

## ***Obligations of State and Local Colleges and Universities to Deaf and Hard of Hearing Individuals***

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State and local colleges and other post-secondary institutions have obligations under two federal laws to provide effective communication with their students and other individuals who are deaf or hard of hearing.

Colleges or universities which receive any form of financial assistance or loans, for the institution or for students attending the institution, are federal financial recipients pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, as amended. The receipt of that funding by any component of the institution requires every program within the institution to comply with the civil rights requirements imposed by the receipt of federal funding. Civil Rights Restoration Act of 1978, 29 U.S.C. §794(b).

As a recipient of federal financial assistance, a post-secondary institution has an obligation under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended, to be accessible to students and other individuals with disabilities. As a part of this obligation, the U.S. Department of Education has determined that these institutions must provide necessary auxiliary aids for persons with sensory impairments, including interpreters for deaf or hard of hearing persons, transcribers, notetakers, and provision of closed captioning or other access for televised information. 34 C.F.R. 104.44(d). This obligation applies to all of the activities of the college, including extracurricular activities, off-site internships, and activities open to the public, or to part-time, non-credit or non-matriculated students, and to employees.

In its Analysis of this Regulation, the Department of Education notes:

Under §104.44(d), a recipient must ensure that no handicapped student is subject to discrimination in the recipient's program because of the absence of necessary auxiliary educational aids. Colleges and universities expressed concern about the costs of compliance with this provision. The Department emphasizes that recipients can usually meet this obligation by assisting students in using existing resources for auxiliary aids, such as state rehabilitation agencies and private charitable organizations. Indeed, the Department anticipates that the bulk of auxiliary aids will be paid for by private agencies, not by colleges or universities.

45 Fed.Reg. 30954 (Friday, May 9, 1980).

Many deaf students are eligible for vocational rehabilitation assistance. Colleges may encourage eligible students to take advantage of any benefits available to

them, including participation in a vocational rehabilitation program. However, the college may not require students to apply for these benefits, or condition availability of auxiliary aids on having a student apply for benefits. Any time a student is ineligible for vocational rehabilitation support, the institution will be responsible for this service.

The responsibility of the institution in the absence of vocational rehabilitation involvement is clear. Every court which has reviewed this issue has determined that colleges and post-secondary institutions are obligated to provide interpreters and other auxiliary aids and modifications for deaf students who are not recipients of vocational rehabilitation. United States v. Board of Trustees of the University of Alabama, 908 F.2d 740 (11th Cir. 1990); Camenisch v. University of Texas, 616 F.2d 127 (5th Cir. 1980), vacated as moot, 451 U.S. 390 (1981); Jones v. Illinois Department of Rehabilitation Services, 504 F. Supp. 1244, fn. 56 (N.D. Ill. 1981), aff'd 689 F.2d 724 (7th Cir. 1982); Crawford v. University of North Carolina, 440 F. Supp. 1047 (M.D.N.C. 1977); Herbold v. Trustees of the California State Universities and Colleges, C-78-1358-RHS (ND Cal. 1978); and Barnes v. Converse College, 436 F. Supp. 635 (D.S.C. 1977). See also Patrick, 7 NDLR 470 (1995). Colleges would also be responsible for services while a student is being considered for vocational rehabilitation assistance, or for any activities and services not funded by vocational rehabilitation.

Moreover, the U.S. Department of Education and, before it, the U.S. Department of Health, Education, and Welfare, have issued findings of violation against several post-secondary institutions for not providing interpreters and other services for deaf students. In Re Johnson State College, Docket No. 01-89-2010 (Region I); Manley v. Paterson College, Docket No. 79-0001 NE (Region II); Warso v. Southern Florida University, Docket No. 0419780109 (Region IV); and Arnold v. University of Alabama at Birmingham, Docket No. 04107902090 (Region IV).

There is a second federal statute which creates the obligation to provide auxiliary aids for colleges and universities. Title II of the Americans with Disabilities Act, 42 U.S.C. §§12182, 12183, (ADA) provides people with disabilities with rights to equal access to all state and local government activities and agencies, regardless of receipt of federal funds. 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). Title III of the ADA applies the same standards to private schools and colleges, as well as to all places of public accommodation.

The ADA requires colleges and universities to provide qualified sign language interpreters, and other auxiliary aids, to ensure effective communication with deaf and hard of hearing individuals. In addition, a college may have to modify its procedures to assure that the deaf student is able to participate equally and

effectively in college programs. The Department of Justice regulation specifically states:

(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 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.

The Department of Justice regulation defines the term auxiliary aid comprehensively:

[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 [TTYs], videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments.

28 C.F.R. 35.104. In addition to providing interpreter services or other appropriate methods of making classroom activities accessible, colleges and universities must purchase captioned video and film resources, where available, and assure that television, telephone and computer services are accessible.

The U.S. Department of Justice has defined "qualified interpreter," for purposes of Title II, 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. See generally, Patrick, 7 NDLR 470 (1995).

The Office for Civil Rights has held that the three basic components of "effective" communication are timeliness of delivery, accuracy of the translation, and provision of communication in a manner and medium appropriate to the significance of the message and the abilities of the individual with the disability.

Few university administrators have depth of knowledge about methods of making programs accessible to persons with the wide range of disabilities who are protected by these laws. Planning and consultation with disability organizations are necessary to assure compliance with Title II. Courts have held that a public entity violates its obligations under the ADA when it simply responds to individual requests for accommodation on an ad-hoc basis. A public entity has an affirmative duty to establish a comprehensive policy in compliance with Title II, in advance of any request for auxiliary aids or services. See *Tyler v. City of Manhattan*, 857 F.Supp. 800 D.Kan. 1994).

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