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Getting Comfortable with the Uncomfortable

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Getting Comfortable with the Uncomfortable: An Invitation to Learn More About the Interaction Between Physical and Cognitive Limitations and the Practice of Law

Two Issues to Consider When Dealing with Clients Who Might Have Cognitive
Impairments or Vulnerabilities

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I would like to break this into two parts: First, the clients who have cognitive impairments that limit their capability to make sound decisions. And second, the clients who have vulnerabilities that make the susceptible to abuse or exploitation.

The first category of clients is a continuum, and being able to ascertain the scope of the client's capability as a legal professional in a short period of time can be a great challenge.

I believe we are shifting away from a black and white "capacity" or "competence" standard. In my view, the concept of "capability" is much more realistic and helpful:

- Because "capacity" has taken on so much nuance in medical and legal parlance, it can be useful to shift to the more broadly understood language of "capability"
- Capability is not "black and white;" not "either/or;" not "all or nothing;" not "yes or no."
- Capability looks different for different people...
- Capability can even look different for the same person at different times.
- Can be thought of as a continuum.
- Focus on person's abilities, what an individual can do...
 - Whether can handle finances, make medical decisions
 - Whether a person can consent
- Recognize a person may have capability to do one thing, but not another

Legal capability and informed consent:

Legal capacity/capability is a basis for informed consent:

In the law, informed consent involves a 3-pronged test that requires an individual is: a) informed; b) gives consent voluntarily; and c) has the requisite capacity to provide consent

Consent is "informed" when a person

- Understands the issue or question
- Knows that there are options in responding
- Comprehends the risks and benefits of those options

- Makes a choice
- Understands the consequences of the choice

Another consideration is the relatively new “supported decision-making” statutes. These states include Alabama, Alaska, Arizona, California, Colorado, Delaware, District of Columbia, Illinois, Indiana, Louisiana, Maryland, Minnesota, Nevada, and New Jersey. Each of these states has passed legislation that provides a legal framework for supported decision-making agreements, offering various safeguards and protections for individuals with disabilities.

In Delaware, the supported decision-making statute is found in Chapter 94A of Title 16 of the Delaware Code. The law, enacted in 2016, allows individuals with disabilities to make their own decisions with the support of a chosen network. This network can help them understand options, responsibilities, and consequences without taking away their right to make decisions. The aim is to promote autonomy and reduce unnecessary guardianships.

Texas has its supported decision-making statute in Chapter 1357 of the Texas Estates Code. This law provides a legal framework for supported decision-making agreements, where individuals with disabilities can select supporters to assist them in making decisions, rather than having decisions made for them. This statute emphasizes the importance of self-determination and the role of the supporter as an advisor rather than a decision-maker.

With regard to issue spotting in particular:

When it comes to elderly clients, listen for repetition and gaps. When people skip around or repeat themselves, we probably need to slow down. If they are not making sense, we need to delve deeper into their story. Perhaps we are not accustomed to relating to the elderly, or our listening skills aren’t good enough. We could be talking into his bad ear, and simply need to shift positions. The client could have a UTI (this was frequent in long term care, and recently I jumped to the conclusion that a client was in a sharp cognitive decline and called her daughter to investigate. The daughter explained it had happened before, and after a couple days on antibiotics, my client stabilized).

However, we need to bear in mind the data:

According to recent studies, about 10% of people aged 65 and older have dementia. Additionally, 22% of older adults have mild cognitive impairment, which can be a precursor to dementia. www.cuimc.columbia.edu. According to the NIH (nih.gov) nearly 25% of people in their eighties have some type of dementia.

Therefore, although we don’t want to be biased toward the elderly (ageism), we also need to be aware and ready and willing to help our clients that have limited capability.

Tip: When in doubt as to capacity (or capability), getting a professional involved (often a psychologist, psychiatrist, or geriatrician) can be the ounce of prevention that is better than a pound of cure. Consider what is at stake.

According to the WHO (World Health Organization), the most socially acceptable prejudice in the world is ageism. Remember that every elderly person is a unique individual, and

that some are going to be like Warren Buffett (who is 94 years old and is still the CEO of Berkshire Hathaway), and others will truly be on the impaired spectrum.

Don't fall into the trap this dentist did:

Anonymous asked: "I am 65 years old. My 35-year-old dentist made a mistake. She carelessly did not check my records which documented the work to be done and as a result, she replaced a \$1,500 restoration on the wrong tooth. (Hard to distinguish exactly which tooth is being worked on when your mouth is frozen!) Flabbergasted when I looked in the mirror, I pointed out she had replaced the wrong restoration. She responded by patting my arm, and saying "No, dear. Don't you remember that we talked about which tooth?"

From: Yo, is this Ageist? blog, Ashton Applewhite

Attorneys have specific ethical duties when representing clients with diminished decision-making capacity or cognitive impairments. According to the American Bar Association's Model Rules of Professional Conduct, Rule 1.14, attorneys must make reasonable efforts to maintain a normal client-lawyer relationship. This includes giving the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so (www.2civility.org; Ethical Considerations for Lawyers When Responding to Clients With Cognitive Decline, by Mark C. Palmer). When an attorney determines that a client's capacity is diminished, they should consider factors such as the client's ability to articulate reasoning leading to a decision, the variability of the client's state of mind, and the consistency of the decision with the client's known long-term commitments and values (which in some cases are unknown). For example, if an elderly client with dementia wishes to change her Will (especially if it involves disinheriting a child), the attorney must assess whether the client truly understands the implications of this decision and whether it aligns with her long-term intentions.

This brings us to the second category of clients, which are the vulnerable. We want to make sure we are giving vulnerable clients the protection they need while balancing that with the respect of autonomy. It can be degrading to underestimate a person's abilities, but it can also be disastrous to miss the warning signs of exploitation and abuse.

Story of client who disinherited children, and 9 years later had dementia and was declared incompetent by physician a few months before one of her children took her to another attorney to do a new Will and put the children back in. I believe this was a case study on Stockholm Syndrome in the elderly with dementia.

Stockholm syndrome is a psychological response to captivity or abuse, where hostages or abuse victims develop positive feelings or emotional bonds with their captors or abusers over time. This condition was first identified during a 1973 bank robbery in Stockholm, Sweden, where hostages bonded with their captors and even defended them after being freed. The syndrome is thought to be a coping mechanism, helping victims endure the trauma of captivity by sympathizing with their captors. It can occur in various situations, including child abuse, domestic violence, and human trafficking. Treatment for Stockholm syndrome typically involves psychotherapy, also known as "talk therapy," and sometimes

medications if needed. The goal is to help the victim process the trauma and rebuild a sense of safety and autonomy.

In cases where the client's capacity is significantly impaired, the attorney may need to take protective action. This could involve consulting with individuals who have the authority to act on behalf of the client, such as a legal guardian or power of attorney, to ensure the client's best interests are protected. (ABA Rule 1.14). For instance, if a client with severe cognitive impairment is being pressured by family members to make a financial decision that is not in their best interest, the attorney may need to intervene to prevent exploitation.

Story about “Frank” at “Premier Dementia Care”: Frank had significant dementia and lived in a very nice “lock down” unit; but he dressed and presented well, leading to his escape.

“Joe” was also in dementia care. He had been a successful attorney, and was still fairly sharp, but the gaps in logic and short-term memory loss were becoming apparent. I allowed for his autonomy as much as possible by letting my staff drop him off and pick him up at the gym where he had a membership and loved to work out. It was at least three miles away and across some major streets. The day came when we were late to pick him up, and he had decided to walk back....

It could be argued that the average 18-year-old male is far from competent. In reality, they are capable of making most decisions (as a society, we have decided alcohol is not one of them). Clearly some are still not able to gauge risk levels accurately and make devastating decisions that they would never make as a 30-year-old (if they make it to 30). Just as we would not allow (without strong intervention) a “competent” 18-year old client to make a destructive decision, likewise with the 88-year old client.

This shows implicit bias from a judge in a Kansas conservatorship case:

“As all of us grow older, we gradually lose our faculties, both physical and mental. The longer we live and the older we become, the more we lose.”

-In re Citizens State Bank and Trust Co. of Hiawatha, 601 P.2d 1110 (1115).

From “Ageism in our Own Backyard,” by Prof. Linda Whitton, Valparaiso

It is absolutely critical that the client meet with you alone, if for no other reason to discuss the person coming back into the room, their relationship, level of trust, motives, etc. We know the person still may have undue influence on the client, since he is out in the waiting room or will be asking the client questions on the way home, or simply be seeing and knowing the results of the planning. Some family members are skilled in manipulation and gaslighting to a degree we will never catch on—this is why I recommend watching video tutorials on psychological topics by experts like Dr. Henry Cloud. When I have any suspicion that we do not have an alignment of goals between client and his Agent or family member, I will take extra careful notes, discuss things in private and ask hard and uncomfortable questions to the client (and sometimes the family member), follow up with a

phone call to the client when I am quite certain that the family member is absent from the home.

What to do when it becomes suspected or obvious a client/party has cognitive challenges that may impede decision making or make the client/party susceptible to undue influence.

A variety of the ideas discussed above, including the “supported decision making” model some states have put in place, as well as utilizing legal Agents (and replacing or supplementing such Agents as appropriate, by working with an estate planning or elder law attorney).

Dealing with well-meaning, or not-so-well-meaning family members or guardians who might be overstepping their roles in a legal matter.

There are subtle and not so subtle (depending on the person involved) ways to show and tell that messing with the client can come back to bite them. Once I had a son who came in with client. I could tell he was greedy and wanted the house now (instead of waiting for his mother to pass). The mother was somewhat anxious, not really comfortable with the concept of giving up her home, but also wanting to please her son. I asked her if I could have her son come back and in tell him my opinion, and she said yes (I was a bit concerned about him being mean to her later). I then proceeded to tell the son that although his mother seemed open to giving him the home, I told her it was a terrible idea and that I would never support it, and the legal reasons why (which were compelling, due to the 5 year lookback for Medicaid eligibility, among other reasons). By making myself the “bad guy” as much as possible, I think I was able to defer some of his anger away from my client. The vast majority of family members I encounter are very supportive of my client. But we need to be aware of the following:

At the Minnesota Elder Justice Center, the majority of callers have questions about elder abuse in later life. Last year:

- In 56% of contacts, the perpetrator is a family member, spouse/intimate partner, or friend.
- By far the most frequent type of victimization reported is financial exploitation, at 68%.

Note, many callers experience more than one type of victimization.

- 1,000,000 – 2,000,000 adults in later life in U.S. are victims of abuse. ¹
- 1 in 10 persons over the age 60 are victims of elder abuse. ²
- Victims of elder financial abuse in U.S. lose close to \$3 Billion each year. ³

¹National Center of Elder Abuse: 2005 Elder Abuse Prevalence and Incidence

² National Institute of Justice: Elder Abuse as a Criminal Problem

³ Blancato, Robert: Violence Against Older Women and The Elder Justice Act; 3/04/12 – from MetLife

Navigating Communication Barriers in Legal Practice: Insights from a Deaf Attorney

Introduction

Panelist: Michael Fowler, Of Counsel, Prelle Eron & Bailey, P.A., Wichita, Kansas

Michael Fowler is a deaf attorney and panelist for the “Getting Comfortable with the Uncomfortable: An Invitation to Learn More About the Interaction Between Physical and Cognitive Limitations and the Practice of Law” session of the ABI/UMKC 2024 Midwestern Bankruptcy Institute, bringing extensive experience in navigating the complexities of legal practice while managing communication challenges. As Of Counsel at Prelle Eron & Bailey, P.A. in Wichita, Kansas, Michael offers a unique perspective on the intersection of disability and law. His personal experiences and professional insights provide valuable lessons on effective communication, inclusion, and advocacy in the legal field.

I. The Spanish Story: A Lesson in Perception and Communication

As a deaf individual working in a customer service role, I encountered a unique challenge that unexpectedly provided valuable insights into human behavior and communication. This experience, which I call "The Spanish Story," serves as a powerful illustration of how perceptions and assumptions can dramatically affect interpersonal interactions.

Personal Experience Overview:

During my time as a server at a restaurant, I often received inquiries about my accent or origin due to my speech patterns affected by my hearing impairment. Initially, when I disclosed my deafness, I noticed that many people became visibly uncomfortable, often resorting to exaggerated gestures or speaking loudly, which paradoxically made communication more difficult.

In an attempt to ease these interactions, I began telling curious customers that I was from Spain. The change in their reactions was immediate and striking. People became excited, interested, and notably more patient in their communication. They made efforts to understand me without dramatically altering their behavior or showing discomfort.

Key Observations:

1. Perception of foreignness often elicited patience and interest, while disclosure of disability frequently led to discomfort or awkward attempts at accommodation.
2. People's assumptions about an individual's background significantly influenced their communication style and willingness to engage.

3. The ease of interaction when people believed I was foreign versus when they knew I was deaf highlighted societal biases and misconceptions about disabilities.

This experience underscores the impact of preconceptions on communication and interaction, a lesson that has profound implications in the legal field where clear, effective communication is paramount.

II. Applying Insights to Legal Practice

The lessons learned from "The Spanish Story" can be invaluable applied to legal practice, particularly in client interactions and courtroom settings.

A. Recognizing and Addressing Communication Barriers

1. Importance of Clear, Direct Communication:
 - a. Always prioritize clarity in your communication, regardless of your assumptions about a client's or colleague's abilities.
 - b. Use plain language and avoid legal jargon when possible, especially in client interactions.
 - c. Confirm understanding by asking open-ended questions rather than yes/no questions.
2. Avoiding Assumptions:
 - a. Refrain from making assumptions about a person's abilities or needs based on appearances or initial impressions.
 - b. Instead of assuming, politely ask individuals if they have any communication preferences or needs.
 - c. Be prepared to adapt your communication style based on individual needs rather than preconceived notions.

B. Creating an Inclusive Environment Beyond Physical Accommodations

1. Considering Diverse Communication Needs:
 - a. Recognize that accessibility goes beyond physical modifications like ramps or grab bars.
 - b. Be prepared to offer various communication methods: written notes, email, text messages, video calls with captions, or sign language interpreters.
 - c. Ensure your office is equipped with assistive listening devices or has access to real-time captioning services.
2. Implementing Non-Physical Accommodations:
 - a. Develop a protocol for identifying and addressing diverse communication needs in your practice.
 - b. Train all staff members on inclusive communication practices and available accommodations.
 - c. Create an atmosphere where clients feel comfortable expressing their needs without fear of judgment or inconvenience.

C. Ensuring Direct Engagement with Clients

1. Observing Non-Verbal Cues and Body Language:
 - a. Pay close attention to facial expressions, gestures, and posture, which can convey as much as spoken words.
 - b. Be aware that some individuals may rely more heavily on non-verbal communication due to hearing or speech impairments.
 - c. Practice active listening, which includes observing these non-verbal cues.
2. Strategies for Empowering Clients:
 - a. Address the client directly, even if they are accompanied by an interpreter or family member.
 - b. Encourage clients to express their thoughts and concerns by asking open-ended questions and providing ample time for responses.
 - c. Offer multiple means of communication (e.g., written, verbal, visual) to accommodate different preferences and abilities.
3. Mitigating Interference from Third Parties:
 - a. Establish clear boundaries with family members or other accompanying individuals about their role in the legal process.
 - b. When appropriate, schedule one-on-one time with the client to ensure their voice is heard without outside influence.
 - c. Be vigilant about potential undue influence, especially in cases involving clients with cognitive impairments.

III. Legal Framework and Resources

Understanding the legal obligations and best practices regarding communication with clients with disabilities is crucial for ethical and effective legal practice.

A. Americans with Disabilities Act (ADA) Requirements

Title III of the ADA prohibits discrimination on the basis of disability in places of public accommodation, including law offices. Key points include:

1. Obligation to Provide Effective Communication:
 - a. Law firms must provide auxiliary aids and services necessary to ensure effective communication with clients who have disabilities.
 - b. The type of aid or service required depends on the individual's needs and the complexity of the communication.
2. Examples of Auxiliary Aids and Services for Deaf or Hard of Hearing Individuals:
 - a. Qualified interpreters (on-site or video remote interpreting services)
 - b. Notetakers
 - c. Real-time computer-aided transcription services
 - d. Written materials
 - e. Assistive listening devices

B. Relevant Case Law

1. *Updike v. Multnomah Cty.*, 870 F.3d 939 (9th Cir. 2017):
 - a. The court held that a deaf individual's rights under the ADA were violated when he was not provided with an ASL interpreter during his time in jail.
 - b. This case emphasizes the importance of effective communication in legal settings, including those beyond the courtroom or law office.
2. *Gillespie v. Dimensions Health Corp.*, 369 F. Supp. 2d 636 (D. Md. 2005):
 - a. The court ruled that a hospital violated the ADA by failing to provide a deaf patient with an ASL interpreter.
 - b. This case highlights the need for *individualized* assessment of communication needs and the inadequacy of relying solely on written notes or family members for interpretation.

C. Best Practices for Attorneys

1. [ABA Model Rule 1.14: Client with Diminished Capacity](#)
 - a. This rule provides guidance on maintaining a normal client-lawyer relationship as far as reasonably possible when a client's capacity to make decisions is diminished.
 - b. It emphasizes the importance of client autonomy and the lawyer's duty to protect the client's interests.
2. [DOJ's "ADA Requirements: Effective Communication" guidelines](#)
 - a. These guidelines offer practical advice on ensuring effective communication with people who have vision, hearing, or speech disabilities.
 - b. They stress the importance of considering the nature, length, complexity, and context of the communication when determining appropriate accommodations.
 - c. <https://www.ada.gov/resources/effective-communication/>

D. Additional Resources

1. [National Association of the Deaf \(NAD\) - Legal Resources](#)
 - a. Offers extensive information on the legal rights of deaf and hard of hearing individuals.
 - b. Provides guidance on accessibility in various settings, including legal environments.
 - c. <https://www.nad.org/resources/justice/>
2. [ABA Commission on Disability Rights](#)
 - a. Provides resources for lawyers on disability inclusion in the legal profession.
 - b. Offers guidance on creating accessible law offices and legal services.
 - c. [Planning Accessible Meeting and Events Toolkit \(americanbar.org\)](#)
 - d. <https://www.americanbar.org/groups/diversity/disabilityrights/>

Conclusion

The lessons learned from "The Spanish Story" highlight the critical importance of open-mindedness, adaptability, and clear communication in legal practice. By recognizing our own

biases, being willing to adapt our communication styles, and creating truly inclusive environments, we can better serve all clients, regardless of their abilities or backgrounds. As legal professionals, we have both an ethical obligation and a unique opportunity to lead by example in fostering a more inclusive and accessible society.



Accessible Meetings and Events

TOOLKIT

Collection of signs for Accessibility and people with disabilities. Illustration by designalldone via Getty Images.

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Disabled access. Illustration by ChrisSteer via Getty Images.

Overview

Planning meetings and events—whether in-person or virtual—that are fully accessible for persons with disabilities might seem overwhelming, but with proper planning can become second nature. An effective approach begins with learning more about disabilities and the barriers that limit or preclude participation by persons with disabilities.

According to the Centers for Disease Control and Prevention, one in four adults in the United States has a disability that impacts a major part of their life. At some point during their lifetime, most everyone is likely to experience having a disability or know someone who has one, whether due to aging, chronic disease, illness, injury, etc. Every reasonable effort must be made to ensure that no person with any type of disability is prevented or discouraged from attending—and from fully and equally participating in—any part of the meeting or event. Planners should reach out to persons with diverse types of disabilities, disability organizations, independent living centers, and the ADA National Network Centers for guidance and assistance.

Note that some individuals may not disclose their disability-related needs. Accordingly, meeting and event planners should be proactive in addressing potential barriers to participation by incorporating principles of universal design; that is, designing the meeting or event so that it can be accessed, understood, and used by as many people as possible. The goal is to make the meeting or event as inclusive as you can.

Planners must collaborate with attendees and presenters interactively so that the most appropriate accommodations can be provided. It is helpful to have a general understanding of the diverse types of disabilities, including mobility, sensory, cognitive, learning, neurological, developmental, and psychiatric. However, although individuals may have the same disability, some accommodations may work for one person but not for another. Accommodations must be based on the individual's needs. Ask the individual what accommodations they need.

Some accommodations may be unreasonable, meaning that they pose an undue hardship or change the fundamental nature of the service being provided. However, most barriers to participation can be removed without incurring great expense, imposing an administrative burden, compromising the nature of the activity, or raising health and safety concerns.

This toolkit is intended to assist entities in planning both in-person and virtual meetings and events that are accessible to persons with disabilities. It provides recommendations and checklists for all phases of a meeting or an event, from choosing the venue to materials, websites and mobile apps, presentations, meals and social functions, staff and volunteer training, and communication and etiquette. Due to the increase in virtual meetings and events, we have included a checklist and suggested best practices as well. Most of the recommendations and checklists in this toolkit, including for materials, websites and mobile apps, presentations, staff training, and communication and etiquette, apply to virtual meetings as well.

Note that it is impossible to anticipate every barrier that might limit or preclude participation by an individual. Moreover, because innovative ideas for improving accessibility and modern technologies continue to emerge, this toolkit should be viewed as a living document that is meant to evolve.



Businessman on wheelchair at hotel reception desk. Photo by Johner Images via Getty Images.

Choosing a Venue

Before booking any in-person meeting or event, plan an on-site visit to the venue to determine whether barriers to accessibility exist. Merely asking representatives from the venue whether it is accessible is not sufficient. Plan the visit far enough in advance to find an accessible venue without the time pressures created by an impending meeting or event. Of course, an on-site visit should take place in cooperation with representatives from the venue.

Planners should evaluate the accessibility of the venue itself, as well as the surrounding areas. Ask whether the venue has participated in an audit to determine its compliance with the accessibility requirements of the Americans with Disabilities Act (ADA). Also inquire as to whether venue staff have taken trainings in interacting with persons with disabilities, including accessibility and etiquette. In addition, check whether the venue is near airports, rail stations, taxi or shuttle services, paratransit services for persons with disabilities, and public transportation routes. Are there accessible hotels, restaurants, shops, theaters, and tourist attractions nearby?

Prior to the on-site visit, prepare a checklist of specific accessibility items. For assistance, contact persons with diverse types of disabilities; even better, ask them to accompany you on the visit, as they can be helpful in identifying barriers. Seek guidance from [your region's ADA National Network Center](#), disability organizations, and Mayor's Office/

Commission/Committee for People with Disabilities in cities including Chicago, Houston, Philadelphia, New York, and San Francisco.

We have prepared some sample accessibility checklists for the exterior and interior features of the venue, as well as the meeting/event rooms. In general, we do not provide exact measurements (e.g., height, width, requisite number, etc.); these can be found in the [Department of Justice's regulations implementing Title III of the ADA, 28 C.F.R. pt. 36](#). Note that some items, such as ramps, temporary Braille and tactile signs, detectable warning devices, and additional parking spaces, may need to temporarily be added to make the venue fully accessible.

Exterior Features Checklist

General

- ☐ Close proximity of venue from airport, train and bus stations, paratransit services, and public transportation
- ☐ Close proximity of venue to accessible hotels, restaurants, theaters, shops, and other attractions
- ☐ Barrier-free/step-free paths of travel
- ☐ Slip-resistant, level surfaces
- ☐ Tactile ground surface indicators that signal stairs and ramps for people who are blind or have low vision
- ☐ Stairs with continuous handrails on both sides; no open risers (space between steps)
- ☐ Ramps for inaccessible areas, with handrails on both sides if the rise is greater than 6 inches, and level landings
- ☐ Curb ramps/cuts for persons who use mobility aids or devices
- ☐ Crosswalks with visual and audible signals
- ☐ Toileting, watering, and walking areas for service animals

Entrance

- ❑ Barrier and step-free, clearly marked (Braille and tactile signage), well-lit, slip-resistant accessible main entrance at street level so that all individuals can use this entrance
- ❑ Direct access from the main entrance to the lobby, main floor, and elevators
- ❑ Clearly marked (Braille and tactile signage), covered drop-off and pick-up points adjacent to the main entrance, with curb cuts
- ❑ Alternative accessible entrances used during same hours as main entrance
- ❑ Signs (Braille and tactile) indicating location of accessible entrances
- ❑ Entrance connected by an accessible route to public transportation stops, accessible parking and passenger loading zones, and public streets or sidewalks
- ❑ Other entrances that are at street level or accessible by ramps or lifts

Doors

- ❑ Main entrance/exit doorways that are wide enough (32 inches with the door open 90 degrees) to accommodate mobility devices and aids
- ❑ Easy-to-open (automatic/push button door openers, lever handles), operable with one hand, within reach for mobility device users, lightweight (no more than 5 pounds) doors; no revolving doors
- ❑ Glass doors with contrasting door frames, stickers, or bright signs

Parking/Transit

- ❑ Accessible, clearly marked (symbol of accessibility) parking spaces (at least 1 handicap space for every 25 total spaces) located on the shortest accessible route of travel from adjacent parking to an accessible entrance
- ❑ Accessible transit services (private and public)
- ❑ Available paratransit services

Interior Features Checklist

General

- ❑ Well-lit areas; adjustable lighting
- ❑ Even, stable, regular, slip-resistant, non-sloped paths of travel
- ❑ Sufficiently wide (64 inches for two-way traffic), barrier-free hallways and corridors to allow everyone to move about freely
- ❑ Securely attached edges of carpets or mats
- ❑ Clearly marked (Braille and tactile signage) accessible exits
- ❑ Clearly marked (Braille and tactile signage) accessible restrooms located on an accessible route
- ❑ Video screens with closed captioning
- ❑ Registration/concierge at a height accessible by mobility device users that allows for a frontal approach and provides adequate knee clearance
- ❑ Emergency procedures for persons with disabilities (audio and visual alarms in halls and sleeping rooms)
- ❑ Venue free of strong smells (perfume, cleaning agents, etc.), loud noises, and flashing/bright lights
- ❑ Designated low-stimulation quiet room away from conference rooms and hallways with no talking, no noise, no electronic devices, and low or dim lighting
- ❑ Designated high-stimulation room with fidget toys and plenty of space to allow people to talk, shout, clap, make noises, jump around, and do whatever they need for stimulation
- ❑ Designated room for deaf and hard of hearing attendees to communicate away from conference rooms and hallways

Doors/Elevators

- ❑ Easy-to-open, lightweight (no more than 5 pounds) doors with lever handles that are easy to grasp with one hand or that open with automatic/push button openers
- ❑ Wide (32 inches with the door open 90 degrees) doorways for mobility devices to enter/exit
- ❑ Clearly marked (Braille and tactile signage) elevators along an accessible route
- ❑ Elevator doors that reopen automatically when obstructed by an object or person
- ❑ Elevator interiors adequately illuminated and wide enough for wheelchairs/scooters/mobility devices to enter, maneuver within reach of controls, and exit
- ❑ Elevator call buttons with visual and audible signals, reachable by mobility device users
- ❑ Elevator control buttons that are designated by Braille and tactile characters or symbols and are reachable by wheelchair/scooter/mobility device users
- ❑ Elevator voice and visual display two-way emergency communication

Amenities

- ❑ Accessible sleeping rooms (check on number available) with roll-in showers
- ❑ Accessible fitness center, including restrooms and showers
- ❑ Accessible restaurants (including ability to provide for dietary restrictions and large print/Braille or digital menus), bars/lounges, and shopping

Meeting/Event Rooms Checklist

General

- ❑ Barrier-free, slip-resistant path to rooms
- ❑ Proper air circulation with temperature controls
- ❑ Rooms large enough to allow all persons to move about freely
- ❑ Clearly marked (Braille and tactile signage) accessible restrooms located on an accessible route near rooms
- ❑ Elevators in proximity to rooms and along an accessible route
- ❑ Accessible exhibit areas
- ❑ Easy-to-open, lightweight doors (no more than 5 pounds) with lever handles or automatic/ push-button openers
- ❑ Doors wide enough (32 inches with door open 90 degrees) for mobility devices to enter/exit and maneuver
- ❑ Doors propped open at start and end of each session, with attendants or an automatic mechanism to open the doors during sessions
- ❑ Multiple sets of power outlets for laptops and other electronics placed outside of paths of travel
- ❑ Well-secured, covered cables, wires, cords, and microphones placed outside of paths of travel
- ❑ Tables for materials and food/beverage at a height (28 to 34 inches) reachable by wheelchair/mobility device users and in an accessible location
- ❑ Designated low-stimulation quiet room with no talking, no noise, no electronic devices, and low or dim lighting
- ❑ Designated high-stimulation room with fidget toys and plenty of space to allow people to talk, shout, clap, make noises, jump around, and do whatever they need for stimulation
- ❑ Designated room for deaf and hard of hearing attendees to communicate away from conference rooms and hallways
- ❑ Space for service animals

Visual

- ❑ Signs (with Braille and tactile characters, sans serif or simple serif large type fonts, sentence case, and good contrast) that direct attendees to all rooms
- ❑ Mounted signs designating permanent rooms and spaces with tactile characters that contrast with their backgrounds and Braille
- ❑ Well-lit rooms and adjacent areas

Auditory

- ❑ Good acoustics and a functioning auxiliary sound system
- ❑ Public address (PA) system
- ❑ Location of all audio/visual equipment in an area that does not block paths of travel
- ❑ Assistive listening devices, hearing or induction loops, and Communication Access Realtime Translation (CART) for attendees who are d/Deaf or hard of hearing
- ❑ Prominent, well-lit, visible space for interpreters to stand (e.g., raised platform with a dark, solid color background)
- ❑ Clear lines of sight to interpreters and screens displaying real-time CART
- ❑ Designated room for d/Deaf and hard of hearing attendees to communicate away from conference rooms and hallways

Seating

- ❑ Barrier-free seating aisles that are wide enough (36 inches) to accommodate mobility devices
- ❑ Seating rows that are wide enough for attendees to walk through or traverse with mobility devices
- ❑ Accessible, integrated seating throughout the rows
- ❑ Preferred seating for persons with visual and hearing disabilities in the front rows
- ❑ Reserved seating near the exits for attendees who are sensitive to crowds and need to take breaks

- Adequate number of spaces for mobility devices dispersed to allow location choices and viewing angles equivalent to other seating, with clear lines of sight
- Seats for companions accompanying persons with disabilities
- Space on the side of or under seats for service animals



Video conference call with closed captions. Video courtesy of the American Bar Association.

Virtual Meetings and Events

Just as with in-person meetings and events, virtual meetings and events must be accessible to individuals with disabilities. When planning a virtual meeting or event, you must consider their accessibility needs, including those who are d/Deaf or hard of hearing, blind, or have intellectual, developmental, or mobility disabilities.

Selecting the right platform is key. It must be accessible to all participants, including those with disabilities who use assistive technologies. Before choosing a vendor, visit its website to familiarize yourself with the accessibility features offered. Features to look for include platforms that provide real-time captions or otherwise support captions, support screen readers and interpreters, allow individuals to magnify screen content, and can be navigated by a keyboard only and with keyboard shortcuts. Note that some vendors may represent that their platforms are accessible when they are not. Accordingly, have people with various types of disabilities test the platform before selecting it.

Virtual Meetings and Events Checklist

Ensure that the platform:

- ❑ Is accessible for disabled persons
- ❑ Has been tested by users with diverse types of disabilities
- ❑ Is compatible with assistive technologies used by disabled persons (e.g., screen readers for blind persons, screen enlargement applications, closed-captioning, cognitive aids including computer devices, etc.)
- ❑ Has real-time automated captioning and/or supports manual captioning by a third-party vendor
- ❑ Allows ASL Interpreters to stay visible throughout your meeting or event
- ❑ Has simple keyboard shortcuts for users who are unable to use a mouse
- ❑ Has a chat, note, Q&A, or other features for participation that is fully accessible
- ❑ Allows for computer- and phone-based audio listening/speaking
- ❑ Has customizable interfaces so that anyone using screen readers or screen magnification can adjust the video windows as needed
- ❑ Provides good video quality, including the ability to show two screens at once

Virtual Meetings and Events Best Practices

Below is a list of best practices to help ensure that your virtual meetings are accessible.

- ❑ Include a statement on your website, registration, and all other communications that asks attendees to specify their accessibility/accommodations needs, gives a deadline for requests, and provides the name, email address, and phone number of the individual(s) to contact.
- ❑ If there are any barriers or extra steps to joining the meeting or event, such as requiring the user to input an ID, passcode, or other information to join, make sure all attendees know and understand how to do so and provide assistance.
- ❑ Offer alternative options for individuals to access the meeting or event, including via Internet and dial-in.

- Provide all materials, agenda, and PowerPoint slides in an electronic, accessible form and share several weeks before the meeting or event.
- Ensure that the host is trained on how to set up, explain to attendees, and implement the platform's accessibility features.
- List in all meeting or event communications accessibility/accommodations that you will provide without the need for attendees having to request, such as captioning.
- Designate a point person who can assist with accessibility issues that may arise during the meeting or event and provide in the chat or Q&A their contact information to attendees.
- Provide attendees with information about how to use the chosen platform. Offer training sessions before the meeting or event.
- Allow attendees to send comments and questions before the meeting or event.
- Offer backchannels for attendees to actively contribute, share opinions, ask questions, take polls, and give feedback in real time.
- Build breaks (10 minutes at a minimum for each hour) into your meeting or event.
- Work with presenters to ensure that they build time in their presentations to allow individuals to process information.
- Inform of any delays or scheduling, content, or structural changes as soon as possible.
- On Zoom, screen readers read aloud the comments in chat, distracting screen reader users from hearing the conversation effectively. As a result, use the chat feature sparingly for only important information; mute the chat function; do not use the chat function; designate a person to read the chats aloud; and/or keep a record of the chat and make it available to users after the meeting.
- Consider your audience and language level. Use plain language when appropriate.
- Ask attendees at the start of the meeting or event whether they can hear everyone or if anyone is speaking too quickly, and advise them to share any issues that arise during the meeting or event through the chat function.

- ❑ Advise everyone at the start of the meeting or event verbally and in the chat or Q&A function about the accessibility features/accommodations being offered and how to use them, including captions. Do a check of accessibility features before the meeting or event begins. Invite attendees to raise access concerns during the event and instruct them how to do so.
- ❑ Announce at the start of the meeting or event how to access copies of materials and share the link on the presentation's first page and in the chat or Q&A function and read it aloud.
- ❑ Offer the option for people using chat and/or Q&A functions to have their comments and questions read aloud.
- ❑ Provide CART (real-time captioning) for all meetings or events even if the virtual platform generates automatic captions, as these are often unreliable for individuals who are d/Deaf or hard of hearing. Captioning creates a transcript of the meeting or event that can be used by everyone, including those who attend the live meeting or event.
- ❑ Ask presenters to describe themselves and what they are wearing for individuals who are blind or have low vision.
- ❑ Describe all images and videos for individuals who are blind or have low vision, as well as for those joining by phone. Some videos with descriptive audio can be found on YouTube or [YouDescribe](#).
- ❑ Sharing your screen is not accessible for screen reader users viewing the shared screen, so send or post materials electronically and in an accessible format several weeks before the event. On the day of the meeting or event, provide a link to the materials in the Q&A or chat function and add a visual description. Ensure that the presenters describe the screen verbally.
- ❑ If a video is played during the meeting or event, ensure that it is captioned.
- ❑ Give people the option to turn off their cameras.
- ❑ Advise attendees to stay in gallery view so they can see all presenters and the ASL interpreters at the same time.
- ❑ Have the host only show the person presenting, along with the active ASL interpreter.
- ❑ Avoid flashing or strobing animations in presentations and videos.
- ❑ For people who read lips, ensure that presenters have their camera on and are well lit.

- Ensure that the environment behind presenters is not distracting. If it is, use a virtual background, but note that some can wash out faces.
- Eliminate background noise by muting everyone except for the person speaking. At the start of the meeting, instruct attendees how to unmute themselves.
- Some apps can help reduce background noise on calls, such as Krisp.
- Instruct everyone to raise their “virtual” hand before speaking. Doing so prevents more than one person from speaking at one time and helps the captioner(s) and ASL interpreter(s) interpret more accurately.
- Have each person say their name each time they speak so that attendees, captioners, and interpreters know who is speaking.
- Ensure that any voting, polling, or other forms of participation are accessible.
- Provide alternative ways for attendees to share their comments and questions such as through the chat.

Materials

Promotional and Registration Materials

Alternative Formats

Promotional and registration materials are fundamental for communicating about the accessibility of your in-person or virtual meeting or event. Most importantly, offer these materials in alternative formats that are accessible to persons with disabilities, such as Braille, large print, and electronic files. Printed and digital text should be in sans serif fonts, such as Helvetica, Verdana, or Arial. Include a statement in your registration materials that lets attendees know that alternative formats are available upon request. Here is a sample statement:

The materials are available in alternative formats upon request. Please contact [name, email address, telephone number (including TTY)] by [deadline date].

Or,

The materials are available in alternative formats. Please check the format you need:

- ☐ Braille
- ☐ Large Print: **Font Size**
- ☐ Audio
- ☐ Digital File: **Format**
- ☐ Other _____

Accessibility Statement

Stating in your promotional and registration materials that your in-person or virtual event is accessible is essential to attracting persons with disabilities. Here is a sample statement: “We aim to host events that enable individuals of all abilities to participate fully and equally.” Consider including images of persons with various disabilities, as well as [universal access symbols](#). Consider using a combination of “person-first” and “identity-first” language in your materials. [Person-first language](#) emphasizes the person before the disability, for example “person who is blind.” [Identity-first language](#) puts the disability first in the description, e.g., “disabled” or “autistic.” Person- or identity-first language depends on personal preference. To further attract attendees with disabilities, identify and contact those organizations that advance the rights of, or are led by, persons with disabilities.

Registration

Provide a range of registering options: online, telephone (voice and text), and email. Make sure your registration forms are accessible for persons using assistive technologies such as screen readers, text readers, screen magnification software, speech input software, and alternative input devices for individuals unable to use a mouse or keyboard (e.g., head pointers, motion or eye tracking, single switch entry devices). Include explicit labeling for all form fields, as well as for other user inputs like drop-down menus and “submit” or “buy” buttons.

Accommodations & Accessibility

Be sure to include in your promotional and registration materials a statement that invites persons with disabilities to request accommodations and share their accessibility needs. Give a deadline for such requests so that you have enough time to respond and provide the accommodations/accessibility needs. Asking questions beforehand about accommodations and accessibility allows planners to identify attendees’ needs, find local service providers, make all the arrangements in advance, budget for these accommodations and accessibility needs, and minimize any last minute “surprises.” Of course, always be prepared for accommodation/accessibility requests made a few days before, or the day of, the meeting or event.

Here is a sample statement: “We welcome people with disabilities. For questions about accessibility or to request an accommodation, please attach your requirements to this form or contact [name] at [voice and/or TTY phone numbers]; [fax]; or [e-mail]. Requests should be made at least [specific time period] prior to the event.” You may want to designate one contact person for accessibility and another for accommodations.

For registration materials, planners may want to include a more specific statement, such as “I will need the following accommodations: interpreters (ASL, Oral, Voice, Simultaneous Communication (Sim-Com), Other [blank space]); cued language transliterators (trained in conveying spoken languages visually through Cued Speech); intervenors (trained in sign language that involves touching client’s hand in a two-hand, manual alphabet or finger spelling); Communication Access Realtime Translation (CART); assistive listening devices; hearing or induction loops; captioned videos; sighted guides; Braille; large print; notetakers; readers; digital files; audio; computer disk [format]; audio CD; scent-free environment; wheelchair access; accessible transportation; orientation to the facility; dietary restrictions (e.g., vegetarian, vegan, gluten-free, dairy-free, sugar-free); and other [blank space].” Ask whether attendees have any food allergies (e.g., milk, soy, egg, wheat, peanuts, tree nuts, fish, and shellfish) or chemical sensitivities.

To accommodate attendees with multiple chemical sensitivities, you can request that all attendees refrain from wearing perfumes and use fragrance-free, unscented personal care products. Here is a sample statement: “To be respectful of persons with allergies and environmental sensitivities, we request that all attendees refrain from wearing fragrances and use scent-free toiletries.”

Offer a range of accommodation options since not all individuals with the same disability use the same accommodations. What works for one person may not work for another. Always give primary consideration to the option preferred by the person with a disability, unless doing so is unduly burdensome. Listening is key to determining each person's unique needs.

Some persons with disabilities may bring their personal care attendants or service animals to the meeting or event. On the registration form, ask about these issues. Here are sample statements:

“A personal care attendant will be accompanying me: ☐Yes ☐No.”

“A service dog will be accompanying me: ☐Yes ☐No.”

It is recommended that you not charge personal care attendants the full registration fee, but rather that a food/drink-only fee be added to the attendee's registration. Provide a service space in seating areas for service animals, as well as break and relief areas. Note that you must accept service animals regardless of whether they are registered with your event. Service animals can only be removed if they pose a danger to others, or if the individual cannot control them.

Designate staff to manage all accommodation and accessibility issues and list them with their contact information (name, phone/text, email) in all materials. Ensure that they are trained and educated about the expected duties. They must respond to accommodation and accessibility requests promptly. Note that it may take several communications to work out the details. In addition, the contact persons should notify the venue of those accommodations needed and accessibility issues that are within its control. In turn, the venue should notify the contact persons of any accommodation and accessibility requests it receives.

Promotional and Registration Materials Checklist

- ❑ Provide alternative registration options (online, telephone, text, email).
- ❑ Include a statement that meeting/event is accessible.
- ❑ Include a request for accommodations statement.
- ❑ Inquire about personal care attendants and service animals.
- ❑ Designate staff to manage accommodation and accessibility requests.
- ❑ Ensure that your website and mobile apps are accessible.
- ❑ Include an accessibility link for meeting/event on your website in a prominent place.
- ❑ Identify any barriers that cannot be eliminated and ways they have been mitigated.
- ❑ Offer materials in alternative formats (e.g., Braille, large font, electronic).
- ❑ Ensure that fonts used are sans serif.

Meeting/Event Materials

Planners must ensure that all attendees have equal access to the materials for the in-person or virtual meeting or event, whether in print or digitally, so they can fully participate. Accordingly, it is essential to offer all materials in alternative formats and at least several weeks in advance of the meeting or event. Doing so will not only expand the pool of potential attendees, but also demonstrate your commitment to accessibility. When setting the deadline for receiving all materials, remember to factor in the time that it will take to produce the alternative formats.

Meeting/Event Digital and Print Materials Checklist

Text Format

- ❑ Use a 16-point font size, when possible, but if that is not practical, at least 14-point.
- ❑ Avoid highly stylized typefaces.

- Use easy-to-read fonts with clearly defined letters and clear spacing between the letters, such as sans-serif fonts (e.g., Helvetica, Verdana, Arial).
- Avoid underlining or italicizing large volumes of text.
- Avoid using blocks of capital letters for more than a couple of words.
- Spell out numbers.

Layout

- Align all text on the left, rather than centered or right justified.
- Use one-inch margins.
- Avoid columns.
- Avoid lines of text longer than six inches (for persons using magnifiers).
- Embed links into the text.
- Do not place text directly over or wrap text around an image.
- Use at least 1.5 spacing between lines of text paragraphs.

Contrast and Color

- Ensure good contrast between the text and background colors.
- Use black text.
- Use cream instead of white paper for printed materials.
- Use a single solid color for documents with a colored background.

Paper

- Choose a matte rather than a glossy finish.
- Avoid using thin paper, which can bleed images and text from the reverse.
- Print on one side of paper.



Accessibility button on computer keyboard. Photo by alexsl via Getty Images.

Digital

Website

Many organizations include a page or portal for their in-person or virtual meetings and events on their website where persons can register and obtain all relevant information and materials. Be sure to place an accessibility link in a prominent place. On that linked page, include all details about the meeting or event that are relevant for persons with disabilities, as well as the name of the person to contact for accommodations and accessibility issues. For instance, include information regarding accommodations; accessibility of the sleeping rooms, including: a list of amenities; accessible parking; paratransit services; public transportation in close proximity to the venue; a description (oral and electronic, as well as a map) of the venue, including the location of the lobby, front desk, concierge, and elevators, as well as the layout of the meeting rooms; accessible restaurants, hotels, and shopping; accessibility barriers that cannot be eliminated; and the availability of materials in alternate formats. Ask whether the venue has a sensory map available and, if not, consider collaborating with them to create one. For inspiration, see the [Kennedy Center's sensory maps](#). Publish logistical information such as locations, schedules, and maps early to ensure that interested persons can be prepared and informed on what to expect.

Ensure that the website is accessible and compatible with the range of assistive technologies used by persons with disabilities such as screen readers and magnifiers, special keyboards, and alternative pointing devices. Include a statement requesting that persons experiencing accessibility issues contact a particular person via telephone or email. The current website accessibility standard is the [Web Content Accessibility Guidelines](#)

(WCAG). The WCAG are regularly revised to keep up with changes in technology and greater understanding of the needs of persons with disabilities, so web authors should check frequently to ensure that they are complying with the current WCAG standard.

All images used (including in linked PDFs and Word documents) should include descriptive “alt text” (alternative text attribute). At a minimum, alt text should describe the content of the image so that people who are blind or have low vision can still glean the necessary information. A useful set of guidelines can be found on [Penn State’s website](#). Images should not feature text in the body of the image itself.

Website Checklist

- ❑ Ensure your webpage complies with the current [WCAG](#).
- ❑ Ensure that foreground and background color combinations contrast.
- ❑ Use a sans serif font like Arial or Calibri.
- ❑ Provide color invert and magnification tools.
- ❑ Ensure that any background images are not too “busy” (e.g., have many lines, patterns, or colors) that could make the foreground more difficult to read and understand.
- ❑ Provide text equivalents to auditory and visual content (e.g., videos and images).
- ❑ Ensure that the “alt text” (alternative text attribute) of the image tag conveys what is important or relevant about the image.
- ❑ Avoid flashing images.
- ❑ Ensure that any moving text can be paused, stopped, and hidden.
- ❑ For all videos, provide closed captioning in a readable font with high-contrast colors at a readable speed. Where the format allows, captions should be able to be turned on and off (toggled), and should feature controls for font size, color, and location.
- ❑ Avoid drop-down menus that can only be accessed by using a keyboard.
- ❑ If using CAPTCHAs (Completely Automated Public Turing Tests to Tell Computers and Humans Apart), ensure that there are multiple options (e.g., image and audio or “I’m not a robot” CAPTCHA options).

- ❑ Define page hierarchy with header tags and lists and include “breadcrumbs” to assist in navigation where appropriate.
- ❑ Ensure that all websites and pages are compatible with mobile devices and can be viewed on them without difficulty.

Mobile Apps

Mobile applications (“apps”) have become much more prevalent in recent years. Some organizations design a mobile app for their in-person or virtual meetings and events, and many others use third-party apps (such as guidebook apps) for their meetings and events. Many attendees find that using apps is both easier and more accessible than relying on physical media. Ensuring that your app (either a proprietary one or one you have contracted with a vendor to use) is accessible enables you to reach a much broader audience. Follow the [WCAG guidelines for mobile accessibility](#).

Accessibility must be incorporated in the design stage of the app, rather than as an add-on later—universal design is key from both a design perspective and a user perspective. If you do use a third-party app, or if you create content that you expect people to interact with through third-party apps and mobile devices, be sure to apply the same checklist, and ensure that the apps are fully accessible.

Apps Checklist

- ❑ Follow the current WCAG guidelines for Mobile Accessibility.
- ❑ Resize text at least 200% without using assistive technology.
- ❑ Enable zooming within the app without having to tilt the device for horizontal panning.
- ❑ Ensure that browser pinch zoom is not blocked.
- ❑ Provide on-page controls to resize the text rather than having to go into the app’s settings.
- ❑ Use appropriate contrast ratios for large and small text.
- ❑ Provide assorted color options for people with colorblindness.
- ❑ Enable keyboard support with Bluetooth and other technologies.
- ❑ Make touch targets large and noticeable, with adequate spacing.

- Keep touchscreen gestures (e.g., directional swipes or singular taps) as simple to implement as possible.
- Have on-screen indicators of how and when gestures should be used.
- Ensure buttons are easy to access.
- Enable speech recognition software and voice commands.



Team building group presenting ideas in front of participants in business conference discussion. Photo by Edwin Tan via Getty Images..

Presentations

It is crucial that planners communicate with all speakers/presenters well in advance to ensure that their in-person or virtual presentations and materials are accessible for persons with a wide range of disabilities. Incorporating universal design into presentations ensures maximum inclusion and benefits everyone.

Ask presenters to submit their materials a month before the meeting or event to allow enough time to produce alternative formats, and to provide the materials to interpreters and other service providers and attendees. Make the materials available to attendees in advance; posting them on your event website is optimal.

The presenters themselves may also have disabilities. Ask each presenter well in advance whether they require any accommodations or have accessibility needs. For in-person presentations, also ask about the type of microphone (table, headset, lapel) and presentation environment (e.g., floor level, stage, podium, table) the presenter prefers. If there are multiple presenters, including one or more with a disability, ensure that all presenters are seated together, whether at floor level or on a stage, to ensure that they are viewed as equals. Avoid podiums and putting presenters who use mobility aids or devices at the end of the table. For virtual meetings and events, a presenter may need an interpreter, or if they are blind, they may need assistance with positioning so that they can be viewed by attendees on screen.

For virtual meetings and events, ensure that for people who read lips presenters have their camera on and are well lit. Also ensure that the environment behind presenters is not distracting. If it is, suggest that they use a virtual background, but note that some backgrounds can wash out faces. Ask presenters to describe themselves and what they are wearing.

In addition, eliminate background noise by muting everyone except for the person speaking. At the start of the meeting, instruct attendees how to unmute themselves. Allow only one person to speak at a time by asking them to raise their “virtual” hand, and have each person say their name each time they speak so that attendees, captioners, and interpreters know who is speaking.

Prepare an accessibility checklist well in advance. We have provided a sample checklist below. Schedule a briefing session with the presenters to go over the items on your checklist. Set out your expectations from the start.

Presentations Checklist

General

- ❑ Announce when the meeting begins and ends.
- ❑ Inform attendees of any delays or scheduling, content, or structural changes as soon as possible.
- ❑ Build multiple breaks into the schedule, preferably 10 minutes every hour.
- ❑ Avoid the use of flashing lights and loud sounds.
- ❑ Ensure that the presentation area and screens are viewable from all areas of the room.
- ❑ Allow space for interpreters.
- ❑ Provide all materials (papers, PowerPoints, agendas, slides) in alternative formats (e.g., large print, Braille, electronic, audio CDs, etc.) and in advance of the meeting/event.
- ❑ Make electronic versions of materials available in plain text, rich text, or Microsoft Word formats and post on the event website.
- ❑ Make materials available in advance to interpreters and other support personnel so they can familiarize themselves with the materials and ask any questions.

- Provide a post meeting/event summary that sets forth key points, decisions, action items, next steps, and assign tasks and responsibilities with specific timelines.
- Specify any pre-reading or preparation required.

Structure

- At the start of the meeting, introduce the interpreter(s) and other service providers.
- At the start of the meeting, verbally describe the room layout and location of restrooms, elevators, emergency exits, break rooms (e.g., quiet or high-stimulation rooms or those for d/Deaf and hard of hearing), service dog relief areas, and food/beverage offerings and stations.
- Provide an overview of the presentation at the start, including a schedule (including any modifications made) and a summary of the key points at the end.
- Build in sufficient time for attendees to get from session to session.
- Allow for regular breaks (about every hour) for attendees, service animals, and access service providers such as interpreters, CART providers, notetakers, and readers.
- Ensure that the virtual environment behind presenters is not distracting. If it is, use a virtual background, but note that some can wash out faces.
- Eliminate background noise in virtual meetings or events by muting everyone except for the person speaking. At the start of the meeting or event, instruct attendees how to unmute themselves.
- Allow only one person to speak at a time by raising their hand (including “virtual” hand). This will also help the captioner(s) and ASL interpreter(s) more accurately interpret.
- Have each person say their name each time they speak so that attendees, captioners, and interpreters know who is speaking.

Presenter

- Always face the audience or camera.
- Use a microphone, or test how you would sound on a virtual platform.
- Ask everyone if they can hear you clearly.

- ❑ Keep hands and other objects away from your mouth when speaking.
- ❑ If interpreters are being used, do not walk while speaking.
- ❑ Be visible to everyone; stand in good light or make sure your camera is on you and well lit.
- ❑ Avoid the silhouette effect by not standing in front of a window or bright screen.
- ❑ Speak in well-modulated tones and at a pace that allows interpreters to interpret accurately.
- ❑ Keep the presentation clear, simple, concise, and organized.
- ❑ Use simple language; avoid acronyms, jargon, and idioms.
- ❑ Give attendees enough time to process information by pausing between topics.
- ❑ Use multiple communication methods to accommodate different learning styles (verbal, written, visual, and auditory).
- ❑ Check in with attendees throughout the presentation to ensure that they are understanding and clarify if needed.
- ❑ Avoid using gestures and visual points of reference.
- ❑ When reading directly from text, provide an advance copy in print and digital format and pause slightly when interjecting information not in the text.
- ❑ Describe verbally all visual materials (e.g., slides, charts, PowerPoints, etc.).
- ❑ Provide captioning for all videos.
- ❑ Provide CART for all sessions.

Q&A

- ❑ Instruct attendees to wait to be called on or raise their “virtual” hand, to not interrupt, to speak one at a time, and to speak clearly.
- ❑ Provide attendees with the option of submitting their questions ahead of time, which the presenters can then read aloud before responding.
- ❑ Repeat questions posed by people before responding.



Diverse group of business people taking a break to have a snack at the convention center banquet. *Photo by South_agency via Getty Images.*

Meals and Social Functions

Planners must ensure that meals and social functions, such as receptions, are accessible to persons with disabilities. These networking opportunities can be as important to attendees as the substantive meetings and presentations.

Meals and Social Functions Checklist

General

- ❑ Do not overfill the venue.
- ❑ Ensure sufficient room for everyone to maneuver safely and independently.
- ❑ Ensure an accessible route of travel to the food and entertainment and between tables.
- ❑ Ensure that any entertainment is accessible, including for attendees with sensory disabilities.
- ❑ Arrange for accessible transportation to and from the social event.

- ❑ Label all food and beverages.
- ❑ Avoid self-serve meals or buffets; otherwise, have personal assistants on hand.
- ❑ Include finger foods that do not require persons to use utensils or hold plates.
- ❑ Avoid common allergens like nuts and shellfish.
- ❑ Provide food and drink options that are vegan, vegetarian, gluten-free, dairy-free, and allergen-free.
- ❑ Set up more than one food and beverage area.
- ❑ Avoid setting up food and beverages in tiers.
- ❑ Separate alcoholic and non-alcoholic drinks into multiple bars.
- ❑ Provide a choice of cutlery and crockery (e.g., straws, lightweight plastic cups and plates).
- ❑ Avoid long, billowy tablecloths.
- ❑ Have personal assistants and interpreters on hand.

Layout

- ❑ Make tables and chairs available.
- ❑ Ensure that tables and bars are at a correct height (28 to 34 inches) for persons using mobility devices.
- ❑ Avoid counter-top high tables and chairs.
- ❑ Avoid fixed seating attached to tables.
- ❑ Ensure adequate room under dining tables for mobility devices to roll under.
- ❑ Ensure sufficient space between seating areas for mobility devices and service animals.
- ❑ Avoid seating persons with disabilities in one area or on the fringes of the venue.



A helpful female worker at Convention Center, helping businessman with disability with registration process for a conference. They're going through registration steps together, starting with QR code and later with participant tag. *Photo by visualsplace via Getty Images.*

Staff and Volunteer Training

Staff (both event and venue) and volunteers (e.g., readers, notetakers, guides, and personal assistants) are critical to holding accessible meetings and events. For assistance with developing or providing training, contact regional ADA National Network Centers previously referenced.

In the planning stage, appoint a point person for accessibility and accommodations and list the person on all materials and on the website. This will be the person staff go to with their accessibility or accommodations questions. Be proactive and create a plan to address any accessibility issues that may arise during the meeting or event.

Make sure to train those staff responsible for registering attendees and answering questions about the meeting or event. They should be knowledgeable about the available accommodations, the use of assistive devices, emergency procedures, and accessibility features of the venue and meetings. They should also be trained in etiquette for communicating and interacting with persons with disabilities and service animals.

Before the meeting or event, hold an orientation for all staff and volunteers that addresses how to best assist and communicate with individuals with disabilities. Share the attendees' accommodation and accessibility requests received. Emphasize

that accessibility and creating a welcoming and inclusive environment are priorities; set forth expectations. Discuss both visible disabilities and non-visible disabilities, such as learning, cognitive, and mental health disabilities. Review all meeting and event activities, including social events, to ensure they are accessible.

Similarly, hold an orientation for interested attendees with disabilities. Assure them that trained staff and volunteers will be on site. Review the accessibility features of both the venue and the meetings and provide a tour. To help attendees with visual disabilities find the meeting and event locations, tactile maps or prerecorded instructions can be helpful. In addition, identify the location of aids such as assistive listening devices. Make sure staff and volunteers are clearly visible and identifiable through signs, uniforms, or highly visible buttons/nametags. Also, take care of any additional accommodation requests. For instance, people with visual disabilities may need a guide to go from one meeting or event to another. Persons with cognitive disabilities may need an explanation of what meetings and events will be going on and where.

For virtual meetings and events, at the start a staff person should advise everyone verbally and in the chat or Q&A function about all the accessibility features/accommodations being offered and how to use them. That person should also invite attendees to raise access and other concerns during the meeting or event and instruct them how to do so.

Furthermore, in the days prior to and on the day of the meeting or event, the point person—accompanied by the appropriate staff and volunteers and persons with disabilities—should do a walk-through of the facility and the meeting/event rooms. All technical equipment should be tested upon its arrival, as well as on the day of the event.

Staff and Volunteer Training Checklist

- ❑ Create a plan for accessibility problems that may arise during the event.
- ❑ Contact regional ADA National Network Centers for assistance with training.
- ❑ Appoint a point person(s) for accessibility issues and accommodation requests, and list on all materials and the website.
- ❑ Train staff/volunteers about accommodations, use of assistive devices, emergency procedures, and accessibility features of the venue and meeting/event.
- ❑ Hold orientations for staff and volunteers on diverse types of disabilities and disability etiquette.
- ❑ Hold orientation for attendees with disabilities to review accessibility features, location of meetings/events, and accommodations.

- Do a walk-through of the venue a few days before and on the day of the meeting/event.
- Test all technical equipment when it arrives and on the day of the meeting/event.
- Test all accessibility features and volume on digital platforms before the virtual meeting or event begins.
- Ensure that staff and volunteers are clearly visible through their uniform, signage, or other notable features.



Communication and Etiquette

Communicating with individuals with disabilities should be no different from the same respectful, clear communication deserved by everyone. This is especially important to remember given that most disabilities are “hidden” or “invisible,” i.e., not obvious. Below are some general guidelines.

Every Person

- Treat the person with the same respect that you extend to every person.
- Focus on the person, not their disability.
- Do not ask about their disability.
- Do not make assumptions about the person's ability or inability to participate in an activity or perform a task.
- Do not assume that the presence of one disability (e.g., a speech impairment) indicates the presence of another (e.g., a cognitive impairment).
- Do not make decisions for the person.
- Ask each person what will make them most comfortable.

- Always ask the person if they need assistance and how you can assist; do not assume they need help.
- Address the person directly rather than the sign language interpreter, reader, or other access provider.

Persons Who Use Mobility Devices

- When speaking for more than a few minutes, bend to eye level or pull up a chair.
- Never lean on, push, move, or touch the mobility device.

Persons Who Use Service Animals

- Service animals are not required to wear a vest when they are working.
- You can ask two questions regarding a service animal: 1) is this a service animal? 2) what duties does it perform?
- Remember that service animals perform a variety of tasks, many of which may not be immediately visible; do not make assumptions and remember to respect the handler's privacy.
- Approach a service animal calmly and speak to the person, not the animal.
- Do not touch, pet, feed, whistle, or make sounds at the service animal without asking permission; the service animal is working and petting or otherwise engaging with it could distract and stop it from performing its duties.
- Walk on the opposite side of the service animal.

Persons Who Are Blind or Have Visual Disabilities

- Ask the person their name.
- Introduce yourself and others if present.
- Describe yourself.
- Identify your job or role.

- ❑ Avoid touching without permission; to get their attention, say their name or, “excuse me.”
- ❑ Avoid shouting.
- ❑ Be descriptive when giving directions.
- ❑ Offer your arm if the person wants to be guided.
- ❑ Avoid using visually oriented references.
- ❑ Describe where you are going and any obstacles if you are serving as a guide.
- ❑ Find a place with good lighting, but not too bright.
- ❑ With permission, guide the person’s hand to the back of a chair if you offer someone a seat.
- ❑ Let the person know when you are leaving.

Persons Who Are Deaf or Hard of Hearing

- ❑ To get their attention, wave to them; avoid touching them without permission, and only then tap lightly on their shoulder.
- ❑ Ask the person how they prefer to communicate (e.g., sign language, gesturing, writing, or speaking).
- ❑ Face the person when talking.
- ❑ Speak clearly, avoiding gum chewing or obscuring your mouth with your hand.
- ❑ Use your normal tone of voice and volume.
- ❑ Maintain eye contact with the d/Deaf or hard of hearing person.
- ❑ Have pen and paper or a device to text on hand as alternative communication method.
- ❑ Address the person rather than their interpreter.
- ❑ Avoid spaces with background noise.
- ❑ Find a well-lit room but avoid glare.

- ❑ Ensure that the venue has an induction loop that stops background noise from interfering if the person is wearing a hearing aid.
- ❑ When communicating with a person who reads lips, speak clearly in a normal way that does not over-exaggerate words, use short and simple sentences, avoid blocking your face, and stand in a well-lit place.
- ❑ If there is a window in the room, place the person with their back to it to avoid the silhouette effect.
- ❑ In groups, request that people speak one at a time.
- ❑ If communicating in a smaller group setting, arrange seating or stand in a circle so d/Deaf or hard of hearing attendees can see signing and/or lipread.
- ❑ Ask, if you have any doubts, if the person understood you.
- ❑ Do not pretend to understand when you do not.
- ❑ Ask for clarification if you do not understand something.
- ❑ Be aware of situations involving announcements or calling out names so you can notify persons who are d/Deaf or have other hearing loss.

Persons with Speech Disabilities

- ❑ Ask each person what will make them most comfortable.
- ❑ Give the person your full attention.
- ❑ Find a quiet space.
- ❑ Listen carefully.
- ❑ Do not finish sentences for the person or interrupt.
- ❑ Do not pretend to understand when you do not.
- ❑ If you do not understand, ask the person to repeat; if you still are unable to understand, ask the person to write the information or to recommend an alternative method of communicating.
- ❑ Consider writing as an alternative means of communicating.

Persons with Learning/Cognitive Disabilities

- Ask each person what will make them most comfortable.
- Ask the person how they prefer to communicate (e.g., written or verbal).
- Listen carefully.
- Speak clearly.
- Check for understanding.
- Use clear, concrete language, avoiding abstractions.
- Allow the person extra time to process the information and ask questions.
- Do not overload the person with too much information.
- Find a quiet place without distractions.

Persons with Developmental Disabilities

- Ask each person what will make them most comfortable.
- Keep to the person's schedule and routine.
- Speak clearly.
- Do not use “baby” talk, and speak at a normal volume unless asked to do otherwise.
- Model your pace of speech and vocabulary on that of the person.
- Ask neutral questions.
- Allow time for decision-making.
- Use simple words and concrete, not abstract, concepts.
- Break down complex concepts into small parts.
- Verify responses by repeating questions in a different way.
- If you are not sure if the person understood you, ask them to repeat the information.

Persons Who Are Neurodivergent

- Address the person by their name when speaking to them.
- Communicate clearly and free of ambiguities.
- Avoid using euphemisms, sarcasm, and vagueness.
- Avoid abstract and generic terms.
- Do not use too many filler words and phrases.
- Avoid small talk on topics that seem out of context or irrelevant.
- Limit non-verbal and social cues.
- Offer to communicate in writing.
- Provide short, precise instructions.
- Highlight important information.
- Prioritize information in the order of importance.
- Pause while speaking to give the person time to process and sort the information.
- Create an environment that avoids distractions, clutter, loud noises, and bright lights and colors.

Persons with Psychosocial Conditions

- Ask if there is a preferred time to communicate.
- Schedule communications in the late morning or early afternoon.
- Keep the pressure of the situation to a minimum.
- Use automated reminders to highlight times and locations of meetings.
- Provide written instructions.
- Allow for breaks.



Feedback Text On Jigsaw Puzzle. Photo by Nora Carol Photography via Getty Images.

Post-Meeting/Event Survey

All meetings and events should include a survey for attendees to provide their feedback. These questions will allow planners to examine ways to both increase and improve the accessibility of your future meetings and events.

For instance, the following survey questions may help attendees rate the accessibility of an event (answers can be marked with an “X”):

	VERY	SOMEWHAT	NOT VERY	INACCESSIBLE	N/A
Registration					
Registration Materials					
On-site registration					
Accommodations Process					
Promotional Materials					
Meeting/Event Website					
Virtual Platform					

	VERY	SOMEWHAT	NOT VERY	INACCESSIBLE	N/A
Meeting/Event Site					
Hotel Rooms					
Transportation					
Parking					
Meeting/Event Rooms					
Presentations					
Presentation Materials					
Receptions/Social					
Activities/Meals					
Staff and Volunteers					
Disability Etiquette					

Additional comments:



Conclusion

We recognize the sheer volume of information provided in this toolkit. Organizing accessible in-person and virtual events and meetings will take time and may require staff trainings. However, by following the advice laid out above, you will provide a space for people to share innovative ideas and learn from one another. By incorporating universal design principles into your own programming, you will benefit everyone involved.

The materials contained herein represent the opinions of the authors and editors and should not be construed to be those of either the American Bar Association or the ABA Commission on Disability Rights, unless adopted pursuant to the bylaws of the Association. The materials contained herein are not intended as and cannot serve as a substitute for legal advice. Readers are encouraged to obtain advice from their own legal counsel. These materials and any forms and agreements herein are intended for educational and informational purposes only.

[Updike v. Multnomah Cty.](#)

United States Court of Appeals for the Ninth Circuit

June 7, 2017, Argued and Submitted, Portland, Oregon; August 31, 2017, Filed

No. 15-35254

Reporter

870 F.3d 939 *; 2017 U.S. App. LEXIS 16761 **

DAVID UPDIKE, Plaintiff-Appellant, v. MULTNOMAH COUNTY, a municipal corporation; STATE OF OREGON, Defendants-Appellees, and CITY OF GRESHAM, Defendant.

Subsequent History: Request granted, Costs and fees proceeding at [Updike v. Multnomah Cty., 2018 U.S. App. LEXIS 564 \(9th Cir. Or., Jan. 9, 2018\)](#)

US Supreme Court certiorari denied by [Multnomah Cty. v. Updike, 2018 U.S. LEXIS 5523 \(U.S., Oct. 1, 2018\)](#)

Prior History: **[**1]** Appeal from the United States District Court for the District of Oregon. D.C. No. 3:13-cv-01619-SI. Michael H. Simon, District Judge, Presiding.

[Updike v. City of Gresham, 99 F. Supp. 3d 1279, 2015 U.S. Dist. LEXIS 36628 \(D. Or., Mar. 24, 2015\)](#)

Disposition: AFFIRMED in part; REVERSED in part; and REMANDED.

Summary:**SUMMARY***[Americans With Disabilities Act / Rehabilitation Act](#)

The panel affirmed in part and reversed in part the district court's summary judgment orders, and remanded, in a case in which David Updike, who has been deaf since birth, alleged that the State of Oregon and Multnomah County did not provide him with an American Sign Language interpreter at his arraignment on criminal charges, and that the County did not provide him with an ASL interpreter and other auxiliary aids in order for Updike to effectively communicate while he

was in pretrial detainment and under pretrial supervision, in violation of [Title II of the Americans with Disabilities Act](#) and § 504 of the Rehabilitation Act.

The panel held that Updike lacks standing to pursue his claims for injunctive relief against the State because it is no more than speculation and conjecture that the State will not provide an ASL interpreter and auxiliary aids if Updike makes an appearance as a pretrial detainee again, and lacks standing to pursue his claims **[**2]** for injunctive relief against the County because the possibility of recurring injury remains speculative.

The panel affirmed the district court's summary judgment in favor of the State on Updike's claims under the ADA and [§ 504](#) because there is no evidence that the State's failure to provide an ASL interpreter was the result of deliberate indifference.

The panel reversed the district court's summary judgment in favor of the County on Updike's ADA and [§ 504](#) claims for damages. The panel held that a reasonable jury could find that the County was deliberately indifferent and violated Title II and [§ 504](#) when it did not conduct an informed assessment of Updike's accommodation needs and did not give primary deference to Updike's requests or context-specific consideration to his requests; and when County employees failed to provide Updike with an ASL interpreter in a multitude of interactions with County employees, did not offer use of a TTD, and did not turn on closed captioning.

Counsel: Carl L. Post (argued), John Burgess, and Daniel Snyder, Law Offices of Daniel J. Snyder, Portland, Oregon, for Plaintiff-Appellant.

Jacqueline Kamins (argued), Assistant County Attorney; David N. Blankfeld, Multnomah County Attorney; Office of Multnomah County **[**3]** Attorney, Portland, Oregon; for Defendant-Appellee Multnomah County.

Peenesh Shah (argued), Assistant Attorney General; Benjamin Gutman, Solicitor General; Ellen F. Rosenblum, Attorney General; Oregon Department of

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

870 F.3d 939, *939; 2017 U.S. App. LEXIS 16761, **3

Justice, Salem, Oregon; for Defendant-Appellee State of Oregon.

Judges: Before: A. Wallace Tashima, Ronald M. Gould, and Johnnie B. Rawlinson, Circuit Judges. Opinion by Judge Gould.

Opinion by: Ronald M. Gould

Opinion

[*943] GOULD, Circuit Judge:

David Updike, who has been deaf since birth, uses American Sign Language ("ASL") as his primary language. He brings this action against Defendants the State of Oregon ("State") and Multnomah County ("County"), alleging that the State and the County did not provide him with an ASL interpreter at his arraignment on criminal charges, and that the County did not provide him with an ASL interpreter and other auxiliary aids in order for Updike to effectively communicate while he was in pretrial detainment and under pretrial supervision. Updike brings claims for violations of [Title II of the Americans with Disabilities Act \("ADA"\)](#), [42 U.S.C. §§ 12101-12213](#), and § 504 of the Rehabilitation Act, [42 U.S.C. §§ 701-796](#), negligence, and false arrest. Updike appeals the district court's grant of summary judgment to Defendants on [*4] all claims. We affirm in part, reverse in part, and remand this case for further proceedings.

I

A

David Updike has been deaf since birth and communicates primarily through ASL, which is his native language and preferred method of communication. Updike does not consider himself to be bilingual in English and does not read or speak English well. Updike is not proficient at reading lips because he has never heard English words—in these circumstances, it is difficult to know the shape that lips make to produce certain words. All of Updike's friends are deaf and Updike's ex-wife is deaf. Updike explains that he "live[s] in the deaf world."

In the early afternoon of January 14, 2013, officers from the Gresham Police Department arrived at Updike's

home to respond to a 911 call reporting a disturbance. The 911 caller told the operator that the disturbance¹ involved deaf individuals, but the officers did not bring an ASL interpreter with them. The officers arrested Updike and took him to Multnomah County Detention Center ("MCDC") for booking.

MCDC has a telecommunications device for the deaf ("TDD") available. MCDC staff, including corrections deputies and medical providers, can request an ASL interpreter [*5] as needed. The County has a contract with Columbia Language Services, Inc. to provide interpreting services, including "Interpretation for the Deaf," "Interpretation for the Deaf/After Hours," "Remote/Electronic Interpretation," "Interpreter [Services]/Normal Hours/ASL," and "Interpreter Services/After Hours/ASL."

[*944] At MCDC, Updike signed for an ASL interpreter and a teletypewriter ("TTY")² and tried to speak the word "interpreter," but was denied these requests. Instead, Officer Ozeroff showed Updike statements written by the other person involved in the disturbance and a witness, and wrote Updike a note asking Updike to write down what happened. Updike had trouble writing down what happened because written English is not his preferred form of communication. No ASL interpreter was provided.

At booking, a female corrections officer removed Updike's handcuffs and spoke to Updike. Updike tried to read her lips and could not understand her statements. Deputy Kessinger, a booking deputy, completed Updike's intake. Updike was also photographed and fingerprinted. Updike requested an ASL interpreter during the booking process but was not given one.

After booking, Updike was placed in a holding room. [*6] Updike saw other inmates making telephone phone calls, and he wanted to call an attorney and his mother. He asked a corrections officer for a TTY, by saying "TTY," and motioned his hand to his ear to mime a telephone. The officer instructed Updike to sit down and gestured for Updike to sit down. Updike stated and signed "I need an interpreter," but the officer did not respond to this request. Updike then spoke the word "paper" and made a writing gesture. The officer denied the request for paper and a writing

¹ Updike explains that a deaf guest in his home assaulted him after he refused to give the guest money.

² TDD and TTY are used interchangeably by Updike and throughout this opinion.

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instrument, and told Updike to sit down.

After the booking process, Updike again asked to use a TTY by gesturing typing and by making a verbal request to a different corrections officer. The officer denied the requests and instructed Updike to sit down and wait.

Still at MCDC, Updike met with Nurse Nielsen and asked for an ASL interpreter. Updike wanted to communicate that officers hurt his neck and back during the course of his arrest, but the nurse did not request or provide an interpreter despite his request. The nurse pointed to questions on a health intake form, but Updike could not read the form very well and used body language to answer the questions the best he could. The [**7] nurse did not examine his neck and back, and Updike could not communicate that those areas hurt.

Updike met with Recognizance Officer Iwamoto from Multnomah County Pretrial Services Program. Updike had trouble reading the officer's lips and requested an ASL interpreter. The officer did not provide one. Updike also requested a TTY, but was not given one. Updike then learned that he would be held overnight and would appear in court the next day. Officer Iwamoto assured Updike that Iwamoto would notify the court that Updike would require an interpreter at his arraignment.

Officer Iwamoto's practice is to communicate with deaf people in custody by writing notes. Officer Iwamoto testified that if Updike was again arrested, he would likely not be given an ASL interpreter for his recognizance interview, and that he believed this practice needed to change. Iwamoto stated that he felt that written communication was sufficient to complete Updike's recognizance interview in order to make a release determination. Iwamoto's summary of his interview with Updike noted that the interview was conducted by writing, but that Updike would "need a sign language interpreter for court." This information became [**8] part of the court's records, and went to the judge, the district attorney's office, and the defense attorney. The information was also made available to [**945] pretrial release services. Iwamoto stated that he made this determination because arraignment occurred by video conference, and not because he himself had difficulties communicating with Updike by writing during the recognizance interview.

While at MCDC, Updike also met with Deputy Waggoner, a classification deputy. Waggoner's notes said that Updike was deaf; this notation was made so corrections staff could give Updike accommodations, including getting the TTD machine for Updike to make

phone calls. However, Deputy Waggoner did not call for an ASL interpreter during his triage interview with Updike because Waggoner did not think that Updike needed one and felt that Updike communicated fine using written English. Waggoner has never been trained on the necessary steps to obtain an interpreter for a deaf person during booking, and does not know how to get an ASL interpreter if he had trouble with a deaf inmate during a triage interview. Waggoner indicated in the Classification Summary Report that he believed Updike read fine, but also [**9] noted that Updike answered "yes" to the question asking whether Updike had a disability that would impact his ability to understand instructions while detained.

During Updike's time at MCDC, he was not given access to an ASL interpreter, a computer, a TTY, video relay services, or pen and paper. He could not call a lawyer or his family members without a TTY device. He was not able to watch television because there was no video relay service and no closed captioning.

On the evening of January 14, 2013, Updike was transferred to Multnomah County Inverness Jail ("MCIJ"). At MCIJ, an officer gave Updike a toothbrush, toothpaste, a comb, some blank paper and a pen, and a copy of MCIJ's Inmate Manual. Updike wrote to the officer that his neck and back hurt, and he requested pain medication, but no medical provider examined Updike.

Updike remained at MCIJ from January 14 through January 16, 2013. He made many requests for a TTY so he could make phone calls, as he saw that other inmates were freely able to use telephones during their free time. He was denied these requests. Updike also wrote a note requesting that an officer turn on closed captioning, but that request was not honored. MCIJ uses [**10] a loudspeaker system to address inmates, but Updike did not hear any of the announcements made while at MCIJ.

On January 15, 2013, Updike appeared at his arraignment by video. MCIJ arranges arraignment by video, and inmates are not transported to court. During the arraignment, Updike could see but not read Judge Kathleen Dailey's lips and noticed that an interpreter was not in the courtroom. Upon learning that Updike was deaf, Judge Dailey postponed Updike's arraignment to the following day when an ASL interpreter would be available. Updike was thus held for another night at MCIJ.

The County's Pretrial Release Office conducts pretrial

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release interviews, including an assessment of the language needs of an individual, such as whether an individual needs an ASL interpreter, or whether the individual requires some other accommodation for hearing loss. This information is transmitted to the staff of the Oregon Judicial Department ("OJD") prior to arraignment. Updike's pretrial release documents received by OJD employees noted that Updike required an ASL interpreter. If staff do not determine whether an interpreter is required, the issue is not addressed until the court appearance. Typically, **[**11]** OJD staff prepare for arraignments by looking only at the booking register and **[*946]** not by reviewing the pretrial release report. But if a booking register notes a need for an accommodation, OJD staff would take appropriate action. At some time after Updike's arraignment, the County modified the format of the booking register so that the booking register notifies the court of a need for an accommodation. As a result of this change, OJD staff are now alerted that a person needs an ASL interpreter or a foreign language interpreter through the booking register.

On January 16, 2013, Updike again appeared in court by videoconference. An ASL interpreter was provided for Updike, and Updike was released that day. Updike again requested a corrections officer to supply him with a TTY so he could call for his daughter to pick him. He received a TTY for the first time, and left jail late that evening.

On January 17, 2013, Updike reported to pretrial supervision as ordered by Judge Dailey. Updike met with Michale Sacomano, a case manager for the Multnomah County Department of Community Justice's Pretrial Services Program. Sacomano conducted intake by written communication, despite the fact that Updike **[**12]** did not agree to conduct intake by writing and had requested—by both signing and speaking—an ASL interpreter and signed requesting an ASL interpreter. Sacomano denied the request, and explained that Updike should write all of his requests.³ Updike had a series of miscommunications with Sacomano, and felt that Sacomano believed Updike used his hearing impairment as an excuse to violate

conditions of his pretrial release.⁴

The trial on Updike's criminal charge was postponed until April 22, 2013. After the jury was impaneled, the district attorney moved for dismissal.

B

On September 13, 2013, Updike filed his complaint, alleging claims against the City of Gresham, Multnomah County, and the State of Oregon. In early 2014, the City of Gresham settled. On June 1, 2014, Updike filed his first amended complaint. Updike brought several claims: ADA discrimination claims against the State and the County, violations of § 504 of the Rehabilitation Act against the State and the County, common law negligence against the State and the County, and false arrest against the County. He sought compensatory damages, injunctive relief, and attorneys' fees and costs.

The State filed **[**13]** its motion for summary judgment on April 23, 2014, which the district court granted on October 15, 2014. **[*947]** The County filed its motion for summary judgment on November 26, 2014, which the district court granted on March 24, 2015. The district entered final judgment on March 24, 2015.

Updike timely appealed. He does not challenge the grant of summary judgment on his negligence and false arrest claims.

II

We have jurisdiction under [28 U.S.C. § 1291](#). We review

³ Sacomano disputes whether Updike requested an ASL interpreter at this meeting. Because this is an appeal from the grant of summary judgment to Defendants, we construe the facts in the light most favorable to Updike as the non-moving party. See [Olsen v. Idaho State Bd. of Med.](#), 363 F.3d 916, 922 (9th Cir. 2004).

⁴ Sacomano's log entries noted that Updike's case was dismissed, that Updike had poor reporting during his time with pretrial services, that Updike used his hearing impairment as the reason for not complying with the conditions of supervision, and that their interactions were challenging because Updike "argued" everything. The "hearing impaired, learning impaired, and developmentally disabled individuals engage in a range of coping mechanisms that can give the false impression of uncooperative behavior or lack of remorse." [Armstrong v. Davis](#), 275 F.3d 849, 867 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499, 504-05, 125 S. Ct. 1141, 160 L. Ed. 2d 949 (2005). As a result, it is likely that such individuals may have difficulty interacting with personnel who supervise them. *Id.* This is one basis that may explain why the interactions between Sacomano and Updike were challenging.

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de novo a district court's grant of summary judgment. [*Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644, 648 \(9th Cir. 2016\)](#). On review, we determine—viewing the evidence in the light most favorable to Updike, the nonmoving party—whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law. [*Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 922 \(9th Cir. 2004\)](#); see [*Fed. R. Civ. P.* 56](#). "Summary judgment is improper if 'there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.'" [*Simo v. Union of Needletrades, Indus. & Textile Emps.*, 322 F.3d 602, 610 \(9th Cir. 2003\)](#) (quoting [*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S. Ct. 2505, 91 L. Ed. 2d 202 \(1986\)](#)). We review de novo the district court's decision regarding standing. [*Fair Hous. of Marin v. Combs*, 285 F.3d 899, 902 \(9th Cir. 2002\)](#).

III

Article III of the Constitution limits federal courts to hearing only cases and controversies. To establish standing to sue, a plaintiff must show: (1) an injury that is concrete and particularized and actual or **[**14]** imminent; (2) a causal connection between the injury and defendant's challenged action; and (3) redressability. [*Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 \(1992\)](#). Apart from this, standing for injunctive relief requires that a plaintiff show a "real and immediate threat of repeated injury." [*O'Shea v. Littleton*, 414 U.S. 488, 496, 94 S. Ct. 669, 38 L. Ed. 2d 674 \(1974\)](#); see also [*City of Los Angeles v. Lyons*, 461 U.S. 95, 107-08, 103 S. Ct. 1660, 75 L. Ed. 2d 675 \(1983\)](#).

The parties do not dispute that Updike satisfies the general standing requirements of Article III,⁵ but instead dispute whether Updike has shown a real and immediate threat that the injury will be repeated—which

is necessary for standing to seek injunctive relief.

A

Updike offers no evidence of a "real or immediate threat" that he would be "wronged again" by way of the State's failure to provide an ASL interpreter at future court appearances. [*Lyons*, 461 U.S. at 111](#). Evidence in the record further indicates that this wrongful conduct will likely not occur again, given that information about necessary accommodations are now noted in the booking registers—the documents relied upon by OJD to set hearing dates—rather than the pretrial release reports.

[*948] Updike has not met his burden of showing that the State's allegedly wrongful behavior will likely recur. Moreover, Updike's evidence is insufficient to establish that any such wrongful behavior is likely to recur **[**15]** against him, *i.e.*, that he is likely again to be a pretrial detainee. Updike lacks standing to pursue his claims for injunctive relief against the State because it is no more than speculation and conjecture that the State will not provide an ASL interpreter and auxiliary aids if Updike makes an appearance as a pretrial detainee again. See [*id.* at 103, 107-08](#).

B

Although certain facts slightly alter our calculus in considering the threat of future harm from the County, we also hold that the possibility of recurring injury remains speculative such that Updike also lacks standing to pursue injunctive relief against the County.

Updike has been booked at MCDC on five previous occasions, and avers that he had been held overnight in a Multnomah County detention facility before and was then denied an ASL interpreter and a TTY although he requested auxiliary aids and services. Record evidence also shows that a County officer had communicated with other deaf people in custody by writing notes, and that another County officer admitted to now knowing *how* to get an ASL interpreter if he had difficulties communicating with a deaf inmate.

Although "past wrongs are evidence bearing on whether there is a real and immediate **[**16]** threat of repeated injury," [*O'Shea*, 414 U.S. at 496](#), "past wrongs do not in themselves amount to [a] real and immediate threat of injury necessary to make out a case or controversy,"

⁵ Nor could the County or State really dispute this: The State and County's alleged failure to provide Updike with an ASL interpreter or the use of auxiliary services constitute concrete and particularized injuries sufficient to satisfy Article III. Further, Updike's inability to effectively communicate with corrections staff or even communicate at all with his lawyer or family was caused by the Defendants' failure to provide him with accommodation and meaningful access. Finally, a decision favorable to Updike would redress his injuries. See [*Lujan*, 504 U.S. at 560-61](#).

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Lyons, 461 U.S. at 103. Updike's past injury is insufficient to establish that the risk of recurring injury is more than speculative. He has not identified specific County policies and practices that would subject Updike to a realistic possibility that the County would subject him to the injurious acts again in the future. Compare *id.* at 108-110 (holding that the plaintiff did not have standing because it was no more than conjecture that he would be subject to another unconstitutional chokehold in the future), with *Armstrong v. Davis*, 275 F.3d 849, 864 (9th Cir. 2001) (explaining that the California Board of Prison Term's consistent practice of denying appropriate accommodations warranted holding that the plaintiff class established standing), abrogated on other grounds by *Johnson v. California*, 543 U.S. 499, 504-05, 125 S. Ct. 1141, 160 L. Ed. 2d 949 (2005). Further counseling against standing for injunctive relief is the assumption that Updike will likely conform his activities within the law such that he would not be arrested and detained in the future. See *O'Shea*, 414 U.S. at 497 ("We assume that respondents will conduct their activities within the law and so avoid prosecution and conviction as well as exposure to [**17] the challenged course of conduct said to be followed by petitioners."). Updike has not shown "there is 'sufficient immediacy and reality' to [his] allegations of future injury to warrant invocation" of jurisdiction. *Id.*

In sum, Updike does not have standing to pursue his claims for injunctive relief against the State and County. We turn next to the merits of his claims for compensatory damages.

IV

A

Updike challenges the district court's grant of summary judgment in favor of the [*949] State and the County on his ADA and § 504 claims.

The ADA was enacted "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and "to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1)&(2). Title II of the ADA provides:

[N]o qualified individual with a disability shall, by reason of such 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 such entity.

Id. § 12132. To prove that a public program or service violated Title II of the ADA, Updike must show that: "(1) he is a 'qualified [**18] individual with a disability'; (2) he was either excluded from participation in or denied the benefits of a public entity's services, programs, or activities, or was otherwise discriminated against by the public entity; and (3) such exclusion, denial of benefits, or discrimination was by reason of his disability." *Duvall v. Cty. of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001), as amended on denial of reh'g en banc (Oct. 11, 2001). This provision extends to discrimination against inmates detained in a county jail. See *Penn. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210, 118 S. Ct. 1952, 141 L. Ed. 2d 215 (1998) (concluding that "[s]tate prisons fall squarely within the statutory definition of 'public entity,' which includes 'any department, agency, special purpose district, or other instrumentality of a State or States or local government.'" (quoting 42 U.S.C. § 12131(1)(B))).

"Title II of the ADA was expressly modeled after § 504 of the Rehabilitation Act." *Duvall*, 260 F.3d at 1135. Section 504 of the Rehabilitation Act provides:

No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance

29 U.S.C. § 794. To bring a § 504 claim, Updike must show that "(1) he is an individual with a disability; (2) he is otherwise [**19] qualified to receive the benefit; (3) he was denied the benefits of the program solely by reason of his disability; and (4) the program receives federal financial assistance." *Duvall*, 260 F.3d at 1135.

Title II and § 504 include an affirmative obligation for public entities to make benefits, services, and programs accessible to people with disabilities. See *id.* at 1136; *Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 266-67 (D.D.C. 2015) (citing 42 U.S.C. § 12131(2) and 28 C.F.R. § 35.130(b)(1)(iii)), reconsideration denied, 146 F. Supp. 3d 197 (D.D.C. 2015).

As to persons with a hearing disability, implementing regulations for Title II provide that a public entity must "take appropriate steps to ensure that communications"

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with disabled persons "are as effective as communications with others." [28 C.F.R. § 35.160\(a\)](#).

These regulations, squarely on point here, provide:

(b) (1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.

(2) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the [*950] individual; the nature, length, and complexity of the [*20] communication involved; and the context in which the communication is taking place. 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.

Id. [§ 35.160\(b\)](#). For deaf and hearing-impaired persons, auxiliary aids and services include:

Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; 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 [*21] technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing[.]

Id. [§ 35.104\(1\)](#).

The Appendix to the ADA regulations also makes clear that the public entity has a duty to ensure effective communications and establishes a required deference that must normally be given to a disabled person's personal choice of aid and service:

The public entity shall honor the choice [of the individual with a disability] unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under [§ 35.164](#). Deference to the request of the individual with a disability is desirable because of the range of disabilities, the variety of auxiliary aids and services, and different circumstances requiring effective communication.

Id. pt. 35, App. A (alteration in original) (quoting [28 C.F.R. pt. 35, App. A \(2009\)](#)). The Appendix goes on to explain that "the type of auxiliary aid or service necessary to ensure effective communication will vary with the situation." *Id.* These regulations "require effective communication in courts, jails, prisons, and with law enforcement officers." *Id.*

One limitation on this duty, however, [*22] provides that a public entity is not required "to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens." *Id.* [§ 35.164](#); see also *id.* pt. 35, App. A. Yet the mere payment for an ASL interpreter and the payment for a TTY or similar device cannot be considered an undue burden.

Under both Title II of the ADA and [§ 504 of the Rehabilitation Act](#), Updike must show that he was excluded from participating in or denied the benefits of a program's services or otherwise discriminated against. "[C]ompensatory damages are not available under Title II or § 504 absent a showing of discriminatory intent." [Ferguson v. City of Phoenix, 157 F.3d 668, 674 \(9th Cir. 1998\)](#), as amended (Oct. 8, 1998); see [Duvall, 260 F.3d at 1138](#). To show intentional discrimination, this circuit requires that the plaintiff show that a defendant acted with "deliberate indifference," which requires "both knowledge that a harm to a federally protected right [*951] is substantially likely, and a failure to act upon that . . . likelihood." [Duvall, 260 F.3d at 1139](#). "When the plaintiff has alerted the public entity to his need for accommodation (or where the need for accommodation is obvious, or required by statute or regulation), the public entity is on notice that an accommodation [*23] is required, and the plaintiff has satisfied the first element of the deliberate indifference test." *Id.* To meet the second prong, the entity's failure to act "must be a result of conduct that is more than negligent, and involves an element of deliberateness." *Id.*

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A public entity may be liable for damages under Title II of the ADA or § 504 of the Rehabilitation Act "if it intentionally or with deliberate indifference fails to provide meaningful access or reasonable accommodation to disabled persons." *Mark H. v. Lemahieu*, 513 F.3d 922, 937-38 (9th Cir. 2008). The "failure to provide reasonable accommodation can constitute discrimination." *Vinson v. Thomas*, 288 F.3d 1145, 1154 (9th Cir. 2002). A public entity may not disregard the plight and distress of a disabled individual.

The parties do not dispute that Updike is a qualified individual with a disability and that, as a detainee at the detention facility, he was otherwise qualified to receive the services and benefits of the public entity. Instead, the parties dispute whether Updike was intentionally discriminated against when his requested accommodations were denied or when accommodation was not provided. Because Updike's ADA and § 504 claims do not differ in any respect relevant to resolving this appeal, and no party asserts that any distinctions are material, we address the **[**24]** ADA and § 504 claims together. See *Duvall*, 260 F.3d at 1135-36.

B

The thrust of Updike's allegations against the State is that the State failed to arrange for an ASL interpreter at Updike's first criminal court appearance. As a result, Updike had to stay at MCIJ for an additional evening, and he complains that he could have been released earlier if an ASL interpreter had been provided on January 15, 2013, the date of his first arraignment hearing. The district court concluded that Updike did not show that the State acted with deliberate indifference. The State gave evidence that in setting Updike's arraignment, it reviewed the booking register, which did not note his need for an interpreter, but not the pretrial release report, which did note Updike's need for an interpreter.

Updike relies on *Robertson v. Las Animas County Sheriff's Department*, 500 F.3d 1185, 1199 (10th Cir. 2007) and *Chisolm v. McManimon*, 275 F.3d 315, 330 (3d Cir. 2001) to argue that he was denied the ability to participate at the January 15, 2013 arraignment. Both cases involved deaf or hearing impaired individuals who made court appearances without ASL interpreters. But neither out-of-circuit case discussed our circuit's heightened requirement for a plaintiff to establish that the discrimination was committed with deliberate indifference in order to recover monetary damages

under the ADA or § 504. **[**25]** See *Duvall*, 260 F.3d at 1138-39. We have explained deliberate indifference as follows:

Because in some instances events may be attributable to bureaucratic slippage that constitutes negligence rather than deliberate action or inaction, we have stated that deliberate indifference does not occur where a duty to act may simply have been overlooked, or a complaint may reasonably have been deemed to result from events taking their normal course. Rather, in order to meet the second element of the deliberate indifference **[*952]** test, a failure to act must be a result of conduct that is more than negligent, and involves an element of deliberateness.

Id. at 1139.

We conclude that the district court correctly granted summary judgment for the State on this issue. This case reflects an absence of effective communication and coordination between the County's pretrial services and employees at OJD about the need for an interpreter at Updike's arraignment. While it is regrettable that it appears that Updike spent an extra night in jail that he likely would not have had to spend had he been provided an ASL interpreter the first time he appeared before Judge Dailey, there is no evidence that the State deliberately failed to order an interpreter **[**26]** at the January 15, 2013 arraignment. Instead, the evidence shows "bureaucratic slippage that constitutes negligence rather than deliberate action or inaction." *Id.* Since Updike's first arraignment, the County and State have reviewed their procedures and taken the appropriate corrective action, such that this "bureaucratic slippage" is likely to be avoided in the future. Similarly, pretrial services has modified their procedures such that the booking register now provides the necessary notice for accommodations.

There is no evidence that the State's failure to provide an ASL interpreter was the result of deliberate indifference. We accordingly affirm the district court's holding that summary judgment in favor of the State is appropriate on Updike's claims under the ADA and § 504.

C

Along with alleging that the County failed to arrange for an ASL interpreter at Updike's arraignment, Updike

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alleges that the County did not provide him with an ASL interpreter and other auxiliary aids in order to effectively communicate while he was in pretrial detention and under pretrial supervision. The district court held that Updike could have, but did not, provide the County notice of this conduct that allegedly **[**27]** violated the ADA and [§ 504](#) and that summary judgment was warranted on this ground. The district court, however, went on to review Updike's allegations and found that there was no evidence in the record creating a genuine issue as to whether the County intentionally violated the ADA or the [Rehabilitation Act](#). As to Updike's ADA and [§ 504](#) claims for damages against the County, we reverse.

1

"[Federal Rule of Civil Procedure 8\(a\)\(2\)](#) requires that the allegations in the complaint 'give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.'" *Pickern v. Pier 1 Imps. (U.S.), Inc.*, 457 F.3d 963, 968 (9th Cir. 2006) (quoting [Swierkiewicz v. Sorema N.A.](#), 534 U.S. 506, 512, 122 S. Ct. 992, 152 L. Ed. 2d 1, (2002)). "[S]ummary judgment is not a procedural second chance to flesh out inadequate pleadings." [Wasco Prods., Inc. v. Southwall Techs., Inc.](#), 435 F.3d 989, 992 (9th Cir. 2006).

The district court found that Updike raised several specific factual allegations in his declaration opposing the County's motion for summary judgment, submitted after the close of discovery, that were not previously raised in his complaint, including:

Plaintiff's requests: (1) for an auxiliary aid to make telephone calls; (2) for an ASL interpreter to speak with Nurse Julie Nielson; (3) for closed captioning to be turned on for the [j]ail televisions; and (4) for an ASL interpreter for his meetings with pre-trial services.

[*953] The district court concluded that Updike's failure to provide the County with adequate **[**28]** notice of additional allegations warranted summary judgment on Updike's ADA and [§ 504](#) claims on these allegations.

We disagree. Although the primary focus of Updike's complaint was on the ASL interpreter that was not provided at his arraignment on January 15, 2013, Updike's complaint gave sufficient factual allegations describing the County's failure to provide auxiliary aids and services while Updike was detained and under pretrial supervision to put the County on notice that those inactions would be at issue. For example,

Updike's complaint stated that while Updike was at MCDC he requested an ASL interpreter and a TTY but neither was provided. He further alleged that he was directed to write a statement without the accommodations of a TTY or an ASL interpreter. The complaint went on to allege that the County did not provide Updike with an ASL interpreter while he was held at MCIJ.

His complaint also alleged that while he awaited trial, he was under the supervision of employees of the County. He had requested an ASL interpreter to aid his communication, but the County did not accommodate this request. Updike repeated these allegations throughout his complaint:

Defendant County denied Plaintiff the benefits **[**29]** of Defendant's services and programs through failure to provide an ASL interpreter and failure to promptly provide a TTD while Plaintiff was in custody. Defendant County also failed to provide an ASL interpreter during Plaintiff's pretrial release while he was under the supervision of Defendant County's employees.

The complaint specifically alleged that the County denied Updike "effective communication by refusing to provide him with a qualified interpreter in circumstances involving the following types of communication which would be normal in criminal investigations and the arrest of a suspect." These circumstances included:

explaining to the police the details of the incident and the alleged crime; discussing injuries; discussing damage to and loss of personal property; conveying and understanding one's rights as a crime victim; conveying and understanding one's rights as an arrestee and pretrial detainee; asserting the right to effective communication during booking and being held by a jail or correctional facility; asserting the right to an ASL interpreter for appearances in court; and asserting the right to effective communication with supervising County employees during pretrial **[**30]** release.

Updike complied with the notice pleading requirement of [Federal Rule of Civil Procedure 8](#). Updike alleged sufficient facts that the County did not accommodate his requests for an auxiliary aid to make telephone calls or for an ASL interpreter while in custody, such that the County should have been "on notice of the evidence it need[ed] to adduce in order to defend against [Updike's] allegations." [Coleman v. Quaker Oats Co.](#), 232 F.3d

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[1271, 1292 \(9th Cir. 2000\)](#). Coupled with Updike's deposition testimony, the County was put on notice of the evidence it would need to defend against Updike's ADA and [Rehabilitation Act](#) claims. *See id.*

2

The district court also granted summary judgment on the alternative ground that there was insufficient evidence of intentional discrimination by the County against Updike.

The County argues that not providing Updike with his preferred form of communication [*954] is not, by itself, a violation of the ADA or the [Rehabilitation Act](#). The County emphasizes that each of the County employees believed Updike could effectively communicate without the use of an ASL interpreter or TTD/TTY device. Whether Updike could effectively communicate in English is disputed as Updike avers that ASL is his primary language, he does not consider himself to be bilingual in English, [*31] he does not read or speak English well, and he is not proficient at reading lips. He contends that he was not able to communicate effectively with correctional staff because they did not provide appropriate accommodations. Other disputes central to this case include whether the County undertook "a fact-specific investigation to determine what constitutes a reasonable accommodation," [Duvall, 260 F.3d at 1139](#), and gave "primary consideration" to Updike's requests, [28 C.F.R. § 35.160\(b\)\(2\)](#).

It is well-settled that Title II and § 504 "create a duty to gather sufficient information from the [disabled individual] and qualified experts as needed to determine what accommodations are necessary." [Duvall, 260 F.3d at 1139](#) (alteration in original) (quoting *Wong v. Regents of the Univ. of Cal.*, 192 F.3d 807, 818 (9th Cir. 1999)). Thus, a public entity "must consider the particular individual's need when conducting its investigation into what accommodations are reasonable." *Id.* As explained above, to meet the deliberate indifference test for compensatory damages, the public entity must be on notice that an accommodation is required, and that the entity's failure to act involved an element of deliberateness. *Id.* A denial of a request without investigation is sufficient to survive summary judgment on the question of deliberate indifference. *See* [*32] [id. at 1140](#) ("[Plaintiff] provided sufficient evidence to create a triable issue as to whether [defendants] . . . had notice of his need for the accommodation involved and that they failed despite repeated requests to take the

necessary action."). Here, there is no dispute that County employees were aware of Updike's disability. There is also no record evidence that the County properly investigated Updike's need for accommodation. We reverse the district court's grant of summary judgment on the ground that the County's failure to provide accommodations proceeded without conducting an adequate investigation of Updike's disability and the efficacy of other ways to communicate.

We also reverse the district court's grant of summary judgment on the ground that there are disputed issues of material fact as to whether, at each of Updike's requests for accommodation, the County's failure to provide an accommodation was done with deliberate indifference, rather than merely negligence.⁶

These are the individual bases for Updike's ADA and § 504 claims:

Failure to provide an ASL interpreter or TTY during the booking process: During the booking process, Updike requested [*955] an ASL interpreter and also requested a TTY device [*33] so he could make phone calls to his attorney and his mother. The district court dismissed this aspect of Updike's claim, explaining that Updike did not explain how the booking process would have been different in any material respect had he been provided with his preferred accommodation. This analysis, however, disregards the County's affirmative obligations to provide reasonable accommodations. Employees for the County were aware that Updike was deaf, and that Updike had requested an ASL interpreter and other auxiliary services. Furthermore, the County has a contract with Columbia Language Services for interpreting services. Taken together, a reasonable trier

⁶ Updike also contends that an inmate with a communication-related disability "often lacks the ability to communicate his need for accommodation." *See, e.g., Pierce, 128 F. Supp. 3d at 269* ("[Defendant] does not explain how inmates with known communications-related difficulties (such as [Plaintiff]) are supposed to communicate a need for accommodations, or, for that matter, why the protections of Section 504 and Title II should be construed to be unavailable to such disabled persons unless they somehow manage to overcome their communications-related disability sufficiently enough to convey their need for accommodations effectively."). Our case law is clear on this point: there may be situations where a public entity's duty to look into and provide a reasonable accommodation may be triggered when "the need for accommodation is obvious," and the public entity is on notice about a need for accommodation. [Duvall, 260 F.3d at 1139](#).

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of fact could conclude that the County acted with deliberate indifference in denying a reasonable accommodation. See *id.* at 1136; *Wong*, 192 F.3d at 819 (explaining that the denial of a request for accommodation "without consulting [plaintiff] or any person at the University whose job it was to formulate appropriate accommodations" was "a conspicuous failure to carry out the obligation 'conscientiously' to explore possible accommodations"). A reasonable jury could conclude that an accommodation, such as an ASL interpreter or use of a TTY, was necessary for effective **[**34]** communication during the booking process.

Failure to provide a TTD to make phone calls: Updike made many requests for corrections staff to provide him with a TTD or TTY device so he could call his mother or an attorney but avers that no such aid was ever provided. As the district court noted, the parties do not dispute that a TTY machine was available for inmates to use for telephone calls, and that Updike was never provided with a TTY machine until after the January 16, 2013 arraignment when he was released from custody. The district court reasoned that Updike failed to present any evidence that the County actually refused to provide him with a TTY machine. We disagree with the district court's conclusion that the County did not act with deliberate indifference in denying the request for a TTD or TTY. That Updike repeatedly requested a TTD, which was physically available at the jail, but was never provided such a device to assist making phone calls is evidence that the County denied him use of a TTD, creating a genuine issue of material fact on this issue. A trier of fact could conclude that the County acted with deliberate indifference in denying direct requests for this accommodation, **[**35]** which would permit Updike to use telephones, a service routinely made available to non-deaf inmates.

Failure to turn on closed captioning on jail televisions: Updike asked MCDC officials to turn on closed captioning several times while in the custody of the County, but avers this request was not accommodated. Although the district court attributed this to an "unintentional oversight," Updike has introduced evidence that County jail employees were aware of Updike's disability, yet ignored his repeated requests to turn on closed captioning. Again, there is a genuine factual dispute on deliberate indifference.

Failure to provide an ASL interpreter during his medical evaluation: Under Updike's evidence, which should be credited on summary judgment, Updike

requested an ASL interpreter while meeting with Nurse Nielsen, and could not convey that he had neck and back pain because of an inability to communicate. He also explained that he could not read well the form the nurse used and that he could not respond or give input. Although the County asserts that Updike was very literate, and that an accommodation through writing was sufficient to comply with the ADA, the County has not put forth evidence **[**36]** showing that it looked into whether his **[*956]** request for accommodation could be granted without undue burden. Further, Updike disputes that the method of communication through writing was effective.

The district court dismissed this claim because there was no evidence in the record that Updike was denied any specific benefit or service that is regularly offered to other inmates. The lack of an ASL translator, however, may have denied Updike the opportunity to communicate effectively during the medical evaluation provided by the County. Medical evaluations often will be the type of complex and lengthy situation in which an ASL interpreter should be provided. See *Duffy v. Riveland*, 98 F.3d 447, 456 (9th Cir. 1996) ("[A] qualified interpreter may be necessary when the information being communicated is complex, or is exchanged for a lengthy period of time." (quoting 28 C.F.R. pt. 35, App.); *28 C.F.R. § 35.160(b)(2)* ("The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.")). A trier of fact can weigh these factors in deciding whether written communication, **[**37]** rather than an ASL translator, was an appropriate accommodation.

Failure to provide an ASL interpreter during the recognizance interview: During Updike's recognizance interview, he requested an ASL interpreter and a TTY device, was not given either, and Updike said that he had difficulty reading the officer's lips. Officer Iwamoto disputed this, believing that he was able to communicate effectively with Updike through written English and that Updike communicated clearly through written notes. But again, the County introduced no evidence that it ascertained what accommodations might be needed, and instead relies on self-serving observations that its employees believed they were effectively communicating with Updike. Whether the County's accommodation was sufficient requires sifting through a number of facts. See *28 C.F.R. §*

[35.160\(b\)\(2\)](#). And here too, a reasonable jury could conclude that written communication was not adequate to ensure that Updike could communicate as effectively as non-hearing-impaired individuals or that the County provided the appropriate accommodation.

Failure to provide an ASL interpreter and other auxiliary aids during interactions with pretrial services: Updike and Sacomano dispute whether **[**38]** Updike requested an interpreter. Although the record shows that Sacomano was aware that Updike is deaf, the County did not put forward evidence that she looked into providing Updike with an ASL interpreter during their meetings. The district court focused on whether Updike was actually denied services or whether his interactions "actually caused him harm" in dismissing this aspect of Updike's claim. The district court should have instead focused on whether Updike could effectively communicate with Sacomano while under supervision of the County and whether the County gave Updike reasonable accommodations. Considering the evidence in the light most favorable to Updike, a reasonable jury could conclude that Sacomano did not adequately address Updike's need for accommodation.

Failure to timely arrange for an ASL interpreter at arraignment: Updike inquired with County staff whether an ASL interpreter would be available at arraignment, yet no interpreter appeared at his January 15, 2013 arraignment. The County, however, timely communicated Updike's need for an ASL interpreter before his January 15 arraignment by noting **[*957]** it in his pretrial release report. That OJD staff looked at the booking **[**39]** register but not the pretrial release report in setting calendar, does not show that the County was deliberately indifferent to Updike's need for an ASL interpreter. As discussed earlier, this sequence of events shows "bureaucratic slippage that constitutes negligence rather than deliberate action or inaction." [Duvall, 260 F.3d at 1139](#). Summary judgment was appropriate on this facet of Updike's claim.

* * *

The County's employees knew that Updike was deaf but did not provide Updike with an ASL interpreter, TTY device, or closed captioning for television, despite his repeated requests for these accommodations. Updike put forth evidence that he made repeated requests for an ASL translator and other auxiliary services with respect to various aspects of his time in custody and under pretrial supervision. The County was also on

notice that Updike believed that his disability would impact his ability to understand instructions while detained. Updike contends that the County's failure to provide auxiliary aids and services limited his ability to communicate effectively, speak with his attorney and family members, and enjoy other programs and services on par with non-hearing impaired inmates.

Updike disputes the County's **[**40]** assertion that he was able to communicate fine using pen and paper, and instead contends that communication between him and corrections staff during the course of his detention and supervision were ineffective. Even if a jury ultimately determines that the County is correct—a matter that must be left to the jury where, as here, there are disputes of material fact—summary judgment was improper because the County never meaningfully assessed Updike's limitations and comprehension abilities. At no time was Updike assessed to determine to what extent he would need accommodation to ensure that he could communicate effectively with others during his time in custody and under pretrial supervision. Yet "[w]hen an entity is on notice of the need for accommodation, it 'is required to undertake a fact-specific investigation to determine what constitutes a reasonable accommodation.'" [A.G. v. Paradise Valley Unified Sch. Dist. No. 69, 815 F.3d 1195, 1207 \(9th Cir. 2016\)](#) (quoting [Duvall, 260 F.3d at 1139](#)). Nor did the County present evidence that it engaged in any inquiry as to why an ASL interpreter or TTY would be unreasonable or could not be accommodated.⁷ The record sets forth that it was not until his January 16, 2013 arraignment that Updike was provided with an ASL interpreter, and that it was not until Updike **[**41]** was released from custody that he was provided with a TTD. For these reasons, the district court erred in granting summary judgment in favor of the County on Updike's ADA and [§ 504](#) claims.

The district court, in granting summary judgment in favor of the County, concluded that Updike was not actually excluded from services that similarly-situated non-deaf individuals also accessed. We emphasize, however, that a public entity can be liable for damages under Title II and § 504 if it intentionally or with deliberate indifference does not provide a reasonable

⁷ The County makes no argument that providing Updike with an interpreter or providing other auxiliary services, such as a TTD, would have been unduly burdensome. Nor would this argument have much weight, given their existing contract with Columbia Language Services to provide those in custody with ASL interpreter services.

accommodation to a deaf or hearing-impaired person. See [Duvall, 260 F.3d 1138-39](#); [Mark H., 513 F.3d at 938](#).

[*958] In reversing the grant of summary judgment in favor of the County on Updike's claims for damages, we do not hold that Updike necessarily was entitled to have an ASL interpreter as a matter of course to achieve effective communication with County employees or that the County should be subject to liability for failing to provide one. However, whether the County provided appropriate auxiliary aids where necessary is a fact-intensive exercise. Upon notice of the need for an accommodation, a public entity must investigate what constitutes a reasonable accommodation. See [Duvall, 260 F.3d at 1139](#). Regulations require that public entities [**42] give primary consideration to the requests of the deaf individual with respect to auxiliary aid requests and give deference to such requests. [28 C.F.R. § 35.160\(b\)\(2\)](#). And the type of auxiliary aid or service that will be appropriate should take into account the context in which the communication is taking place. *Id.* If the public entity does not defer to the deaf individual's request, then the burden is on the entity to demonstrate that another effective means of communication exists or that the requested auxiliary aid would otherwise not be required. See [28 C.F.R. pt. 35, App. A](#). A public entity must "take appropriate steps to ensure that communications" with a person with a disability is "as effective as communications with others." *Id.* [§ 35.160\(a\)\(1\)](#). To deny a deaf person an ASL interpreter, when ASL is their primary language, is akin to denying a Spanish interpreter to a person who speaks Spanish as their primary language. An ASL interpreter will often be necessary to ensure communication with a deaf person who has become enmeshed in the criminal justice system. At a minimum, officials must conduct an adequate investigation into what accommodations may be necessary to permit effective communication of the deaf while incarcerated.

In this [**43] case, a reasonable jury could find that the County was deliberately indifferent and violated Title II and § 504 when it did not conduct an informed assessment of Updike's accommodation needs, when it did not give primary deference to Updike's requests or context-specific consideration to his requests, when County employees failed to provide Updike with an ASL interpreter in a multitude of interactions with County employees, when County employees did not offer use of a TTD, and when County employees did not turn on closed captioning. Thus, we reverse the district court's holding that no evidence in the record created a genuine

issue of material fact on whether the County violated the ADA or the [Rehabilitation Act](#) by inaction and conduct undertaken with deliberate indifference to Updike's legitimate needs as a deaf individual. Stated another way, the County may not turn a blind eye to a deaf ear. Whether it has done so here cannot be resolved at this stage of the proceedings before the consideration of relevant testimony and other evidence that may be offered at trial, and before a jury or the district court has made findings of fact based on trial proceedings. We reverse the grant of summary [**44] judgment in favor of the County on Updike's compensatory claims under Title II of the ADA and [§ 504 of the Rehabilitation Act](#). On the genuine factual disputes that we have identified, the case should proceed to trial.

V

We affirm in part and reverse in part the district court's summary judgment orders. We affirm the district court's grant of summary judgment in favor of the State. We also affirm the district court's conclusion that Updike lacks standing to pursue his claims for injunctive relief. We reverse the district court's grant of summary judgment in favor of the County on [*959] Updike's ADA and [§ 504](#) claims for compensatory damages. We remand the case for further proceedings consistent with this opinion.

AFFIRMED in part; REVERSED in part; and REMANDED. Each party shall bear its own costs on appeal of the summary judgment order entered in favor of the State. We award costs to Updike on appeal of the summary judgment order entered in favor of the County.

End of Document

Gillespie v. Dimensions Health Corp.

United States District Court for the District of Maryland

May 16, 2005, Decided

Civil Action No. DKC 2005-0073

Reporter

369 F. Supp. 2d 636 *; 2005 U.S. Dist. LEXIS 9130 **; 16 Am. Disabilities Cas. (BNA) 1401

ELIZABETH GILLESPIE, et al. v. DIMENSIONS
HEALTH CORPORATION d/b/a LAUREL REGIONAL
HOSPITAL

Counsel: **[**1]** For Elizabeth Gillespie, David Irvine,
Erin Whitney, Cary Barbin, Kathryn Elizabeth Hale,
Brian Leffler, Ziomara Porras, Plaintiffs: David A Last,
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For Laurel Regional Hospital, Defendant: Neil E Duke,
Pamela J White, Ober Kaler Grimes and Shriver,
Baltimore, MD.

For Dimensions Health Corporation, doing business as
Laurel Regional Hospital, Defendant: Pamela J White,
Ober Kaler Grimes and Shriver, Baltimore, MD.

Judges: DEBORAH K. CHASANOW, United States
District Judge.

Opinion by: DEBORAH K. CHASANOW

Opinion

[*637] MEMORANDUM OPINION

Presently pending and ready for resolution in this
disability discrimination action is the motion by
Defendant Dimensions Health Corporation d/b/a Laurel
Regional Hospital to dismiss count I of Plaintiffs'
complaint ¹ (Paper 10) pursuant to *Fed. R. Civ. P.*

¹ After Defendant filed its motion to dismiss, Plaintiffs moved
for leave to file an amended complaint merely to correct the
name and related information of the previously misidentified
Defendant. Defendant did not object, and the court granted the
motion on March 15, 2005. Accordingly, Defendant's motion
will be analyzed vis-a-vis Plaintiffs' amended complaint.

12(b)(6). The issues have been fully briefed and the
court now rules, no hearing being deemed necessary.
Local Rule 105.6. For the following reasons,
Defendant's motion **[**2]** will be granted in part and
denied in part.

I. Background

A. Factual Background

The following facts have been alleged by Plaintiffs
Elizabeth Gillespie, David Irvine, Erin Whitney, Cary
Barbin, Kathryn Hale, Brian Leffler, and Ziomara Porras.
Plaintiffs are deaf individuals who have sought and
received medical treatment at Defendant Laurel
Regional Hospital ("Laurel Regional") either for
themselves, or, in one instance, for a child. To
communicate effectively in medical situations, Plaintiffs
require a live, qualified sign language interpreter. On
multiple occasions when Plaintiffs visited Laurel
Regional independent from one another, **[**3]** they
made repeated requests for the assistance of a live and
in-person, qualified sign language interpreter to enable
them to communicate effectively with hospital personnel
in order to participate in their medical treatment. On
each occasion, despite specific and repeated requests
for live interpreter services, the hospital refused to
comply with Plaintiffs' requests. Rather, on several
occasions, Plaintiffs were forced "to communicate
through cryptic notes or lip-reading, . . . an extremely
speculative means of **[*638]** communication." Paper
20, P 4. Additionally, in some instances, rather than
communicating with an in-person interpreter, Plaintiffs
were able to utilize a Video Remote Interpreting ("VRI")
device, which proved to be an insufficient mode of
communication. ²

² According to Plaintiffs' amended complaint, VRI uses video
conferencing technology to provide remote interpreting
services. Paper 20, P 5. When utilizing VRI, a sign language
interpreter is located at a remote location and, through video

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[**4] For example, on November 1, 2003, Plaintiff Elizabeth Gillespie, accompanied by her hearing impaired husband, Plaintiff David Irvine, sought medical treatment at Laurel Regional's emergency room for, among other things, severe abdominal pain, nausea, and vomiting. After being admitted due to her serious medical condition, both she and her husband requested a live, in-person interpreter in order to communicate with the doctors, nurses, and hospital staff. Plaintiffs were told the hospital did not have any sign language interpreters. After some time had passed, and repeated requests for an interpreter went unanswered, Gillespie and Irvine were informed that the hospital had a VRI device they could utilize. However, the device was unavailable at that time because it was being used by another patient. Approximately two hours later, Gillespie was moved to the room containing the VRI device, but, in the interim, she alleges she was unable to communicate with the hospital staff and did not understand the medical advice or treatment she received during that time period. Moreover, after moving her to the room with the VRI, it took the hospital staff approximately twenty to thirty minutes to [**5] set up the device due to "improper[] and inadequate[] training." Paper 20, P 21. Once the VRI device was operational, Gillespie and Irvine engaged in an approximate ten minute consultation with the doctor, during which time he informed her that he did not know what was causing her pain, and that he was ordering an x-ray and, possibly, a CT-scan.

Following this consultation, and during all subsequent tests, procedures, and doctor consultations, Laurel Regional failed and/or refused to provide access to the VRI device, and denied Gillespie and Irvine's repeated requests for a live sign language interpreter or an effective alternative mode of communication. Rather, the hospital staff insisted on speaking verbally to Gillespie and Irvine despite the fact that Irvine cannot read lips and Gillespie's ability to read lips was compromised by her medical condition. Occasionally, the hospital staff would write notes to communicate with Gillespie and Irvine, but only "in a few select and extreme circumstances and only after Ms. Gillespie begged and continuously motioned for some sort of

communication." *Id.*, P 22. Even then, the hospital staff limited its writing to a "few words." *Id.*

[**6] After the initial x-ray, a doctor returned and verbally informed them that Gillespie had an enlarged heart and that she would need to undergo a CT-scan. Because this information was communicated only verbally, Plaintiffs "did not fully understand the doctor's diagnosis or the medical treatment [Gillespie] was going to receive." *Id.*, P 23. After a few hours had elapsed, a male hospital attendant arrived to take Gillespie to the CT-scan room. Neither Gillespie nor Irvine could understand the attendant's instructions to them, nor the [*639] procedure which she was about to undergo. Further, despite repeatedly indicating to the attendant their desire to communicate in writing, he refused to comply. Rather, apparently to indicate that Gillespie was to remove some of her clothing for the procedure, the attendant pulled on and snapped her bra strap. *Id.*, P 25. As a result, Gillespie refused to undergo the CT-scan unless a female nurse was present. Eventually, however, Gillespie underwent the procedure.

After a few more hours elapsed, a doctor appeared to inform Gillespie that additional tests were needed to determine the source of the pain. During this consultation, the doctor primarily [**7] communicated with Gillespie and Irvine verbally, but, per Irvine's request, sparsely used written notes. However, these notes were "short, confusing and cryptic." *Id.*, P 28. At this time, feeling exasperated with her treatment and uninformed about her medical condition due to the hospital's failure to communicate with Plaintiffs adequately, Gillespie informed the doctor that she wanted to leave. Plaintiffs allege that the doctor "cavalierly recommended that Ms. Gillespie go to another emergency room at a different hospital for treatment." Moreover, the discharge papers and written materials given to Gillespie upon their departure failed to mention the heart condition which the hospital had earlier detected.

The other Plaintiffs in this action allege similar experiences during their visits to Laurel Regional. All of them requested a live, in-person sign language interpreter in order to communicate effectively with the hospital staff; all of their requests went unfulfilled. In those situations where the VRI device was utilized as an alternative method of communication, it was wholly ineffective, either because the staff was inadequately trained and unable to operate the VRI device, [**8] because Plaintiffs were unable to understand the video interpreter due to the poor quality of the video

conferencing, the deaf individual and the interpreter can view each other. Facing a small camera mounted on top of a computer monitor, the deaf individual signs to the interpreter, who then voices what has been signed to hearing participants. The interpreter then signs the hearing participants' response so that the deaf individual can view the response in the monitor. *Id.*

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transmission, or both.³ As a consequence, Plaintiffs contend that they have been denied the benefit of effective communication with physicians and other health care providers, denied the opportunity to participate in their treatment, and denied the full benefit of the health care services provided by Laurel Regional.

[**9] B. Procedural Background

On January 11, 2005, Plaintiffs filed suit, alleging that Laurel Regional violated the Americans with Disabilities Act ("ADA"), [42 U.S.C. §§ 12101 et seq.](#), and [§ 504](#) of the Rehabilitation Act, [29 U.S.C. § 794](#), by failing to provide Plaintiffs with an appropriate auxiliary aid necessary to ensure effective communication, thereby denying them full and equal medical treatment because of their disability. Plaintiffs allege that Laurel Regional's unlawful conduct has directly caused Plaintiffs to sustain past and continuing physical and emotional injuries. They further allege that Plaintiffs "have suffered, are suffering, and will continue to suffer irreparable injury as a [*640] result of [Laurel Regional's] pattern and practice of discrimination." *Id.*, P 74.

On February 10, 2005, Defendant filed a motion to dismiss, pursuant to *Fed. R. Civ. P. 12 (b) (6)*, Plaintiffs' ADA claim (count I). Defendant contends that because injunctive relief is the only remedy available to Plaintiffs under count I, Plaintiffs lack standing to assert this claim, and, accordingly, [*10] count I must be dismissed. For the following reasons, Defendant's motion will be granted as to Plaintiffs Whitney and Leffler, but denied as to the remaining Plaintiffs.

II. Standard of Review

The purpose of a motion to dismiss pursuant to *Fed. R. Civ. P. 12(b) (6)* is to test the sufficiency of the plaintiff's

³ Plaintiff Whitney alleges that on multiple visits to Laurel Regional when the VRI device was utilized, she could not understand the video interpreter due to the poor quality of the video transmission, and because she was unable to sit up in order to see the monitor. See Paper 20, PP 34, 38, 41. Plaintiff Hale alleges that on multiple visits to Laurel Regional, the VRI device proved utterly ineffective because the improperly and inadequately trained hospital staff was unable to operate the equipment. See *id.*, PP 55, 56. Plaintiff Leffler alleges that he was informed by hospital staff that the VRI device, for reasons unknown to him, was simply "not available" during his emergency visit to the hospital. *Id.*, P 58.

complaint. See [Edwards v. City of Goldsboro](#), 178 F.3d 231, 243 (4th Cir. 1999). Accordingly, a 12(b) (6) motion ought not be granted unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." [Conley v. Gibson](#), 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957). Except in certain specified cases, a plaintiff's complaint need only satisfy the "simplified pleading standard" of [Rule 8\(a\)](#), [Swierkiewicz v. Sorema N.A.](#), 534 U.S. 506, 513, 152 L. Ed. 2d 1, 122 S. Ct. 992 (2002), which requires a "short and plain statement of the claim showing that the pleader is entitled to relief." [Fed. R. Civ. P. 8\(a\) \(2\)](#).

In its determination, the court must consider all well-pled allegations in a complaint as true, see [Albright v. Oliver](#), 510 U.S. 266, 268, 127 L. Ed. 2d 114, 114 S. Ct. 807 (1994), [*11] and must construe all factual allegations in the light most favorable to the plaintiff. See [Harrison v. Westinghouse Savannah River Co.](#), 176 F.3d 776, 783 (4th Cir. 1999) (citing [Mylan Laboratories, Inc. v. Matkari](#), 7 F.3d 1130, 1134 (4th Cir. 1993)). The court must disregard the contrary allegations of the opposing party. See [A.S. Abell Co. v. Chell](#), 412 F.2d 712, 715 (4th Cir. 1969). The court need not, however, accept unsupported legal allegations, [Revene v. Charles County Comm'rs](#), 882 F.2d 870, 873 (4th Cir. 1989), legal conclusions couched as factual allegations, [Papasan v. Allain](#), 478 U.S. 265, 286, 92 L. Ed. 2d 209, 106 S. Ct. 2932 (1986), or conclusory factual allegations devoid of any reference to actual events, [United Black Firefighters v. Hirst](#), 604 F.2d 844, 847 (4th Cir. 1979).

III. Analysis

Title III of the ADA applies to privately operated public accommodations, including hospitals, and prohibits discrimination "on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations." [42 U.S.C. P 12182\(a\)](#). [*12] Although Title III does not allow a private party to seek damages, it does provide for injunctive relief. [Dudley v. Hannaford Bros. Co.](#), 333 F.3d 299, 304 (1st Cir. 2003); [Pickern v. Holiday Quality Foods, Inc.](#), 293 F.3d 1133, 1136 (9th Cir. 2002); [Proctor v. Prince George's Hosp. Ctr.](#), 32 F.Supp.2d 820, 824 (D.Md. 1998). To establish standing for injunctive relief, a plaintiff must first demonstrate that he will suffer an injury in fact which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. See [Lujan v. Defenders of Wildlife](#), 504 U.S. 555, 560-61, 119 L. Ed. 2d 351, 112 S. Ct. 2130

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(1992).⁴ Regarding an "injury [***641**] in fact," the Supreme Court has explained that "past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects." *City of Los Angeles v. Lyons*, 461 U.S. 95, 102, 75 L. Ed. 2d 675, 103 S. Ct. 1660 (1983) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495-96, 38 L. Ed. 2d 674, 94 S. Ct. 669 (1974)). In *Lyons*, the Court held that a plaintiff who had been subjected to a "chokehold" by the Los Angeles police would have [****13**] had to allege not only that he would have another encounter with the police, but that he was likely to suffer similar injury during that encounter in order to obtain injunctive relief. *Lyons*, 461 U.S. at 105-06. "Absent a sufficient likelihood that he will again be wronged in a similar way," the Court stated, "Lyons is no more entitled to an injunction than any other citizen of Los Angeles." *Id.* at 111.

In support of its argument, Defendant cites to several ADA opinions, including two from this court, which have held that the plaintiffs lacked standing to pursue injunctive relief. It asserts that the "plain and inescapable conclusion given the [cited] body of law is that Plaintiffs simply lack standing to [****14**] pursue injunctive relief under Title III of the ADA because they face no real and immediate threat of harm." Paper 18 at 16. A careful reading of these cases, however, demonstrates that Defendant's reliance is misplaced.

In *Proctor*, a hearing-impaired plaintiff sued the medical center ("PGHC") that treated him for severe injuries arising from a motorcycle accident, alleging that he was denied live interpretive services during the course of his treatment, in violation of Title III of the ADA. 32 F.Supp.2d at 821. Raising the issue of standing *sua sponte*, this court dismissed his Title III claim on the basis that he had failed to "demonstrate the requisite predicate for seeking" injunctive relief. *Id.* at 824. Citing some of the same cases on which Defendant now relies, the court concluded that Proctor had failed to show an injury in fact, i.e., a real and immediate threat of future injury at the hands of the defendant. The court stated:

By now, several months have passed since Plaintiff

⁴ In addition to "injury in fact," a plaintiff must also demonstrate that the conduct complained of will cause the injury alleged, and that it is likely, not speculative, that the injury will be redressed by a favorable decision. *Id.* These elements are not at issue here.

was discharged from PGHC. Thus, even if Plaintiff correctly alleges that he was the victim of discrimination, the present record does not reflect any on-going [****15**] discrimination against him or that he is likely to return to PGHC in the near future. While the [Office for Civil Rights of the United States Department of Health and Human Services] findings do not have binding effect in this court, the complaints and order evidence that issues have arisen regarding whether PGHC is in compliance with the ADA. However, the relevance of the past complaints is limited by the fact that the hospital subsequently amended its policy designed to prevent violations. Plaintiff has not challenged the policy's adequacy. Instead, Mr. Proctor contends that PGHC failed to follow it when treating him. Additionally, Plaintiff must demonstrate that any violation resulted from conditions that make repeated violations likely if Mr. Proctor should return to PGHC.

Id. at 825.⁵ Accordingly, the court concluded that on the record it had before it, [***642**] it was "unlikely an injunction would be appropriate." *Id.*

[****16**] Similarly, in *Falls v. Prince George's Hospital Center*, 1999 U.S. Dist. LEXIS 22551, 1999 WL 33485550, at * 1 (D.Md. Mar. 16, 1999), this court entered judgment in favor of the defendant, PGHC, on the plaintiff's ADA claim because "there was [no] 'actual and imminent' threat" to the plaintiff's hearing-impaired daughter's rights, and, thus, "she [did] not have standing to seek injunctive relief." 1999 U.S. Dist. LEXIS 22551, 1999 WL 33485550, at *6. Critical to this court's conclusion was that the record neither reflected any on-going discrimination by PGHC against the plaintiff's daughter, nor that she was likely to return to PGHC in the near future. Indeed, the plaintiff stated in her deposition that she did not want to use the services of PGHC again, even if her daughter was "near death." *Id.*

⁵ In July of 1991 and January of 1992, deaf former PGHC patients filed complaints with the Office for Civil Rights of the United States Department of Health and Human Services ("OCR"), alleging that the PGHC failed to provide them with effective communication during their treatment. In December of 1993, the OCR found that PGHC was in violation of § 504 of the Rehabilitation Act. Shortly before the OCR released its finding, and apparently as a result of the OCR's investigation, PGHC revised its policy on accommodations for hearing impaired patients. *Id.* at 822. Thus, well before Proctor's visit to PGHC, it had revised its policy in an attempt to comply with federal anti-discrimination laws.

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Accordingly, the plaintiff was unable to establish that her daughter faced "a real and immediate threat of future harm from Defendant, and not merely a conjectural or hypothetical threat." *Id.*

Those cases are significantly different than this one. First, both *Proctor* and *Falls* involved plaintiffs alleging violations of the ADA based on one visit to PGHC, as opposed to multiple plaintiffs, some of **[**17]** whom are alleging multiple violations on multiple occasions. See Paper 20, PP 18, 31, 36, 53, 55, 56. Second, in both *Proctor* and *Falls*, the hospital provided, or made arrangements to provide, an interpreter for part of the plaintiffs' respective visits, although for the bulk of their stay, interpreters were not provided. *Proctor*, 32 F.Supp.2d at 824; *Falls*, 1999 U.S. Dist. LEXIS 22551, 1999 WL 33485550, at * 4. In stark contrast, Plaintiffs allege in this case that despite their repeated requests for a live and in-person interpreter, none was ever provided, and that the VRI device the hospital sparingly attempted to utilize was utterly ineffective. Moreover, in both *Proctor* and *Falls*, the records reflected that neither plaintiff was likely to return to PGHC in the near future. *Proctor*, 32 F.Supp.2d at 825; *Falls*, 1999 U.S. Dist. LEXIS 22551, 1999 WL 33485550, at * 6. As mentioned above, Ms. Falls testified in her deposition that she would not take her daughter back to PGHC, even if she was "near death." In contrast, Plaintiffs Gillespie, Irvine, Barbin, Hale, and Porras have alleged that they have "sought and received, and will likely continue to seek, **[**18]** medical treatment" from Laurel Regional for themselves and their family members. Paper 20, PP 9, 10, 12, 13, 15. This allegation is buttressed by the proximity of Laurel Regional to their homes. Each of these five allege that they live between two and five miles from the hospital, making it the closest and most convenient medical center to their homes. See *id.* Far from alleging that they will never visit Laurel Regional again, these Plaintiffs allege that they will likely continue to seek medical treatment there. This is further supported by the fact that Gillespie and Hale both made repeated visits to Laurel Regional even after being denied the services of a sign language interpreter on previous visits. *Id.*, PP 18 (Gillespie), 55-56 (Hale).

Finally, Plaintiffs are alleging that they have been injured, and will likely continue to be injured, by Defendant's "policies, pattern, and practice." *Id.*, PP 74, 75. In contrast, in *Proctor*, prior to the plaintiff's encounter with PGHC, it had amended its policy in order to prevent ADA violations. Thus, this court made clear that *Proctor* **[*643]** was not "challenging the policy's adequacy," but rather "that PGHC failed to follow it

when treating **[**19]** him." *Proctor*, 32 F.Supp.2d at 825. Similarly, in *Falls*, the plaintiff was not challenging the policy of PGHC, which, according to the then-existing PGHC Guide to Services, was that "sign language interpreters [were] available upon request." 1999 U.S. Dist. LEXIS 22551, 1999 WL 33485550, at * 4. Indeed, on a previous visit to PGHC, Ms. Falls had utilized an interpreter for her daughter. 1999 U.S. Dist. LEXIS 22551, [WL] at * 3. Rather, Ms. Falls brought suit on the basis that during her last, and according to her, final visit to PGHC, it failed to provide interpreters despite repeated requests. 1999 U.S. Dist. LEXIS 22551, [WL] at ** 3-4. Thus, she was not challenging PGHC's policy, but rather its failure to observe it.

This critical difference makes it less likely that the plaintiffs in *Proctor* and *Falls* would be aggrieved in the event of a future visit to PGHC than Plaintiffs here would be during future visits to Laurel Regional. Given that Plaintiffs have alleged that it is the policy, pattern, and practice of Laurel Regional to not provide live, in-person, qualified sign interpreters, but rather to resort to occasional and sporadic note-taking, and to a VRI device that its staff is allegedly improperly and inadequately **[**20]** trained on, and which on numerous occasions proved ineffective due to the quality of the picture, it is likely that Plaintiffs will be harmed again if and when, as they allege, they return to Laurel Regional. See *Proctor*, 32 F.Supp.2d at 825 ("Additionally, Plaintiff must demonstrate that any violation resulted from conditions that make repeated violations likely if Mr. Proctor should return to PGHC.") (emphasis added). Accordingly, reliance on this court's previous rulings in *Proctor* and *Falls* is misplaced.

Neither do the cases Defendant cites from outside this district support its position. First, in *Aikins v. St. Helena Hosp.*, 843 F.Supp. 1329 (N.D.Cal. 1994), the court dismissed the plaintiff's claim for injunctive relief under Title III because the plaintiff "had not shown that defendants' alleged discrimination [was] on-going and that she [was] likely to be served by defendants in the near future." *Id.* at 1334. Indeed, this latter point would have been difficult for the plaintiff to demonstrate given that she merely owned a mobile home near the defendant hospital and only stayed there "several days each year. **[**21]**" *Id.* at 1333.⁶

⁶The *Aikins* court dismissed the ADA count with leave to amend "to show that Mrs. Aikins faces a real and immediate threat of future injury at the hands of defendants." After amending her complaint to add additional allegations that she

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In *Schroedel v. New York Univ. Med. Ctr.*, 885 F.Supp. 594 (S.D.N.Y. 1995), the court dismissed the plaintiff's claim for injunctive relief on standing grounds because the defendant hospital was "not the nearest medical center to either [the plaintiff's] residence [**22] or place of employment," the plaintiff had not alleged that "she regularly utilizes the services of the Hospital for any specific medical condition," and, on two prior occasions before the events giving rise to the cause of action, the plaintiff had visited a different hospital. *Id.* at 599.

Finally, in *Freydel v. New York Hosp.*, 2000 U.S. Dist. LEXIS 9, 2000 WL 10264 (S.D.N.Y. Jan. 4, 2000), the court dismissed the plaintiff's claim for injunctive relief on standing grounds because there were "eleven [health] care centers [**644] closer to [the plaintiff's] home" than the defendant hospital. 2000 U.S. Dist. LEXIS 9, [WL] at * 3. Additionally, her primary care physician no longer worked at the defendant hospital, "thus severing [the plaintiff's] previous link with the institution." *Id.* Perhaps most important, however, was the fact that the hospital "had amended its policy of providing translation services in ways which [made] a recurrence of [the] alleged violation of her rights even more unlikely." *Id.* Thus, even if the plaintiff were to return to that particular hospital, its new policy made it unlikely that she would experience the same treatment.

All three of these cases present [**23] critically different factual situations from the one set forth by Plaintiffs, who assert that the alleged discrimination is an ongoing manifestation of Laurel Regional's policy and practice, and where five of the Plaintiffs continue to reside within two to five miles of the hospital, supporting their assertions that they likely will seek treatment there in the future.⁷ Accordingly, these cases provide little or no

considered it "reasonably possible that she might need to seek services from the hospital, and that defendants . . . engaged in 'a pattern and practice of violating' pertinent anti-discrimination statutes," the court, in an unpublished opinion, denied the defendants' motion to dismiss, notwithstanding the plaintiff's relatively infrequent visits to her mobile home. See *Aikins v. St. Helena Hosp.*, 1994 WL 794759, at * 3 (N.D.Cal. Apr. 4, 1994).

⁷ Similar analysis of the remaining cases Defendant cites reveals that critical and important differences exist between those cases and Plaintiffs' which made dismissal appropriate in the former, but inappropriate here. See, e.g., *Constance v. State Univ. of New York Health Science Ctr. at Syracuse*, 166 F.Supp.2d 663 (N.D.N.Y. 2001) (finding plaintiffs lacked standing because they only traveled to the Syracuse area, where the hospital was located, a few times a year, they had

support for Defendant's position.

[**24] The main cases to which Defendant cites, arguably beginning with *Aikins*, 843 F.Supp. 1329, all hold that injunctive relief is not available for isolated instances of medical personnel refusing to provide auxiliary aids to patients who have not alleged or demonstrated a likelihood of seeking and being denied treatment without the necessary aids in the future. "However, where a public accommodation in the health care field adheres to its policies of refusing to provide the requested auxiliary aid or has denied treatment altogether to an individual who seeks to receive treatment at the facility, injunctive relief may be available." *Majocha v. Turner*, 166 F.Supp.2d 316, 325 (W.D.Pa. 2001). In *Majocha*, the plaintiffs filed suit under the ADA and Rehabilitation Act against a doctor and his partners for the doctor's refusal to supply a qualified interpreter during a medical consultation for their fifteen month old son. The plaintiffs averred that they would still like their son to be evaluated and treated by the defendants, but "that they [were] prevented from doing so because defendants steadfastly refused to alter their procedures for dealing with [**25] hearing impaired parents." *Id.* at 325. The evidence suggested that the doctor who the plaintiffs initially saw, and to whom they would like to take their son in the future, always used written communications by notes in such cases and intended [**645] to continue that practice despite plaintiffs' exertion of rights claimed under the ADA. *Id.* Accordingly, the court concluded that the plaintiffs did have standing to seek injunctive relief, and

not been to the hospital prior to or after the incident giving rise to the action, and one plaintiff sought cancer treatment from her oncologist at another hospital in another city); *Hoepfl v. Barlow*, 906 F.Supp. 317, 320 (E.D.Va. 1995) (finding plaintiff lacked standing because at the time of the suit, she "resided in a different state," making it "highly unlikely that she will ever again be in a position where any discrimination by [the defendant] against disabled individuals will affect her personally"). Moreover, in *Naiman v. New York Univ.*, 1997 U.S. Dist. LEXIS 6616, 1997 WL 249970 (S.D.N.Y. May 13, 1997), the court dismissed for lack of standing the plaintiff's claim for injunctive relief but granted him leave to amend to allege facts sufficient to demonstrate standing. 1997 U.S. Dist. LEXIS 6616, [WL] at * 5. Interestingly, and of some relevance here, is that the court noted that "although not exhaustive nor necessarily dispositive, such allegations (if they can be made on the facts) might include whether [the plaintiff] suffers from a recurring medical condition and the reasons why [the defendant hospital,] as opposed to some other hospital, is the facility which [the plaintiff] would go to in an emergency." *Id.* (emphasis added).

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that "they [would] have the opportunity to prove their case for such relief at trial." *Id.*; see also [Mayberry v. Von Valtier](#), 843 F. Supp. 1160, 1166 (E.D.Mich. 1994) (holding plaintiff may seek injunctive relief under Title III of the ADA where doctor refused to treat deaf patient because she did not want to provide a sign interpreter and where evidence suggested she would not revise her policy and "intended to refuse to hire an interpreter in the future"); cf. [Dudley v. Hannaford Bros. Co.](#), 146 F.Supp.2d 82 (D.Me 2001) (where defendant declines to revise its policies which resulted in discrimination against plaintiff on the basis of his alleged disability, plaintiff is not required to perform a **[**26]** futile act of seeking the services again; injunctive relief is available), *aff'd*, 333 F.3d 299 (1st Cir. 2003) (*Dudley II*) (stating that "while there is no absolute certainty that Dudley would be denied the right to purchase alcoholic beverages during a future visit to [defendant's store], the likelihood of a denial seems substantial. No more is exigible to support a Title III right of action.").

Similarly, Plaintiffs allege that they have been harmed, and will likely continue to be harmed, by the policy, pattern, and practice of Defendant. Their claim is not that Defendant acted contrary to an ADA compliant policy, but rather that the existing and on-going policy and practice itself violates their rights under the ADA. This claim is supported by the allegations that on multiple occasions, Laurel Regional has denied requests to provide live, in-person interpreters, and instead, has attempted to utilize alternative, and allegedly, ineffective methods of communication. Moreover, Plaintiffs allege that they have sought, and will likely continue to seek, medical treatment from Laurel Regional. This allegation is supported by the fact that Plaintiffs Gillespie, Irvine, **[**27]** Barbin, Hale, and Porras reside within two to five miles of Laurel Regional, thus, making it highly likely that Laurel Regional, rather than some other medical facility, will be where they go in an emergency. Additionally, Plaintiffs Gillespie and Hale have alleged multiple visits to Laurel Regional, despite what they allege was unlawful treatment in the past. This fact only bolsters the allegation that they will likely return there in the future. Given the proximity of their residences to Laurel Regional, their strikingly common past experiences with the hospital, and the fact that they seek to enjoin what they allege is an unlawful policy, pattern, and practice, the court concludes that Plaintiffs Gillespie, Irvine, Barbin, Hale, and Porras have sufficiently alleged a real and immediate threat of future injury at the hands of Defendant in order to have standing to seek injunctive relief. Cf. [Dudley II](#), 333 F.2d at 306 ("To sum up, the question before us is whether

Dudley has proffered enough evidence to establish a real and immediate threat that Hannaford's policy will again result in a Title III violation. Given the remedial purpose underlying the ADA, courts should **[**28]** resolve doubts about such questions in favor of disabled individuals."). Whether Defendant's actions violate Plaintiffs' rights under Title III of the ADA, entitling them to injunctive relief, is not the question to be decided today. Rather, it is whether these Plaintiffs, or some of them, have standing to seek such relief. The court concludes that some do. Accordingly, Defendant's motion to dismiss count I as to Plaintiffs Gillespie, Irvine, Barbin, Hale, and Porras will be denied.

However, because Plaintiffs Whitney and Leffler now reside outside of the state of Maryland, it is much less likely **[*646]** that they will seek medical treatment at Laurel Regional in the future. Thus, the likelihood that these two Plaintiffs will ever be harmed again by Defendant is minimal at best. [Hoepfl](#), 906 F.Supp. at 320 (finding plaintiff lacked standing because at the time of the suit, she resided in a different state, making it "highly unlikely that she will ever again be in a position where any discrimination by [the defendant] against disabled individuals will affect her personally"). "Absent a sufficient likelihood that [they] will again be wronged in a similar way," [Lyons](#), 461 U.S. at 111, **[**29]** they lack standing to seek injunctive relief. Accordingly, Defendant's motion to dismiss count I for lack of standing as to Plaintiffs Whitney and Leffler will be granted.

IV. Conclusion

For the foregoing reasons, Defendant's motion to dismiss count I for lack of standing is denied in part and granted in part. The motion is denied as to Plaintiffs Gillespie, Irvine, Barbin, Hale, and Porras, and granted as to Plaintiffs Whitney and Leffler. A separate Order will follow.

DEBORAH K. CHASANOW

United States District Judge

May 16, 2005

ORDER

For the reasons stated in the foregoing Memorandum Opinion, it is this 16th day of May, 2005, by the United States District Court for the District of Maryland,

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ORDERED that:

1. The motion by Defendant Dimensions Health Corporation d/b/a Laurel Regional Hospital to dismiss count I of Plaintiffs' complaint (Paper 10) BE, and the same hereby IS, GRANTED as to Plaintiffs Erin Whitney and Brian Leffler and DENIED as to Plaintiffs Elizabeth Gillespie, David Irvine, Cary Barbin, Kathryn Hale, and Xiomara Porras;
2. The claims of Plaintiffs Whitney and Leffler for injunctive relief under the ADA (count I) BE, and the same hereby ARE, **[**30]** DISMISSED; and
3. The clerk will transmit copies of this Memorandum Opinion and Order to counsel for the parties.

DEBORAH K. CHASANOW

United States District Judge

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Hon. Sarah A. Castle is a U.S. Circuit Court Judge for the 16th Circuit Court of Jackson County (Div. 1) in Kansas City, Mo., appointed on Oct. 20, 2020. At the time of her appointment, she had been serving as Associate Circuit Judge of Division 27, having been appointed to the bench on Jan. 29, 2020. Prior to her appointment, Judge Castle served as an assistant prosecutor in the Jackson County Prosecutor's Office, and as a Special Assistant U.S. Attorney in the U.S. Attorney's Office. Judge Castle was a member of the Women's Wheelchair Basketball Team of Team USA from 2005-12. In 2008, she and her teammates won a gold medal at the Paralympics in China. In 2012, the team finished fourth at the Paralympics in London. In addition, Judge Castle, who is also a swimmer, won a silver medal in 2000 in the 100 meter breaststroke for Team USA at the Paralympics in Sydney, Australia. In 2004, she came in fourth in the 100 meter breaststroke at the Paralympics in Athens, Greece. Judge Castle received her J.D. from the University of Missouri-Kansas City Law School in 2012.

Michael Fowler is Of Counsel with Prella Eron & Bailey, P.A. in Wichita, Kan. A deaf attorney with 10 years of diverse legal experience, he specializes in business law, transactional work and bankruptcy matters. Mr. Fowler's career began in consumer bankruptcy before transitioning to an eight-year tenure as in-house counsel for an insurance company, where he played a pivotal role in the company's growth, facilitating expansion into more than 15 new state markets. In January 2024, he returned to private practice, where he applies his broad experience to business law and bankruptcy matters. Mr. Fowler is an active member of the Wichita Bar Association and the Wesley E. Brown Inn of Court. He is admitted to practice in the U.S. District Court for the District of Kansas and the Kansas Supreme Court. Mr. Fowler received his B.B.A. in entrepreneurship in 2008 from Wichita State University and his J.D. in 2014 from Washburn School of Law.

Hon. Mitchell L. Herren is a U.S. Bankruptcy Judge for the District of Kansas in Wichita, appointed in July 2020. His 33 years prior to the bench included practice with a litigation firm in Kansas City, serving as in-house litigation counsel for a large energy company, then returning to private practice for 18 years with a Wichita-based firm, where he served for seven years as managing member and represented clients ranging from individuals to large companies, with a focus on commercial litigation. Judge Herren is a Fellow of the Litigation Counsel of America and the American Bar Foundation. He received his J.D. from the University of Missouri at Kansas City School of Law.

Brent R. Kellenberger is an attorney with W Law Group, LC in Overland Park, Kan., where he focuses his practice on estate-planning and several of its niche areas, including asset-protection, farm succession, family legacy, charitable giving, special needs, long-term care and incapacity, and business planning. He counsels clients on protecting and transferring assets, including real property, financial accounts, qualified plans, personal property, intellectual property, and wisdom and values. Mr. Kellenberger designs and drafts various types of trusts, along with wills, powers of attorney, deeds, and other legal tools. He previously worked as a nursing home administrator and as a science teacher. Mr. Kellenberger received his undergraduate degree in 1999 from Kansas State University (1999) and his J.D. in 2005 from the University of Kansas.