

Public School Obligations to Deaf Individuals

This memorandum addresses the obligations of a public school system under Section 504 and the Americans with Disabilities Act. Deaf students, parents and personnel are entitled to a physically accessible facility and to services including qualified sign language interpreters when they need accommodations to have meaningful access to school activities. The ADA and Section 504 apply to all programs and activities offered by a school system, including school board meetings, extracurricular programs, teacher conferences, recreational activities, social and cultural activities, adult education, summer school or hobby classes.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, requires programs which receive federal financial assistance to provide interpreters or other auxiliary aids to handicapped people when necessary to give them equal access to the program. See also 34 C.F.R. 104.4 and 104.21. Public school systems receive substantial federal financial assistance, so this law applies to them. The Americans with Disabilities Act (ADA), 42 U.S.C. 12101-12213, requires comparable access by all state and local government programs, regardless of whether or not the programs get federal assistance. Title II of the ADA went into effect on January 27, 1992.

A separate federal law, the Individuals with Disabilities Education Act (IDEA), also affects children with disabilities. This law requires public school systems to provide a "free, appropriate public education" to children who need specialized services because of a disability. It establishes a procedure for developing an individualized curriculum and identifying needed supportive services for individual children. Although this is the principal law which determines the special educational services children will receive from a school system, Section 504 and the ADA provide additional protection, especially in the context of architectural accessibility, extracurricular activities, summer programs and services for parents, personnel and other adults .

The U.S. Department of Justice has promulgated regulations to implement Title II of the ADA, which applies to activities of public entities such as school systems. 28 C.F.R. Part 35. The accompanying Analysis specifically addresses the question of duties of school systems to provide accessibility to parents with disabilities: "Some commenters asked for clarification about the responsibilities of public school systems under section 504 and the ADA with respect to programs, services and activities that are not covered by the Individuals with Disabilities Education Act (IDEA), including, for example, programs open to parents or to the public, graduation ceremonies, parent-teacher organization meetings, plays and other events open to the public, and adult education classes. Public school systems must comply with the ADA in all of their services, programs, or activities, including those that are open to parents or to the public. For instance, public school systems must provide program accessibility to parents and guardians with disabilities to these programs, activities, or services, and appropriate auxiliary aids and services whenever necessary to ensure effective communication, as long as the provision of the auxiliary

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aid results neither in an undue burden or in a fundamental alteration of the program." 56 Fed. Reg. 35696 (July 26, 1991).

The Title II regulations specifically address the obligation of a school board or other public entity to remove communication barriers for deaf individuals:

(a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.(2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities. 28 C.F.R. 35.160.

The regulation defines "auxiliary aids and services" to include: "Qualified interpreters, note takers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons [TTYs], videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments; . . . and . . . other similar services and actions. " 28 C.F.R. 35.104.

The appropriate auxiliary aid depends on the context of the communication and the needs of the individual with disabilities. For example, in a school auditorium or a school board meeting, some deaf people may need a sign language interpreter to follow and participate in the proceedings. Other people with hearing impairments do not use sign language. They may need a computer- assisted transcript or an assistive listening system (e.g., a loop system or an FM or infrared amplification system) in order to understand and participate in the same activity. If the school has videotapes or films, or if it broadcasts on cable television, captioning may be the most appropriate way to give access to deaf viewers.

In order to make sure a deaf individual is alerted to a fire or other emergency, a school system should install visual (flashing) fire alarms in areas used by deaf individuals. Examples of accommodations for deaf persons include visible fire alarm systems, amplification systems that are compatible with hearing aids, entry systems that do not depend on ability to use an intercom or respond to a buzzer or other auditory device.

A telecommunication device for deaf persons (TTY) may be necessary, so that the school and parent can communicate directly about illnesses, schedules, discipline of a

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child and other problems.

The primary concern is whether or not the auxiliary aid or service is effective to make the spoken information available and to give the person with impaired hearing an opportunity to participate effectively. When there is a disagreement or uncertainty about the appropriate auxiliary aid, the regulations require the public agency to give "primary consideration" to the requests of the individual with disabilities. In analysis of this regulation, the Justice Department states: ". . . The public entity shall honor the choice [of the deaf individual for a particular auxiliary aid] 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." 56 Fed.Reg. 35711-12 (July 26, 1991).

A federal court has ruled that school systems must provide interpreters when deaf parents meet with teachers or attend school programs such as orientation programs. *Rothschild v. Grottenthaler*, 907 F.2d 886 (2nd Cir. 1990). The Office for Civil Rights for the U.S. Department of Education has held that PTA programs and activities are covered by the ADA, in that the school district provides significant indirect assistance to the PTA. *Irvine Unified School District*, 19 IDELR 883 (OCR 1993). The Office for Civil Rights has also determined that sign language interpreters permit deaf people to participate meaningfully in federally-assisted programs. It has ruled that public school systems must give access to extracurricular programs, and must give access when they offer services to parents as well as to students. The agency may not assess any additional charge for the provision of an auxiliary aid or service. 28 C.F.R. 35.130(f).

School systems should routinely publicize the method that deaf persons can use to request necessary services such as interpreters. A public entity must have a procedure that a deaf person can use to request service at school system activities, accessible by TTY. TTY-accessible telephone numbers should be clearly identified in telephone directory listings, school system letterhead, and information disseminated about school system services. Failure to provide a qualified sign language interpreter or other auxiliary aid or service for a deaf parent or child under these circumstances would be a discriminatory practice.

This material was prepared by the National Association of the Deaf Law Center. It is intended solely as informal guidance. This material is not legal advice. For technical assistance and additional information about how laws against discrimination apply to you, contact the NAD Law Center, a local attorney, or an enforcement agency.