



A. GENERAL EFFECTIVE COMMUNICATIONS REQUIREMENTS UNDER TITLE II OF THE ADA

The effective communication requirement applies to ALL members of the public with disabilities, including job applicants, program participants, and even people who simply contact state or local government agencies seeking information about programs, services, or activities.

A.1 Requirements:

Subpart E -- Communications

Regulatory references: 28 CFR **35.160 – 35.164.**

Other references: Appendix A to Part 35 -- Preamble to Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services (Published July 26, 1991) (hereinafter “the Preamble to the Final Regulations”)

35.160 General.

Section 35.160(a) requires “a 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.**”

Section 35.160 (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, a service, program, or activity conducted by” the public entity. Section 35.160 (b)(2) states that “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.”

In interpreting Section 35.160 (b)(2), the Preamble to the Final Regulations indicates that the public entity must provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice and must honor the choice unless it can demonstrate that (1) another effective means of communication exists, or that (2) use of the means chosen would not be required under Sec.35.164 (i.e., because it would result in



fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens).

The Preamble to the Final Regulations also states that, “**Television and videotape programming** produced by public entities are covered by this section” and that “access to audio portions of such programming may be provided by **closed captioning**”, but does not limit an agency’s compliance to this method.

35.161 Telecommunication Devices for the Deaf (TDD's)

Section 35.161 requires that, “Where a public entity communicates by telephone with applicants and beneficiaries, TDD's or equally effective telecommunication systems shall be used to communicate with individuals with impaired hearing or speech.”

The Preamble to the Final Regulations indicates that where telephone relay services, such as those required by Title IV of the ADA are available, a public entity may use those services to meet the requirements of this section. It also indicates that Department of Justice encourages those entities that have extensive telephone contact with the public such as city halls, public libraries, and public aid offices, to have TDD's to insure more immediate access, and suggests that where the provision of telephone service is a major function of the entity, TDD's should be available.

35.162 Telephone Emergency Services

Section 35.162 requires that, “Telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems.”

The Preamble to the Final Regulations indicates that telephone emergency access through a third party or through a relay service would not satisfy the requirement for direct access.

The Preamble to the Final Regulations points out that Section 35.133, which mandates maintenance of accessible features, and requires public entities to “maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities” would apply to TDD's and other devices that provide direct access to the emergency system. It also encourages the use of speech amplification devices on the handsets of dispatchers’ telephones in case the caller does not have an amplification device on his/her phone.



35.163 Information and Signage

Section 35.163(a) requires the public entity to “ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.” Paragraph (b) requires the public entity to “provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities” and to use the international symbol for accessibility “at each accessible entrance of a facility.”

35.164 Duties

Section 35.164 states that Subsection E of the Regulations (Communication), which includes Sections 35.160- 35.164, above), “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.” However, it also states, “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.” It further states that “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.”

This is virtually identical to the language of 35.150(a)3 regarding modifications to existing facilities. The Preamble to the Final Regulations indicates that, because of the essential nature of the services provided by telephone emergency systems, the Department of Justice assumes that Sec.35.164 will rarely be applied to Sec.35.162.

A.2 Findings:



During the ADA Self-evaluation prepared by the City in 1990, a citywide review of the City's provisions for effective communication took place. Since that time, the City has had a policy to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. This includes:

- Providing an invitation to request accommodation, including assistive communication services or devices, in all public meeting notices;
- Providing auxiliary aids and services, including qualified interpreters, to people with disabilities upon request;
- Accepting and returning calls via the 7-1-1 California State Relay Service and other third party services;
- Maintaining full direct TTY/TDD and computer modem text capability for 9-1-1 emergency service calls and regularly training dispatchers on the use of these systems;
- Providing signage in many (but not all) facilities to guide City visitors to accessible entrances and services;
- Providing access to television and videotape programming produced by City TV, including providing closed captioning for major meetings, such as City Council meetings.

As part of the current Self-evaluation and Transition Plan Update process:

- A new policy on Assistive Communication Requests was created to better communicate these commitments to staff and the public. **See Appendix A.5.1**
- An "Assistive Communications Resources List" was developed as part of this Self-evaluation process, to assist staff in accommodating requests for assistive devices and services from persons with disabilities. **See Appendix A.5.2**
- A training document "Tips for Providing Better Customer Service To People with Disabilities" was developed to provide information to staff about etiquette when communicating with people with disabilities. **See Appendix A.5.3**

These documents will be distributed to all staff and made available on the City's computer system.

A.3 Recommendations:



1. Teach all employees about the requirement to provide effective communication to people with disabilities. All employees who interact with the public over the telephone or in person need to know their role in ensuring effective communication.
2. Teach all employees to utilize telephone relay services or video relay services. Instruct employees to accept and handle relayed calls in the normal course of business. Untrained individuals frequently mistake relay calls for telemarketing or collect calls and refuse to accept them. They also may mistakenly assume that deaf people must come into a government office to handle a matter in person even though other people are allowed to handle the same matter over the telephone.
3. Teach key employees, such as Department ADA Liaisons, how to obtain and use assistive services and devices when a person with a disability requests it.

Here are some examples of different auxiliary aids and services that may be used to provide effective communication for people with disabilities. **Not all ways work for all people with disabilities or even for people with one type of disability. It is important to consult with the individual to determine what is effective for him or her.**

- qualified interpreters
- notetakers
- screen readers
- computer-aided real-time transcription (CART)*
- written materials
- telephone handset amplifiers
- assistive listening systems
- hearing aid-compatible telephones
- computer terminals
- speech synthesizers
- communication boards
- text telephones (TTY/TDDs)
- open or closed captioning
- videotext displays
- description of visually presented materials
- exchange of written notes
- TTY/TDD or video relay service
- email
- text messaging
- instant messaging
- qualified readers
- assistance filling out forms
- taped texts
- audio recordings
- Brailled materials
- large print materials
- materials in electronic format (compact disc with materials in plain text or word processor



- closed caption decoders (Captioned Telephone format)
- video interpreting services

The type of aid or service necessary depends on the length and complexity of the communication as well as the format. Staff should consider how important the communication is, how many people are involved, the length of the communication anticipated, and the context.

Only qualified interpreters (Sign Language, Oral, Cued Speech) should be used.

** Many people who are deaf or hard of hearing are not trained in either sign language or lipreading. CART transcription is a service in which an operator types what is said into a computer that displays the typed words on a screen.*

4. Continue to ensure that Public Television programs and videos are accessible to people who are not able to hear the audio portion of these productions. Ideally, this will be done through closed captioning. For persons who are blind or have low vision, detailed audio description will ideally be added to describe important visual images. However, NATOAA (National Association of Telecommunications Officers and Advisors) recognizes that many local government agencies are not able to provide these services due to the cost.
5. Continue to make sure that 9-1-1 dispatchers are trained and receive periodic refreshers on how to communicate using this equipment.
6. Improve signage and the use of the international symbol for accessibility (ISA) to identify accessible facilities. Also provide directional signage including the ISA symbol and an arrow at inaccessible facilities pointing to accessible facilities (i.e. entrances, restrooms, drinking fountains, telephones, elevators, wheelchair lifts, etc.) to better comply with the requirements of Section 35.163., as indicated elsewhere in the Transition Plan.
Whenever possible, signage should also be added for tactile/Braille room identification and exiting identification to address the wayfinding needs of persons who are blind or have low vision.



7. Ensure that printed materials provided to the public by the different departments within the City are provided, upon request, in an accessible format, such as in large print, Braille, or audio recording.