

# Obligations of Private Educational Classes or Institutions to Deaf Students

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This memorandum addresses the obligations of businesses, schools, organizations, recreational organizations, daycare centers, museums and institutions to provide auxiliary aids and services to deaf students who are attending classes, seminars, workshops, training and other educational, cultural or recreational activities.

Title III of the Americans with Disabilities Act (ADA), P.L. 101-336, 42 U.S.C. 12181 et seq. (Title III), provides people with disabilities the right to equal access to public accommodations. Title III covers a wide range of places, including private for-profit businesses and nonprofit organizations offering training classes, training institutions, and private schools at every level of education. These places of public accommodations are required to provide auxiliary aids and services to ensure effective communication with deaf and hard of hearing people. The ADA also requires the removal of structural communication barriers that are in existing facilities, by the installation of flashing alarm systems, permanent signage, and adequate sound buffers.

Public accommodations are required to provide auxiliary aids when they are necessary to enable a person with disabilities to benefit from their services: " A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. " 8 C.F.R. §36.303(c).

This requirement applies to all activities and services of the educational institution. For example, if a student is enrolled in a private school, all of its activities including extracurricular activities and activities involving parents should be accessible to a parent or a child who is deaf.

The appropriate type of auxiliary aid or service will depend on the type of activity and the needs of the individual. A comprehensive list of auxiliary aids and services required by the ADA is set forth in this regulation, and includes, for deaf and hard of hearing individuals: "[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. 36.303(b)(1).

Deaf individuals who use sign language will ordinarily use the services of a qualified sign language interpreter. Deaf individuals who do not use sign language will ordinarily use the services of an oral interpreter or real-time computer transcription. The appropriate auxiliary aid depends on the needs of the individual and the type of training or education. The Analysis to this regulation states that Congress, as well as the Department of Justice, "expects that public accommodations will consult with the individual with a disability before providing a particular auxiliary aid or service." 56 Fed.Reg. at 35567.

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The term qualified interpreter is defined by the regulation as: ". . . an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary." 28 C.F.R. 36.104.

The costs for providing auxiliary aids may not be imposed upon the individual with disabilities. 28 C.F.R. 36.301(c). The cost of providing an auxiliary aid should be considered part of the organization's overhead expenses. While places of public accommodation are not required to provide auxiliary aids if it would be an undue financial or administrative burden, it is clear that the fact that a deaf student's fee or tuition is less than the cost of an interpreter will not suffice to show undue burden. Some classes are available to the public without any charge. Nevertheless, accommodations must be provided if it would not be an undue burden on the public accommodation. The whole institution's financial status will be reviewed for a determination of whether or not an accommodation would be an undue burden.

Businesses may be entitled to income tax credits for the provision of services and alterations to be accessible to persons with disabilities.

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.