



ADA Live! EPISODE 4: EFFECTIVE COMMUNICATION

Event Date: January 8, 2014

Presenters: Julia Sain, Executive Director of Disability Rights and Resources

Host: Pamela Williamson, Southeast ADA Center

VOICE-OVER ANNOUNCER: Welcome to WADA ADA Live! Talk radio. Brought to you by Southeast ADA Center, your leader for information, training and guidance on the Americans with Disabilities Act. And here's your host.

PAMELA WILLIAMSON: Good afternoon and welcome to WADA ADA Live! On behalf of the Southeast ADA Center, the Burton Blatt Institute at Syracuse University and the ADA National Network, we are excited to welcome our Internet radio listening audience to the fourth installment of WADA ADA Live! My name is Pamela Williamson and I am the Project Director for the Southeast ADA Center and today's host.

The topic of today's show is "Effective Communication." And we are very fortunate to have today's speaker, Julia Sain, Executive Director of Disability Rights and Resources based in Charlotte, North Carolina.

Julia will discuss the obligations of public agencies and private businesses to provide effective communication so that individuals with disabilities can participate fully in the programs and services they offer.

Please note that you are able to call throughout the show to submit your ADA related questions. The show's call-in number is 646-595-2880. Again, the call-in number is 646-595-2880.

Julia, let's get started. Can you please tell us what is meant by "effective communication"?

JULIA SAIN: Thank you, Pam. The Americans with Disabilities Act requires inclusion for all people with disabilities. Now, members of the general public often think of the ADA as meaning physical site access like parking spaces and ramped entrances, but rarely recognize that some disabilities have nothing to do with structural barriers.

Some disabilities result in barriers to communication - disabilities that affect hearing, vision or speech. Individuals with these types of disabilities are not prevented from inclusion by a lack of a

ramp or a parking space. These individuals are prevented from inclusion by the general public not knowing how to communicate with them.

There are other disabilities that may result in barriers to understanding, such as autism or learning disabilities. But that's not the same as communication. So we aren't talking about those today. We are only going to address disabilities that affect hearing, vision or speech.

The ADA requires businesses and governmental entities to ensure that methods are used to overcome these communication barriers so that everyone has access to the same information. This is called effective communication. The law states that communication with individuals with disabilities must be as effective as communication with others.

Who is covered by this responsibility? State and local governments and public accommodations or private businesses. So that means that a person with a communication disability has the right to enjoy equal opportunity to participate in and benefit from all the programs, services and activities whether they are provided by a state or local government or they are provided by a public accommodation.

You know, most of the time communication happens during the presentation and exchange of information. It is done through sound, through print, through graphics or through gestures. For the information to be communicated effectively requires some kind of aid or service and these are called "auxiliary aids or services" and include a wide range of devices, techniques and procedures that enable people with disabilities to participate fully in the exchange of information.

The type of auxiliary aid or service necessary to ensure this effective communication depends on the length and complexity of the communication involved. But we will talk more about that later in the show.

Let me give you some examples of how effective communication is being provided. Hospitals that provide televisions for use by patients or hotels, motels and places of lodging that provide televisions in five or more guest rooms, must provide a closed caption decoder upon request.

Tax bills and other print communication by a state or local government must be made available to individuals with vision impairments in a form that is usable by them.

PowerPoint presentations at city council meetings would be described to someone who cannot see.

PAMELA WILLIAMSON: Julia, thank you so much for providing our listening audience with the comprehensive yet concise overview of effective communication.

Today we are going to talk more about what the ADA does and does not require of private businesses and governmental entities in order to communicate effectively with people with disabilities, especially people who have communication disabilities.

So, let's talk a little bit more about the specifics. So, you talked about auxiliary aids and services earlier. What are auxiliary aids and services?

JULIA SAIN: Auxiliary aids and services are items, or equipment or services that assist in effective communication between a person who has a hearing, vision or speech disability and a person who doesn't. There's a list of examples in the ADA, but remember the ADA was written in the 1990's. There are so many wonderful new techniques and services that have been invented and discovered since then. But the items listed in the ADA are not the only options available.

If someone has a hearing disability, the aid or service might be qualified interpreters, note takers, pad and pencil, closed captioning, open captioning or assistive listening devices. It could also be video remote interpreting or something else that the expert -- the person with the disability -- knows about.

If someone has a vision disability, the aid or service might be electronic format, large print, screen readers, or Braille, or sighted guides, qualified readers, audio descriptions or recordings.

For someone who has a speech disability, the primary aid or service just might be patience because the person may bring their own talking computer or communication board and you have to wait until they expressed their thoughts. Or they might call through a relay service, and those calls are handled the same way they are when somebody who is deaf places a relay service call.

PAMELA WILLIAMSON: Well, thank you so much. We talked about auxiliary aids and services, but who chooses how the auxiliary aid or service will be provided?

JULIA SAIN: Well, the person making the request should be clear about his or her needs and the person providing the auxiliary aid or service needs to be sure that what is provided is effective. If the request comes to a state or local government agency, the agency must give priority to the type of auxiliary aid or service the person identifies.

If the request comes to a Title III, to a private entity, however, that business can decide on the specific type of auxiliary aid it provides as long as the aid provided is equally effective in ensuring accurate communication. With that private entity, what is needed to provide effective communication depends on what exactly needs to be communicated. If it's a simple transaction between a customer who is deaf and a salesperson, say, at a camera store, then pen and paper may be all that's needed to discuss the sale and answer the customer's questions. But, if it's a more complex situation, say the customer is discussing financing a new car, then the services of a sign language interpreter might be required, and, yes, the car dealer is responsible for finding and paying for the qualified sign language interpreter.

PAMELA WILLIAMSON: So, are there any circumstances when a public entity or a private business is not required to provide effective communication?

JULIA SAIN: Yes, public and private entities do not have to provide an auxiliary aid or service in two situations. One is if doing so would create a fundamental alteration in the goods or services being offered. Or, if it would result in an undue burden, which means a significant difficulty or expense. However, they still must do their best to provide a different auxiliary aid that would

ensure effective communication, if at all possible. And state and local government agencies would have a bit more explaining as to why they did not provide more than a business would.

PAMELA WILLIAMSON: Thank you so much for that follow up. The effective communication requirements that we've discussed today for state and local governments and for private businesses will be posted on our website, ADALive.org, after the show.

Julia, we received a question and the person has asked: I am Deaf and my doctor has asked me to bring a family member with me when I come to an appointment. Doesn't my doctor have to provide a sign language interpreter if I request one?

JULIA SAIN: Title II and III of the ADA regulations specifically state that you cannot be required to bring a family member or another individual with you in order to interpret. Instead, the doctor is required to provide auxiliary aids or services, including hiring an interpreter, in order to ensure effective communication. Now this could mean hiring a qualified sign language interpreter or it might be another method, such as video remote translating—as long as the communication is equally effective for both of you to understand each other.

The interpreter has to be qualified, because suppose the doctor hires someone who claims to be an interpreter but the patient doesn't understand their signs. Or the interpreter does not know how to sign medical terminology. Then the communication is not being effective and the patient needs to stop that appointment and reschedule when a different interpreter can be located.

PAMELA WILLIAMSON: But what if the person who is Deaf really wants to use a family member as their interpreter?

JULIA SAIN: Well, let's look at what the ADA says about that. The ADA regulations also say that a public entity or private business shall not rely on an adult accompanying an individual to interpret or facilitate communication except where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, and the accompanying adult agrees to provide the assistance, and reliance on that individual for such assistance is appropriate under the circumstances.

So, if the person who is Deaf wants to bring a family member along to interpret, that's OK, but it might not be a good idea. Because for one thing, using a family member to interpret violates the patient's privacy and the patient/doctor confidentiality. And the family member may not understand the medical terminology or how to interpret it.

Also, a family member may choose not to interpret accurately what the patient or the doctor said. They may not want to let the patient know how serious the condition is. Or they might be embarrassed by the patient's response and sort of "tone it down" a little bit.

PAMELA WILLIAMSON: Very good information. Let's move on to another question. Are the effective communication requirements different for a state or local government agency than for a private business?

JULIA SAIN: Earlier, I said that state and local governments must give primary consideration to what the person with a disability requests. So if this same person who is Deaf plans to attend a City Council meeting and requests an interpreter, the city must provide it unless doing that would somehow be impossible, maybe the request came in on short notice. However, the city must make a good faith effort to secure the services of an interpreter.

Also, although the person who is Deaf does have the right to a qualified interpreter, they do not have the right to insist on a specific interpreter. To define a qualified interpreter – a qualified interpreter is: someone who understands the signs used by the individual who is Deaf and can tell the hearing people what the person is communicating; and understands the words being spoken by the hearing people and can convey those words and concepts into signs understood by the people who are Deaf; and is objective in that situation.

PAMELA WILLIAMSON: Thank you, Julia. We appreciate that information. ADA Live listeners, if you have a question that you would like Julia to answer, please call 646-595-2880. And now, we have a word from our sponsors.

VOICE-OVER ANNOUNCER: Disability Rights and Resources, located in Charlotte, North Carolina, was incorporated as a non-profit organization in 1980 and became one of the first ten Centers for Independent Living in the country. Disability Rights and Resources provides advocacy, peer mentoring, independent living skills, information and referral and community reintegration for people with disabilities. Disability Rights and Resources is a local affiliate of the Southeast ADA Center, a member of the ADA National Network. For answers to your ADA questions contact the ADA National Network at 1-800-949-4232.

PAMELA WILLIAMSON: Welcome back to our ADA Live listening audience. Julia, while we were on that commercial break, we had a question come in. You had mentioned that it's important for an interpreter to be objective. Is there a situation where an interpreter may not be objective or where you can provide us [with] an example?

JULIA SAIN: Sure. Suppose a school system employs an interpreter to work with a child who is deaf in the classroom. Now suppose that same interpreter is asked by her principal to interpret for a deaf parent during an appointment where that parent is very upset about an issue. Imagine that the parent proceeds to cuss out the principal -- how difficult that scenario might be for that interpreter. She doesn't want to jeopardize her job by saying all of those things to the principal but if she doesn't - if she sugar coats it - that's unfair to both sides.

PAMELA WILLIAMSON: Julia, we thank you for answering our caller's question. We do have some more questions that we are going to discuss today regarding our topic of effective communication.

We had another question that came in. The person wants to know about what happens in a hospital. Her husband had a heart attack and while they were at the hospital, she requested an

interpreter because she is Deaf. The hospital denied the request because she was not the patient. Was that the right thing to do?

JULIA SAIN: No. The requirement to provide effective communication also includes the obligation to provide effective communication to companions who are Deaf. So the hospital is required to find a way to communicate with someone who has a communication disability as effectively as they would communicate with that person if he or she did not have the disability. Most hospitals (and other service providers) think their only responsibility is to ensure communication to their specific patient. They don't realize that, depending on the nature of what is being communicated, they have an obligation to communicate effectively with the patient's family members. The rule is, if they generally communicate with family members without disabilities, they have to communicate with the family members who are Deaf.

PAMELA WILLIAMSON: Thank you so much, and we have received another question. Can I ask a theater hosting a live play to allow me to bring my own sign language interpreter? I would like to have them allow her to sit in the seat in front of me. I would also like to have a copy of the script a few days before the play so my interpreter can read it a head of time.

JULIA SAIN: Well, the answer here is yes, you can bring your own sign language interpreter. And, no, they do not have to allow her to sit in the seat in front of you. You can bring someone with you as your companion or interpreter but you would have to buy two tickets. But the requirement for effective communication is not going to require the theater to take any action that would cause a fundamental alteration in the goods or services being offered. Having someone sit in the seat in front of you so she can interpret would disturb the other patrons and would fundamentally alter the experience for them.

However, asking the theater to hire a sign language interpreter does fall under the effective communication requirements. Private theaters now can require you to make this request within a specified amount of time prior to the show. If you're going to a theater that's owned, operated or funded by a state or local government, remember that they will need to have time to hire an interpreter, so make your request in advance.

If the theater provides the interpreter, you would only have to pay for your own ticket. The theater would cover the cost of the interpreter and would also find a seat for you so you can see the interpreter clearly.

PAMELA WILLIAMSON: What about the caller's request about knowing whether or not they could get a copy of the play in advance for the interpreter?

JULIA SAIN: Oh, right, okay. Well, getting a copy of the script to a non-theater employee might violate copyright and other contractual provisions agreed to when the theater obtained permission to put on the play, so that request would probably have to be denied for someone who is not employed by the theater. I have a colleague who provides audio description for plays for patrons

who are blind. Because she's a contract theater employee, she can get a copy of the script ahead of time and can have it while the play is still in rehearsal.

PAMELA WILLIAMSON: Thank you so much for that information. Now, ADA Live listeners, if you have a question that you would like for our speaker to answer, please call 646-595-2880. And now, we are going to have a word from our sponsors.

VOICE OVER ANNOUNCER: The ADA National Network provides information, guidance and training on the Americans with Disabilities Act tailored to meet the needs of business, government and individuals at local, regional and national levels. The ADA National Network consists of ten regional ADA centers in the United States providing local assistance to insure that the ADA is implemented wherever possible. The ADA National Network is not an enforcement agency, but a helpful resource supporting the ADA's mission, to make it possible for everyone with a disability to live a life of freedom and equality.

PAMELA WILLIAMSON: Welcome back, everyone. We have got just a few more questions that have come in. We are going to talk to Julia about a little more of those. Julia, one of the things you mentioned earlier was something about the fundamental alteration of goods and services being provider— excuse me —being offered. A caller wants an example of what that might mean.

JULIA SAIN: The classic example, which may or may not have really happened, is for someone to ask that the lights in a planetarium be raised so she can see her interpreter. Of course, that would fundamentally alter the experience for everyone, including the person who asked for it.

Even though the planetarium could and probably did deny that request the planetarium still has obligations under the ADA. So one possible solution could be to offer the patron a seat off on the far right or far left and position the interpreter with a dim light right in front of her. Or to provide her with the narrator script and a clip on light, something like that.

PAMELA WILLIAMSON: I could definitely see where that might be a fundamental alteration. Now, Julia, do restaurants have to provide menus in Braille?

JULIA SAIN: No, it might be an undue administrative or financial burden for a restaurant to print a new Braille menu every time they change an item or a price. However, it is not appropriate for a request for a Braille menu to be answered with simply: "We don't have any."

Restaurant staff should be trained on how to properly provide the information from the menu to the guest who requests it so they can make their choices from the full menu.

PAMELA WILLIAMSON: You also mentioned audio description for a theater performance; are there also audio describers for art museums?

JULIA SAIN: Yes, there are. Audio description is a relatively new service that people with vision loss are finding effective. However, many museums offer audio tours and mistakenly think this is the same as audio description -- but it's not. Audio tours provide a handheld receiver and the patron can input a code and hear a pre-recorded message about a particular display.

But usually the information provided includes details about the items' history or what makes it unique -- but not descriptive words, what it looks like, the subject matter if it's a painting, or talk about its size, its markings or what it's made of. That's what the audio description can do.

PAMELA WILLIAMSON: Very interesting. Is audio description provided by the museum staff or is it a profession like sign language interpreters?

JULIA SAIN: Providing effective audio description is a technical skill. It's being learned by many professional audio describers in many cities. It began in towns where patrons with vision loss wanted to attend live theater but now describers are also working in museums and on guided tours. If you want to know who provides audio description in your area you could contact your local ADA Center at 1-800-949-4232.

PAMELA WILLIAMSON: Well, Julia, thank you so much for that excellent information. We have received a couple of questions that are quite complex. One is specifically regarding the use of text enhanced by speech on tests such as the AP or SAT. Unfortunately, due to the complexity of this question, it's going to be much more beneficial for our caller to contact the ADA Center so that they can get a much more personalized and confidential answer. So, we would encourage that caller to contact the ADA Center at 1-800-949-4232. Again, that number is 1-800-949-4232, so that he or she can speak to an ADA Information Specialist.

And if there are any WADA listeners that were unable to submit a question today or have additional questions about the ADA, you may contact the ADA Centers at 1-800-949-4232. Please know that all of your questions are very important to us and all answers are confidential.

At this time, I would like to thank Julia Sain, our guest speaker today, and Julia, again, is based at Disability Rights and Resources in Charlotte, North Carolina. Julia, we - I know that our ADA Live listening audience and the Southeast ADA Center is extremely grateful for your support and participation in this series of broadcasts.

Listening audience, if you would like to continue this discussion, please join the Southeast ADA Center in our online discussion at ADAlive.org. And don't forget to tell a friend about ADA Live. You can like us on Facebook, Tweet about us, or share an update with your LinkedIn colleagues. And please join us next month on Wednesday, February 5th, when we discuss service animals.

See you next month on WADA ADA live.

VOICE-OVER ANNOUNCER: Thank you for listening to ADA Live! Talk radio. Brought to you by the Southeast ADA Center. Remember to join us the first Wednesday of each month for another ADA topic, and you can call 1-800-949-4232 for answers to your ADA questions.

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