

Obligations of Private Colleges and Other Post-secondary Institutions to Deaf Students

This memorandum addresses the obligations of private colleges and universities to provide auxiliary aids and services to deaf students. There are two major federal laws which create this obligation. Since 1973, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, as amended, has required colleges and universities which receive any federal financial assistance to provide interpreters to deaf students. The Americans with Disabilities Act (ADA), P.L. 101-336, 42 U.S.C. 12181 et seq. (Title III), now requires this of all post-secondary education institutions, regardless of whether or not they receive federal financial assistance.

Colleges and other post-secondary institutions which receive any form of financial assistance or loans, for the institution or for students attending the institution, are federal financial recipients pursuant to Section 504. The receipt of that funding by any component of the institution requires every program within the institution to comply with the civil rights requirements imposed by the receipt of federal funding. Civil Rights Restoration Act of 1978, 29 U.S.C. §794(b).

As a recipient of federal financial assistance, a post secondary institution has an obligation under Section 504 to be accessible to students with disabilities. As a part of this obligation, the U.S. Department of Education has determined that these institutions must provide necessary auxiliary aids for sensory impaired students, including interpreters for hearing impaired students, 34 C.F.R. 104.44(d). In its Analysis of this Regulation, the Department of Education notes: " Under §104.44(d), a recipient must ensure that no handicapped student is subject to discrimination in the recipient's program because of the absence of necessary auxiliary educational aids. Colleges and universities expressed concern about the costs of compliance with this provision. The Department emphasizes that recipients can usually meet this obligation by assisting students in using existing resources for auxiliary aids, such as state rehabilitation agencies and private charitable organizations. Indeed, the Department anticipates that the bulk of auxiliary aids will be paid for by private agencies, not by colleges or universities. " 45 Fed.Reg. 30954 (Friday, May 9, 1980).]

Many deaf students are eligible for vocational rehabilitation assistance, which has a primary obligation to provide interpreter services. However, a college may not require students to apply for vocational rehabilitation assistance, and when the student is not a client of vocational rehabilitation, or when funding for interpreters is not forthcoming from vocational rehabilitation, the institution is responsible for this expense. See generally, Patrick, 7NDLR 470 (1995).

The responsibility of the institution in the absence of vocational rehabilitation

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involvement is clear. Every court which has reviewed this issue has determined that colleges and post-secondary institutions are obligated to provide interpreters for deaf students who are not recipients of vocational rehabilitation. *United States v. Board of Trustees of the University of Alabama*, 908 F.2d 740 (11th Cir. 1990); *Camenisch v. University of Texas*, 616 F.2d 127 (5th Cir. 1980), vacated as moot, 451 U.S. 390 (1981); *Jones v. Illinois Department of Rehabilitation Services*, 504 F. Supp. 1244, fn. 56 (N.D. Ill. 1981), aff'd 689 F.2d 724 (7th Cir. 1982); *Crawford v. University of North Carolina*, 440 F. Supp. 1047 (M.D.N.C. 1977); *Herbold v. Trustees of the California State Universities and Colleges*, C-78-1358-RHS (ND Cal. 1978); and *Barnes v. Converse College*, 436 F. Supp. 635 (D.S.C. 1977).

Moreover, the U.S. Department of Education and, before it, the U.S. Department of Health, Education, and Welfare have issued findings of violation against several post secondary institutions for not providing interpreter services for deaf students. *In Re Johnson State College*, Docket No. 01-89-2010 (Region I); *Manley v. Paterson College*, Docket No. 79-0001 NE (Region II); *Warso v. Southern Florida University*, Docket No. 0419780109 (Region IV); and *Arnold v. University of Alabama at Birmingham*, Docket No.04107902090 (Region IV).

The second federal statute which creates the obligation to provide auxiliary aids for colleges and universities is Title III of the Americans with Disabilities Act (ADA). Title III of the ADA provides people with disabilities with the rights to equal access to public accommodations. Title III covers a wide range of places, including private schools, institutions and businesses offering educational services at every level of education. These public accommodations are required to provide auxiliary aids and services to ensure effective communication with deaf and hard of hearing people. The ADA also requires the removal of structural communication barriers that are in existing facilities, by the installation of flashing alarm systems, permanent signage, and adequate sound buffers.

The U.S. Department of Justice regulation to Title III of the ADA, 28 C.F.R. Part 36, and the Analysis thereto, 56 Fed. Reg. 35544 - 35691 (July 26, 1991), explain in detail the requirements of this title. Public accommodations are required to provide auxiliary aids when such are necessary to enable a person with disabilities to benefit from their services: " A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities." 8 C.F.R. §36.303(c).

A comprehensive list of auxiliary aids and services required by the ADA is set forth in this regulation, and includes, for deaf and hard of hearing individuals: [q]ualified interpreters, notetakers, computer-aided transcription services, written materials,

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telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunication devices for deaf persons [TTYs], videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments. 28

C.F.R. 36.303(b)(1).

For many deaf sign language users, the only effective way to achieve effective communication is through the use of qualified sign language interpreters: ". . . an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary." 28 C.F.R. 36.104.

For some deaf and hard of hearing persons who do not use sign language, the auxiliary aid which a college or university should provide may be a computer-aided real-time transcription, or CART system. A trained operator enters everything which is spoken in a class into a computer, which simultaneously transcribes this onto a computer screen for the deaf student. In some situations, this system is preferable to a sign language interpreter.

In all cases, the deaf student should be consulted as to the appropriate method of providing effective communication. The Office for Civil Rights has held that the three basic components of "effective" communication are timeliness of delivery, accuracy of the translation, and provision of communication in a manner and medium appropriate to the significance of the message and the abilities of the individual with the disability. The costs for provision of these auxiliary aids may not be imposed upon the individual with disabilities. 28 C.F.R. 36.301(c).

The Department of Justice regulation ensures further that courses given by private entities shall be accessible for disabled persons. The regulation states: " Any private entity that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or post-secondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals." 28 C.F.R. §36.309(a).

The regulation outlines what is required under this section for examinations. 28 C.F.R. §36.309(b). It also provides this mandate for courses offered by private entities: " A private entity that offers a course covered by this section shall provide appropriate auxiliary aids and services for persons with impaired sensory, manual, or speaking skills. . . Auxiliary aids and services required by this section may include. . . interpreters. . ." 28 C.F.R. §36.309(c). The ADA applies to

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all the activities of the institution, including extracurricular activities and activities that take place outside of the classroom.

Finally, colleges and universities have duties to make physical accommodations to deaf students in dormitories, university buildings and other facilities. The standards for architectural accommodations include flashing light alarms, visible doorbells and other signaling devices, and access to captioned television and telecommunications equipment.

Few administrators have expertise about the broad range of accommodations that are needed for individuals with disabilities. The Analysis to this regulation makes it clear that Congress, as well as the Department of Justice, "expects that public accommodations will consult with the individual with a disability before providing a particular auxiliary aid or service." 56 Fed.Reg. at 35567.

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