

Access Ready Local and State Government Beyond the Web Legal Foundation

Beyond Websites - Government Technologies and Disability Rights Law

Public Access

Title II of the Americans with Disabilities Act (ADA), covering all state and local governments, was enacted in 1990 and Section 504 of the Rehabilitation Act, covering all recipients of federal funding, has been in place since 1973. These laws are unequivocal: they require covered entities to ensure their public communications are equally effective for people with disabilities as for people without disabilities. The Department of Justice has made clear that Title II requires all services, programs, and activities of public entities, including those provided or received via kiosks, electronic voting machines, emergency alert systems, public address and notification systems (including by email and text), and other technologies, to be accessible.

Equally effective communication generally means people with disabilities can access or acquire the same information, engage in the same interactions, and enjoy the same products and services that the government's communications offer its sighted participants with substantially equivalent ease of use. All types of communication are covered - including information and communications technology (ICT)-based communication. To be effective, accessible communications must be provided in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. These requirements apply to both communications the state or local government makes to members of the community and communications it receives from the community.

The only defenses available are when the state or local government documents in advance, and can prove, that, using all its available resources, it is too difficult or too expensive to accomplish accessible communication or it would fundamentally alter the nature of the communication or program to make it accessible. Even if one of those defenses applies, the government entity is required to do everything it can to provide accessible communication up to the point where the burden becomes too great.

So, if a state or local government agency, department, or office is providing information, services, programs, or activities to the public via communication technology, or if it is receiving information, requests, complaints, applications, and the like from the public via the internet or ICT, it ignores the accessibility of those communications at its own peril.

In the bygone era of just paper-and-pencil documents and in-person or telephone communications, equally effective communication generally meant providing large print, taped texts, and Braille formats for documents, and using sign language interpreters, relay services, and captioning for meetings and telephone calls. These are known in the ADA and Section 504 as auxiliary aids and services. As we have entered the age of information and communications technologies, auxiliary aids and services have also advanced technologically. A digital technology can be made accessible to people who are blind and low vision by ensuring the information it conveys can be accessed both visually and audibly (or in tactile (Braille) form) and that both visual and nonvisual means of inputting information are available. For example, information or registration kiosks can provide a headset jack allowing audio output of all visual information and a device with touchscreen input can include a tactile keyboard or keypad, and audio navigation. Similarly, captioning for video and audio information is readily available for people with hearing disabilities.

If a government uses an information and communications technology that is not accessible, the government will have to maintain an equivalent system for communicating with people with disabilities. That separate accessible system, whether it is a staff person onsite at the information device, a staffed telephone line, or some other means, is likely to be expensive and may still violate the ADA's requirement of equally effective communication. A staff-based substitute for an information kiosk, or website, for example, would need to be available 24 hours a day, 7 days a week, 365 days a year, just as the kiosk or website is. The staff would need to be prepared to orally provide all the information on the kiosk or website, and carry out transactions for a person with a disability. The staff would need to be prepared to transcribe or interpret all the speech and audio content of videos and audio programming. And the staff would need to be prepared to accurately input any information the person with a disability wanted to communicate back to the government agency. All of this would need to be timely, accurate, and complete, while not placing additional burdens on the person with a disability and while maintaining their privacy and independence.

Accessible technology does not happen automatically. In order to avoid the expensive, noncompliant fallback system of access, state and local government leaders, as well as their technology designers, technology vendors, content creators, and communicators, have to incorporate accessibility as a matter of course, not as an exception, both when developing or purchasing new technology or content, and as part of a planned remediation strategy.

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