



State of Idaho Council for the Deaf and Hard of Hearing

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ACCESS TO COURT ACTIVITIES

ACCESS TO COURT FOR PERSONS WHO ARE DEAF OR HARD OF HEARING

Title II of the Americans with Disabilities Act (ADA) prohibits all public entities from discriminating against a person with a disability. (28 Code of Federal Regulations)

GENERAL PROHIBITION AGAINST DISCRIMINATION

People who are disabled because they are deaf or hard of hearing have the right to participate in court activities. To deny participation is a violation of Title II of the ADA. A qualified person with a disability shall not be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity based on their disability.

Qualified individual with a disability means an individual with a disability who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. Even if it takes reasonable modifications to rules, policies, or practices, or the provision of auxiliary aids and services for them to participate. (28 CFR Part 35.104)

Public Entity means –

- (1) Any State or local government;
- (2) Any department, agency, or other local government. (28 CFR Part 35.104)

Courts are public entities and courts must allow people who are disabled because they are deaf or hard of hearing to have equal opportunity to participate in all court activities. This access is especially important in the courtroom where people who are deaf or hard of hearing need to be able to participate fully in the judicial process, not only as litigants, but as judges, jurors, attorneys and spectators.

COMMUNICATION REQUIREMENTS

A court shall take appropriate steps to ensure that communications with applicants, participants and members of the public who are deaf or hard of hearing are as effective as communications with others. This may mean a change in the practices and policies of the court or require that the court furnish appropriate auxiliary aids and services to give an individual who is deaf or hard of

hearing an equal opportunity to participate in, and enjoy the benefits of court activities.

Auxiliary aids and services include qualified interpreters, note takers, transcriptions, assistive listening systems or other effective methods of making audibly delivered materials available to individuals who are deaf or hard of hearing. The court must take steps necessary to provide auxiliary aids or services to assure communication access. The type of aids or services will vary depending on the circumstances. Complex legal situations might require more sophisticated communication assistance than a simple transaction where the person is ordering a copy of their birth certificate from the County Courthouse. Whatever the circumstances, appropriate communication access must be provided.

When an auxiliary aid or service is needed for a person to participate, the court shall give primary consideration to the request of the person with a disability. (28 CFR Part 35.160)

COST OF AUXILIARY AIDS OR SERVICES

A court 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 programs accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the ADA.

The court cannot require that the person who is deaf or hard of hearing pay for aids or services nor can it assess the costs as part of court costs. (28 CFR, Part 35.130f)

WHAT IS NEEDED TO ASSURE ACCESS

Effective communication access depends on the circumstances and the severity of the person's hearing impairment. Solutions may be very simple like have speakers look at the person with a hearing impairment or they may require some high technology devices. Although many of the needs of person who are deaf are different than the needs of persons who are hard of hearing, some solutions work for both groups. The solutions for both groups are discussed.

COMMUNICATION ACCESS FOR PERSONS WHO ARE HARD OF HEARING

Courtrooms are often a nightmare for persons who are hard of hearing. Many are large rooms with high ceilings and very difficult for good communication. The problem for the person who is hard of hearing is compounded by the fact that courtroom participants often move around and are a distance away from persons serving as witnesses or jury members. In order to improve communication it may be necessary to have speakers look at the person who is hard of hearing. Also there are assistive listening systems that can be used in court. Microphones and loud speakers may be all that is needed for a person with a less severe hearing loss. There are different types of assistive listening systems that transmit sounds through induction loops, FM systems or infrared systems. Each system has its advantages and disadvantages. In an induction system is used it may be used by persons with telecoils in their hearing aids. FM and infrared systems usually require the person who is hard of hearing to use a special receiver. FM systems are usually less expensive than the infrared but if they are used in more than one room, then the FM system must be on different bandwidths in each room. Infrared systems are more suitable in areas where confidentiality is important since they cannot be heard outside the room in which they are used. Costs of the systems vary depending on the size of the room and the number of receivers.

COMUNICATION ACCESS FOR PERSON WHO ARE DEAF

Persons who are deaf need to have the information that is being given audibly given to them in another format. Sign language interpreters will be the most common auxiliary aid needed to assure communication access in the courtroom. Interpreter services required may be American Sign Language, Signed English, or oral (easy to speech/read). The person who is deaf should be consulted to determine the appropriate interpreter services needed.

A more high technology solution for persons who are deaf is the use of computer assisted note taking or transcription projected to a personal monitor or a screen. Instead of listening to the information that is being relayed audibly, they read it. This solution can work for both persons who are deaf and persons who are hard of hearing.

HOW CAN YOU HELP ASSURE ACCESS?

Although auxiliary aids and services can provide communication access, they must first be available. It is very important for persons who are deaf or hard of hearing to request to participate in court activities and to request auxiliary aids and services. This will help to educate state or local court officials regarding their responsibilities under the ADA.

If you have questions regarding whether a court is complying, ask to speak with the Courts ADA coordinator. The ADA requires that a public entity, make available the name, office address and telephone number of at least one employee that coordinates efforts to comply with and fulfill its responsibilities under the ADA including the investigation of complaints. In addition, the court must adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that is prohibited by the ADA. (28 CFR Part 35.107)

Copies of the Council's Directory of Sign Language Interpreters have been made available to all Trial Court Administrators and additional copies may be obtained by call the Council for the Deaf and Hard of Hearing.