

WHITE PAPER SERIES

Learning from Civil Rights Lawsuits:

Effective Communication with Deaf, Hard of Hearing, Blind, and Low Vision Incarcerated People



Executive Summary

JULY 2022

A project of the Civil Rights Litigation Clearinghouse and the University of Michigan Law School

Tessa Bialek, Clearinghouse Managing Attorney
& **Margo Schlanger**, Clearinghouse Director,
Wade H. and Doree M. McCree Collegiate Professor of Law
University of Michigan Law School

This project and related materials are available for reading or download at clearinghouse.net/policy/1/1. Materials include the report itself (in regular and large-print) and a large-print version of this document, as well as case summaries, litigation documents, and other resources.

© The Civil Rights Litigation Clearinghouse and the University of Michigan Law School. This paper may be copied and shared for any purpose, for free or at cost, with attribution. The model policies in Part III of the paper may be copied freely for any purpose with or without attribution, and may be freely adapted or amended so long as adaptations are not attributed to the Civil Rights Litigation Clearinghouse and/or the authors.



**National Association
of the Deaf**



**NATIONAL FEDERATION
OF THE BLIND**

The National Association of the Deaf and the National Federation of the Blind helped shape the recommended policies, and endorse them for consideration and adoption by Departments of Corrections at every level of government.

The Problem

Tens of thousands of people incarcerated in jails and prisons throughout the United States have one or more communication disabilities—that is, they are disabled in ways affecting communication. This group includes people who are deaf, hard of hearing, blind, and/or low vision. Incarceration is not easy for anyone, but the isolation and inflexibility of incarceration can be especially challenging, dangerous, and further disabling for prisoners with communication disabilities. Federal disability antidiscrimination law requires jails and prisons to avoid discrimination and ensure effective communication and equal access to services, programs, and activities. Failure to meet these requirements is not just unlawful; it may have dire consequences.

Prisoners with communication disabilities in jails and prisons face myriad risks and challenges. For example, they may be inappropriately housed in solitary confinement, a harmful and extremely isolating practice, because of their disability—related, for example, to policies requiring users of certain assistive devices to be housed apart from others, or for perceived safety reasons—or because of disability-related challenges to understanding and obeying rules or participating in disciplinary proceedings. Prisoners with communication disabilities are sometimes targeted for abuse because of their lessened ability to perceive danger and their reliance on other incarcerated people. Overreliance on out-of-date telecommunications devices, or failure to provide such devices in the first place, often has precluded contact between prisoners and their loved ones outside of prison. In the absence of a qualified interpreter or other auxiliary aid or service to facilitate effective communication at medical appointments, deaf and hard of hearing prisoners have received inaccurate diagnoses or treatment, or not been made aware of their own medical diagnoses or treatment. Prisoners with communication disabilities have been relegated to jobs that pay less and offer fewer opportunities for vocational training or sentence credits. And prisoners who are blind and who rely on sighted incarcerated people to initiate grievance processes have had grievances dismissed due to mistakes by sighted prisoner assistants, have been subject to extortion, and have been unable to initiate or complete grievance processes.

Correctional entities must confront these challenges. Doing so will require adequate resources and preparation, as well as a shift in policy, practice, and values: to meet their antidiscrimination obligations, jails and prisons must offer choice, flexibility, and individuation well beyond what is typical in carceral environments.

The Law

Section 504 of the 1973 Rehabilitation Act and Title II of the Americans with Disabilities Act are the primary sources of governing federal antidiscrimination law in this area. The statutes prohibit exclusion or discrimination on the basis of disability in federally conducted or supported services, and state and local government services, respectively—between the two statutes, every prison and jail in the United States is covered. The statutes require:

- No Disparate Treatment: The statutes bar discrimination on the basis of disability, prohibiting jails and prisons from excluding from or denying the benefits of entity services, programs, and activities qualified prisoners with disabilities, because of their disabilities.
- Reasonable Modifications: Jails and prisons must make reasonable modifications and accommodations to policies, practices, and procedures to avoid discrimination and promote inclusion of prisoners with disabilities.
- Effective Communication: Jails and prisons must ensure that communication with prisoners with disabilities is as effective as communication with non-disabled prisoners, and must provide any necessary auxiliary aids and services to facilitate effective communication.
- Integration: Jails and prisons must administer services, programs, and activities in the most integrated settings appropriate for prisoners with disabilities.
- No Surcharges: Although compliance with the above requirements may cost jails and prisons money, the ADA's regulations forbid them to charge the persons with disabilities in their custody for the costs of the requisite aids, services, modifications, and accommodations.

Policy Recommendations

The white paper begins to answer the question: **What must jails and prisons do to comply with antidiscrimination law in the custody and treatment of prisoners with communication disabilities?**

To avoid discrimination and ensure effective communication and equal access to services, programs, and activities, jails and prisons must develop policies, procedures, and protocols for the treatment of prisoners with communication disabilities. In broad strokes, jails and prisons must:

- Prepare in advance. Jails and prisons should adopt policies, form partnerships with community organizations and services providers, consult with experts, purchase and install necessary equipment and devices, create accessible versions of important documents and resources, modify emergency protocols, appoint experienced ADA coordinators, train staff, and modify facilities even before any prisoner with communication disabilities enters their custody.
- Provide requisite medical devices, auxiliary aids and services, and reasonable modifications and accommodations. Jails and prisons must offer comprehensive collaborative, and ongoing processes for identifying needed medical devices (such as eyeglasses or hearing aids); auxiliary aids and services to facilitate effective communication (such as qualified interpreters, videophones, screen readers, or Brailled materials); and reasonable modifications and accommodations to policies, practices, and procedures. These medical devices, auxiliary aids and services, and reasonable modifications and accommodations must be readily available and accessible.
- Permit individuation and account for wide variation. There is no one-size-fits-all solution for prisoners with communication disabilities. Policies and procedures must acknowledge that prisoners with communication disabilities may be differently and/or multiply disabled in ways that affect their abilities and needs. The requisite medical devices, auxiliary aids and services, and reasonable modifications and accommodations required for effective communication require a robust array of options and individualized solutions.

Part III of the white paper offers detailed policy recommendations for meeting these requirements and improving practices. The recommendations derive from litigation documents—including court opinions and settlement agreements—as well as workshops and interviews with advocates and experts. The recommended policies cover the following topics:

1. Antidiscrimination Principles

- 1.1 Overall Commitment to Equality
- 1.2 No Punishment of Disability or Its Expression
- 1.3 No Disparate Treatment
- 1.4 Reasonable Modifications and Accommodations
- 1.5 Effective Communication
- 1.6 Adverse Determinations
- 1.7 Integration Mandate
- 1.8 No Surcharges
- 1.9 Primary Consideration to Prisoner Requests

2. Initial Identification; Initial and Ongoing Assessment; and Requests for Auxiliary Aids and Services, and Reasonable Modifications and Accommodations

- 2.1 Initial Identification
- 2.2 Medical Assessment
- 2.3 Functional Assessment
- 2.4 Communication and Accommodation Plan
- 2.5 Periodic Reassessment and Subsequent Requests
- 2.6 Appeal of Denial of Requests

3. Notice of Rights and Resources

- 3.1 Notice of Rights
- 3.2 Intake and Orientation Materials

4. Identification

- 4.1 Identification

5. Classification and Housing

- 5.1 5.1 Classification and Housing

6. Participation in Services, Programs, and Activities

- 6.1 Access to Services, Programs, and Activities
- 6.2 Access to Visiting

7. Medical Devices

- 7.1 Hearing Aids and Cochlear Processors
- 7.2 Corrective Lenses, Glasses, and Sunglasses
- 7.3 White Canes

8. Auxiliary Aids and Services, and Reasonable Modifications and Accommodations

- 8.1 Qualified Interpretation for Deaf and Hard of Hearing Prisoners
- 8.2 Other Auxiliary Aids and Services for Deaf and Hard of Hearing Prisoners
- 8.3 Effective Telecommunication
- 8.4 Access to Television and Other Screen Devices
- 8.5 Recreation
- 8.6 Additional Auxiliary Aids and Services and Reasonable Modifications and Accommodations for Blind and Low Vision Prisoners
- 8.7 Non-Auditory Alarms, Alerts, and Emergency Evacuation Notification

9. Prisoner Assistants

- 9.1 Prisoner Assistants for Blind and Low Vision Prisoners

10. Hand Restraints

- 10.1 Hand Restraints and Sign Language Communication
- 10.2 Hand Restraints and Blind or Low Vision Mobility

11. Staff and Training

- 11.1 ADA Coordinators
- 11.2 Other Staff Training

12. Tracking and Auditing

- 12.1 Tracking and Annual Audit

13. Definitions

- 13.1 Auxiliary Aids and Services
- 13.2 Communication Disability
- 13.3 Disability
- 13.4 Effective Communication
- 13.5 [Entity]
- 13.6 Qualified Interpreter
- 13.7 Reasonable Modification and Accommodations
- 13.8 Service, Program, or Activity
- 13.9 Staff

The model policies are intended as a template for correctional administrators, legislators, and advocates who are working to change jail and prison policy, and we have written them so that they can be easily copied and pasted into a document that then refines them for a particular facility or system. (The model policies are available at <https://clearinghouse.net/resource/3567/> in an unfootnoted word processing text format, to facilitate such copying.)