

CLIENT NEWS BRIEF

New Federal Guidance on Effective Communication with People Who Have Communication Disabilities

On January 31, 2014, the U.S. Department of Justice (DOJ), Civil Rights Division, issued guidance entitled "Effective Communication" regarding the American with Disabilities Act's (ADA) requirements for effective communication with people who have communication disabilities (i.e., vision, hearing, or speech impairments), including requirements that went into effect on March 15, 2011. The Effective Communication guidance is available [here](#).

Under the ADA, public entities, such as school districts and state and local governments, including cities, and businesses that serve the public have a mandatory obligation to communicate effectively with people who have communication disabilities. The goal of these requirements is to ensure that communication with people with communication disabilities is equally effective as communication with people without disabilities.

The purpose of the Effective Communication guidance is to make certain that entities subject to the ADA have information regarding what is required to ensure effective communication and compliance with the ADA. The effective communication rules under the ADA serve to ensure that people with communication disabilities can receive information from, and convey information to, the entity.

Specifically, responsible entities must provide auxiliary aids and services, when needed for effective communication, to people with communication disabilities. Auxiliary aids and services are those services or devices that may assist a person with communication disabilities to communicate more effectively. For example, for a person with vision impairment, this may include providing a "qualified" reader, documents in large print or Braille, and/or audio of the information. In the case of a person who has a hearing impairment, auxiliary aids and services may include a sign language interpreter, real-time captioning, and/or written materials. The Effective Communication guidance sets forth several additional examples of auxiliary aids and services that may be provided.

In determining what aid or service is required to provide effective communication, the Effective Communication guidance recommends considering the "nature, length, complexity, and context of the communication as well as the person's normal method(s) of communication." For example, in the school setting, this may mean providing a deaf parent with a sign language interpreter to meaningfully participate in a meeting regarding the parent's child. When determining which aid or service to provide, public entities must give primary consideration to the preference of the person with the communication disability, unless the entity can demonstrate that another equally effective means of communication is available or that the use of the person's preferred communication aid or service would result in an undue burden or a fundamental alteration. Entities should be cautious, however, when claiming a "fundamental alteration or undue burden," as the public entity must still provide an alternative aid or service that provides effective communication if available.

March 2014
Number 20



Anahid Hoonanian
Senior Counsel
Los Angeles Office
choonianian@lozanosmith.com



Colleen R. Villarreal
Associate
Sacramento Office
cvillarreal@lozanosmith.com



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

The Effective Communication guidance provides additional useful considerations and reminders:

- Entities must also provide effective communication for companions who have communication disabilities (e.g., parent's spouse at a school meeting);
- Interpreters are the entity's responsibility and an entity cannot require a person with a communication disability to bring his/her own interpreter (exceptions are set forth in the Effective Communication guidance); and
- For public entities claiming that aids and services would result in an "undue burden" (significant difficulty or expense), the entity must consider "the cost of the particular aid or service in light of all resources available to fund the program, service, or activity and the effect on other expenses or operations." A decision that a particular aid or service would result in an undue burden must be made by a high level official, no lower than a Department head, and must include a written statement of the reasons for reaching that conclusion.

The best way to ensure compliance with the requirements under the ADA is to establish good policies and train staff accordingly.

If you have any questions regarding this guidance, or accommodations under the ADA, Section 504 or the Individuals with Disabilities Education Act (IDEA) in general, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).