

Legal Snapshots Presentation

Council of Language Access Coordinators Conference

May 20, 2015

Santa Fe, New Mexico

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General ADA Questions

Question: Can a certified interpreter bring a comfort dog into a courtroom?

Answer: Comfort and companion animals are not covered under the ADA, and therefore the facilities' rules on pets would apply. Resources on the difference between comfort/companion animals and service animals:

US Department of Justice Service Animals fact sheet:

www.ada.gov/service_animals_2010.htm.

ADA National Network Service and Emotional Support Animals page:

<https://adata.org/publication/service-animals-booklet>

Question: Is the court responsible for providing a sign language interpreter for a Deaf lawyer to communicate with her client at counsel table?

Answer: No, under Title I of the ADA it is the responsibility of the lawyer or the lawyer's employer to provide accommodations needed for employment-related activities.

Question: Does immigration status has any relevance to the application of the ADA?

Answer: No. Access must still be provided, though undocumented immigrants may not be entitled to the full range of remedies under the ADA.

Question: Under Sub-Part E; Sec. 35.164 Duties, what constitutes "undue financial and administrative burdens;" what is the standard of proof; can you give us examples where the public entity has shown financial and administrative burdens?

§ 35.164 Duties

This subpart 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. 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. 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.

Answer: When evaluating a claim under this section, the “all resources for available use” would encompass the entire state budget. Therefore, it is generally accepted that a state court would not be successful making this claim.

Accommodations for working interpreters

Question: What accommodations are courts required to provide certified interpreters with disabilities? Can interpreters with disabilities be limited in assignments?

General Answer: Under the ADA, accommodations are decided on a case-by-case basis through a negotiated process, so it is impossible to provide a comprehensive list of what accommodations must be provided. Regarding limiting assignments, it would depend upon the essential functions of the job.

ADA Questions and Answers: www.ada.gov/qandaeng.htm

Interpreters with mobility issues (permanent or temporary):

Answer: Potential accommodations could include a chair so the interpreter may sit while working. This may mean having the consumer of services also sit if needed, or use of equipment for spoken language interpreters.

Interpreters who are blind:

Answer: Seeing is obviously an essential function that cannot be accommodated for signed language interpreters, but a spoken language interpreter may simply need a reader for sight translation of documents.

Interpreters who are Hard of Hearing:

Answer: Hearing aids are considered personal devices that are not provided by the employer, but other accommodations may be provided. For on-site interpreting, both spoken and signed language interpreters could benefit from an FM system that offers amplification. For phone interpreting, spoken language interpreters could benefit from working in a quiet space where background noise is not a factor and from an amplified phone that allows them to adjust the volume as needed.

Provision of services for individuals who are Deaf or Hard of Hearing

Question: How can a court provide privacy for parties to hold privileged conversations with their attorneys in a courtroom with other Deaf individuals in the room at the opposing table or in the gallery?

Answer: May need to consider use of portable screens to limit line-of-sight for privileged communications.

Question: Are courts required to provide spectators who are Deaf or Hard of Hearing accommodations to observe court proceedings? Does this also apply to spectators who are covered under Title VI?

Answer: Under Titles II and III of the ADA, court is open to the public, and accommodations must be provided – but requests must be reasonable, such as being submitted with sufficient advance notice. Under Title VI, interpreters must be provided for NES individuals who are a “principal party in interest” but not spectators who aren’t part of the case.

Question: How does a court effectively assess the language needs of a Deaf person who has minimal or no language, is from another country, or uses a form of non-standard signed language?

Answer: Most court staff will not be qualified to make this assessment. Rely on qualified interpreters to make these recommendations, including requests for the use of a Certified Deaf Interpreter (CDI).

More resources regarding CDIs are listed below.

RID Standard Practice Papers – including one about Certified Deaf Interpreters:

www.rid.org/about-interpreting/standard-practice-papers

Deaf 411 Blog related to CDIs: <http://deaf411online.com/blog/?p=357>

Question: To what extent can a state court be required to go outside its jurisdictional boundaries to find an interpreter who can provide language access?

Answer: The court must provide effective language access. There will be times when one would need to use a Certified Deaf Interpreter (CDI) and unfortunately there are only 167 CDIs nationwide, so the potential to need to go outside jurisdictional boundaries could be high.

Question: Can VRI be used to provide language access to individuals who are Deaf or Hard of Hearing?

Answer: Yes, with several parameters.

- The technology works well – the picture can be seen clearly, bandwidth is sufficient for clear movement, and the interpreter can hear the proceeding well.
- The event is brief, not complicated, and doesn’t involve witness testimony.
- It is appropriate for the consumer and agreed to by everyone involved – VRI isn’t appropriate for consumers with non-standard language, poor visual acuity, or mental health issues.
- It is provided by an interpreter who is qualified to work in your courts. When hiring an interpreter through a company that provides VRI services, qualifications vary dramatically.

Several resources regarding VRI are included below.

National Association of the Deaf: <http://nad.org/issues/technology/vri>

Ventura County (CA) Superior Court: www.youtube.com/watch?v=FB9O2Af9yOk

Judicial Council of California: www.courts.ca.gov/documents/CIP-ASL-VRI-Guidelines.pdf

Additional Resources

The ADA National Network includes regional centers that offer ADA Technical Assistance, and are an excellent source of information.

<https://adata.org/national-network#map>

National Association of the Deaf (NAD) Advocacy Statement about Access in State and Local Courts:

<http://nad.org/issues/justice/courts/communication-access-state-and-local-courts>

RID Standard Practice Papers – several topics may be helpful, including *Interpreting in Legal Settings*:

www.rid.org/about-interpreting/standard-practice-papers