

## **WAKE UP AND SMELL THE ADA!**

In the introduction section of the ADA complaints we file, we include this:

“On July 26, 1990, now more than twenty years ago, the ADA was passed, establishing the most important civil rights law for people with disabilities in the nation's history.”

So why is it more than twenty years later, CCDC's Legal Program still must file so many lawsuits to gain compliance? The answer may be simple: No one bothers to think about it. They have better things to do. Until they get sued.

And worst offenders? Government entities such as: state Medicaid agencies, county departments of social services, licensing agencies, to name a few. Recently, it has been county Sheriff's Offices. Government entities designed to serve their citizens, even those designated to serve and protect the public, routinely discriminate on the basis of disability. In large part, it is because they don't bother to try to comply. Until they get sued.

Government entities are called “public entities” under the ADA, covered by [Title II](#) and its [regulations](#).

Routinely, in our work, the Legal Program and CCDC's advocates and members send out requests for records to those government entities. These take many forms, but commonly our requests ask for something like this:

Provide records of all policies, practices and procedures related to making reasonable modifications in policies, practices, or procedures to avoid discrimination against individuals with disabilities.

Public entities are required to make such accommodations and modifications under the [regulations](#).

More often than not, the answer we get back is, “We do not have any such policies or records.” Zero. Zilch. Nada. Nothing.

When they get sued, they usually say, “The ADA doesn't require us to have policies like that.” We beg to differ. Quick history lesson. While I'm sure you're all very well versed on Title II of the ADA, let's review:

### ***ADA Title II 101:***

## **“In the beginning...”**

All public entities were required to (and, for quite some time now, have been required to) conduct a [“Self-evaluation,”](#) requiring that the entity “evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.”

## **And so it goes...**

Public entities are also required to provide [“Notice”](#) to the public of “information regarding the provisions of this part [of the regulations] and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.” Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe a public entity's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio. In providing the notice, a public entity must comply with the requirements for effective communication in § 35.160. The preamble to that section gives guidance on how to effectively communicate with individuals with disabilities.

For public entities with [50 or more employees](#), the ADA requires there be “Designation of responsible employee and adoption of grievance procedures.”

## **It didn't happen.**

Routinely when we ask for these records, we get the same response, "Nope. Nothing like that. Haven't seen it." "I think we did it, but we don't have it anymore."

Doesn't it make maybe a teenie weenie bit of sense to develop, keep, maintain, and implement some policies about how to comply? And maybe update it from time-to-time? Maybe even tell the public about it?

## **“What we have here is a failure to communicate.”**

In no area of disability discrimination is the complete utter failure of public services to develop and implement policies more egregious than in the requirement to provide effective communication. The ADA's requirements regarding “Communications” are very clear, and the regulations devote an [entire subpart](#) to the subject.

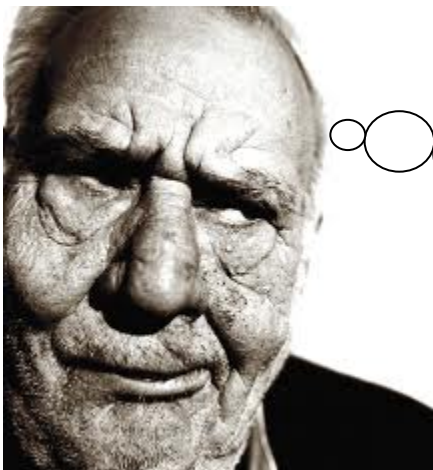
## Can't we just talk about it?

"A public entity shall [take appropriate steps](#) to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others." To do this, "A public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities . . . an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity."

## “What’s that you talkin’ ‘bout?”

[“Auxiliary aids and services”](#) include many types of services and equipment to ensure communication is equally as effective with individuals with disabilities. These include, for example, qualified interpreters and videophones for effective communication with deaf individuals and Brailled materials for blind individuals. In order to ensure effective communication is provided, “A public entity shall ensure that interested persons, including persons with impaired vision or hearing, [can obtain information](#) as to the existence and location of accessible services, activities, and facilities.” “In determining what types of auxiliary aids and services are necessary, a public entity shall give [primary consideration](#) to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.”

Here’s the thought process a public entity or a lawyer advising it should have had:



Says here I gotta know about the auxiliary things. I gotta make sure I know how to make ‘em available. I gotta tell people who might need ‘em about ‘em. And I gotta give ‘em the one they think might actually work effectively.

Oh yeah. Says here I shoulda figured this out and shoulda been doin’ it since 1990.

## How much longer can I wait?

We have been [investigating and in litigation](#) with public entities recently – several police departments and county sheriffs offices, in particular – that had no policies whatsoever regarding effective communications with individuals who are deaf. If they

have policies at all, they are woefully inadequate. For example, documents obtained from a county Sheriff's Office in which we asked for:

Specifically, I request copies of any and all documents and/or policies relating to the provision of sign language interpreters for arrestees of the Adams County Sheriff's Department. Further, I request copies of any and all documents and/or policies relating to the provision of sign language interpreters for detainees and/or inmates of the Adams County Jail.

We got [this](#).

But, its so haaaaaaard. I don't know what to do.

The U.S. Department of Justice has issued [specific model policies](#) for law enforcement agencies. Now, please know that you don't need to have a fancy law degree and many years of experience researching this stuff to find these model policies. If someone even peripherally associated with a law enforcement agency wondered what should be expected of said law enforcement agency with respect to people with disabilities, a quick search on "law enforcement agencies americans with disabilities act" would shed [quite a bit of light](#).

All public entities were responsible for compliance over 20 years ago. The DOJ provided -- and does provide -- ready access to compliance manuals, model policies, technical assistance manuals and more.

### **So what this means for you, public entity:**

When CCDC's Legal Program is able to take on one of the numerous cases in which an individual with a disability was denied a reasonable accommodation on the basis of disability or not offered or provided effective communication, your public entity will not get a nice letter from our office. You are likely gonna get sued.

Your public entity shoulda done it 20 years ago. You had better do it now.