

Navigating Disability Law: The 30,000-Foot View

Center for Health Literacy Conference 2011
Plain Talk in Complex Times

September 23, 2011

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Topics addressed in these materials

- Questions you may have
- Which federal disability rights laws apply to agencies/programs
- Basic ADA/504 requirements related to communication
- Rules of thumb for ADA/504 compliance
- The obligation to provide effective communication with individuals with disabilities
- Telecommunications access
- Website accessibility
- Information kiosks
- Health care reform and effective communication
- Communication with individuals with limited English proficiency
- What if my agency/program can't afford to do what the law requires?
- What could happen if my agency/program doesn't comply?
- Resources

Questions you may have

- Which disability rights laws apply to my agency/program?
- What does my agency/program have to do to comply with disability rights laws?
- What if my agency/program can't afford to do what disability rights laws require?
- What could happen if my agency/program doesn't comply with disability rights laws?

Which federal disability rights laws apply to agencies/programs

- Title II of the Americans with Disabilities Act (ADA) applies to the programs and services of states and local governments (including services provided by contractors).
- Title III of the ADA applies to private and non-profit entities providing services to the public (“places of public accommodation”).
- Title I of the ADA applies to employment practices of employers of 15 or more employees, employment agencies, unions, and labor-management committees.
- Section 504 of the Rehabilitation Act (Section 504) applies to the programs and services of all federal agencies.
- Section 504 also applies to the programs and services of recipients of federal financial assistance (including federal grants, federal Medicare and Medicaid funds, etc.).
- Section 508 of the Rehabilitation Act (Section 508) applies to electronic and information technology developed, purchased, or used by federal agencies.

In many instances, more than one of these laws applies to an entity’s programs and services.

In addition, the Plain Writing Act of 2010 requires federal agencies to ensure that new documents used to apply for federal benefits; documents describing federal programs; and letters, notices, and tax documents are written in plain language and easy to understand. Executive Orders require regulations to be written in plain language.

Basic ADA/504/508 requirements related to communication

- Entities covered by the ADA/504 must provide people with disabilities with meaningful access to programs, services, and information, and an equal opportunity to participate in and benefit from programs and services.
- Entities covered by the ADA/504 must provide reasonable accommodations to people with disabilities (including modifications of program rules and procedures) when necessary for people with disabilities to have a meaningful access or an equal opportunity to participate and benefit.
- Entities covered by the ADA/504 cannot be operated in a way that has a discriminatory effect.
- Entities covered by the ADA/504 must provide effective communication with individuals with disabilities.
- Federal agencies must ensure, that the electronic and information technology is accessible to federal employees and members of the public with disabilities seeking information or services from a federal agencies. If it would be an undue burden the federal agency must provide individuals with disabilities with information and data by an alternative accessible means.

Rules of thumb for ADA/504 compliance

- It's not just about technical standards and technology—it's also about what your policies and procedures say and whether staff comply with them.
- One size does not fit all: If your agency or program requires people to do things in only one way (e.g., only in person, only by phone, only online, only in the morning, only on Wednesdays, etc.), you are probably violating the ADA/504. Assume that for every method of doing something, there are people with disabilities who cannot do it that way for reasons related to their disability. The greater the number of paths to obtaining information, applying for services, receiving services and fulfilling program requirements, the less likely you are to violate the ADA/504.
- One exception does not fit all: Just because you make one type of accommodation or one means of accessibility does not mean that you don't have to do other things to meet your ADA/504 obligations. (Not all deaf and hearing-impaired individuals use TTYs.)
- Assumptions (about what people need or use) result in ADA/504 violations. (Some people don't have computers; some people don't have anyone to read or explain documents to them.)
- The more difficult it is for clients to get accommodations (or for staff to get approval to provide them), the more likely the agency or program is to violate the ADA/504.
- Request for Proposal (RFP) and contract language matter: RFPs (e.g., to set up phone systems, operate call centers and help

lines, design websites, produce written materials, conduct trainings, etc.) should require bidders to describe how they will make services/materials accessible, and inform bidders of what this means. Contracts should contain specific information on what the contractor must do to comply with the ADA/504. Boilerplate language (“thou shalt comply with the ADA/504”) is not enough to result in accessible services/materials.

- Having written ADA/504/508 policies that contain operational details (who is responsible for doing what, etc.) is essential. Written policies are the necessary connective thread between broad legal requirements (“meaningful access”) and what staff actually do each day. Without detailed written policies and staff training on those policies, there is no way that your program is complying with the ADA/504, and it is unlikely that it is complying with 508.
- Compliance monitoring is essential. Assuming that staff understand and comply with ADA/504/508 instead of checking is likely to result in ADA/504 violations.

The obligation to provide effective communication with individuals with disabilities

- State and local governments and public accommodations must ensure that communication with individuals with disabilities is effective.
- Applies to applicants, participants, beneficiaries, members of the public, and “companions” with disabilities (relatives, friends, advocates of the applicant, recipient, patient, if the person is an appropriate person to be interacting with the agency or business) (e.g., deaf parent of patient or client, a visually impaired advocate for a client).
- If necessary for effective communication, an agency must provide auxiliary aids and services to the individual. “Auxiliary aids and services” include:
 - Qualified sign language interpreters (on-site and remote); notetakers; computer transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices and systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning including realtime captioning; voice, text, and video-based products and systems, including text telephones (TTYs); videophones and captioned telephones or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making orally delivered information available to individuals who are deaf or hard of hearing;
 - Qualified readers; taped texts; audio recordings; Brailled

- materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs; large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;
- Acquisition or modification of equipment or devices; or
 - Other similar devices and actions.
- The type of auxiliary aid and service that must be provided depends on the length and complexity of the communication, the context, etc. (Writing notes with a deaf person may be sufficient to schedule an appointment, if the person can read and write English, but is not sufficient to discuss rights and responsibilities, medical regimens, etc.).
 - Auxiliary aids and services must be provided in a way that protects privacy and independence of the individual with a disability. (Reading documents to clients may not be adequate).
 - Effective communication requirements apply to individuals with disabilities other than vision and hearing impairments, (e.g., individuals with cognitive, intellectual and learning disabilities). Materials, to the greatest extent possible, should be written at a level that individuals with low reading levels can understand. Documents that require a college degree to read and understand may raise ADA/504 issues.

Telecommunications access

- If you communicate by phone with applicants, beneficiaries and members of the public, you must have a TTY or equally effective method of communicating with individuals who are deaf, hearing impaired or have speech impairments. Using relay services to make outgoing and accept incoming calls is sufficient (if staff are adequately trained). Entities must accept incoming calls from people with disabilities by whatever means they are made (e.g., voice relay, video relay, speech-to-speech relay, etc.)
- Exception: Telephone emergency services (e.g., 911) must provide direct access to callers using TTYs and computer modems.
- Policies (e.g., “we are not allowed to talk to a third party”) have a discriminatory effect on people with disabilities (unless disability-related exceptions are made).
- Automated phone answering and routing systems and voicemail (IVR) must be set up in a way that makes it possible for TTY and relay callers to use them in the same manner that others do (e.g., allowing sufficient time to select options if a relay call). Federal law requires telecommunications hardware and software be designed to be accessible to people with disabilities, if readily achievable, and if not, to be compatible with assistive technology, so these systems have the capacity to be set up to provide access.
- People with disabilities increasingly use methods of remote communication other than telephones (e.g., email, texting). Government agencies and public accommodations should consider using these methods with some clients.

Website accessibility

- Government agency and public accommodation websites must be accessible to and usable by people with disabilities, even if people can obtain information and services by other means (e.g., phone, mail, in person). Nothing provides the 24/7 access and convenience of the internet.
- Accessibility means: A person who is vision-impaired who uses a screen or Braille reader can access web pages using this assistive technology; people using assistive technology can fill out online forms; charts make sense to people using screen and Braille readers, non-text elements have text labels, deaf or hearing-impaired people have access to information conveyed through sound; the website does not trigger seizures; etc.
- How: Non-text elements (photos, icons, images) must have a text description; pages and attachments must be in a text format (not image PDFs); boxes in tables must have text labels; layout must be logical for screen reader users; sound must be captioned; etc.
- There are two sets of technical accessibility standards:
 - Section 508 standards, which apply to federal agencies
 - World Wide Web Consortium Web Content Accessibility Guidelines (WC3 Guidelines)

WC3 Guidelines have been updated (2.0); Section 508 standards are being updated. At the present time, 508 standards and WC3 Guidelines are not the same. When 508 standards are updated they will be far more similar.
- Every state has an accessible website or technology law or policy that adopts Section 508 standards, WC3 Guidelines, or a

combination, for state websites.

- The U.S. Department of Justice (DOJ) position: State and local government websites and public accommodation websites must be accessible, though DOJ has not said which set of technical standards they must comply with.
- If your website complies with neither 508 standards nor WC3 Guidelines, you are out of compliance with the ADA/504.
- The U.S. Department of Health and Human Services (HHS) has said in IT Guidance and proposed Affordable Care Act (ACA) regulations for Health Exchanges that it will consider an Exchange website that meets Section 508 standards to be in compliance with Section 504.

Information kiosks

- Information kiosks must be accessible to individuals with disabilities. DOJ is considering issuing specific regulations on kiosks and other electronic and information technology, and the U.S. Access Board is considering adopting technical accessibility standards for kiosks.

Health care reform and effective communication

Implementation of health care reform must comply with the ADA, Section 504 and Section 508.

Some of the (too numerous to identify) ADA/504/508 issues:

- Exchange websites and online applications must be accessible.
- Exchange call centers must provide effective communication with callers with hearing, speech, and other impairments.
- Written materials provided by exchanges (e.g., comparative information on insurance options) must be provided in alternative formats if needed by people with disabilities.
- Individuals with disabilities who need in-person assistance to apply for benefits must be provided with that assistance.

ACA and proposed regulations also contain many requirements intended to ensure that people with disabilities (and other vulnerable populations) have meaningful access to services and information, and are protected from discrimination.

What if my agency/program can't afford to do what disability rights laws require?

The ADA and Section 504 don't require agencies and businesses to do everything for everyone:

- Although state and local governments and public accommodations must give primary consideration to the auxiliary aid or service requested by the person with a disability, the law does not require them to provide the person's first choice of an aid or service if something less expensive will be effective for the individual (e.g., a person may want Braille materials but if she uses a computer and has screen reading software, an electronic text document may suffice).
- State and local governments and public accommodations don't have to provide reasonable accommodations or do things to provide effective communication that would fundamentally alter the program or be an undue financial or administrative burden. (But: The burden is on the agency to prove such a burden; saying "it costs too much" is not sufficient, and a court may look at entire agency or program budget to decide if the agency can afford it).

What could happen if my agency/program doesn't comply with disability rights laws?

Lacking a crystal ball, I will provide information instead of predicting the future:

- The Social Security Administration was sued for not providing notices in alternative formats to claimants who are blind and those with vision impairments.. The agency lost, and now has procedures in place to provide notices in alternative formats.
- The Treasury Department was sued for not making paper currency accessible to the blind. The Department lost, and is now taking steps to make paper currency accessible.
- The Atlanta transit agency was sued for not providing bus schedules in alternative formats and failing to have an accessible website. The court issued a preliminary injunction against the agency.
- Universities have been sued in court and had DOJ complaints filed against them for using inaccessible technology in their courses (e.g., using Kindle as an "electronic textbook" when the text-to-speech feature could not be used for all of the device's features). The cases and complaints have settled with the universities agreeing to use accessible technology (or refrain from using inaccessible technology).
- Many banks have been sued or the subject of DOJ ADA complaints for refusing to accept relay calls. Many have resulted in settlement agreements in which the banks agreed to change their policies.
- DOJ looks at telephone and web accessibility and effective communication procedures when it investigates complaints

(even if these issues were not raised in the complaint). Offices for Civil Rights at other federal agencies (e.g., HHS, Food and Nutrition Service) now routinely look at web accessibility in their complaint investigations and compliance reviews.

Resources

U.S. Department of Justice Information and Technical Assistance on the Americans with Disabilities Act (ADA): www.ADA.gov

Official Website for Section 508 of the Rehabilitation Act:
www.section508.gov

Section 508 Electronic and Information Technology Accessibility Standards: www.access-board.gov/sec508/standards.htm

Information on Proposed Updated Section 508 Standards:
www.accessboard.gov/508.htm

Federal Interagency Working Group on Limited English Proficiency (LEP): www.lep.gov

World Wide Web Consortium (WC3) Web Content Accessibility Guidelines and Techniques: www.w3.org/WAI/guid-tech

U.S. Department of Justice ADA Best Practices Tool Kit for State and Local Governments: www.ada.gov/pccatoolkit/toolkitmain.htm

Federal Communications Commission: What You Need To Know About Telecommunications Relay Services (TRS):
<http://transition.fcc.gov/cgb/dro/trs.html>

U.S. Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS) Guidance for Exchange and Medicaid Information Technology Systems:
http://cciio.cms.gov/resources/files/exchange_medicaid_it_guidance_05312011.pdf

HHS Office for Civil Rights LEP Resources and Tools:
www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/

Federal Plain Language Guidelines:

www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/TOC.cfm

Web Accessibility Evaluation Tools:

www.w3.org/WAI/ER/tools/complete and

<http://www.section508.gov/index.cfm?fuseaction=techtools>

State Web Accessibility Policies/Legislation

(Note: chart may not be up to date):

www.hp.com/hpinfo/abouthp/accessibility/State_Web_Accessibility.pdf

Web Accessibility in Mind (WebAIM): www.webaim.org

Beyond ALT Text: Making the Web Easy to Use for Users With Disabilities, Nielsen Norman Group:

www.nngroup.com/reports/accessibility/ [148-page report]

Web Accessibility: Web Standards and Regulatory Compliance, Jim Thatcher et al www.friendsofed.com/web-accessibility