

**Robertson v. Las Animas Cty. Sheriff's Dep't, 500 F.3d 1185, 1197 (10th Cir. 2007) – Excerpts from decision – Knowledge of disability triggers duty to accommodate**

The ADA requires more than physical access to public entities: it requires public entities to provide "meaningful access" to their programs and services. *Chaffin v. Kansas State Fair Bd.*, 348 F.3d 850, 857 (10th Cir.2003); *see also Randolph v. Rodgers*, 170 F.3d 850, 858 (8th Cir.1999) (holding that although deaf inmate could physically attend prison activities, he did not have "meaningful access" without a sign language interpreter). The Department of Justice ("DOJ") promulgated regulations to implement the nondiscrimination mandate of Title II. *See* 42 U.S.C. § 12134(a) (requiring the Attorney General to promulgate regulations to implement Title II).

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The DOJ's regulations interpreting Title II are entitled to substantial deference. *Marcus v. Kan. Dept. of Revenue*, 170 F.3d 1305, 1307 n. 1 (10th Cir.1999).

...

Title II's use of the term "reasonable modifications" is essentially equivalent to Title I's use of the term "reasonable accommodation." *See McGary v. City of Portland*, 386 F.3d 1259, 1266 n. 3 (9<sup>th</sup> Cir.2004) ("Although Title II of the ADA uses the term 'reasonable modification,' rather than 'reasonable accommodation,' these terms create identical standards."). In Title II cases, this Court has used the terms interchangeably, referring to an individual's request for a "modification" under Title II as a request for "accommodation." *See, e.g., Tyler v. City of Manhattan*, 118 F.3d 1400, 1407 (10th Cir.1997).

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(a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

(b) (1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

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[B]efore a public entity can be required under the ADA to provide an auxiliary aid necessary to afford an individual an equal opportunity to participate in the entity's services, programs, or activities, the entity must have **knowledge** that the individual is disabled, either because that disability is **obvious** or because the individual (or someone else) has informed the entity of the disability. **(emphasis added)**

**Comment:** Courts in guardianship cases have knowledge that respondents have serious disabilities. In initial proceedings, such knowledge is gained from the petition. The courts know that the nature of the respondent's cognitive disabilities are severe enough to impede the ability of the respondent to understand and make decisions on basic matters. Communication and emotional disabilities are also often involved. The courts therefore know that affirmative measures will be needed to ensure effective communication and to ensure the respondent has an opportunity for meaningful participation in his or her case.