

KEEPING IT LEGAL – FEDERAL LANGUAGE & DISABILITY ACCESS LAW FOR THE CITY OF LOVELAND

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Keeping it Legal – Federal Language & Disability Access Law for the City of Loveland

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Non-Discrimination Notices

HUD

Various federal laws require housing and community development programs and activities to operate regardless of race, color, national origin, disability, sex, and other protected characteristics.

FHEO enforces many civil rights laws that apply to public entities, including state and local government agencies, as well as recipients of federal financial assistance.

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Federal laws prohibit discrimination in housing and community development programs and activities because of race, color, religion, sex, national origin, familial status, and disability.

These obligations extend to recipients of HUD financial assistance, including sub-recipients, as well as the operations of state and local governments and their agencies, and certain private organizations operating housing and community development services, programs, or activities.

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Federal laws prohibit discrimination, including the denial of participation in and benefit of, the following examples of programs and activities: homelessness, transitional housing, permanent supportive housing, the operations of social service organizations, public housing, voucher programs, other affordable housing programs, community development funded facilities, etc.

Recipients and other covered entities must take certain affirmative steps within such programs and activities to provide equal housing opportunities.

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If you believe you have been discriminated against in any housing or community development program, you may [file a complaint](#) with FHEO.

Provide Contact Info for FHEO and Your Program



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[NONPROFIT] complies with applicable federal and state non-discrimination laws. XXX shall not discriminate on the basis of race, color, religion, gender, gender expression, age, national origin, language, disability, marital status, sexual orientation, or military status, in any of its activities or operations.

These activities include, but are not limited to, hiring and firing of staff, selection of volunteers and vendors, and provision of services. We are committed to providing an inclusive and welcoming environment for all members of our staff, clients, volunteers, subcontractors, vendors, and clients.

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Title VI of the Civil Rights Act of 1964

“No Person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

42 United States Code § 2000d

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As President John F. Kennedy said in 1963:

“Simple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination.”

Source: USDOJ

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- Longstanding Justice Department regulations also expressly require communication between funding recipients and program beneficiaries in languages other than English to ensure Title VI compliance. National Multi-Family Housing Council v. Jackson, 539 F. Supp. 2d 425, 430 (D.D.C., 2008)
- ... longstanding case law, federal regulations and agency interpretation of those regulations hold language-based discrimination constitutes a form of national origin discrimination under Title VI. United States of America v. Maricopa County, Arizona 915 F. Supp. 2d 1073, 1080 (D. Ariz. 2012)

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3/11/21 Houston Public Media

The Federal Highway Administration has asked Texas' transportation department to halt construction on an Interstate 45 expansion project, citing civil rights concerns.

In its letter to TxDOT, the FHWA said it was acting in response to public input on the state's project raising concerns under Title VI of the Civil Rights Act of 1964, as well as environmental justice concerns.

“This is a big deal,” said Fred Wagner, an attorney who served as general counsel at FHWA for three years during the Obama administration. “It just doesn’t happen very often.” Politico 4/1/21

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“Language Access Plan” refers to spoken languages pursuant to federal law, U.S. Department of Justice (DOJ) pronouncements, and federal court decisions, for example: *T.R. v. School District of Philadelphia*, Case 2:15-cv-04782-MSG, (E.D. Pa., 2016).



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Section 1: Needs Assessment

Information about the needs of current and prospective consumers whose preferred spoken and written language is a language other than English, including the number of individuals with limited English proficiency, places in which consumers with limited English proficiency interact with the organization, and ways in which individuals interact with the organization.

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Section 2: Language Services

Description of the types of services the organization will provide, such as in-person interpretation and remote interpretation.



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Language Access Plan

How do you Provide Language Assistance?

The population eligible to be served by race, color and national origin

How do you determine Language Assistance Methods?

Language Services Providers – Essential Partners

Due Diligence Check – Resources, Internal/External
Training, Reputation

Language Services Providers are not equal – You have
the liability & federal obligation

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What/Who to Use and When?

Telephone?

VRI?

In-Person Interpreter?

Bilingual Staff?

Quantifying best method per situation

FOUR FACTOR ANALYSIS

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DOJ's Four-Factor Analysis

- The number or proportion of LEP persons eligible to be served or likely to be encountered by the grantee;
- The frequency with which LEP individuals come into contact with the program;
- The nature and importance of the program, activity or service provided by the program to people's lives; and
- The resources available to the grantee/recipient and costs.

U.S. Department of Justice Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 2002, 67 Federal Register 41464

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“...the extent of the recipient’s obligation to provide written translations of documents should be determined by the recipient on a case by-case basis, looking at the totality of the circumstances in light of the **four-factor analysis.**”

Source: U.S. DOJ



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“Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. ... Larger recipients should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance.”

U.S. Department of Justice Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 2002, 67 Federal Register 41464

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According to DOJ:

“A document will be considered vital and need to be translated if it contains information critical for obtaining access to [programs, services and activities] or it is required by law. Some examples of vital documents that [cities] may need to translate to ensure that LEP individuals are provided meaningful access can include applications, forms, consent or complaint forms, notices of rights, and letters or notices that require a response” such as any reduction, denial, or termination of services or benefits.

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Section 3: Notices

Description of how the organization will let its patients, clients, customers, or beneficiaries know about the availability of services. Examples may include taglines and signage

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Section 4: Training

Description of how the organization will train staff on its policies and procedures for providing language assistance services, including who and how often



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Caution:

Avoid assumptions about an individual's primary language or the need for language assistance, based upon a person's name, accent, race, color, or national origin.

Staff shall make all reasonable efforts pursuant to applicable law to ascertain an individual's primary language to ensure effective communication without making assumptions based on race, color, or national origin.

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2004 Census Test	United States Census 2010 LANGUAGE IDENTIFICATION FLASHCARD
<input type="checkbox"/> <p>ضع علامة في هذا المربع إذا كنت تقرأ أو تتحدث العربية.</p>	1. Arabic
<input type="checkbox"/> <p>Խնդրում ենք հշում կատարեք այս քառակուսում, եթե խոսում կամ կարդում եք հայերեն:</p>	2. Armenian
<input type="checkbox"/> <p>যদি আপনি বাংলা পড়েন বা বলেন তা হলে এই বাক্সে দাগ দিন।</p>	3. Bengali
<input type="checkbox"/> <p>ឈ្មួចញាក់ក្នុងប្រអប់នេះ បើអ្នកអាន ឬនិយាយភាសា ខ្មែរ ។</p>	4. Cambodian
<input type="checkbox"/> <p>Motka i kahhon ya yangin ûntûngnu' manaitai pat ûntûngnu' kumentos Chamorro.</p>	5. Chamorro



No smoking



**Keep food and
drink in closed
containers**



**Keep feet off
seats**



**Keep pets
in carrier**
(except service animals)



**Fold strollers
after boarding**

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Section 5: Evaluation

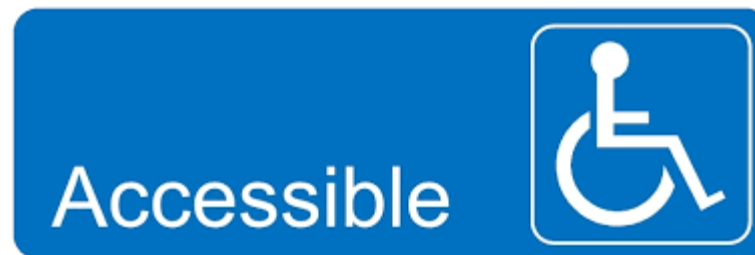
Plan for when and how the organization will monitor and update its plan, policies, and procedures to ensure that needs are met and that there is a framework for continuous quality improvement



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Americans with Disabilities Act

No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.



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Americans with Disabilities Act

1990

- No Disability Discrimination in Places of Public Accommodation - ADA Title III
- No Disability Discrimination by State and Local Governments – ADA Title II
- No Federal Subsidy Required for Coverage
- Effective Communications Accessible to all – Sign Language Interpreters or Other Auxiliary Aids
- DOJ ADA Guidelines (1/31/14)



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ADA's Legal Companion – Rehabilitation Act of 1973

Rehabilitation Act Section 504 - A recipient of Federal financial assistance may not, on the basis of disability:

- Deny qualified individuals the opportunity to participate in or benefit from federally funded programs, services, or other benefits.
- Deny access to programs, services, benefits or opportunities to participate as a result of physical barriers.
- Deny employment opportunities, including hiring, promotion, training, and fringe benefits, for which they are otherwise entitled or qualified....

Source: U.S. Department of Health and Human Services and see: 45 CFR Part 84

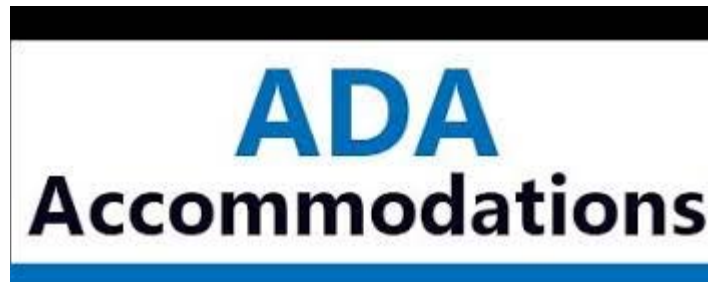
- **Punitive Damages Available in Lawsuits**



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Effective Communication Plan

- What does effective communication really mean?
- What are ADA appropriate auxiliary aids and services?
- When are you required to provide auxiliary aids and services?
- Who chooses the auxiliary aid or service that will be provided?



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USDOJ Effective Communication Guidance:

“The goal is to ensure that communication with people with ... disabilities is equally effective as communication with people without disabilities.”

And....

“effective communication” means that whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people who do not have disabilities.

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“Auxiliary aids and services” shall have the same meaning as set forth in 28 C.F.R. § 35.104 and, accordingly, include qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; computer-aided real-time transcription services (CART); written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; 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 equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing.”

THE UNITED STATES OF AMERICA AND THE ROCHESTER POLICE DEPARTMENT, ROCHESTER,
MICHIGAN

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“Although handwritten notes or typed text such as closed caption can be appropriate auxiliary aids for simple communications, in many situations such as legal proceedings or complex health care-related communications, a qualified American Sign Language (ASL) interpreter may be required. The most effective means of communication in counseling circumstances is an ASL interpreter.”

USDOJ

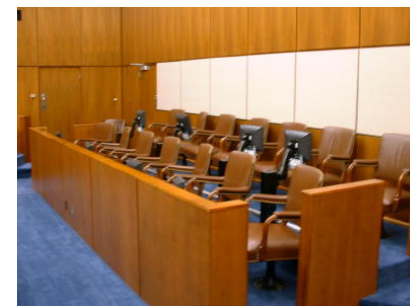


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“The requesting person’s choice does not have to be followed if:

- the public entity can demonstrate that another **equally effective** means of communication is available (Live v. VRI);
- use of the means chosen would result in a fundamental alteration in the service, program, or activity; or
- the means chosen would result in an undue financial and administrative burden.”

Source – USDOJ



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In-Person Interpreter Unavailable



Options:

- Telephone
- Video Remote Interpreting

NOT AN OPTION – Come Back Next Week

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

DOJ: A “qualified interpreter” is someone who is able to sign to the individual who is deaf what is being spoken by the hearing person and who can voice to the hearing person what is being signed by the person who is deaf. Certification is not required by federal law.

To be qualified, an interpreter must be able to convey communications effectively, accurately, and impartially, and use necessary specialized vocabulary and terminology for the relevant situation, such as court hearing, law enforcement encounter.

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Some forms of communication may be ineffective for certain deaf individuals. For example, an individual who has learned ASL as a first language may not understand written notes.

If the deaf person does not understand ASL, offer an effective form of communication requested by the deaf person.



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Publicize information about the location and availability of auxiliary aids and services in formats that are accessible to people who are deaf, hard of hearing, blind, or low vision, such as, for example in large print, closed captioned videos, in Braille, and legally accessible online formats. Digital and online accessibility requirements are beyond the scope of this Plan.



The Law of VRI

Video remote interpreting (VRI) services. A public entity that chooses to provide qualified interpreters via VRI services shall ensure that it provides—

- (1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
 - (2) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;
 - (3) A clear, audible transmission of voices; and
 - (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

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WHO DECIDES?

DO YOU?



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“Primary Consideration. In determining what type of auxiliary aid or service is necessary to comply with the ADA, the RPD agrees to give primary consideration to the expressed preference for a particular auxiliary aid or service by an individual who is deaf or hard of hearing. “Primary consideration” means that Personnel will inquire as to the choice of auxiliary aid or service of the individual and will honor the expressed choice unless the RPD can demonstrate that another equally effective means of communication is available.”

“Primary consideration” means that the public entity must honor the choice of the individual with a disability, with certain exceptions. The individual with a disability is in the best position to determine what type of aid or service will be effective.

The requirement for consultation and primary consideration of the individual’s choice applies to aurally communicated information (i.e., information intended to be heard) as well as information provided in visual formats.

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People with Disabilities

- The Three Keys

ASK

- Ask what you can do to assist the customer – do not assume the customer needs or wants assistance.

LISTEN

- Listen and pay attention to what the customer says – he/she may not need or want assistance. Do not be offended if the customer does not want any assistance.

RESPOND

- Respond and let the customer know that you understand his/her concerns and respond appropriately.

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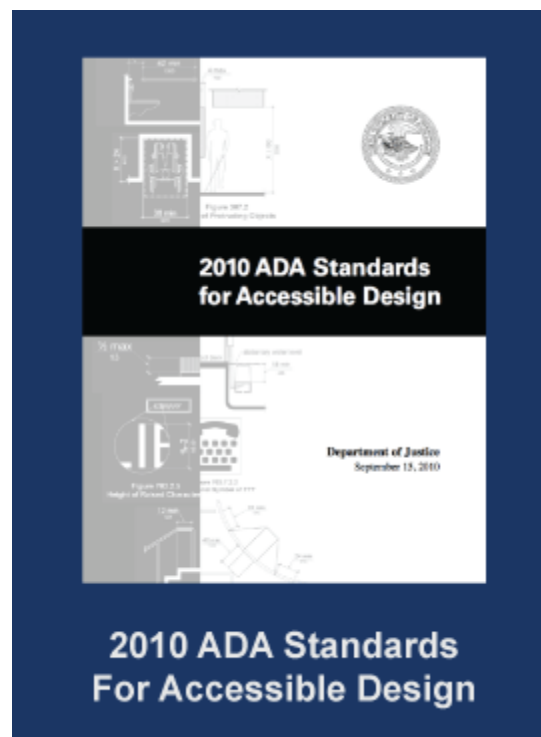
- Identify local resources for auxiliary aids and services and utilize appropriate language services companies. The City shall identify vendors who can provide the required and necessary aids or services and have information about how much advance notice the vendors will need to produce documents or provide services.
- Produce documents in Braille or acquire other aids or services as needed. Technology is changing, and much of the equipment needed to ensure effective communication is less expensive than it once was.
- Contract with qualified interpreter services and other providers so that interpreters and other aids and services will be available on short notice. This is especially critical for time-sensitive situations, such as when a qualified interpreter is necessary to communicate with someone who is arrested, injured, hospitalized, or involved in some other emergency.
- Train employees about effective communication and how to obtain and use auxiliary aids and services. All employees who interact with the public over the telephone or in person need to know their role in ensuring effective communication.

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As DOJ explains:

- “A critical and often overlooked component of ensuring success is comprehensive and ongoing staff training. Covered entities may have established good policies, but if front line staff are not aware of them or do not know how to implement them, problems can arise. Covered entities should teach staff about the ADA’s requirements for communicating effectively with people who have communication disabilities. Many local disability organizations, including Centers for Independent Living, conduct ADA trainings in their communities.”

The Americans With Disabilities Act



The Americans With Disabilities Act

“...[I]f a barrier violating these standards relates to a plaintiff’s disability, it will impair the plaintiff’s full and equal access, which constitutes ‘discrimination’ under the ADA.”
Lozano v. C.A. Martinez Family Limited Partnership, (S.D. Ca., 2015)



The Americans With Disabilities Act

Self-Evaluation – Assessment

Transition Plan – Timeline and Specifics for Compliance



The Americans With Disabilities Act

- *What are the elements of an acceptable transition plan? A transition plan should contain at a minimum --*
- 1) A list of the physical barriers in a public entity's facilities that limit the accessibility of its programs, activities, or services to individuals with disabilities;
- 2) A detailed outline of the methods to be utilized to remove these barriers and make the facilities accessible;
- 3) The schedule for taking the necessary steps to achieve compliance with title II. If the time period for achieving compliance is longer than one year, the plan should identify the interim steps that will be taken during each year of the transition period; and,
- 4) The name of the official responsible for the plan's implementation.
 - DOJ – ADA Title II Regulations

The Americans With Disabilities Act



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Staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform.

Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.”

USDOJ

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