

Auxiliary Aids in State and Local Courts

Deaf and hard-of-hearing persons have a right to communicate effectively and to participate in proceedings and activities conducted by all state and local courts. Specifically, they are entitled to have courts provide and pay for auxiliary aids to enable them to understand and be understood. This right is based on a federal law, the Americans with Disabilities Act (ADA). The ADA protects all persons participating in court activities, including litigants, witnesses, jurors, spectators and attorneys. It applies to any type of court proceeding in any type of state or local court, including civil, criminal, traffic, small claims, domestic relations, juvenile and other specialized courts. It also applies to other activities conducted by court systems, such as personnel, educational activities, and communications with clerks and other court personnel.

For deaf persons who use sign language, the most effective auxiliary aid which a court can provide is usually the service of qualified sign language interpreters, trained in legal procedure and terminology. For deaf persons who do not use sign language and who have good levels of reading comprehension, the appropriate auxiliary aid is usually the use of a computer-assisted transcript, or CAT, system. Through this system, a court reporter enters the words spoken during the proceeding into a computer, which simultaneously transcribes the words onto a computer screen which can be read by the deaf person. For other persons, an oral interpreter may be needed to facilitate lipreading. For those who benefit from hearing aids, the appropriate auxiliary aid would be amplified or modified sound equipment, a courtroom with appropriate acoustic properties, and/or assistive listening systems. However, the appropriate auxiliary aid depends on the amount of hearing, the communication skills and the literacy skills of the individual. Court officers should confer with the deaf or hard of hearing individual to determine the appropriate services or modifications for effective communication for that individual.

All state and local courts are prohibited from discrimination based on disability. This federal mandate is found in Title II of the Americans with Disabilities Act, 42 U.S.C. §§12131-12134. The U.S. Department of Justice has issued regulations explaining the requirements of that Act, 28 C.F.R. Part 35, 56 Fed. Reg. 35694 (July 26, 1991) (U.S. Department of Justice Final Rule: Nondiscrimination on the Basis of Disability in State and Local Government Services).

Under the ADA and its regulation, local and state courts are required to provide auxiliary aids to ensure effective communication with deaf and hard of hearing individuals in civil, as well as criminal, proceedings:

(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

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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.

This law protects deaf parents of minors who are involved in court proceedings. Parents of a minor who is the subject of a juvenile proceeding are clearly "participants" in the proceeding even though the parents are not parties or witnesses, and they are entitled to qualified interpreting services during the proceeding.

The U.S. Department of Justice regulation defines the term "auxiliary aids" for deaf and hard of hearing individuals to include qualified interpreters and computer-aided transcription services, 28 C.F.R. 35.104. In its Analysis of the regulation, the Department of Justice uses the computer-aided transcription system as an example of an effective auxiliary aid or service in a courtroom for a person who is deaf or has a hearing loss who uses speech to communicate. 56 Fed. Reg. 35712. The ADA regulation has also made it clear that the individual with a disability cannot be charged for the auxiliary aid provided by a state or local court: "A public entity may not place a surcharge on a particular individual with a disability . . . to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual . . . with the nondiscriminatory treatment required by the Act or this part." 28 C.F.R. §35.130(f).

Some state courts still have laws that permit state judges to assess the cost of interpreter services as "court costs." These state laws violate the ADA. In its Analysis to the ADA regulation, the Justice Department explicitly addressed the issue of court costs: "The Department [of Justice] has already recognized that imposition of the cost of courtroom interpreter services is impermissible under section 504 [of the Rehabilitation Act of 1973.] . . . (45 Fed. Reg. 37630, June 3, 1980). Accordingly, recouping the costs of interpreter services by assessing them as part of court costs would also be prohibited.

Therefore, states may not enforce laws which permit judges to assess interpreter fees as "costs."

In conclusion, court systems are not equally accessible to deaf individuals who cannot understand and participate effectively in the proceedings. In recognition of this fact, the federal government has placed an obligation on state and local courts

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to modify their procedures and to provide auxiliary aids such as interpreters and computer-aided transcription services, at no cost to the deaf individual.

Provision of Interpreter Services by Federal Courts

The Judicial Conference of the Administrative Office of the United States Courts has adopted a policy that all federal courts will "provide reasonable accommodations to persons with communications disabilities." JCUS-SEP 95, p. 40. The Judicial Conference requires courts to provide sign language interpreters or other appropriate auxiliary aid to deaf and hard of hearing participants in court proceedings, at judiciary expense, in accordance with guidelines prepared by the Administrative Office of the United States Courts. The guidelines are published in Vol. I, Administrative Manual, Chapter III, General Management and Administration, Guide to Judiciary Policies and Procedures.

NOTE: State and local courts are required to provide auxiliary aids and services by Title II of the Americans with Disabilities Act, 42 U.S.C. 12131-34. For information about the responsibility of state and local courts, contact the NAD Law Center.

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.