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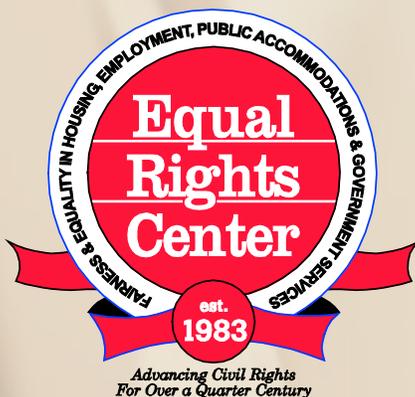
Housing Discrimination Against the
Deaf and Hard of Hearing





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Housing Discrimination Against
the Deaf and Hard of Hearing



The Equal Rights Center
11 Dupont Circle NW, Suite 450
Washington, D.C. 20036
www.equalrightscenter.org

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Executive Summary

In the United States, more than nine million individuals identify as Deaf or hard of hearing, and approximately 2.1 million individuals identify as having a speech impairment.¹ Many of these individuals rely on a Telecommunications Relay Service (TRS) to communicate by telephone.² TRS is a term that encompasses a variety of technologies that facilitate telephone conversations for individuals with hearing or speech disabilities, including internet, video, and sign language systems.³ For many such individuals, TRS is a lifeline to government services, medical care, employment, and housing. TRS is a particularly useful tool when seeking rental housing, in that many prospective tenants contact housing providers by telephone to obtain critical threshold information about apartment availability, rental rates, and the application process.

The Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA) both prohibit discrimination against TRS users with disabilities in housing-related transactions, as do many state and local anti-discrimination laws. Despite these legal protections, TRS users often do not receive equal treatment,⁴ and the Equal Rights Center

1 Gallaudet Research Institute, “Can you tell me how many deaf people there are in the United States?” <http://research.gallaudet.edu/Demographics/Deaf-US.php> (accessed May 29, 2012).

2 National Caregivers Library, “Resources for Caregivers: Some ways to facilitate and encourage communication when caring for someone with a speech impairment,” <http://www.caregiverslibrary.org/caregivers-resources/grp-disabilities/hgrp-speech-impairment/speech-impairment-article.aspx> (accessed May 29, 2012).

3 Federal Communications Commission, “Guide: Telecommunications Relay Service” <http://www.fcc.gov/guides/telecommunications-relay-service-trs> (accessed June, 5 2012).

4 The Urban Institute, “Discrimination against Persons with Disabilities: Barriers at Every Step,” (2005), http://www.urban.org/UploadedPDF/900833_discrimination.pdf (accessed May 29, 2012); and Ken Davis (CEO/founder, Deaf Newspaper, LLC), interview with Equal Rights Center, April 2, 2012 (“Davis Interview”).



(ERC) continues to receive reports of discrimination against people using TRS.⁵

To address this issue, the ERC initiated an investigation of the treatment of TRS users in the rental housing market in the greater District of Columbia metropolitan area. Between October 2011 and March 2012, the ERC conducted 100 fair housing rental telephone tests to compare the treatment of TRS users with non-TRS users. In these tests, **TRS users experienced different and more adverse treatment 45% of the time.**

The differences in treatment documented by the ERC's testing included instances in which rental agents:

- refused to converse with a TRS caller;
- misrepresented apartment availability;
- provided different rental terms, incentives, application requirements, or information; and
- provided less follow-up to TRS callers.

In five tests (11% of tests where there was any different treatment), the TRS caller was treated adversely in multiple ways.

The ERC's findings make clear that discrimination against TRS users is a significant barrier to equal housing opportunity. To address this situation, both housing providers and prospective tenants must take action. First, housing providers must enhance comprehensive staff training to ensure that all prospective tenants—including those using TRS—are being treated equally. Second, TRS users should be aware of their rights under the FHA, ADA, as well as state and local laws, and step forward when these rights are violated.

5 Ibid.



About the Author

Originally formed in 1983, the Equal Rights Center is a national non-profit civil rights organization dedicated to promoting equal opportunity in housing, employment, public accommodations, and government services. Based in Washington, D.C., with 5,000 members located in all 50 states, Puerto Rico, and the District of Columbia, the ERC works to identify, address, and remedy both individual instances of discrimination, as well as large-scale, systematic discrimination nationwide. The ERC's 30 years of service as a fair housing and disability rights advocate has opened housing opportunities for thousands of individuals with disabilities.

At the core of the ERC's success in promoting civil rights is our three decades of experience in civil rights testing. Through a variety of innovative testing techniques, the ERC has become a national leader in identifying and documenting differences in the quality, quantity, and content of information and services provided to individuals based on individual factors and characteristics. Through this process, the nature and extent of illegal discrimination can be ascertained. The ERC conducts hundreds of civil rights tests each year to educate the public and government officials about the discrimination still faced by many individuals across America.





Introduction and Overview

Ken Davis, a prominent journalist, needed to contact his loan servicing company to discuss his home mortgage.⁶ Because Ken is Deaf, he uses Video Relay Service, a type of TRS, to make his calls.⁷ His mortgage company refused to speak with him, claiming that they could not converse with him over the relay service because they did not accept “second party calls.”⁸ Unfortunately, Ken’s experience is all too common, with many reports confirming that services are denied by both private businesses and government agencies.⁹

6 Davis interview.

7 Ibid.

8 Ibid.

9 Representatives from both the private and public sectors regularly refuse to accept TRS calls, denying service to individuals who are Deaf, hard of hearing, or who have a speech impairment. For example, after Hurricane Katrina, FEMA refused to take a TRS call from a displaced Deaf person, because the call came from a “third party.” Similarly, New York State’s child support call center refused service to an elderly Deaf couple, who cared for their grandchildren and needed to find out why child support payments had ceased. Cary LaCheen, *Improving Remote Communication between Public Benefits Agencies and Deaf and Hard of Hearing Individuals*, 43 Clearinghouse Rev. J. of Poverty L. & Pol’y 431 (2010). In the private sector, due to reports that some businesses refused to accept TRS calls, the Federal Communications Commission issued two advisories reminding businesses of their legal obligation to provide service to people who use TRS. Federal Communications Commission, “Public Notice: FCC Reminds Public of Requirements Regarding Internet Relay Service and Issues Alert” (June 18, 2004), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-04-1738A1.doc (accessed June 5, 2012); and Federal Communications Commission, “Public Notice: FCC Alerts Public and Merchants of Fraudulent Credit Card Purchases Through Internet Protocol (IP) Relay Service, a Form of Telecommunications Relay Service (TRS)” (May 4, 2007), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-2006A1.doc (accessed June 5, 2012).

Even when TRS callers do reach a person who is willing to provide service via TRS, studies show that TRS users do not receive equal treatment. Rather, TRS callers are routinely provided with less information and less follow-up than is provided to callers not using TRS.¹⁰

Discrimination against individuals with disabilities using TRS creates more than just a mere inconvenience—it excludes people with disabilities from equal access to vital services, further marginalizing and isolating this community. Such conduct not only violates civil and human rights laws, it is also bad business. With more than nine million individuals in the U.S. who are Deaf or hard of hearing, and millions more with speech impairments, TRS users represent a significant customer pool for housing as well as other goods and services.



10 The Urban Institute, “Discrimination against Persons with Disabilities: Barriers at Every Step” (June 2005), <http://www.hud.gov/offices/fheo/library/dss-download.pdf> at 8,35; studying the treatment of TTY users (accessed June 15, 2012).



Telecommunications Relay Services

TRS is a critical communication tool for people who are Deaf, hard of hearing, or have a speech impairment. As Ken Davis explained:

“It helps the Deaf community a lot when they call through [TRS] and those calls are accepted. It makes people feel that they have the same access to communications that the hearing people have. Like their needs are being met. It helps businesses as well because customers are calling and education happens through [TRS].”¹¹

There are several different types of TRS, which address a variety of communication needs and preferences, depending on the nature of an individual’s disability and their preferred language.¹² One commonly used TRS technology is the Internet Protocol Relay Service (IPRS).

11 Davis interview.

12 In addition to the Internet Protocol Relay Service discussed in this report, TRS technologies include: a) Video Relay Service, which utilizes video technology to allow TRS users to sign their statements to an interpreter; b) Voice Carry Over through which TRS users speak their statements directly to the called party and a communications assistant types the called party’s response to the TRS user; c) Hearing Carry Over, through which TRS users type or sign statements to the communications assistant, who speaks the statements to the called party and allows the TRS user to listen directly to the other party’s response; d) captioning services for individuals who have partial hearing, but who prefer or need to use captioning to ensure that they understand all of the other party’s statements; e) speech-to-speech relay services, which provide interpreters who specialize in understanding speech impairments; and f) Text-to-Voice TTY based TRS, in which a caller uses a specialized machine (TTY) to call a communications assistant, who then speaks the caller’s typed statements to the called party and types the called party’s responses to the caller. See Federal Communications Commission, “Guide: Telecommunications Relay Service” <http://www.fcc.gov/guides/telecommunications-relay-service-trs> (accessed June 5, 2012).

To use IPRS, an individual TRS user contacts a communications assistant over the internet and types his or her statements with a computer keyboard. The communications assistant then calls the party that the TRS user wishes to contact and speaks the TRS user's typed statements to the called party. When the called party speaks, the communications assistant types those spoken statements so that the TRS user can then read the called party's response.¹³ When a TRS call first connects to the called party, the communications assistant generally provides a brief introduction that informs the called party that he or she is receiving a relay call. The communications assistant then explains how the service works and answers any questions that the called party may have about TRS.

Federal law requires that all common carriers providing telephone voice transmission services also provide TRS to people with disabilities in their service areas.¹⁴ The Federal Communications Commission has been tasked with regulating TRS providers, mandating that they meet certain minimum standards, including:

- maintaining confidentiality by not disclosing the content of any relayed call unless required by federal law;
- requiring the relay of all information without alteration, unless the TRS user requests summarization; and
- ensuring sufficient staffing such that a communications assistant is available to place 85% of calls requested by TRS users within 10 seconds.¹⁵

13 IPRS is similar to Text-to-Voice (TTY) service, which uses a telephone line for the portion of the call that occurs between the TRS user and the CA, whereas IPRS uses an Internet connection for that portion of the call.

14 47 C.F.R. § 64.603.

15 47 C.F.R. § 64.604.





Legal Protections for TRS Users

Federal, state, and local laws prohibit housing providers from discriminating against people with disabilities. Federally, the Fair Housing Act (FHA)¹⁶ and the Americans with Disabilities Act (ADA)¹⁷ provide protections to people with disabilities who choose to use TRS to contact housing providers. State and local protections, including the District of Columbia’s Human Rights Act,¹⁸ also protect TRS users in the housing market.

The Fair Housing Act

The FHA broadly prohibits housing providers “from discriminat[ing] in the sale or rental . . . [of] a dwelling because of a handicap of that buyer or renter.”¹⁹ Federal courts have held that housing providers violate the FHA by refusing to accept TRS calls from people with disabilities when the housing provider accepts standard telephone calls.²⁰ In *United States v. Space Hunters*, the Second Circuit Court of Appeals recognized that refusing to accept TRS calls essentially amounts to refusing service to Deaf individuals.²¹

16 42 U.S.C. § 3601, *et seq.*

17 42 U.S.C. §§ 12181-89.

18 D.C. Code Ann. § 2-1401.01, *et seq.*

19 42 U.S.C. § 3604(f)(1)(A).

20 *U.S. v. Space Hunters Inc.*, 429 F.3d 416 (2d Cir. 2009).

21 In *Space Hunters*, the court said that punitive damages could be justified because the housing rental service “did not simply hang up on relay calls” but “used profanity ‘to chase them away from continuing to call back,’” such that an “evil intent” could be inferred. *Id.* at 427.

The FHA's equal treatment mandate also prohibits a housing provider from treating TRS callers differently from non-TRS users by:

- offering different terms or conditions for renting or buying housing
- providing less information;
- imposing more onerous application requirements;
- steering them toward, or away from, specific units;
- misrepresenting apartment availability; or
- failing to follow-up to the same extent as with callers using standard telephones.²²

Finally, the FHA requires housing providers to grant reasonable accommodations in rules, policies, practices, and services in order to ensure that people with disabilities have equal opportunity to use and enjoy a dwelling.²³ Under the FHA, a reasonable accommodation must be granted if there is an identifiable relationship between the requested accommodation and the individual's disability, and the accommodation will not impose an undue financial or administrative burden on the housing provider.²⁴ The small amount of additional time that may be needed to respond to a TRS caller is not a justification for providing disparate treatment.²⁵ Thus, housing providers must accommodate individuals with disabilities by accepting TRS calls and providing the same information to prospective tenants using TRS as they would any other housing applicant.

The Americans with Disabilities Act

In addition to FHA protections, the Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in a variety of contexts, including in places of public accommodation, such as rental housing leasing offices,²⁶ and telecommunications.²⁷ Like the FHA, the ADA and its regulations require housing providers to grant reasonable accommodations to people with disabilities, including individuals who rely on TRS.²⁸ Under the ADA, the owner or manager of a public accommodation must grant a request for a reasonable accommodation

22 42 U.S.C. §§ 3604 (d); 3604(f) (2).

23 42 U.S.C. § 3604(f)(3)(B).

24 United States Department of Housing and Urban Development, "Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations under the Fair Housing Act," <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf> (accessed June 4, 2012).

25 See generally *Space Hunters Inc.*, 429 F.3d at 422 (on appeal affirming judgment against defendant and reversing the denial of punitive damages, noting that defendant claimed at trial that TRS calls are too time consuming).

26 28 C.F.R. § 36.207.

27 28 C.F.R. § 36.303(d)(1)(iv).

28 42 U.S.C § 12182(b)(2)(A); 28 CFR § 36.302.



unless it can show that to do so would “fundamentally alter” the nature of their goods or services,²⁹ which merely participating in a TRS call does not do.

The ADA also requires that housing providers ensure that people with disabilities are not excluded from housing due to the absence of auxiliary aids and services, such as TRS.³⁰ ADA regulations promulgated by the United States Department of Justice explicitly require housing providers to “respond to telephone calls from a telecommunications relay service . . . in the same manner that it responds to other telephone calls.”³¹ According to the Department of Justice: “[i]mplicit in this duty to provide auxiliary aids and services is the underlying obligation of a public accommodation to communicate effectively with its customers . . . who have disabilities affecting hearing . . . or speech.”³² Like the FHA’s reasonable accommodation provision, under the ADA, a public accommodation may only refrain from providing auxiliary aids and services if providing them would fundamentally alter the nature of the public accommodation’s goods or services. Responding to inquiries for housing information via TRS calls not only does not fundamentally alter the nature of a housing provider’s goods and services, it is completely consistent with the very services they provide to non-TRS users every day.

State and Local Laws

People with disabilities who use TRS to call housing providers often have additional protections under state and local laws. In the District of Columbia, for example, the D.C. Human Rights Act (DCHRA) prohibits discrimination in housing and housing-related transactions against people with disabilities.³³

The DCHRA also provides that it is unlawful “[t]o deny, directly or indirectly, any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodations” if such denial is “wholly or partially for a discriminatory reason based on the actual or perceived . . . disability . . . of any individual.”³⁴ Intended to “secure an end . . . to discrimination for any reason other than that of individual merit,” the DCHRA also grants every individual an equal opportunity to “participate fully in the economic, cultural and intellectual life of the District, and to have an equal opportunity to participate in all aspects of

29 Ibid.

30 Ibid.

31 Ibid.

32 Department of Justice, “Americans with Disabilities Act Title III Regulations 2010 Section-by-Section Guidance and Analysis,” (2010) http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.pdf (accessed June 5, 2012).

33 D.C. Code Ann. § 2-1402.21.

34 D.C. Code Ann. § 2-1402.31(a).

life.”³⁵ While the D.C. Human Rights Act is in some ways exceptional,³⁶ its protections for people with disabilities seeking housing are among the most common provisions in state and local civil rights laws nationwide.³⁷



35 D.C. Code Ann. § 2-1401.01.

36 The DCHRA includes 19 different categories of people who are protected against discrimination under the law, compared to the seven protected categories under federal law. *See* D.C. Code Ann. § 2-1401.01.

37 *See* The Leadership Conference for Civil and Human Rights, “State and Local Fair Housing Enforcement Laws,” <http://www.civilrights.org/fairhousing/laws/state-laws.html> (accessed June 5, 2012).



Testing Methodology

In order to study how housing providers actually treat TRS users as they seek rental housing, during a six-month period, the ERC conducted 100 telephone tests of rental properties throughout the greater District of Columbia metropolitan area.³⁸ Each test included a control tester and a protected tester. The control tester had no hearing or speech impairment, and used only a standard telephone; the protected tester was Deaf, and relied on IPRS to place the TRS calls. All callers were recruited, trained, and supervised by ERC staff.

Each telephone test consisted of at least two parts. First, the control tester using a telephone contacted a property and inquired about apartment availability. The protected tester then contacted the same property and also inquired about apartment availability. If the protected tester was informed that no apartments were available, a third test part occurred whereby a control tester made another standard telephone call shortly after the protected tester's call to confirm whether any apartments were, in fact, available.

Each control tester and protected tester was instructed to ask pre-assigned questions of the leasing agent contacted. These questions included inquiries about apartment availability, rental rates, and, in some instances, the rental application process.³⁹ Testers were also instructed to provide the leasing agent with a designated telephone number and email address if the agent asked for contact information in order to “follow-up” with the potential renter.

38 In addition to testing in the District itself, the ERC conducted tests in the Virginia and Maryland suburbs abutting the District, such as Rockville, Maryland and Arlington, Virginia.

39 In order to expand the comparisons of treatment afforded testers, in 87 tests, the control tester and the protected TRS tester were instructed to inquire about the rental process for an available unit.

At the conclusion of their test part, the control testers and the protected testers each prepared a report that documented their conversation with the leasing agent. In reporting, the control and protected testers each completed an identical questionnaire about the information obtained during the call. Control testers also prepared a narrative of their calls, while the protected tester provided a copy of the call transcript prepared by the TRS service. ERC test coordinators then compared the corresponding test part reports to evaluate whether the protected tester was treated differently from the control tester. ERC staff also monitored the voicemail and email accounts given to leasing agents in order to determine whether the agents equally followed-up with both the control tester and the protected tester.





Testing Results

In a disturbing **45 of the 100 tests (45%) conducted by the ERC, the protected tester was treated differently, and less favorably**, when compared to the control tester. While rare, in one test the protected tester was blatantly refused service and provided with information that misrepresented apartment availability. More commonly, the TRS tester was provided with less favorable rental terms, including higher rents, additional fees or other application requirements, and less information about “specials,” such as rent reductions or fee waivers. Moreover, some protected testers received less follow-up from leasing agents than their hearing counterpart. In five instances, the protected tester experienced multiple forms of disparate treatment, such as higher rent prices and more stringent application requirements. Two of these tests included three forms of disparate treatment.

Refusal to Communicate

In a single test, the protected tester was directly refused service by a housing provider. In that test, the housing provider repeatedly refused to engage with the protected tester, first by saying there was no one available at that time and hanging up the telephone, and then refusing to answer two calls placed immediately thereafter.

Misrepresentation of Availability

In four of the ERC’s tests (4%) housing providers misrepresented housing availability to the protected tester. In three tests, the protected tester was told there were no apartments available, while control testers contacting the same housing provider both shortly before and after the protected tester were told that units were, in fact, available. In one test, the protected tester was told nothing was available, while the control testers were informed about units that were either immediately available or available the following week.

Different Rent or Specials

For the majority of people seeking housing, cost is the most decisive factor in determining whether to rent a unit. “Specials” and “incentives,” such as offering a month of free rent, are often used by housing providers to induce a potential renter to make an immediate decision to rent. **In 13 of the ERC’s tests (13%), the protected tester was told of higher rates for rent (7%),⁴⁰ or was not offered the same specials (6%), when compared to the corresponding control testers.** These more disadvantageous terms and conditions tend to discourage a potential renter from choosing to rent at a particular property.

Different Application Requirements

In 25 tests (25%), the protected tester was advised of more stringent application requirements than were required of the corresponding control tester. In 12 of these tests (12%), the protected tester was told that he would be subject to an application fee and/or deposit that was not imposed on the control tester. In seven of these tests (7%), the protected tester was told that he needed to meet an income requirement or have a credit check, while the control tester was not. In seven tests (7%), including one in which there was also an additional fee imposed, the protected tester was told that he would need to provide additional documents, such as pay stubs and a social security card, as part of the application process. The imposition of additional application requirements is a strong disincentive to renting, and act as a barrier to equal housing opportunities for TRS users.

⁴⁰ This figure only includes instances where the rent cost was greater by more than \$10 per month (\$120 over a one-year lease).

Lack of Follow-Up

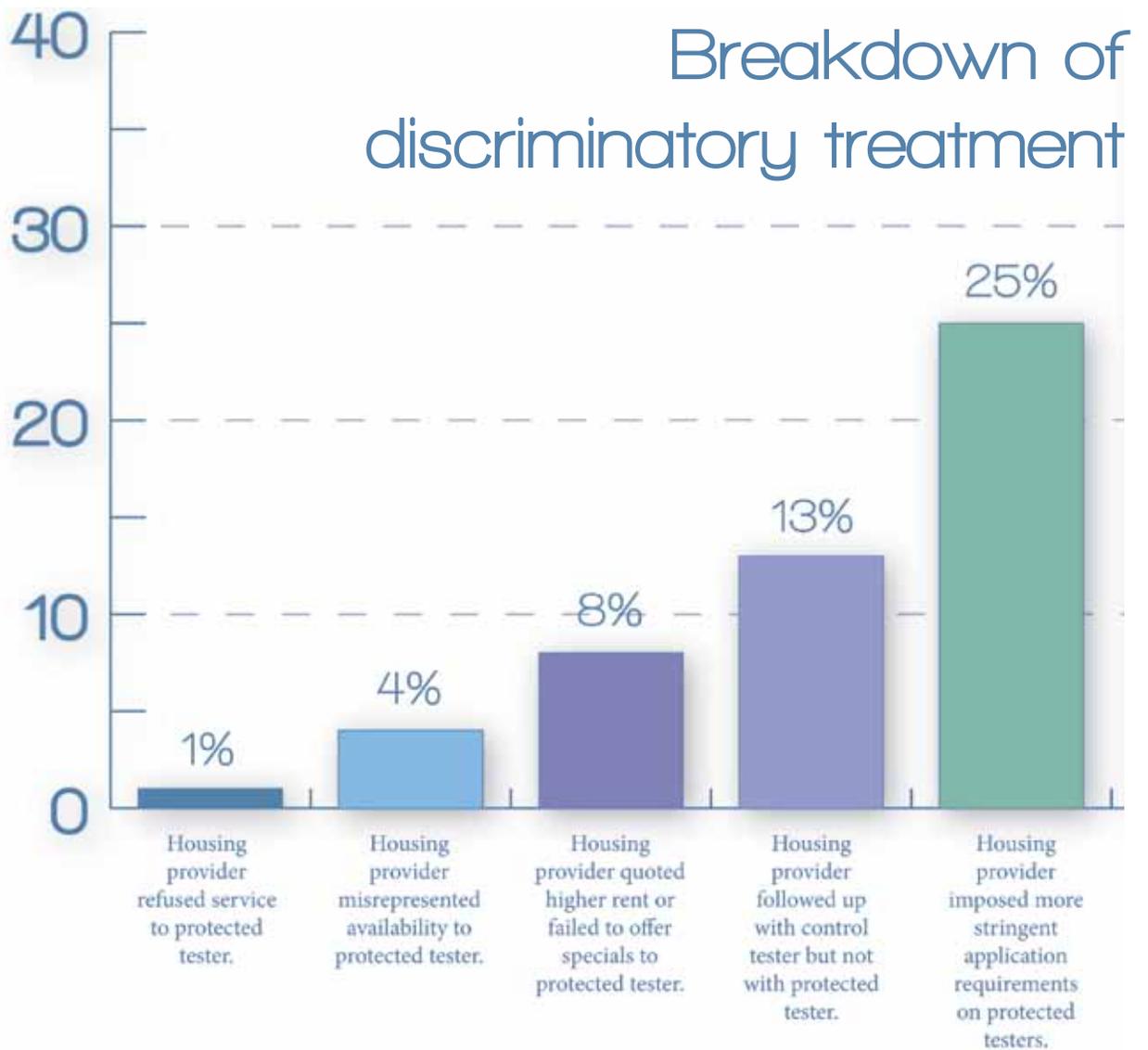
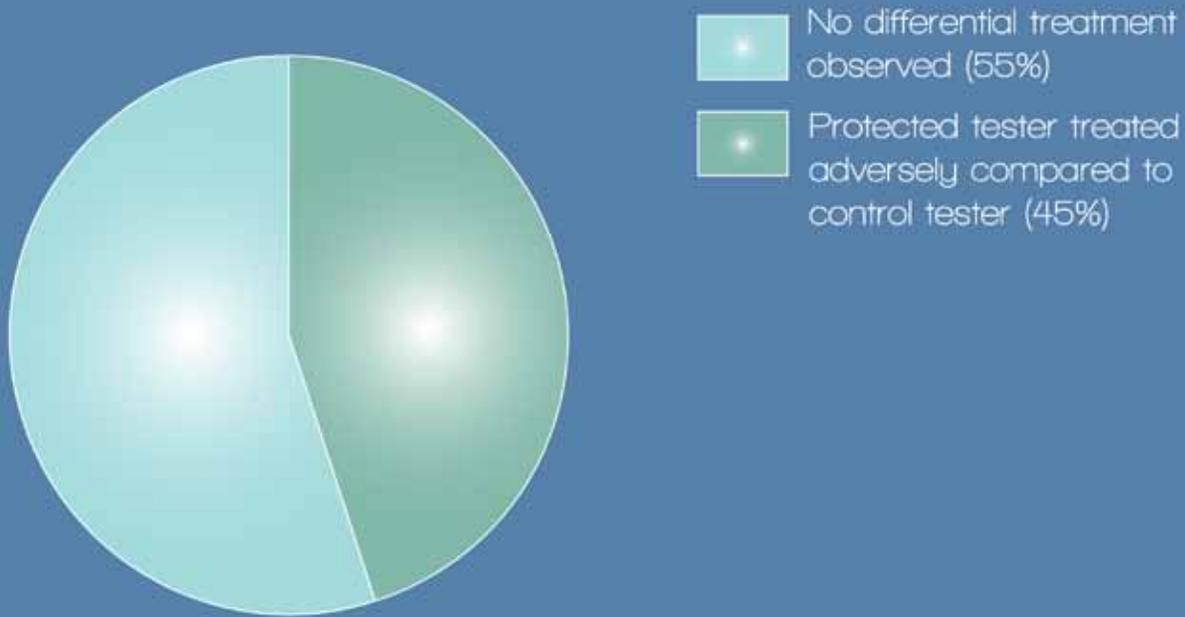
After a prospective tenant initially contacts a housing provider, a leasing agent will often follow up to encourage continuing interest and tenancy. Providing follow-up only to some prospective tenants has the effect of excluding other prospective tenants and, if linked to disability or another protected demographic, amounts to discrimination. **In eight tests (8%), the protected tester did not receive any follow-up, while the corresponding control tester did.** In four of these tests (4%), the agent never even asked the protected tester for contact information, while the control tester’s contact information was both requested and actually used to subsequently encourage them to rent at the property.

Additional Barriers

The ERC’s testing also showed that individuals using TRS confronted other challenges in attempting to obtain information from housing providers. For example, housing providers sometimes spoke in the third person about the protected TRS tester to the communications assistant, rather than addressing the protected tester directly; in one test, when describing the amenities of a building, the leasing agent told a communications assistant “he [the protected tester] can write it down.” Additionally, housing providers sometimes addressed the protected tester according to the gender of the communications assistant, rather than the tester’s gender. While these additional concerns may not clearly violate non-discrimination laws standing alone, they nevertheless demonstrate a lack of sensitivity to the disability community, and such practices should be avoided.



ERC's Testing Results



Conclusion and Recommendations

People with disabilities face barriers to equal housing opportunity far too often. For individuals with disabilities who wish to use TRS to communicate, these discriminatory barriers often begin the moment that they try to contact a housing or service provider. Throughout its nearly thirty-year history, the ERC has been dedicated to promoting fair housing for all people with disabilities. Based on its experience, and the disturbing results of the testing presented here, the ERC recommends the following actions to better ensure equal access to housing:

- **Housing providers** should better train their staff in offering equal service to all prospective tenants, in order to comply with the requirements of the FHA, the ADA, and local anti-discrimination laws. These trainings should include:
 - staff involved in marketing or leasing using telephone communications being made aware of the different forms of TRS, how various TRS technologies work in practice, and how to become comfortable communicating using TRS, including how to place TRS calls in order to follow up with TRS callers who prefer TRS as their communication medium of choice; and
 - the importance of accepting TRS calls, and of the requirement of providing TRS users with the same information, follow-up, and treatment afforded to other callers.
- **TRS users** should be prepared to protect their own rights by:
 - educating themselves on their rights under the FHA, the ADA, and local anti-discrimination laws;
 - advocating for their rights when confronted with discriminatory barriers; and
 - where necessary, contacting the Equal Rights Center, or filing a discrimination complaint with the United States Department of Housing and Urban Development, or their local civil rights or human rights agency.
- If a **TRS provider** is not providing the required services and the issue cannot be resolved, TRS users should direct their complaints to the Federal Communications Commission.

Advancements in technology, such as IPRS and other forms of TRS, have the demonstrated ability to assist those individuals with hearing and speech related disabilities to better achieve equal housing opportunities – but only if these technologies are accepted and utilized by housing providers, management companies, and individual leasing agents. Through the issuance of this report, the ERC hopes to hurry the day when no TRS user is the victim of discrimination.