

MEANINGFUL ACCESS TO JUSTICE

A HANDBOOK FOR NEW
HAMPSHIRE COURT OFFICIALS
ACCESS TO PROGRAMS,
ACTIVITIES AND SERVICES FOR
PERSONS WITH DISABILITIES



NEW HAMPSHIRE
JUDICIAL BRANCH
ADMINISTRATIVE OFFICE
OF THE COURTS
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TABLE OF CONTENTS

INTRODUCTION.....2

OVERVIEW OF AMERICANS WITH DISABILITIES ACT2

 Background2

 Defining Disability under the ADA2

 Individuals Protected by the ADA.....2

 Activities Covered by the ADA3

 Quick Tips for Communicating with People with Disabilities3

 Effective Communication4

 Requesting and Use of Medical Documentation Supporting Requests for Accommodations5

 Accommodating Individuals Who Use Service Animals5

 Accommodating Individuals with Cognitive Disabilities7

 Accommodating Individuals with Mental Health Disabilities.....7

 Accommodating Individuals Who Use Mobility Devices8

 Accommodating Individuals who are Deaf or Hard of Hearing8

 Accommodating Use of Support Persons9

 Examples of ADA Requests And How An Individual Would Submit The Request10

INTRODUCTION

The New Hampshire Judicial Branch is committed to maintaining an environment ensuring that all persons are treated with dignity, respect and courtesy.

Title II of the Americans with Disability Act of 1990 (ADA) protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State government.

This Handbook is designed to help judges and court staff ensure that litigants, jurors, attorneys, and other individuals who interact with our state courts are given meaningful access to all services provided in each of our courthouses throughout the State.

For more information, go to courts.nh.gov/resources/americans-disabilities-act-ada or the U.S. Department of Justice's website ada.gov. Questions can be addressed to General Counsel Mary Ann Dempsey, mdempsey@courts.state.nh.us who serves as the Judicial Branch's ADA Coordinator.

OVERVIEW OF AMERICANS WITH DISABILITIES ACT

Background

The Americans with Disabilities Act ("ADA") was enacted in 1990 to ensure that qualified individuals with disabilities enjoy the same opportunities that are available to persons without disabilities.

The ADA has five sections:

- employment (Title I);
- state and local government services (Title II);
- public accommodations (Title III);
- telecommunication services (Title IV);
- miscellaneous provisions (Title V).

The focus of this Handbook is on Title II which prohibits discrimination on the basis of disability for all services, programs and activities provided to the public by state and local officials.

Defining Disability under the ADA

The U.S. Department of Justice's regulations includes a three-prong definition of "disability": (1) a physical or mental impairment that substantially limits one or more major life activities; (2) a record (or past history) of such an impairment; or (3) being regarded as having a disability.

Major life activities include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

Individuals Protected by the ADA

The ADA protects qualified individuals with disabilities. An individual is qualified when they meet the essential eligibility requirements for participation. This includes parties, representatives, witnesses, jurors, observers and anyone else seeking to access court services.

Eligibility requirements for participation in court programs must not unnecessarily exclude persons with disabilities and must not be based on stereotypes, speculation, or arbitrary bases. Instead, the determination of whether a person with a disability is qualified must be made on a case-by-case basis.

The ADA also provides protections against discrimination for individuals who have a known relationship or association with persons who have disabilities. When determining whether someone is qualified, courts must take into account whether he or she is qualified with or without (1) reasonable modifications to their policies, practices, and procedures, (2) provision of auxiliary aids or services, and/or (3) removal of architectural and communication barriers.

Activities Covered by the ADA

All services, programs, and activities of a court are covered by Title II. These activities include:

- juror selection;
- trials;
- hearings;
- Drug Court;
- mediations;
- court committees and other meetings; and
- access to information, libraries, publications, and websites.

The ADA protects all participants, including parties, witnesses, jurors, observers, attendees at events, and attorneys. The type of ADA accommodation may differ depending on the individual's role in the process.

Example: A potential juror who is blind or deaf will be qualified to serve if reasonable modifications or auxiliary aids (such as large print, a reader, or CART services) are provided.

Most people with disabilities are capable of fulfilling their role with a reasonable accommodation and a court must not exclude them on the basis of generalizations, assumptions, or stereotypes.

Quick Tips for Communicating with People with Disabilities

- Treat everyone with respect.
- A mobility device is considered part

of an individual's personal space; do not lean on it or move it without permission.

- When you offer assistance, wait for the individual to respond; do not make assumptions, listen, ask for instructions, and respect the individual's wishes.
- Speak directly to persons with disabilities; do not avoid eye contact or speak only to their companions.
- Be patient and give your full attention to persons who may have difficulty communicating; some people need more time to express themselves.
- If you do not understand someone, do not pretend you do; ask questions that will help you understand.
- When speaking with a person who is deaf or hard of hearing, speak clearly, face the person, and do not cover your mouth. If speaking through an interpreter, direct your attention to the individual with a disability, not to the interpreter.
- Keep paper and pen handy for exchanging notes with persons who are deaf, hard of hearing, have speech disabilities, or other disabilities that affect communication. Be up to date about any other available communication aids (assistive listening devices, sign language interpreters, etc.) that are available.
- When speaking with a customer of short stature or a person using a wheelchair or scooter, it may be helpful to sit down at eye level, if possible, to make the conversation easier.
- When speaking with a person who is blind or has low vision, identify yourself and others who are with you, and let the person know if you are leaving. Use specific words to give information or directions (remember the person may not be able to see you pointing, nodding, etc.) and offer to read printed material out loud if necessary.

Effective Communication¹

The ADA requires that title II entities (State and local governments) and title III entities (businesses and nonprofit organizations that serve the public) communicate effectively with people who have communication disabilities. The goal is to ensure that communication with people with these disabilities is equally effective as communication with people without disabilities.

The purpose of the effective communication rules is to ensure that the person with a vision, hearing, or speech disability can communicate with, receive information from, and convey information to, the covered entity. Covered entities must provide auxiliary aids and services when needed to communicate effectively with people who have communication disabilities. The key to communicating effectively is to consider the nature, length, complexity, and context of the communication and the person's normal method(s) of communication. The DOJ's rules apply to communicating with the person who is receiving the covered entity's goods or services as well as with that person's parent, spouse, or companion in appropriate circumstances.

¹ More information about effective communication can be found at www.ada.gov/effective-comm.htm.

Requesting and Use of Medical Documentation Supporting Requests for Accommodations

The ADA does not require an individual with a disability to provide medical documentation in his or her initial request for a reasonable accommodation. However, when it is not readily apparent how a requested modification relates to an individual's impairment, it may be necessary for the Judicial Branch to require the individual to provide sufficient medical documentation about the disability and functional limitations. Consistent with Title II of the ADA the Judicial Branch uses a broad definition of disability in favor of expanded coverage and all requests are handled on a case-by-case basis.

If the Judicial Branch determines that more information is necessary to fully and fairly evaluate the modification request, or to fully and fairly evaluate that a modification already granted continues to be an appropriate modification, the Judicial Branch may require the individual to provide medical documentation from a Qualified Licensed Professional.

Qualified Licensed Professionals are individuals who are licensed and possesses expertise in the disability for which modifications are sought. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals. Medical documentation prepared by family members, or professionals participating as non-party support persons for the individual with a disability is not acceptable because of the inherent conflict of interest associated with such an arrangement.

Documentation is sufficient if it:

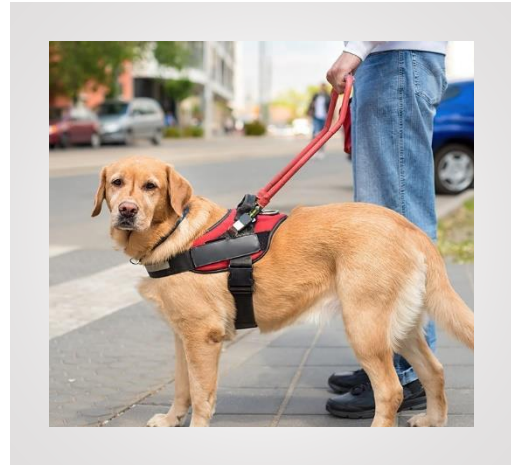
- describes the nature, severity, and duration of the impairment;
- describes the activity or activities that the impairment limits;
- describes the extent to which the impairment limits the individual's ability to perform the activity or activities;
- substantiates why the requested reasonable modification is needed;
- is reasonably current;
- is provided by a Qualified Licensed Professional who has expertise to give an opinion about the individual's medical condition and the limitations imposed by it; and

Medical documents acquired through the administrative process of requesting a modification should not be made part of the public court files. Any cost to obtain such documentation is the obligation of the person requesting the modification.

Accommodating Individuals Who Use Service Animals

For some individuals with disabilities, service animals are essential to navigating the environment, maintaining their stability or balance, or being kept aware of sounds and other aspects of the environment. Under the ADA, it is discriminatory to deny access to a person who uses a service animal in most circumstances. Individuals should not be separated from their service animals.

A service animal is specifically trained to do work or perform services for an individual with a disability.



The only animal recognized to be a service animal under the ADA is a dog. No other animal presently qualifies except the ADA regulations recognize that miniature horses specifically trained to do work or perform services for an individual with a disability is acceptable.

You can ask an individual:

- Is your service dog required for a disability that you have?
- What work has the dog been trained to do?

You cannot ask:

- Do you have documentation or paperwork that the dog is trained as a service animal?

- What disability do you have?

Some service dogs help individuals with mental health issues such as anxiety or post-traumatic stress disorder. Emotional support, comfort, or therapy dogs are not service dogs. If the dog has not been trained to perform specific tasks associated with a disability, it is not a service dog.

When in doubt of whether an animal is a service dog or a comfort dog, let the person into the building and refer the matter to the Clerk or ADA Coordinator for further guidance.

The Court can ask an individual to have a service animal leave the building if: (1) it is out of control; or (2) the animal is not house broken.

Any specific issues or questions should be addressed with Mary Ann Dempsey.

Accommodating Individuals with Cognitive Disabilities

People with cognitive disabilities may have trouble learning new things, making generalizations from one situation to another, inferring information from social cues and body language, and/or expressing themselves through spoken or written language.

Cognitive disabilities include learning disabilities, intellectual disabilities, autism, traumatic brain injury, and dementia.

Many legal or courtroom-related terms and concepts are complex and may be difficult to understand. Courts may first determine whether an individual is a “qualified individual with a disability” under the ADA. Individuals with cognitive disabilities will generally be qualified to serve as witnesses, spectators, or jurors. Courts cannot rely on generalizations, assumptions, or stereotypes and must conduct an individualized inquiry to determine whether an individual is “qualified.”

Example: If a person with a cognitive disability is appearing as a witness or as a potential juror, the court must determine whether or not that individual can carry out his or her duties in a courtroom. If an individual is unable to understand testimony as a juror because of an intellectual disability, and no reasonable modifications are available to enable participation, he or she may not be “qualified” and can be excluded from serving.

Accommodating Individuals with Mental Health Disabilities

Mental illnesses are medical conditions that disrupt a person’s thinking, feeling, mood, ability to relate to others and/or daily functioning.

As with other disabilities, courts must not exclude or limit participation of qualified individuals with mental illnesses.

In determining whether an individual with a mental illness is qualified to fulfill the role of witness, juror, or other participant in a court program, the court should conduct an individualized analysis of the particular person in the particular situation and provide any necessary reasonable modifications.

In rare cases, a person with a mental health disability may pose a "direct threat" to the health or safety of others in the court. A person can be excluded from participation on this basis only if he or she creates a significant risk of substantial harm. The ADA requires courts to make a knowing, individualized determination not based on myth, fear or stereotype of whether an individual poses a threat, and to consider any possible available modifications to reduce or eliminate the threat. Courts may choose to exclude individuals who pose a threat but only in a manner consistent with their civil rights and other protections.

Accommodating Individuals Who Use Mobility Devices²

The 2010 DOJ regulations address the circumstances under which governments are obligated to accommodate various mobility devices. They are divided into two different categories:

- Wheelchairs and other manually-powered mobility aids. These include walkers, crutches, canes, braces, or similar devices. People using devices such as these must be permitted in any areas open to pedestrians.
- Other power-driven mobility devices. These include golf carts, electronic personal assistance mobility devices (EPAMDs), such as Segways, all-terrain vehicles, and any other mobility devices designed to operate in areas without defined pedestrian routes, but that are not wheelchairs.

Example: An EPAMD user is selected for jury duty in one of the smaller courtrooms. If it is not possible for the individual with the disability to park the device and walk into the courtroom, the location of the trial may need to be moved to a larger courtroom to accommodate the use of the EPAMD.

The regulations require that, under the reasonable modification provision of the ADA, courts and other public entities must permit the use of these devices unless the entity can demonstrate that the class of mobility device cannot be operated in accordance with legitimate safety requirements that the entity has adopted.

Accommodating Individuals who are Deaf or Hard of Hearing³

Because many individuals who are hard of hearing individuals grew up in the hearing world and are or were able to speak, they often depend on spoken and/or written language. They receive and convey information in a variety of ways. Many use hearing aids. Some use additional hearing assistive technology systems (HATS), such as hearing loops and FM and infrared systems, to help with understanding speech. Some learn and use ASL or signed English, a form of sign language based on English that uses English syntax. Others use cued speech—a visual communication system that uses handshapes in combination with mouth movements of speech—as a method to reduce variability with speechreading alone.

Deaf or hard of hearing individuals must be able to receive information from, and convey information to, the court. Courts must ensure that a person who is deaf or hard of hearing can both understand what is being said in the proceeding and make himself or herself understood.

² More information about wheelchairs, mobility aids and other power-driven mobility devices can be found at www.ada.gov/opdmd.htm.

³ More information on court access to individuals who are deaf or hard of hearing can be found at <https://www.americanbar.org/content/dam/aba/administrative/commission-disability-rights/court-access-guide-lr-intractv-accsb-rev022317.pdf>.

The type of aids and/or services that are necessary to ensure effective communication will vary based on the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.

For persons who use sign language, qualified sign language interpreters trained in legal procedure and terminology are typically the most effective auxiliary aid or service. For other persons, an oral interpreter may be needed to facilitate speechreading. Amplified or modified sound equipment, a courtroom with appropriate acoustic properties, and/or assistive listening systems may be appropriate auxiliary aids for persons who rely on what hearing they have, aided or unaided by hearing aids or cochlear implants.

Accommodating Use of Support Persons

Many qualified individuals use a support person to assist them in accessing the world around them. Support persons are not “aids and services” under the ADA. However, they provide mobility, orientation, and informal communication services for qualified individuals and are a critically important link enabling them to independently access the community at large.

1. Who can be a support person:

A support person can include, but is not limited to, the following:

- A person who will not disrupt the proceedings;
- A person who is there for you, without their own personal agenda;
- A person who can remain calm and focused;
- An attorney, provided you disclose that fact in advance to the judicial authority or court personnel, and the request is approved.

2. Who may not be a support person:

- A party or a witness in the hearing or trial, unless approved in advance by the court;
- A person who has an order of protection entered against them, which order protects any party;
- A minor.

3. What a support person may do:

The following are examples of how a support person may help a person:

- Provide emotional and moral support;
- Take notes;
- Help organize and hand you documents;
- Perform any other task as requested by the judicial authority to help a litigant with disabilities during proceedings.

4. What a support person may not do:

A support person is not allowed to do the following:

- Give legal advice;
- Address the court without permission;
- Participate in mediation sessions or conferences. A support person may, however, perform the tasks listed in item #3 (above) during mediation sessions or conferences;
- Examine witnesses;
- Cause disruption or interfere with the judicial authority or court personnel. If a support person interferes with the judicial authority or court personnel,

the proceedings, or the parties, the authority may require the support person to be removed or disconnected from a video or telephone proceeding.

A support person may be allowed to attend a proceeding that is closed to the public or that involves access to confidential information, but only if given prior approval by the court or court personnel and only if the support person signs a confidentiality agreement.

Examples of ADA Requests And How An Individual Would Submit The Request⁴

Example 1: An individual who is deaf has been summoned to serve on jury duty. The individual speaks sign language. The court system will provide the individual with an American Sign Language interpreter free of charge. When the individual completes the online juror questionnaire, the individual would check the box that asks if an accommodation is needed and describe the requested accommodation. The individual could also contact the ADA Coordinator directly at mdempsey@courts.state.nh.us.

Example 2: An individual who is hard of hearing who wants to observe a trial in person but is concerned that they will not be able to hear all of the speakers. Every courthouse in New Hampshire has axillary aids to assist the hard of hearing, whether they be witnesses, parties, the public or anyone else seeking to access court programs. To ensure the auxiliary aid is available for use, in advance of the day the aid is needed, the individual should contact the Court Information Center at 1-855-212-1234 or contact the ADA Coordinator directly at mdempsey@courts.state.nh.us.

Example 3: An individual who is a litigant and has generalized anxiety disorder would like to request the ability to submit testimony in writing instead of by live testimony in the courtroom. Because this is a request impacts court procedures in a particular case, the request cannot be decided by the ADA Coordinator or Clerk. Rather, for such a request, the individual will need to file the request in writing as a motion so that a judge can rule upon the request. When considering whether to grant a request, courts must take into account whether the request is a reasonable modification to the court's policies, practices, and procedures. The court is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

Example 4: An individual who is a witness who has an autoimmune disease who is at risk medically when in contact with other people. Because this request would impact the court proceeding, the party who would be calling the witness will need to file the request in writing as a motion so that a judge can rule upon the request. The court could allow the witness to present testimony by telephone or by some other by contemporaneous transmission from a different location. Alternatively, if the court determined that allowing telephonic testimony in a particular case or type of case would fundamentally alter the nature of the hearing, the court could

⁴ Examples can be found on the Court's website at www.courts.nh.gov/resources/americans-disabilities-act-ada.

consider a different accommodation, such as scheduling the hearing at a time when contact with other members of the public would be minimized.

Example 5: A party takes medication which allows them to process information better in the morning. The person has requested to modify the trial schedule from 2 full days to 4 morning sessions. Because this request would impact the court proceeding, the party would need to file the request in writing as a motion so that a judge can rule upon the request. The Court, in considering this request, would need to take into account the disability and whether the accommodation would fundamentally alter the nature of the hearing (for example, a request for a temporary restraining order that requires a ruling within 2 days).