to secure the aid or service.
- d. 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.
- e. Entities are also encouraged to consult a tax advisor regarding available tax credits and other positive tax consequences of providing auxiliary aids and services. *See IRS Tax Credits and Deductions, ADA.GOV, <http://www.ada.gov/taxcred.htm>.*

Entities offering exhibits, public displays guided tours, and similar programs and activities are encouraged to implement or provide the following accessibility measures:

- 1) Sign language interpreters, oral interpreters, CDIs, assistive listening devices, real-time captioning and/or other auxiliary aids or services when requested by the deaf or hard of hearing visitor. The visitor's specific request for a particular aid or service should be honored. No single auxiliary aid or service is suitable for all deaf and hard of hearing visitors.
- 2) Captioning of all audio-visual materials or aural information that is presented to visitors at all permanent or temporary programs, events, and exhibits.
- 3) Guided tours by guides who are fluent in American Sign Language.
- 4) Pre-recorded videos of sign language translations of all audio-visual materials or aural information for deaf and hard of hearing visitors who are not proficient in English or are not able to make an advance request for auxiliary aids and services.
  - a. These sign language videos may be transmitted on a monitor at each exhibit or accessed by scanning a QR code displayed at or near an exhibit with a personal smartphone or a tablet loaned to a deaf or hard of hearing visitor upon request. Examples of museums or galleries that use such technologies include:



1. National Archives Museum: <https://youtu.be/6uZac3anNM0>.
2. National Gallery of Art: <https://www.nga.gov/audio-video/video/asl/asl-at-the-nga.html>.
- 5) Conspicuous signage at all admissions booths and information desks advertising the auxiliary aids and services that are available and the method by which a visitor should request an aid or service.
- 6) Information on the website indicating the auxiliary aids and services that are available and the method by which a visitor should request an aid or service.
- 7) Sensitivity training led by deaf or hard of hearing advocates for all employees, staff, and volunteers on communicating with deaf and hard of hearing visitors.
- 8) Training for all employees, staff, and volunteers on recognizing and responding to telephone calls placed through video or text-based telecommunications relay services in the same manner as other telephone calls.
- 9) Training for all employees, staff, and volunteers on each of the auxiliary aids and services that are available and how to handle requests from deaf or hard of hearing visitors.

An entity may find a local agency that contracts to provide auxiliary aids and services by conducting a basic internet search for the particular aid or service needed. For example, searching for “American Sign Language interpreter Washington, DC” will bring up a list of interpreting agencies in Washington, DC.

Thank you for your attention to this important matter.

Sincerely,

The National Association of the Deaf  
Law and Advocacy Center

## Relevant Sections of Title III of the Americans with Disabilities Act

### § 12181. DEFINITIONS.

As used in this title:

(7) Public accommodation. The following private entities are considered public accommodations for purposes of this title [42 U.S.C. §§ 12181-12189], if the operations of such entities affect commerce-- . . .

(H) museum, library, gallery, or other place of public display or collection;

### § 12182. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(a) General rule. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction.

(1) General prohibition.

(A) Activities.

(i) Denial of participation. It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit. It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit. It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) Individual or class of individuals. For purposes of clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) Integrated settings. Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate. Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) Administrative methods. An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association. It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities 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.

(2) Specific prohibitions.

(A) Discrimination. For purposes of subsection (a), discrimination includes—

(i) the imposition or application of 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 goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and. . .



## Relevant Sections of the Implementing Regulations of Title III of the Americans with Disabilities Act

### 28 C.F.R. § 36.301. ELIGIBILITY CRITERIA.

(c) Charges. A public accommodation may not impose 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, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

### 28 C.F.R. § 36.303. AUXILIARY AIDS AND SERVICES.

(b) Examples. The term "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;

(c) Effective communication.

(1) A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. This includes an obligation to provide effective communication to companions who are individuals with disabilities.

(i) For purposes of this section, "companion" means a family member, friend, or associate of an individual seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation, who, along with such individual, is an appropriate person with whom the public accommodation should communicate.

(ii) 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. A public accommodation should consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, but the ultimate decision as to what measures to take rests with the public accommodation, provided that the method chosen results in effective communication. 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.

(2) A public accommodation shall not require an individual with a disability to bring another individual to interpret for him or her.

(3) A public accommodation 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.

(4) A public accommodation 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) Telecommunications.

(3) A public accommodation may use relay services in place of direct telephone communication for receiving or making telephone calls incident to its operations.

(4) A public accommodation 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.

28 C.F.R. § 36.104. DEFINITIONS.

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.

Video remote interpreting (VRI) service 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 § 36.303(f).

Undue burden means 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.

## Relevant Sections of Title II of the Americans with Disabilities Act

### § 12131. DEFINITIONS.

As used in this title:

- (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 . . .
- (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.

## Relevant Sections of the Implementing Regulations of Title II 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.

### 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.

### Relevant Section of the Rehabilitation Act of 1973

29 U.S.C. § 794

- a. Promulgation of rules and regulations. No otherwise qualified individual with a disability in the United States, as defined in section 7(20) [29 USCS § 705(20)], shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.