

The Duty of Public Entities and Public Accommodations to Provide Effective Communication and Sign Language Interpreters

NEVADA DISABILITY ADVOCACY AND LAW CENTER

THE PROTECTION AND ADVOCACY SYSTEM FOR NEVADA



**NEVADA DISABILITY
ADVOCACY & LAW CENTER**



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Nevada Disability Advocacy & Law Center (NDALC) is a private, statewide non-profit organization that serves as Nevada's federally-mandated protection and advocacy system for human, legal, and service rights for individuals with disabilities. NDALC was designated as Nevada's protection and advocacy system by the Governor in March, 1995.

Services provided by NDALC include, but are not limited to: information and referral services, education, training, negotiation, mediation, investigation of reported or suspected abuse/neglect, legal counsel, technical assistance, and public policy work.

NDALC has offices in Las Vegas, Reno, and Elko with services provided statewide. All services are offered at no cost to eligible individuals in accordance with NDALC's available resources and service priorities.

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Mission Statement

Protect and advocate for human and legal rights, interests, and welfare of Nevadans with disabilities.

Promote, support, and assist Nevadans with disabilities in understanding and controlling those systems and processes which directly affect their lives.

Foster the development, availability, and accessibility of services which increase the opportunities available to Nevadans with disabilities to live their lives as fully, independently, and productively as possible.

This publication is intended for basic information only. It is not legal advice. While attempts were made to ensure its accuracy, readers should direct questions concerning their specific situations to Nevada Disability Advocacy & Law Center (NDALC), legal aid agencies, or a private attorney.



THE DUTY OF PUBLIC ENTITIES AND PUBLIC ACCOMMODATIONS TO PROVIDE SIGN LANGUAGE INTERPRETERS AND OTHER ACCOMMODATIONS

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I. Introduction

Title II of the Americans with Disabilities Act (“ADA”) forbids state and local governments from discriminating against individuals because of a disability, while Title III forbids discrimination by public accommodations. Public accommodations include places like attorneys’ offices, restaurants, elementary schools, and museums. *See pg. 2 for more examples of public accommodations.*

A basic rule of the ADA is that persons with disabilities must be given an equal opportunity to participate in, or benefit from, a public place’s or public accommodation’s aids, benefits, and services.

In general, a public place or public accommodation discriminates against a person who is deaf or hard of hearing IF:

1. A sign language interpreter is needed to make sure there is effective communication between the person who is deaf, or hard of hearing, and the public place or public accommodation, or
2. the person with the disability has asked for an interpreter, and,
3. the public place or public accommodation refuses to provide a qualified interpreter and does not offer to provide other extra (auxiliary) aids or services that would also result in effective communication.

Exception: The entity may not be required to provide an interpreter if it can prove that an undue burden or basic alteration of its services or activities would result. See section G on pages 6-7 for more information on undue burden.

II. Public Entities under Title II of the ADA

“Public Entity” means any state or local government and any of its departments, agencies, or other divisions. The following applies to public entities under Title II of the ADA.

- Title II includes all activities, services, and programs of public entities such as state government, courts, police and fire departments, motor vehicle departments, and employment.
- Title II also includes public transportation services provided by state and local governments, but the U.S. Department of Transportation is responsible for making sure that public transportation meets the regulations of ADA Title II.
- Title II applies to state and local governments if they receive federal funds or not. Title II does NOT apply to:
 - Federal governmental agencies, as they are covered by the Rehabilitation Act of 1973, Sections 501 and 504 and by the Architectural Barriers Act
 - Activities of the branch of the Federal Government that makes laws, including Congress as they are covered under Title V of the ADA



III. Public Accommodations under Title III of the ADA

Public accommodations under Title III of the ADA must be **private** and they must **own, lease, lease to, OR operate** a place of public accommodation. A place of public accommodation is a place that buys or sells something, and falls within one of the following 12 areas:

1. **Places of lodging** (for example; inns, hotels, motels).
2. **Places serving food or drink** (for example; restaurants and bars)
3. **Places of shows or entertainment** (for example; movie theaters, live theaters, concert halls, stadiums)
4. **Places of public gatherings** (for example; auditoriums, convention centers, lecture halls)
5. **Sales or rental places** (for example; bakeries, grocery stores, hardware stores, shopping centers)
6. **Places providing services** (for example; dry cleaners, banks, barber shops, lawyer offices, hospitals, gas stations, supermarkets, pharmacies)
7. **Public transportation terminals, depots, or stations** (not including facilities relating to air transportation)
8. **Places of public displays or collections** (for example; museums, libraries, galleries)
9. **Places of recreation** (for example; parks, zoos, aquariums, amusement parks)
10. **Places of education** (for example; nursery schools; elementary, high school, college or post-graduate private schools)
11. **Social service centers** (for example; day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies)
12. **Places of exercise or recreation** (for example; gyms, health spas, bowling alleys, golf courses)

**Note: The above is not a complete list. There may be other places that are not included.*

IV. What does “Effective Communication” Mean under the ADA?

Regulatory references: 28 C.F.R. 35.160-35.164

“Effective communication” means that whatever is written or spoken must be as clear and able to be understood by people with disabilities, as it is for people who do not have disabilities.

Public places and public accommodations must be sure communications with persons with disabilities are as good as communication with persons without disabilities. They are required to provide extra (auxiliary) aids and services that will provide good communication.



A. Examples of Extra (Auxiliary) Aids and Services

For individuals who are deaf or hard of hearing, here are some examples of extra (auxiliary) aids and services:

- qualified interpreters on-site or through video remote interpreting (VRI) services;
- note takers;
- transcription services;
- written materials;
- exchange of written notes;
- telephone handset amplifiers;
- assistive listening systems;
- telephones compatible with hearing aids;
- closed caption decoders;
- open and closed captioning; including real-time captioning;
- voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or other telecommunications devices;
- videotext displays;
- accessible electronic and information technology; or
- any other methods of making audio information available to individuals who are deaf or hard of hearing.

The type of aid or service needed to make sure there is good communication will vary because of the length and the difficulty of the communication involved.

Remember, the ADA is not one-size-fits-all! Not all aids work for all people with disabilities or even for people with ONE type of disability!

EXAMPLE: A community hospital, emergency room provider must be able to speak with patients about symptoms, and patients must be able to understand information provided about their conditions and treatment. In this case, an interpreter, either on-site or by video-remote interpreting (VRI), would be necessary for communications with individuals who are deaf or hard of hearing.

B. Who is Responsible for the Costs of Extra (Auxiliary) Aids and Services?

Public places and public accommodations are responsible for covering the costs of such extra aids and services and may NOT add special charges to individuals with disabilities to cover the cost of these accommodations; such as providing qualified interpreters.



C. Who Chooses the Extra (Auxiliary) Aids or Services?

Public entities and public accommodations **MUST** allow individuals with disabilities to request the extra (auxiliary) aids or services of their choice.

PUBLIC ENTITIES: must meet with the person with a disability to determine what will work for him or her, and they must consider the person's first choice ("primary consideration"). This means when choosing what type of aid or service is needed; the public entity must honor the first choice of the person with a disability. There are some cases where this will not apply (we have given examples of these cases on page 8 of this guide). The person with a disability is the best person to determine what type of aid or service will work.

PLACES OF PUBLIC ACCOMMODATIONS: if possible, owners of places of public accommodation should meet with the persons with disabilities to determine what type of aid or device is needed for good communication. While this is strongly encouraged, the final decision as to what devices to use, or what measures to take to make sure there is good communication lies in the hands of the owner of the public accommodation. In many cases, more than one type, or aid or service, may be needed.

***EXAMPLE:** A patient who is deaf brings his own sign language interpreter for an office visit without asking the doctor, and then bills the doctor for the cost of the interpreter. The doctor must be permitted to consult with the patient and make an evaluation of what type of extra aid, if any, is needed to communicate with the patient. If the patient believes the doctor's decision will not lead to effective communication, then the patient may challenge that decision under Title III of the ADA by filing an administrative complaint, or possibly*

D. When Might an Interpreter Be Required?

Factors to be considered in determining whether an interpreter is required include:

- the situation in which the communication is taking place,
- the number of people involved, and
- the importance of the communication

When an interpreter is requested by a person who is deaf or hard of hearing, the interpreter provided must be qualified.

E. What is a Qualified Interpreter?

A "qualified interpreter" is someone who is able to sign what is being spoken by the hearing person to the individual who is deaf, and who can voice what is being signed by the person who is deaf, to the hearing person. Certification is not required if the individual has the necessary skills; that is, he or she must be "able to interpret effectively, accurately and impartially; both receptively and expressively, using any necessary 'specialized vocabulary'.



While the Americans with Disabilities Act (ADA) does not require specific certification, Nevada law does require an interpreter to be registered with the State of Nevada if the interpreter is providing services in a community setting.

EXAMPLE 1: Henry, an individual who is deaf, is shopping for film at a camera store. Exchanging written notes with the sales clerk would be enough to make sure there was effective communication between the sales clerk and Henry. He would not need an interpreter in this case.

EXAMPLE 2: Henry then stops by a new car showroom to look at the latest models. The car dealer would be able to give general information about the models available by providing brochures and exchanging notes, or perhaps use a computer to type messages back and forth. If Henry is serious about buying a car, he may need to have a qualified interpreter because of the complications involved in buying a car

EXAMPLE 3: Because of the importance of effective communication in state and local courts, special attention is given to the communication needs of persons with disabilities who have to attend court. Qualified interpreters will usually be needed to make sure communication with lawyers, jurors, and judges is clear and precise. Witnesses who have hearing loss may also need interpreters. For persons with hearing loss that do not use sign language, other types of aids or services may be needed such as assistive listening devices or transcription services, which allow words to appear on displays instantly.

F. Companions and Relatives as Sign Language Interpreters

A public entity or public accommodation cannot require a person with a disability to provide his/her own sign language interpreter. Also, a public entity cannot rely on that person's friend or relative to provide interpreting services.

However, there are two exceptions: (1) when the individual specifically requests his or her companion to interpret, or (2) in cases of emergency.

1. Companion as Interpreter at Individual's Request

Under the first exception, a public entity or public accommodation can rely on the adult companion to translate only if:

1. the person with a hearing loss specifically asks the companion to interpret,
2. the companion agrees, and,
 - a. the companion acting as an interpreter accepts the circumstances.

EXAMPLE: Susan, a college student with hearing loss, is at her school's Visitor Center to ask for directions to a newly opened auditorium on campus and she asks her friend Ellen, who signs, to interpret for her. If Ellen agrees, the Visitor Center's staff may rely on Ellen to interpret. However, if Susan asks Ellen to interpret for her Chemistry class, this may not be acceptable if Ellen does not know the scientific terms used in the class. Ellen would not be a qualified interpreter in this instance so college staff would have to provide a qualified interpreter, or another method for Susan to participate in the class lectures.



2. Companion as an Interpreter in Emergency Situations

Under the second exception, a public entity or public accommodation may rely on the adult companion of a person with a disability to interpret **only**:

1. in cases of emergency,
2. in cases involving a threat to the individual or to the public, and
3. if there is no other interpreter available.

EXAMPLE: *Kaitlin is sitting in the hospital waiting room when loud fire alarms begin ringing throughout the hospital. Because there are no other interpreters around and this is an emergency, the nurse may rely on Kaitlin's friend to interpret and tell Kaitlin where the nearest exit is located.*

3. Children as Sign Language Interpreters

In conversations requiring an adult sign language interpreter, a public entity or public accommodation **cannot** rely on a minor child to interpret, or assist in the communication.

This rule protects children from being pressured into interpreting by persons in authority, as well as making sure they will not be asked to interpret in situations that may not be appropriate (such as during medical appointments).

One exception to this rule (28 CFR §35.160(c)(3)) is that a public entity or public accommodation may rely on a child companion of an individual with a disability to interpret **ONLY** in the emergency situations described in Item 2 above.

EXAMPLE: *Roxanne is shopping for a new car at a local car dealership with Jacob, her 11-year-old son. The salesperson asks her son to use sign language to tell his mother about the car's extra features, and the great deal he can give her if she buys right away. Because this is not an emergency situation, the car salesman cannot rely on Jacob to interpret and needs to provide another way of communicating with Jacob's mother. For example, the salesperson could use written notes to explain the car's features, if the communication does not involve confusing information.*

G. When Are Public Entities and Public Accommodations NOT Required to Provide Interpreters?

Public entities and public accommodations do **not** have to provide a certain interpreter requested by a person with a hearing loss if they can prove that:

- another comparable means of communication is available, or
- use of the means of communication chosen would result in an important change in the service, program or activity, or
- the means of communication chosen would result in great financial or administrative burden ("fundamental alteration").



A “fundamental alteration” is a change so great that it would change the basic nature of the goods, services, buildings, privileges, or accommodations offered. It would be an “undue burden” for the public entity to provide such an accommodation.

EXAMPLE: *A skydiving business is not required to provide an interpreter for an individual with a hearing loss for the duration of the actual skydiving jump, that is, from the moment the individual jumps from the plane until he lands on the ground. This would be a “fundamental alteration” of the nature of the skydiving service because such an accommodation would force the business to change the manner in which it performs its jumps. However, for the ground training and preparation portion of the skydiving jump, the business would need to provide an interpreter or another method of effective communication because of the need to make sure the individual who is skydiving understands the training for safety reasons. This would not be considered a fundamental alteration or undue burden*

An “undue burden” would cause “significant difficulty or expense”, and it is determined on a case-by-case basis; relative to the business’ resources.

Factors used to determine an “undue burden” include:

1. the nature and cost needed to accommodate the person with a disability, and
2. the overall financial resources of the facilities involved.

When reviewing the financial resources of the facility, the financial connection between the facility involved and its owner or parent company will also be reviewed. For example, the store may be too small, but if it is a branch of a larger corporation, the entity will be able to provide the requested accommodation.

When a particular communication aid or service would cause an undue burden, a business must provide another communication aid or service that would still be effective, but less difficult or costly, if one is available.

EXAMPLE 1: *It probably would be an undue burden for a car dealer to have a sign language interpreter available all the time to assist walk-in customers. However, when requested by a customer in advance, the dealer can arrange for an interpreter to be available at a specific time.*

EXAMPLE 2: *A student in a school play requests an ASL interpreter. The request for an interpreter is denied because it is an “undue burden” on the drama department’s funds. However, the drama instructor has to consider all available resources; including whatever funding the school and even the school district has, not just the drama department’s funding.*



V. How to Request an Interpreter

It is the responsibility of the individual with a disability to request an interpreter, or other accommodation under the ADA.

A sample Accommodation Request Letter follows, which shows what to include in a request for an accommodation. The information to provide in the body of the letter should include:

- Identifying yourself as a person with a disability
- Identifying your specific communication difficulties
- Stating that you are requesting accommodations under the ADA, in the form of an interpreter
- Referring to attached medical documentation, and if appropriate, you may want to attach medical information to your letter to help support the fact you are a person with a disability and to document the need for an accommodation.
- Asking the relevant entity/person to respond to your request in a reasonable amount of time



SAMPLE LETTER TO EFFECTIVELY REQUEST AN INTERPRETER

NOTE: Items in bold should include the details related to your own request.

[Date]

[Your Name]

[Your Address]

[Name and Title of Relevant Person, Name of Public Entity/Place of Public Accommodation]

[Address of Public Entity/Place of Public Accommodation]

Dear **[Name of Relevant Person/Body]**:

I am writing to request an accommodation for my **[Name of Disability]** under the Americans with Disabilities Act (ADA). Due to my disability, I require an American Sign Language interpreter to ensure equal access and effective communication. Under Titles II and III of the ADA, public entities and places of public accommodation, such as **[Name of Establishment/Entity]** are required to ensure effective communication and to provide appropriate auxiliary aids and services – including interpreters – for persons with hearing impairments and deafness.

I have provided you with documentation of my disability and my need for an interpreter. As the enclosed documentation indicates, I am **[Name/Description of Disability]**.

I am formally requesting that you provide me with an ASL interpreter, so that I may be able to fully and equally participate in, and benefit from your **[Program/Services/Activities]**. Kindly contact me directly, and no later than **[Desired Date/Deadline for Response]** to respond to my accommodation request. You may contact me at **[Your Telephone Number]**.

Sincerely,

[Your Signature]

[Your Name]



IV. Administrative Remedies

A. What if a Public Entity Covered By Title II Refuses to Provide an Interpreter?

An individual who has been discriminated against because of his/her disability, or who has reasonable grounds for believing they are about to be discriminated against, has options to enforce the law under ADA.

There are two ways a private party can enforce the requirements of Title II. One may file either: (1) an administrative complaint with the Department of Justice (DOJ), or (2) an appropriate federal agency.

1. How do I file an administrative complaint with the Department of Justice (DOJ)?

Fill out and mail the Discrimination Complaint Form under the federal ADA, see website: www.ada.gov/filing_complaint.htm

U.S. Department of Justice, Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section – NYAV
Washington, D.C. 20530
(800) 514-0301 (voice) (800) 514-0383 (TTY)

2. What happens after I file the administrative complaint?

The DOJ or federal agency will investigate the complaint(s) and conduct reviews to see if the entities meet the ADA regulations. Some cases may be referred to a mediation program sponsored by the DOJ, or federal agency, to remedy the violation(s). If settlement efforts fail, the DOJ may bring a lawsuit where it has investigated the matter and has not been able to resolve violations.

The U.S. Attorney General is allowed to bring lawsuits whenever it has reasonable cause to believe there is a “pattern or practice” of discrimination, or there is discrimination that raises an issue of general public importance – these can be actions for stopping the discriminatory practice (injunctive relief), or compensatory damages (punitive damages are not allowed).

3. Is there a time period to file an administrative complaint under Title II? Administrative

complaints of Title II violations must be filed within 180 days of the date of discrimination; unless the time for filing is extended by the Federal agency for good cause. As long as the complaint is filed with any federal agency, the 180-day requirement will be satisfied.

B. What If a Place of Public Accommodation Covered By Title III Refuses to Provide an Interpreter?

An individual who is being discriminated against, or who has reasonable grounds for believing they are about to be subjected to discrimination, has options to enforce the law.

Nevada state law prohibits disability discrimination.



There are three ways a private party can enforce the requirements of Title III of the federal ADA, or Nevada law:

- 1) An administrative complaint with the Nevada Equal Rights Commission (NERC).
 - http://detr.state.nv.us/Nerc_pages/public_accomodation_discrimination.htm
 - or contact NERC directly at NV Relay 711 or 800-326-6868.
- 2) An administrative complaint with the Department of Justice (DOJ) under the federal ADA, www.ada.gov/filing_complaint.htm
 - DOJ-ADA Information Line: 800-514-0301 (voice) or 800-514-0383 (TTY)
 - Disability Rights Telephone Number: 202-307-0663 (voice and TTY)
- 3) A private, civil lawsuit in federal or state court.

1. How do I file a complaint with Nevada Equal Rights Commission (NERC)?

If you feel you, or another person have been discriminated against, and you would like to file a complaint, contact NERC.

Nevada Equal Rights Commission

Las Vegas, Nevada
1820 East Sahara Ave.
Las Vegas, NV 89104
702-486-7161

Nevada Equal Rights Commission

Northern Nevada
1325 Corporate Blvd., Room 115
Reno, NV 89502
775-823-6690

You will need to provide the following information to support your claim:

- A copy of the medical, or other information, that supports your disability and the need for an accommodation,
- A list of witnesses, addresses, telephone numbers, and a brief description of the information they have to support your claim, and
- A list of dates and events that are important to your case as well as any other documents relative to your case; such as a letter you wrote telling the business of the problem.

2. How do I file a complaint under the Americans with Disabilities Act with the Department of Justice (DOJ)?

- If you feel you, or another person, have been discriminated against by an entity covered under Title III, you may also send a letter to the Department of Justice (DOJ), at the address below, and include the following information:
- Your full name, address, and telephone number, and if applicable, the name of the party discriminated against;
- Name of the business, organization, or institution that you believe has discriminated;
- Description of the act or acts of discrimination, date or dates the discrimination occurred, and the name or names of the individuals who you believe discriminated; and
- Any other information you feel is necessary to support your complaint.



Only send copies of documents. Do not send original documents; keep those for your own records.

The complaint must be signed by you, or by someone you have authorized to act on your behalf.

U.S. Department of Justice, Civil Rights Division

950 Pennsylvania Avenue, N.W.

Disability Rights Section – NYAV

Washington, D.C. 20530

(800) 514-0301 (voice) (800) 514-0383 (TTY)

If you file a complaint with the DOJ and would also like to file a lawsuit, do not wait for a response from the DOJ before you file. The DOJ does not investigate all complaints due to lack of staff and resources, so you might miss the deadline (statute of limitations) for filing a Title III claim if you wait for their response.

3. What happens after I file the administrative complaint?

The Nevada Equal Rights Commission (NERC) or the Department of Justice (DOJ) will investigate complaints and conduct reviews of entities covered by Title III to see if they meet the requirements of the ADA. NERC usually will hold a settlement conference to attempt an early resolution if both parties agree. The DOJ will refer most complaints to mediation. If these efforts fail, the DOJ may bring a lawsuit where it has investigated the matter but been unable to come up with a solution. The DOJ has the power to bring lawsuits whenever it has reasonable cause to believe there is a “pattern or practice” of discrimination, or there is discrimination that raises an issue of general public importance. These actions can be to stop the discrimination (injunctive relief), or for compensatory damages (punitive damages are not allowed).

4. Is there a time period to file an administrative complaint under Title III?

A complaint with the Nevada Equal Rights Commission (NERC) must be filed within 180 days of the date of the discrimination or the ending of the alleged discriminatory practice. If you have passed the deadline for filing, you should still contact NERC as they may allow a time extension if there is a good reason.

For a complaint filed with the Department of Justice (DOJ), there is no specific deadline, but it should be filed as soon as possible after the discriminatory event.

5. How do I locate an attorney to assist me in a private lawsuit?

Contact the State Bar of Nevada Referral program at 702-382-0504. You may be charged a small fee to use this service.

