

The Rights of Deaf Inmates

Deaf people serving prison terms are frequently denied basic due process rights and access to rehabilitation programs and prison services because prison administrators fail to understand their special communication needs. However, deaf persons have constitutional and statutory rights of access in correctional facilities. These rights are providing the impetus for many correctional systems to re-evaluate the services they have available to deaf inmates.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, as amended, guarantees persons with disabilities equal access to any entity that received federal financial assistance, either directly or indirectly. Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12141 et seq., now extends these same rights to inmates in all state and local facilities. The standards of accessibility are similar under these two laws.

The U.S. Department of Justice Analysis of its Section 504 regulation explains the specific obligations that jails and prisons have as to deaf inmates. The Analysis states: [D]etention and correctional agencies must insure that their programs and activities are accessible to handicapped persons. For example, correctional agencies should provide for the availability of qualified interpreters (certified, where possible, by a recognized certification agency) to enable hearing-impaired inmates to participate on an equal basis with non-handicapped inmates in the rehabilitation programs offered by the correctional agencies (e.g., educational programs). 45 Fed. Reg. 37630 (June 3, 1980) Under this regulation, a deaf inmate has a right to be provided with sign language interpreter services to enable him or her to participate in or benefit from programs and services the prison offers other inmates, as well as at any disciplinary proceedings. See also, Letter from Patrick, 7 NDLR 425 (April 11, 1995).

Title II of the ADA, the U.S. Department of Justice regulation to Title II, 28 C.F.R. Part 35, and the Analysis thereto, 56 Fed. Reg. 35694 (July 26, 1991) clarify the requirements of Section 504, and extend them to institutions which do not receive federal financial assistance. First, the Title II regulation defines the term "qualified interpreter" to mean: . . . an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary. 28 C.F.R. 35.104.

The Department of Justice regulation to Title II of the ADA also sets forth other auxiliary aids and services which a state or local correctional facility may have to provide to a deaf or hard of hearing inmate: [q]ualified interpreters, notetakers, computer-aided 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, telecommunication devices for deaf persons (TDDs), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments. 28 C.F.R. 35.104.

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Federal courts have confirmed that the ADA and Section 504 create rights for deaf inmates, including the right to qualified interpreter services. *Pennsylvania Dept. of Corrections v. Yeskey*, _____ U.S. ____ (June 15, 1998), 1998 LEXIS 3888 (1998); *Duffy v. Riveland*, 88 F.3d 1525 (9th Cir. 1996); *Bonner v. Arizona Department of Corrections*, 857 F.2d 559 (9th Cir. 1988). For a general overview of the legal issues pertaining to deaf inmates, see Elaine Gardner, *The Legal Rights of Prisoners with Disabilities*, 14 ST. LOUIS PUBLIC L.REV. 175 (1994).

For deaf and hard of hearing inmates, other important auxiliary aids and services generally include TTYs and television decoders. It is clear that the ADA and Section 504 require provision of these important auxiliary aids when other inmates have access to telephones and television.

Policies and procedures must also be modified, in order to give inmates access to this equipment that is equal to the opportunity given to inmates with normal hearing. For example, a facility must not only provide a TTY for a deaf inmate to use, it must also allow sufficient time to use the TTY. TTY conversations take more than three times as long as voice conversations. Therefore, if a facility has a rule that limits inmate telephone use to fifteen minutes, they may need to extend this time for a deaf inmate using a TTY. The facility must also ensure that the deaf inmates have the same hours of access to telephone service as do hearing inmates. Some facilities limit TTY use to daytime hours because the office where a TTY is stored is only open during those hours. This violates the ADA, if other inmates can make telephone calls during evening or weekend hours. No appointments or written requests to use the TTY should be required, if the same is not required when hearing inmates use a conventional telephone. Finally, some facilities prohibit inmates from using 800-level telephone numbers. However, deaf people need to be able to reach the statewide TTY relay service, mandated by Title IV of the Americans with Disabilities Act. The relay service enables a deaf person to telephone people who do not have TTYs. Deaf inmates must be access to the statewide relay service.

The ADA is enforced by the U.S. Department of Justice, Office for Civil Rights. Complaints can be filed with the Department of Justice or in courts.