What does “Effective Communication” mean?

- Effective communication means that anything written or spoken to a deaf or hard of hearing person has to be as clear and understandable as it would be for a person without disabilities.
- This is a very individualistic determination.

Tools for Effective Communication

- Auxiliary Aids and Services – Devices or services that facilitate effective communication.

  Examples:
  - Qualified interpreters
  - Computer-aided real-time transcription (CART)
  - Exchange of written notes
  - Assistive listening systems
  - Hearing aid compatible phones
  - Access to/Accepting video relay service (VRS) calls
  - TTYs
Qualified Interpreters

- **Qualified interpreter** means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators. 28 CFR § 35.104
- This determination depends on the situation, person’s communication needs, and more.
- Also, this person should not be a family member especially if that person is a minor.

Three Factors for Effective Communication

- There are three important factors to consider when providing effective communication with a deaf or hard of hearing person.
  - 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.


What is the Individual’s Method of Communication

- An individual’s communication style depends on a variety of factors such as:
  - Age
  - Primary language
  - Additional disabilities
  - Education level
What is the Nature, Length, and Complexity?

- A short and simple interaction
  - “Where’s the bathroom?”
  - “I want that (pointing).”

- A long and relatively complicated interaction
  - A doctor explaining to a deaf parent what the diagnosis, prognosis, and treatment of a minor child’s ailment is.
  - A classroom lecture

What is the Context of the Communication?

- The following questions should be considered:
  - What is the situation?
    - Emergency
    - Interpreter on the way
  - Where is the situation?
    - In your office v. noisy company lunch
    - Pulled over by police v. at police station
  - Who is part of the situation?
    - Large group of people or small?

Primary Consideration

- ADA Title II mandates that public entities give primary consideration to the request of the individual with a disability. This means the public entity must honor the choice, unless:
  - The public entity can show there is another equally effective means of communication available; or
  - Use of the requested auxiliary aid or service would result in a fundamental alteration of the service, program or activity or an undue burden.
- See [http://www.ada.gov/taman2.html](http://www.ada.gov/taman2.html).
Primary Consideration

- ADA Title III gives places of public accommodations (businesses) the opportunity to choose which auxiliary aid or service to provide.
- However, the business must be able to show that the auxiliary aid or service that they choose is effective for the individual with a disability, unless:
  - Use of the requested auxiliary aid or service would result in a **fundamental alteration** of the service, program or activity or an **undue burden**.
- We are unaware of any case where a court has held that providing an interpreter would be an undue burden.

Conclusions

- Effective communication means that anything written or spoken to a deaf or hard of hearing person has to be as clear and understandable as it would be for a person without disabilities.
- There are three important factors for effective communication:
  - 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.
- While public entities must generally honor the individual’s choice, a place of public accommodation has some flexibility if it can show that effective communication was provided.