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Regina McLeod

Western Michigan University, reginamcleod17@gmail.com

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Deaf and Hard of Hearing Accessibility at Drive-through Restaurants

Regina E. McLeod

Western Michigan University; Lee Honors College

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Literature Review

A report entitled, "Americans with Disabilities: 2010; Household Economic Studies" supplied by the United States Census through author Matthew Brault, contains population reports regarding people who have disabilities. In the survey, people who are deaf fall into the communicative domain of disability. This domain also includes those who are blind or have difficulty seeing and those who have difficulty having their speech understood. The survey defines disabilities based on severity within each domain. For those aged 6 and older, the non-severe communication category includes those who experience deafness or have difficulty hearing a normal conversation, even while wearing a hearing aid. Those described as deaf or unable to hear a normal conversation are in the severe subsection (Brault, 2012). The report includes a survey completed by 241.7 million adults aged 15 or older. Out of the 241.7 million, 7.6 million (3.1%) experienced a non-severe hearing difficulty. 1.1 million people (0.5%), reported having a severe hearing difficulty (Brault, 2012).

There is conflicting data on the exact statistics regarding the number of deaf people in the United States and this is mostly due to the fact that the U.S. Census Bureau only uses the term "hearing difficulty" in its American Community Survey (ACS) 1-year Estimate (United States Census Bureau, n.d.b). Due to this, it is difficult to determine the exact number of people who identify as deaf, as opposed to those who consider themselves hard of hearing or even having the slightest difficulty hearing. The 2017 ACS survey estimates that 11,270,650 people have a hearing difficulty, which ends up being an estimated 3.6% of the population. The estimate for the number of people between the ages of 18 to 64 years who have a hearing difficulty is 3,985,069. (United States Census Bureau, n.d.a). As pointed out by Gallaudet University, deaf people have not been counted as a separate category in the United States Census since 1930. "The last census

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of the U.S. deaf population was privately conducted in 1971, sponsored by the National Association of the Deaf” (Gallaudet University, 2004, para. 6). Due to this lack of data, the Gallaudet Research Institute has developed its own rough estimate of the percentage of people in the United States who have hearing problems, including both those who are deaf and hard of hearing. In an article by Holt, Hotto and Cole (1994), the authors estimate that 38,225,590 out of 294,043,000 or 13% of the total population have hearing problems. It is also estimated that there is a total of 421,000 people who are considered deaf in both ears, which is 0.18% of the population

With such a substantial portion of Americans having a vast scale of hearing difficulties, fast food restaurants need to be aware of effective methods of communication to help serve their deaf patrons. According to a survey conducted by Inclusion Solutions, 42% of the 6,500 deaf or hard of hearing people surveyed have left a drive-through without making a purchase due to frustration with the ordering system (Inclusion Solutions, 2004). There are many reasons fast food restaurants should ensure their drive-throughs are accessible to deaf people, the cardinal reason being that it is the law. For a more self-serving reason, restaurants could lower the lost business of customers who are deaf or have other communication barriers, who feel frustrated like those surveyed by Inclusion Solutions.

The Americans with Disabilities Act (ADA) is a federal statute created in 1990 that prohibits the discrimination of people who have disabilities and sets forth accommodations that legally must be provided to people who have disabilities. The ADA defines disability as being a "physical or mental impairment that substantially limits one or more major life activity" (Americans With Disabilities Act, 1990, §12102). Under this definition, disabilities related to hearing and communication are covered under the ADA.

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Title III is the section of the ADA that discusses public accommodations and services that are operated by private entities, which fast food restaurants fall under. Within Title III, there are three separate areas that are described as discrimination and are thus prohibited. The first of the three sections is called "denial of participation". This section encompasses that it "shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity". (Americans With Disabilities Act, 1990, §12182). The second section is termed as "participation in unequal benefit". The provision states that it "shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals"(Americans With Disabilities Act, 1990, §12182). The last main section is called "separate benefit". It provides that it "shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others" (Americans With Disabilities Act, 1990, §12182).

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As provided by author, Stephanie Jurkowski (2017), federal law supersedes state law and states cannot decide to lower the requirements that are established by the federal government. Since the ADA is federal law, the provisions cannot be lowered by state governments. It is fine, however, for states to implement laws that would increase accommodations related to disabilities if they so please, as long as it does not conflict with the ADA. For example, the state of New Jersey has a statute called the New Jersey Law against Discrimination, in which it is unlawful for public accommodations to deny or not offer accommodations based on disability and other protected statuses (The State of New Jersey, n.d.). The New Jersey law does not contradict anything set forth by the federal government in the ADA, so it is a valid and acceptable increase in civil rights for those who have disabilities.

Congress decided to enact the ADA for the following reasons: to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities" (Americans With Disabilities Act, 1990, §12101). When deciding to draft the ADA, members of Congress found protecting people with disabilities to be so important that the federal government needed to regulate such protections, instead of leaving the protections up to the states to decide.

Filing a Title III complaint can be accomplished online, through mail or by fax and there is also a Spanish language form offered online. The U.S. Department of Justice handles such

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complaints and after reviewing will outline the various forms of action that can occur. If there is a lack of basis for discrimination, the case will not be litigated or investigated, and the complainant will be notified of this outcome. The other outcomes that can occur are referral to the ADA Mediation Program for possible resolution of the complaint; referral to the United States Attorney's Office in the complainant's location in order to begin an investigation; referral to another federal agency with responsibility for the types of issues brought about in the complaint; investigation of the complaint by the U.S. Department of Justice; or consideration of the complaint for possible litigation by the U.S. Department of Justice (United States Department of Justice, n.d.).

The U.S Department of Justice is not able to bring every discrimination case to court and must be very selective in doing so. Due to the selective nature of cases that can be litigated or investigated, Congress specifically encourages alternative means of dispute resolution to be used when solving ADA violations (United States Department of Justice, n.d.). The U.S. Department of Justice has a mediation program in which the Department matches disputes with mediators at no cost to the complainants or the responding party involved. The mediators are professionals who have substantial knowledge regarding the rules and practices of the ADA. The Department boasts that its program has “resolved many ADA disputes quickly and effectively” (United States Department of Justice, n.d.). The mediation program can provide a beneficial outcome to the complainant without the lengthy process of litigation.

Michigan also has a process for reporting discrimination with the Michigan Department of Civil Rights. In terms of public accommodations at drive-through restaurants, the Department allows for a complaint to be filed if, “because of religion, race, color, national origin, age, sex, marital status, or disability, a person has been: denied admission privileges, or equal use of

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facilities, in places made available to the public; subjected to unequal treatment when admitted; denied goods, services, or advantages on an equal basis by a public facility” (Michigan Department of Civil Rights, n.d.).

The Disability Rights Section of the U.S. Department of Justice has created an effective communication guide for title III following entities, which includes public accommodations and commercial facilities. The guide stresses that covered entities need to provide auxiliary aids and services to those who have communication disabilities as to ensure effective communication, which means information received from the establishment to the patron, or vice versa. According to the guide, the key to effective communication is to consider all aspects of the communication as well as the way the person typically communicates (United States Department of Justice, 2010a). A great number of people who are deaf or hard of hearing have American Sign Language as their native language. This, however, is not inclusive of all people who are deaf or hard of hearing because some do not know or use American Sign Language at all. Thus, is not appropriate for all fast food establishments to limit their drive-through operations to only using American Sign Language as a way to communicate with deaf or hard of hearing patrons.

Fortunately, there are a plethora of ways fast food restaurants can ensure effective communication with their deaf patrons who are utilizing their drive-throughs. The Disability Rights Section of the U.S. Department of Justice provides an extensive list of these methods in their communication guide. They recommend methods that include other people, such as a note taker, an American Sign Language interpreter and a real-time captioner. Tangible materials can include a menu suitable for pointing or even a paper and pen to pass back and forth. They also recommend a slew of technological methods, which include open, closed, and real-time

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captioning. Teletypewriters can be effective, as well as videophones, captioned telephones, or other visual-based telecommunications methods (United States Department of Justice, n.d.a).

Inclusion Solutions is a company that aims to help businesses utilize technology that follows the law of the Americans with Disabilities Act (ADA) and allows patrons with all kinds of disabilities to have adequate access (Inclusion Solutions, n.d.a). In 2004, Inclusion Solutions, a company that helps businesses comply with the ADA and better assist customers who have disabilities, conducted a survey on deaf people and their drive-through dining habits. The survey had over 6,400 participants nationwide. The majority of participants, 79.3%, indicated that they are deaf, the rest of the participants included those who are hard of hearing, those with speech impairments, mobility impairments and other. The main findings of the survey indicated that 78% of participants have had difficulty placing a fast-food order and further, 42% have left the drive-through of a restaurant due to communication frustrations. The majority of participants found favor in the following solutions to drive through difficulties; electronic ordering systems and an assistance call button. 95% of respondents favored the former and 78% supported the latter (Inclusion Solutions, 2004). The survey concluded with the following three main points: "Access is a major concern to the deaf community and others, solutions such as electronic order systems or call buttons and written orders would be very well received by the deaf community, and customers with disabilities will reward restaurants that make changes to improve access" (Inclusion Solutions, 2004, p. 3) These findings show that technological improvements in the accessibility of drive-throughs will ensure that the restaurants are following the law. These additions will also increase business from patrons with disabilities and may boost company morale.

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Inclusion Solutions has created a drive-through access system called "Order Assist", which they promote as, sending a message of inclusion that welcomes every customer (Inclusion Solutions, n.d.b). The system works by having a bell that patrons can ring to notify the employees they will be pulling forward to the window to order. They even offer customized order forms that the deaf or hard of hearing patrons can fill out at the window (Inclusion Solutions, n.d.b). This notification system would be an easy step for fast food companies to take, that would help guarantee effective communication with deaf or hard of hearing people at their drive-throughs.

Three major fast food restaurants have undergone lawsuits from deaf individuals due to their drive-through proponent's failure to follow ADA law. These restaurant chains are Burger King, McDonald's and Taco Bell. As listed by McGinley and Rothstein (2010), The cases are *Cirrincione v. Taco Bell Corporation*, *Summerwood Corporation*, and *Newco Services Company, LLC*, *Sacchetti v. King*, and *Bunjer v. Edwards*. These cases illustrate the negative situations companies can find themselves in with an ADA violation. According to Title 28 of the Code of Federal Regulations, civil penalties that can be asserted by the court for public accommodations that violate the ADA can be up to \$92,383 for a first-time violation occurring after January 29, 2018. For subsequent violations of the ADA by public accommodations after January 29, 2018, the monetary penalty can be up to \$184,767 (Judicial Administration, 2016). These civil penalties do not include monetary damages that could be awarded to the plaintiff or the attorney fees the defendant may find themselves liable for.

In the ongoing lawsuit, *Cirrincione v. Taco Bell Corporation*, *Summerwood Corporation*, and *Newco Services Company, LLC*, *Cirrincione* alleges discrimination and failure to follow ADA law against two Taco Bell locations in New Jersey. The filed suit provides that employees

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from the first restaurant Cirrincione visited, leased by Taco Bell Corporation to Newco Services Company, LLC, discriminated against Cirrincione after she placed her handwritten order through the pick-up window. The manager eventually processed her order, but that occurred after he lashed out against Cirrincione, making fun of her disability and telling her she must utilize the inside of the restaurant to order next time. The employees of the second restaurant, Summerwood Corporation, closed the drive-through window on Cirrincione as she attempted to hand them her hand-written order. They refused to open the window and serve her. One of the main issues brought up by Cirrincione's attorneys is that the drive-throughs were not operating for deaf people in a way that was equal to the service offered to non-deaf individuals. The reasoning for the suit is not only to deter the defendants from continuing discrimination but also to compel them to set forth new practices for effective and accessible communication (Cirrincione v. Taco Bell Corporation, 2016). The suit states the damages Cirrincione aims to receive are "declaratory, injunctive, and equitable relief; compensatory and punitive damages; and attorney's fees and costs to redress Defendants' unlawful discrimination on the basis of disability in violation of Title III of the Americans with Disabilities Act." (Cirrincione v. Taco Bell Corporation, 2016).

Through the settlement of Sacchetti v. King, Burger King developed and implemented an ordering system that would be more effective for deaf and hard-of-hearing individuals. The case ended with the plaintiff, Sacchetti, serving as a consultant for the assistance of this program. The settlement had the same aim as the Cirrincione case, to implement improved accessibility practices (McGinley and Rothstein, 2010).

As mentioned by McGinley and Rothstein (2010), Bunjer v. Edwards is a lawsuit that was brought against a McDonald's located in Washington, D.C., where a deaf customer, Bunjer,

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was not only discriminated against, but was also arrested after his drive-through interaction. He tried to give a hand-written order directly to the pick-up window and was met with mocking by employees. He was given food that was not his order and seemed to have been messed with. He went inside to complain and because of his dissatisfaction on how the restaurant decided to handle the situation, refused to leave (McGinley and Rothstein, 2010). Due to this, he was arrested. The federal district court found that he had faced discrimination and even made the point, "under the current system, deaf and hearing-impaired patrons have no way to make use of the drive-thru facility. There is an easy way to make provision for these patrons. All that needs to be done is for the restaurant to put up a sign at the initial speaker/menu point instructing deaf patrons to proceed directly to the window to have their order filled" (Bunjer v. Edwards).

In ruling for Bunjer, the federal district court issued seven orders against the defendants. The restaurant was ordered to pay \$1,500 to the plaintiff in addition to court costs. The restaurant owners and employees were permanently enjoined from discriminating against people who have disabilities related to hearing, which is a strict order from the court prohibiting them from engaging in such behavior ever again. The court also ruled that the defendants are required to make a drive-through facility that is open to all customers by placing a sign at the starting point of the drive-through facility to instruct deaf and other customers with communication barriers that they can proceed directly to the drive-through window to place their orders. Once the customers proceed to the drive-through window to place their order, the court ordered that the facility must provide appropriate writing utensils for the customer to write down their order (Bunjer v. Edwards, 1997).

The court also made rulings related to the training of employees by ordering that "Defendants shall establish written policies and establish a training program to deal effectively

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with the needs of deaf and hearing-impaired customers. It is further ordered that Defendants maintain records of incidents involving a disruption in service with respect to hearing disabled patrons. Said records shall include, but are not limited to, the name, phone number, and address of the hearing-impaired customer; the date of the incident; the nature and resolution of the incident; and the names of the supervisor and all employees involved. Said records shall be maintained for a period of at least five years" (Bunjer v. Edwards, 1997). As stated by Judge Sporkin, the Court was hopeful that this case would "serve as a wake-up call" for the national corporation to implement training and other relevant policies related to customers who are deaf or have other hearing-related disabilities (Bunjer v. Edwards, 1997).

These lawsuits bring about another important issue, the party that holds the burden of accommodation. According to the U.S. Department of Justice, the ADA places responsibility for providing effective communication directly on covered entities, which drive-through restaurants are categorized as under Title III of the ADA (Americans With Disabilities Act, 1990, §12182). In Bunjer v. Edwards, the plaintiff, Bunjer, attempted to relay a handwritten note that he brought to the restaurant himself and the restaurant still refused his order. Bunjer was denied service even though he was the one attempting to provide himself accommodations, which is the sole responsibility of the restaurant.

Customers are not required to bring someone to interpret for themselves at the drive-through restaurant. An ADA covered person is required to use a companion to interpret in only two situations. The United States Department of Justice defines the first situation as being, "an emergency involving an imminent threat to the safety or welfare of an individual or the public, an adult or minor child accompanying a person who uses sign language may be relied upon to interpret or facilitate communication only when a qualified interpreter is not available" (United

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States Department of Justice, 2010). The second exception is, "in situations not involving an imminent threat, an adult accompanying someone who uses sign language may be relied upon to interpret or facilitate communication when a) the individual requests this, b) the accompanying adult agrees, and c) reliance on the accompanying adult is appropriate under the circumstances" (United States Department of Justice, 2010). These second exemption is made clear to not apply to minor children, who should not be used to interpret or facilitate communication unless it is an absolute emergency. Even with these exemptions in place, if a person with communication barriers goes to a drive-through and has a person with them who could interpret, they are under no obligation to utilize the person with them to order. The restaurant cannot make or recommend that the third party interpret, it is up to the customer to decide.

Title III entities are encouraged by the United States Department of Justice to consult directly with the customer who has a disability to discuss what aid or service is appropriate. The purpose of this is to provide an aid or service that will be effective, by taking into consideration the complexity of what is being communicated and the person's preferred method of communicating (United States Department of Justice, 2010). According to the ADA, a restaurant does not need to offer an accommodation if doing so would create an undue hardship. Undue hardship means that the accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, and the needs of the business, but an employer may not refuse to provide an accommodation just because it involves a cost (Americans With Disabilities Act, 1990, §12182).

In determining whether a particular aid or service would result in an undue burden, a Title III entity should take into consideration the nature and cost of the aid or service in relation to their size, overall financial resources, and overall expenses. Generally speaking, a business

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that has a large amount of resources is expected to do more to ensure effective communication than one who has less resources. Also, if the business is a franchisee, the financial relationship, as well as the size, resources, and involvement of the franchisor, would also be up for consideration (Americans With Disabilities Act, 1990, §12182).

A main issue that was brought up by Judge Sporkin in *Bunjer v. Edwards* is when drive-through restaurants lack appropriate signage near the drive-through speaker indicating to customers who need communication-required accommodations on what steps to take. Judge Sporkin stated that a simple way to improve drive-through accessibility would be for the restaurant to “put up a sign at the initial speaker/menu point instructing deaf patrons to proceed directly to the window to have their orders filled” (*Bunjer v. Edwards*, 1997). A lack of signage could potentially be viewed as a violation of Title III of the Americans with Disabilities Act (ADA). Section 12182, subsection (a.), defines discrimination as including, “a failure to remove architectural barriers, and communication barriers that are structural in nature, where such removal is readily achievable” (Americans with Disabilities Act, 1990, §12182).

Providing outstanding accommodations can actually increase profits and generate business for drive-through restaurants. As stated in an article by Madison Kircher, a Starbucks franchise in Florida recently received over 5 million views on a video circulated through various media sources. The video shows a deaf customer driving up to the drive-through speaker and pressing a button to receive a video call to an employee who was able to use ASL to take the customer’s order (Kircher, 2015). Videos like this one receive a substantial amount of positive attention and circulation online. This media coverage boosts a corporation’s public image and can likely lead to increased profits for the particular franchises involved. More importantly, the overall corporation receives a positive public image, even though a particular franchise is

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responsible for the accommodations offered to customers. Just because one Starbucks franchise offers such a service, does not mean all locations offer that service.

On the other hand, a lack of accessibility or discrimination can lead to negative media attention, which can be detrimental to a business in terms of negative media attention and lost profits. The situations come up often in various media outlets. A recent example of this is laid out by reporter, Amanda Henderson, in which a deaf man in Jacksonville, FL was refused service when attempting to order at a Dunkin' Donuts drive-through (Henderson, 2019). Another incident that received immense media circulation took place at a KFC restaurant in Mississippi. As mentioned by author, Anthony Perez, the attention surrounding the incident was so negative that "the management company of 270 KFC, Pizza Hut and Taco Bell franchises nationwide has agreed to provide sensitivity training at those outlets following a May incident at a KFC in Mississippi in which a deaf woman felt she was being mocked" (Perez, 2018). Restaurants suffer when they do not have existing accommodation policies and disability discrimination training in place for employees.

In summary, the literature review details clear legal obligations for drive-through restaurants in accommodating the needs of the deaf or hard of hearing. In addition to legal obligations, the literature suggests that both the franchise itself and the larger corporation would build good will and increase their market if they were to integrate proper accommodations for the deaf and hard of hearing community.

Research Purposes, Procedures and Methodology

Purpose/Background Information

The purpose of this study is to identify whether or not there is an issue regarding accessibility at restaurants that have a drive-through component in the Kalamazoo/Portage area. The literature review highlights concerns with this issue.

The goal of this research is not to impersonate a person who is deaf and hard of hearing or to participate in cultural appropriation, it is only to identify issues within the restaurant's policies and procedures that are related to accessibility. As a hearing person, I obviously have no idea of knowing how this experience actually is. It would have been preferable to use a person who is deaf or hard of hearing to go to each drive-through, but I feel that the risks associated with them participating would be too costly, as they would likely be put in a situation where they had to deal with discrimination.

Past lawsuits illuminate the issue that members of the deaf and hard of hearing communities are facing at drive-through restaurants. Some cases go past frustration, all the way to blatant discrimination. As laid out by McGinley and Rothstein (2010), two of these cases are *Sacchetti v. King* and *Bunjer v. Edwards* (McGinley & Rothstein, 2010, pg. 301). In each case, the respective restaurants were sued under a violation of Title III of the Americans with Disabilities Act, unlawful discrimination on the basis of disability. The main goal of this honors thesis is to discover if these concerns are occurring at drive-through restaurants in the area.

The purpose of this study is not to make accusations against restaurants in the area, it is to learn if there is a communication barrier affecting those who are deaf and hard of hearing. No identifying information will be disclosed of either the restaurants studied, or the employees encountered in the study; only experiential data on my ordering experience. With awareness and greater understanding, issues can be corrected. This could be due to policy changes of drive-through restaurants at the individual or corporate level or legislative actions by state or local

governments. There may be a large issue in the Kalamazoo/Portage area that needs to be corrected in order to ensure an accessible community.

Research Procedures and Methodology

The study will take place at various fast food restaurants that include a drive-through, throughout the Kalamazoo/Portage area. I will visit 14 different fast food establishments that will remain unidentified, except for the arbitrary number assigned to them. I will use a deceptive approach, as I will order in a manner that may portray the image that I am deaf or hard of hearing but am not actually deaf or hard of hearing.

I will drive to each restaurant in my car and drive straight up to the window because that is equivalent to what a person who is deaf or hard of hearing would most likely do. Once I approach the window, if the window is open and the employee is ready, I will first use American Sign Language to indicate that I need assistance. What occurs next depends upon the reaction of the employee at the window and the policies the restaurant location has set up. In whatever means granted to me, whether it be a piece of paper and a pen, a picture menu, or some other tool, I will attempt to order a large drink. Throughout the interaction, I will identify what procedures the employees/restaurant have in place to handle a situation such as this. Once I successfully or unsuccessfully order the large drink, I will immediately park in a safe location and take field notes on what occurred. I will note the date and time of day, but no identifying information.

The field notes will pinpoint what procedures the restaurant has in place for when a deaf or hard of hearing customer attempts to order at their drive-through. The data will be categorical and based on my experience of accessibility and effectiveness of ordering. The study will take place during the month of February 2019.

Subject Recruitment

The subjects of this study are the restaurants visited, specifically their procedures and policies. The restaurants will be 14 restaurants in the Kalamazoo/Portage area and each establishment will be different. There will be 7 restaurants visited in Portage and 7 visited in Kalamazoo. These 14 will also include 7 that are visited on the weekend and 7 that are visited during the week. No identifying information will be disclosed, and each restaurant will be assigned an arbitrary number for the purpose of data collection. There will be no way to identify what restaurant was visited because nothing regarding the name, specific location, or food offerings will be mentioned. While I will be interacting with employees, this is a study on the policies a restaurant has for helping deaf or hard of hearing customers, not a study on employee behavior.

Informed Consent Process

As the focus of this study is on restaurant procedures and policies, not on individuals, it was determined by Western Michigan University's Human Subjects Institutional Review Board that IRB oversight is not required. Furthermore, with no human subjects, there is no process of informed consent prior to data collection. There will be no disclosure of any identifying information whatsoever, for both the restaurant and the employees present in the interaction. Precautions will be taken to ensure that no identifying information is disclosed, down to ordering the same item, a large drink, at each restaurant. The study will not identify the restaurant name, type, or location (besides the Kalamazoo/Portage area). The study will also not identify the name, gender, age, or any physical characteristics of any employee encountered. It will be impossible to pinpoint what restaurant is encountered in each situation and further, what

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employee was encountered. The data will be field notes based on my personal ordering experience and the mechanisms put in place by the restaurant.

Risks and Costs to and Protections for Subjects

There are no physical, economic or social risks in this study because the information regarding the employees and restaurants will be unidentifiable in every way. Risk will mostly be placed on me as I will be the one in a vulnerable position, but I am prepared for the task. I am earning a minor in sign language, so I am confident in the language if it becomes necessary to use it. I have also taken a class on deaf culture and history. I am prepared for the unexpected chance of a negative interaction and will handle it calmly. I have experience as an actress, so I will not break character. I believe that my acting experience along with my education in sign language leaves me at a unique position to conduct this study.

Benefits of Research

This thesis will provide an understanding about a communication barrier that can affect a certain population of people. If it turns out that there is an ordering issue for those who are deaf or hard of hearing with the restaurants in the Kalamazoo/Portage area, this thesis will provide a potential remedy to the problem. If no such issue is found, this research project will attempt to identify the reasoning behind why the Kalamazoo/Portage area drive-through restaurants differ from the restaurants involved in the ADA violation and discrimination-based lawsuits. This project will benefit the subjects involved because it will allow them to strengthen their skills in dealing with deaf or hard of hearing members of their community or expose them to a type of customer they have never had before.

If an issue is found, it is my hope that the findings could lead to policy changes within restaurants, even those not included in the study. I hope that it will bring about a consciousness

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on the issue for restaurant managers and corporate level employees. This could lead to training manuals being updated and new methods of ordering being implemented. This thesis could also lead to governmental changes in the long run and introduce new statutes regarding the issue at hand.

The Americans with Disabilities Act is law that public accommodations must follow. This research is of the utmost importance because if the law is being violated, it must be corrected. Without correction, it could lead to lawsuits and a negative public image. If the restaurants' employees and corporate level staff take this information seriously, it could prevent potential lawsuits. Not only that, but it could protect a vulnerable population of people from discrimination.

Confidentiality of Data

The only person who will be aware of the specific restaurants where data collection takes place will be me. The data will be collected through field notes and then broken up into categorical measures. The field notes will be located in my journal and will be retained by me in a safeguarded area until the thesis process is complete, after which they will be destroyed.

Research Findings

Throughout a period of eleven days, I visited fourteen drive-through restaurants in the Kalamazoo/Portage area. Seven of the restaurants have locations in Portage and seven are located in Kalamazoo. Within those fourteen, seven were visited on a weekday and seven on a weekend. I attempted to visit half of the restaurants during what would be considered a busy time, such as during the lunch or dinner rush. At each location I used a stopwatch to measure the time I had to wait before ordering, to indicate "busyness". The average time I had to wait before ordering was three minutes and sixteen seconds. The longest I had to wait was eight minutes and

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twelve seconds and the shortest I had to wait was ten seconds. For the purposes of my research, I used the three-minute wait time as a requirement to be considered “busy”. For eight out of the fourteen restaurants I had to wait less than three minutes and at the remaining six restaurants, I waited for three minutes or more. Based upon this measure, I considered nearly half of the restaurants that I visited to be busy.

The first main issue I faced with some drive-throughs was a lack of signage near the menu and voice-ordering mechanism that indicated what to do. Of the fourteen drive-through restaurants I visited, only four had a sign that notified people to pull forward to the window if they have accessibility needs, a communication barrier, or some variation of that. The remaining ten restaurants had nothing at all indicating what to do, so the only option is to drive straight up to the window. Only one place I visited had a button to press that indicated to the staff inside the restaurant that someone would be pulling up to the window to place the order. This signage, or lack thereof, is crucial in providing customers with an accessible ordering experience. Customers will be unable to know how to receive accommodations if the restaurant is not clear with its instructions.

The way in which the employees took my order was largely by handing me a piece of paper and a pen, which was utilized at twelve of the fourteen drive-throughs. The method of using a piece of paper and a pen was successful and convenient as both the customer and the employee can write back and forth to one another. One restaurant offered me only a picture menu to point at for ordering, which was largely unsuccessful because the employees then had no way of furthering communication and were forced to rely on pantomiming to ask questions on size and comment on price, which was frustrating and time consuming for both parties involved. By handing me a picture menu and a piece of paper and pen, one restaurant made the ordering

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process even more effective. One restaurant had a manager who had American Sign Language (ASL) skills. When I pulled up to the drive-through she signed to ask me if I knew ASL and when I indicated that I did, she took my order using ASL.

Indicating price was also a problem area for some restaurants. Only half, seven out of fourteen of the restaurants I visited, indicated the price to me before I paid. Two of the places had an electronic screen that shows the price to every customer and one place used American Sign Language to indicate the price to me. The remaining four places that indicated price to me used a paper and pen to write the price to me. The places that did not relay the price to me put the order into the system and stared at me until I handed them my credit card. Drive-through employees tell customers who do not need accommodations the price of their item(s) before paying, so they should be telling the prices to customers who need accessibility-related accommodations.

At each restaurant I timed the amount of time it took for the employee to successfully enter my order into the register. The quickest time was forty-five seconds and the longest time was three minutes and twenty seconds, with an average of two minutes and twenty-one seconds. I noted that most people in line before me spent an average of one minute to place their orders at the drive-through speaker. Thus, the time I took to order with the added accommodations was around double the amount of time that other customers around me took to order.

I speculate the reasoning behind it taking double the amount of time for me to order is due not to the actual accommodations being provided, but due to the restaurants employees being ill-prepared to implement such accommodations. The assistance time for some restaurants was so slow because the employees had no idea on what to do and often had to ask higher level employees how to proceed. The places that were the quickest at taking my order appeared to

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have some type of structured plan in place for if they were met with a customer who had communication barriers. These restaurants were quick to realize they needed to provide accommodations and used their various methods to assist me in ordering, immediately. At the restaurant I visited that took the longest amount of time for me to order, a person behind me in line drove out of the line because it was taking so long. With all things considered, in order to be efficient with their time and not lose valuable customers due to a long amount of time for employees to figure out how to offer ADA-compliant accommodations, restaurants should include such information in their employee training. There is not a secure way for restaurants to avoid providing accommodations, as it is the law. Thus, these restaurants should find it worthwhile to train employees on how to offer such accommodations appropriately.

One of the best exchanges of accommodations occurred when after relaying my order by writing it down, the employee communicated the price back through the piece of paper and then wrote down on the paper asking if I wanted to join the rewards program. This exchange was superb because the employee had been trained to treat customers who require accommodations the same as every other customer. The outcome of this ordering experience is entirely in line with the spirit and goals of the Americans with Disabilities Act, which is to ensure that restaurants treat every customer, regardless of accessibility needs, equally.

Recommendations

My recommendations for drive-through restaurants in the Kalamazoo/Portage area to maintain ADA compliant drive-through ordering operations are substantially similar to the United States District Court's orders in the case, *Bunjer v. Edwards*. In *Bunjer*, Judge Sporkin ordered that the drive-through restaurant found to have violated the ADA needed to implement training for employees about discrimination and accessibility, improve the instruments used to

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facilitate accessibility, and update physical structures to ensure ease of access for customers who have communication or hearing-related disabilities. These three components are crucial in the full accessibility of a drive-through restaurant for customers who are deaf, hard of hearing, or have other communication-related barriers. Furthermore, I believe the restaurants should implement use of a button for customers who have communication barriers to press to indicate to the employees that they will be placing their order at the window.

Drive-through restaurant employees should be trained on how to provide service to customers who have communication barriers. This training is imperative for drive-through restaurants avoiding lawsuits in violation of the ADA. The ADA sees discrimination by public accommodations and services as including a “failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden” (Americans with Disabilities Act, 1990). The employees of drive-through restaurants need to be aware that they cannot treat patrons who have communication barriers in a way that is discriminatory or differential from how they treat other customers. One way that is differential would be failing to indicate the price of the items to deaf or hard of hearing customers before they issue payment, just as I experienced.

It would be extremely beneficial for employees to receive information on what constitutes discrimination and why it is so crucial to avoid. This understanding could aid in employee knowledge on how to conduct themselves in the presence of someone who needs accommodations. Even if employees have been trained on how to provide ADA-compliant

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accommodations, the behaviors of each employee must not be discriminatory. The most secure way to ensure that employees do not exhibit discriminatory behavior is by educating them on acceptable and unacceptable actions.

The most efficient and successful way to accomplish ADA training is through the restaurant corporation setting companywide employee procedures for the interaction with customers who have communication barriers. This should be up to the parent company and not each individual franchise, because that method will produce the most cohesive results throughout franchise locations.

The instruments used by a corporation necessary for drive-through accessibility related to communication should at the lowest level be the presentation of a pen and a piece of paper to the customer. Just as the United States District Court ordered in the case of *Bunjer v. Edwards*, drive-through restaurants need to provide customers who are deaf or have hearing-related disabilities with “access to appropriate writing instruments to write down their order” (*Bunjer v. Edwards*, 1997). It would be ideal for the corporation to provide more accommodations, such as an on-staff or on-call American Sign Language interpreter, or a digital ordering screen, but they are not required to provide anything more than the basic-level accessibility.

Signage near the drive-through speaker box should be added to restaurants that lack it. As experienced through my research, places that lacked such signage were much more disorganized in their implementation of accommodations. Further, a lack of signage could potentially be viewed as a violation of Title III of the Americans with Disabilities Act (ADA). Section 12182, subsection (a.), defines discrimination as including, “a failure to remove architectural barriers, and communication barriers that are structural in nature, where such removal is readily achievable” (Americans with Disabilities Act, 1990, §12182). A drive-through speaker is

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structural and presents a communication barrier for those who have some to full levels of hearing loss, as well as those who cannot speak. Communication barriers could be remedied by the addition of signage that instructs customers on what action to take, which is typically driving straight to the payment window for assistance. The ADA defines “readily achievable” as being “easily accomplishable and able to be carried out without much difficulty or expense” (Americans with Disabilities Act of 1990). Signage additions would be “readily achievable” as they are low cost and an easy addition to make. The one-time payment of this amount of money is not burdensome or expensive for the average fast food franchisor or franchisee, thus the restaurants should have these signs.

In *Bunjer v. Edwards*, Judge Sporkin stated that a simple method to improve drive-through accessibility would be for the restaurant to “put up a sign at the initial speaker/menu point instructing deaf patrons to proceed directly to the window to have their orders filled” (*Bunjer v. Edwards*, 1997). My observations during research coincide with the judge’s opinion on this matter. Not only would a sign increase accessibility for customers who have communication barriers, it would also improve the functionality of the restaurant because a clear policy for accessibility would be put in place.

The most efficient option would be for drive-through restaurants to implement a button that notifies the employees inside that a person will be coming up to the window to order and that accommodations should be prepared as they will need to be provided. Drive-through restaurants have to operate quickly, as that is the whole purpose behind fast food. As seen in my research through the person who pulled out of the line after ordering, not having a procedure in place to assist customers who have communication barriers is not cohesive with the speediness required by drive-throughs. Drive-through lines will be slowed down because the employees

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have to guess on what action to take to help a customer or on what accommodations to implement.

These alert systems are not too costly to implement, as it is essentially a wireless doorbell. Inclusion Solutions offers the BigBell™ system for \$199. Inclusion Solutions also sells a package called OrderAssist™ for an average price of \$800, although there is a discount for buying in bulk, if a corporation were to do so. The system includes not only the BigBell™ system, but also other materials such as a steel bar for mounting of the BigBell™, a special sign indicating that those who are deaf or have other communication barriers should press the button and proceed to the window to place their order, and restaurant-specific order forms for the customer to use once they approach the window (Inclusion Solutions, n.d.b.). It would be a greater cost for a business to not be accessible and lose customers who have communication barriers, lose customers in line for taking too long to help a customer who needs accommodations, or even worse, have to pay court costs and lawyer fees if faced with a lawsuit for violating the ADA.

To become fully accessible in terms of equal ordering processes for people who have communication barriers and those who do not, there would have to be a complete redesign of the current drive-through system that is used by most drive-through establishments. Instead of a speaker, there could be a kiosk near the menu in which people could select the food items they want by touching a screen. As mentioned by journalist, Hollis Johnson, the Panera Bread restaurant corporation recently implemented kiosks for customers to place their own orders, instead of using employees to place said orders. Using the kiosk the customer is able to browse the menu, read nutritional information and add customizations before placing an order and paying, all through the machine (Johnson, 2015). While these specific kiosks have been

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implemented for in-store use, a similar mechanism could potentially be used for drive-through restaurants instead of a speaker. Since speech and hearing is not relied upon in the ordering process, it would be more accessible for those who have communication barriers. This overhaul of the fast food system is not required by law, but as technology ever increases, it may be a possibility for the future.

Drive-through restaurants, while not totally inaccessible to customers who are deaf, hard of hearing, or have other communication barriers, still have much room for improvement. The results of this research, as well as the fact that there is still an ongoing federal lawsuit regarding similar accessibility and discrimination at drive-throughs in the case of *Cirrincione v. Taco Bell Corporation*, *Summerwood Corporation*, and *Newco Services Company, LLC*, is indicative of the fact that the current state of drive-through accessibility for customers who have communication-related disabilities is not exemplary. It is imperative that drive-through restaurants implement training for employees on topics of disability discrimination and accessibility, improve the instruments used to facilitate accessibility, and update physical structures to ensure ease of access for customers who have communication or hearing-related disabilities.

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