



TITLE	POLICY NUMBER	
Americans with Disabilities Act – Title II	DCS 04-07	
RESPONSIBLE AREA	EFFECTIVE DATE	REVISION
Human Resources/Business Support Services	10/10/18	

## **I. POLICY STATEMENT**

The Arizona Department of Child Safety (“DCS” or “the Department”) does not discriminate based on disability in the operation of its programs, services, or activities. DCS provides reasonable accommodations to enable persons with disabilities to participate in programs, services and activities. This policy was developed to conform to and comply with Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973.

## **II. APPLICABILITY**

Title II of the ADA prohibits disability discrimination by public entities (and their agencies and departments) as to the services, programs, or activities that they provide. Public entities must comply with Title II regulations established by the U.S. Department of Justice.

Section 504 of the Rehabilitation Act proscribes discrimination in all federally funded programs and the operations of a department or agency of a state or local government that receives federal financial assistance. The Act, the precursor to the ADA, applies to federal agencies, contractors, and recipients of federal financial assistance. Because of the nearly identical language and requirements in the Act and the ADA, this policy shall treat them the same, and references to the ADA shall include references to Section 504, unless otherwise specified.

This policy forbids unlawful discrimination by DCS against any disabled individual,

including but not limited to employees, children, parents (biological, foster, or adoptive), guardians, relatives, and placements. The services, programs, and activities of DCS include but are not limited to investigations, assessments, provision of in-home services, Arizona Department of Child Safety 2 removal of children from their homes, case planning and service planning, visitation, guardianship, adoption, foster care, and reunification services. Nothing contained in this policy shall be construed as interfering with or superseding State of Arizona or DCS policies or regulations that, pursuant to other federal or state laws, may provide rights or benefits greater than those required by Title II of the ADA or Section 504. Where multiple laws apply, DCS will apply whichever law provides the most rights or benefits.

### **III. AUTHORITY**

[Americans with Disabilities Act of 1990](#)

[Americans with Disabilities Act Amendments Act of 2008](#)

[Americans with Disabilities Act Title II Regulations](#)

[A.R.S. § 41-1492](#)

[Protecting the Rights of Parents and Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act](#)

[Section 504 of the Rehabilitation Act of 1973](#)

[Web Content Accessibility Guidelines 2.0](#) World Wide Web Consortium

[28 CFR Part 35](#) Nondiscrimination on the Basis of Disability in State and Local Government Services

[45 CFR Part 84](#) Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance

### **IV. DEFINITIONS**

Accessible: The concept that individuals with disabilities are able to independently acquire the same information, engage in the same interactions, and enjoy the same services within the same timeframe as individuals without disabilities, with substantially equivalent ease of use.

Accommodations: May include, but are not limited to:

- making reasonable modifications in policies, practices, and procedures;
- furnishing, at no charge, auxiliary aids and services, which are not limited to equipment, devices, and materials in alternative formats;
- providing qualified interpreters or readers;
- making each program, service, or activity, when viewed in its entirety, readily accessible to and usable by qualified individuals with disabilities requesting accommodations.

Note: DCS is not required to take any action that would result in a *fundamental alteration* (see definition below) in the nature of a program, service, or activity or is an *undue financial or administrative burden* (also defined below).

Alteration: Modification made to an existing building or facility that goes beyond normal maintenance activities and affects or could affect usability.

American with Disabilities Act (ADA) Coordinator: The person within DCS Human Resources responsible for coordinating implementation of ADA requirements within DCS, responding to technical questions from DCS employees related to DCS ADA policy, and coordinating DCS ADA activities.

Assistive device: A device that assists users in accomplishing day-to-day functions.

Auxiliary aids and services include the following:

- qualified interpreters, note-takers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
- qualified readers, taped texts, audio recordings, Braille materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

- acquisition or modification of equipment or devices; and
- other similar services and actions.

Companion: A family member, friend, or associate of an individual seeking access to a DCS program, service, or activity, who is an authorized person with whom the program should communicate.

Customer: Any person who applies for, receives, or participates in a DCS program, service, or activity.

Direct threat: A significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

Disability: The condition of an individual who:

- has a physical or mental impairment that substantially limits one or more of the major life activities;
- has a history of such impairment;
- is regarded as having such an impairment.

Electronic and information technology: Includes information technology and any equipment or interconnected system or subsystem of equipment used in the creation, conversion, or duplication of data or information. This term includes, but is not limited to, the internet and intranet websites, content delivered in digital form, electronic books and electronic book reading systems, search engines and databases, learning management systems, classroom technology and multimedia, personal response systems (“clickers”), and office equipment such as classroom podiums, copiers and fax machines. It also includes any equipment or interconnected system or subsystem of equipment used in the automatic acquisition, creation, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. This term also includes telecommunications products (such as telephones), information kiosks, Automated Teller Machines (ATM) transaction machines, computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

Equally effective: The alternative format or medium communicates the same information in as timely a fashion as does the original format or medium.

Existing facility: A facility in existence on any given date, without regard to whether the facility may also be considered newly constructed or altered under the ADA regulations.

Facility: All or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Fundamental alteration: A change that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered.

Grantee: A person or entity who has received a grant from the Department to provide services to individuals to enhance their ability to perform major life activities.

Major life activities: Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

New construction: A project in which an entirely new facility is built from the ground up or where a new facility is added to an existing facility.

Other power-driven mobility device: Any mobility device powered by batteries, fuel, or other engines (whether or not designed primarily for use by individuals with mobility disabilities) used by individuals with mobility disabilities for the purpose of locomotion. This includes electronic personal assistance mobility devices (EPAMDs), or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of the ADA.

Physical or mental impairment: Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine. It also means any mental or psychological disorder. It also includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

Programs, services, or activities: Includes any DCS program, service, or activity whether within DCS-administered or operated by a contractor or grantee. Programs, services, or

activities are sometimes collectively referred to as "program" or "programs" in this policy.

Qualified individual with a disability: An individual with a disability who meets the essential eligibility requirements for the receipt of services or participation in programs, services, or activities provided by a public entity, including DCS. The individual may meet the eligibility requirements with or without reasonable modifications or modifications to rules, policies, or practices; the removal of architectural, communication, or transportation barriers; or the provision of auxiliary aids and services.

Qualified interpreter: An interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Sign language interpreters and oral translators are examples of qualified interpreters.

Qualified reader: A person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.

Reasonable modification: A modification in the policies, practices, or procedures of a program, service, or activity if the modification allows an individual with a disability the opportunity to participate equally in the program, service, or activity and is necessary to avoid discrimination based on disability unless the modification would fundamentally alter the nature of the program, service, or activity.

Report of discrimination: A complaint by anyone alleging an act of disability discrimination by the Department in violation of Title II or Section 504 including the failure to provide a reasonable modification and retaliation for exercising rights under the ADA and Section 504.

Service animal: A dog individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

Teletext typewriters (TTY): A freestanding piece of equipment that runs over a telephone line or through a computer modem to communicate with deaf or hard of hearing individuals. The person with a TTY can communicate by typing a message that is transmitted in text format to another TTY. If the caller and the call recipient both have a TTY, they can communicate directly. If only one party has a TTY, the parties

communicate through a voice relay operation that has a TTY, and typed messages are read to the party without a TTY.

Transitory impairment: An impairment with an actual or expected duration of six months or less.

Undue administrative or financial burden: Significant difficulty or expense incurred by DCS to provide a specific accommodation that is unduly extensive, substantial, or disruptive, or would fundamentally alter the nature or operation of the business. Determinations must be made on a case-by-case basis.

Video Remote Interpreting (VRI) Service: An interpreting service that uses video conferencing technology over dedicated lines or wireless technology offering high speed, wide-bandwidth video connection that delivers high-quality video images.

## **V. POLICY**

### **A. General**

1. No qualified individual with a disability shall, on the basis of disability, be discriminated against, be excluded from participation in, or be denied the benefits of the programs, services, or activities of the Department. DCS shall provide reasonable modifications when necessary to avoid discrimination.
2. DCS shall not, directly or through contractual, licensing, or other formal or informal arrangements, on the basis of disability, deny a qualified individual with a disability the opportunity to participate in a program, service, or activity to receive the benefits or services offered in accordance with law.
  - a. DCS shall not use methods of program administration that have a discriminatory effect on individuals with disabilities;
  - b. DCS shall not use eligibility criteria that unlawfully screen out individuals with disabilities.
3. DCS shall not assess a charge or fee to an individual with a disability to cover the cost of measures required to provide the individual with the

nondiscriminatory treatment required by this policy.

4. DCS may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, DCS must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.
5. Nothing in this policy prohibits the Department from providing benefits or services to individuals with disabilities beyond those required by law.

#### B. Discrimination on the Basis of Association

1. DCS does not discriminate against individuals that do not have disabilities themselves, but have a known relationship or association with individuals who have disabilities such as family members, friends, or any other individual.
2. An individual who experiences discrimination by association has the right to file a report of discrimination or a grievance with DCS, file a discrimination complaint with the appropriate federal or state designated agency, or to file a lawsuit.

#### C. Protection against Retaliation

1. The ADA protects individuals who exercise their rights under the ADA or assist others in exercising their rights under the ADA from retaliation. "Exercising rights" under the ADA include requesting reasonable modifications. An individual who has filed a complaint, testified, or participated in any manner in the investigation of any complaint shall not be intimidated, threatened, coerced, discriminated, or retaliated against in any way.
2. Individuals who believe they have experienced retaliation after exercising their rights under the ADA, including those who exercise their rights by requesting a reasonable modification have the right to file a discrimination complaint and/or a lawsuit.
3. The DCS ADA Coordinator or designee shall investigate allegations of retaliation against individuals with disabilities or others protected under



this policy.

D. Administrative Responsibilities

1. DCS ADA Coordinator Responsibilities

- a. Appointed by the Director, the DCS ADA Coordinator is responsible for administering Department-wide compliance with the ADA, Section 504, and other federal and state disability discrimination laws.

The DCS ADA Coordinator may be contacted at:

Arizona Department of Child Safety  
 3003 N. Central Avenue  
 Phoenix, Arizona 85012  
[FMLA@azdcs.gov](mailto:FMLA@azdcs.gov)  
 Telephone: (602) 255-2903

- b. The DCS ADA Coordinator shall:
  - i. oversee ADA compliance in all DCS programs, services, and activities;
  - ii. assist and oversee the resolution of ADA grievances. This oversight shall include ensuring that written results of any grievance are provided to the person with a disability;
  - iii. assist DCS programs, services, or activities to review written rules and policies as well as practices to identify and modify those that may have a discriminatory effect, or adopt specific procedures for modifying those rules, policies, and practices for people with disabilities when necessary;
  - iv. investigate and review any proposed denial of a reasonable modification request by a Department employee or supervisor prior to issuance of the written decision. Upon confirmation of the denial decision, the DCS ADA Coordinator is responsible for ensuring a written notice of denial of reasonable modification is sent to the individual

with a disability in a format to ensure effective communication is accomplished;

- v. assist and oversee the resolution of ADA grievances. This oversight shall include ensuring that written results of any grievance are provided to the person with a disability in a format to ensure effective communication is accomplished;
- vi. review all ADA grievances filed regarding DCS to identify trends that require changes in policies and practices, and ensure that such changes are made;
- vii. have the authority to require those within DCS programs, services, or activities to modify policies and practices to accommodate the individual with a disability;
- viii. assist in developing training on the ADA.

## 2. Department Responsibilities

In addition to program requirements identified in the policy, specific responsibilities include, but are not limited to the following.

- a. The DCS Office of Procurement shall ensure that all DCS contracts to provide services to individuals, and all contracts for programs, services, or activities receiving federal financial assistance, require the party with whom DCS is contracting to comply with the ADA and Section 504 as required by law;
- b. The DCS Communications Office shall facilitate obtaining forms and publications in alternative formats when requested by or on behalf of individuals with disabilities, or by a DCS office;
- c. The DCS Communications Office shall assist the DCS ADA Coordinator and DCS programs, services, and activities, to ensure that materials are provided in alternative formats that are accessible to people with disabilities when needed;
- d. Learning and Development shall work with all DCS programs, services, or activities to develop ADA training materials that are

tailored to particular DCS programs, services, or activities, and review any training materials developed by the programs, services, or activities;

- e. The Office of Real Estate shall be responsible for oversight of physical accessibility of program sites in which DCS programs, services, or activities are delivered. This oversight includes:
  - i. ensuring that existing facilities are accessible;
  - ii. ensuring that new construction complies with accessibility guidelines;
  - iii. ensuring that building modifications are made in compliance with the ADA; and
  - iv. negotiating accessibility issues when renewing leases, including assigning responsibility for accessibility matters between the landlord and tenant, as appropriate.

E. Eligibility Criteria: Programs, Services, or Activities May Not Exclude or Screen Out Individuals with Disabilities

1. DCS shall not exclude qualified individuals with disabilities from DCS programs, services, or activities on the basis of disability if they meet the program's essential eligibility requirements, with or without reasonable modification of rules, policies, or procedures, or the provision of auxiliary aids and services. DCS shall apply nonessential program, service, or activity rules in a flexible manner for people with disabilities when necessary to avoid denial of meaningful access to programs.
2. DCS shall not apply eligibility criteria or standards that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities from fully and equally enjoying any goods or services, unless such criteria can be shown to be necessary for the provisions of goods and services. Questions about these criteria may be directed to the DCS ADA Coordinator.
3. When there is a barrier to eligibility or participation that is related to the applicant's disability and the program, service, or activity's eligibility

criteria, the program, service, or activity should apply the reasonable modification provisions of this policy (refer to section V.F).

4. DCS programs, services, and activities for individuals with a particular type of disability cannot exclude individuals simply because they have an additional disability.
5. DCS may not exclude persons with disabilities from activities based solely on the preference of other participants.
6. DCS may impose legitimate safety requirements even if they screen out individuals with disabilities, with the conditions that:
  - a. safety standards shall be applied to all individuals or participants;
  - b. the safety screening requirements shall be based on actual risk, not on speculation, stereotypes, or generalizations about individuals with disabilities or on presumptions about what a class of individuals with disabilities can or cannot do;
  - c. DCS inquiries about particular disabilities shall be limited to matters necessary to implement the safety standards.
7. DCS programs, services, or activities cannot require an individual to disclose a disability even though the decision not to disclose a disability may have consequences for the individual. Programs, services, or activities shall not deny benefits or services to the individual on the basis that a person failed or refused to disclose a disability or provide documentation of a disability.

#### F. Reasonable Modification

1. DCS shall provide individuals with disabilities with reasonable modifications when necessary to have a meaningful opportunity to participate in and benefit from DCS programs, services, or activities.

DCS shall make reasonable modifications to policies, practices, or procedures of a program, service, or activity at no cost to the individual with a disability when the modifications are necessary to avoid discrimination based on disability unless the modification would

fundamentally alter the nature of the program, service, or activity, or create an undue administrative or financial burden. Fundamental alteration and undue burden are discussed in Section J of this section. Refer to the Procedures section (VI.A) for instructions regarding modification requests.

## 2. Granting Requests

Supervisors shall have the responsibility and the authority to provide reasonable modifications to individuals with disabilities. They are trained in applicable procedures to ensure requests are resolved in a reasonable and timely manner.

## 3. Documentation and Disability for Modifications and Interim Modifications

- a. Documentation of an obvious disability shall not be required unless:
  - i. the modification sought is a deferral from a programmatic requirement;
  - ii. the program and the individual with a disability disagree about what type of modification would meet the needs of the individual with a disability, and documentation from the individual would explain why the modification offered would not meet the needs of the individual; or;
  - iii. there is a question of what modification is appropriate.
- b. The requested documentation shall verify the disability and its relationship to the barrier to eligibility or participation, and how the requested modification would reduce or eliminate the barrier to permit the individual to meet essential eligibility or participation requirements.
- c. Documentation of the existence of a disability is considered sufficient if it confirms the existence of the disability, the permanent or temporary nature of the disability, and the functional limitations caused by the disability.

- d. Only the information related to the disability generating the need for modification may be requested.

#### 4. Time Frame to Provide Reasonable Modifications

- a. Modifications shall be provided in time to avoid discrimination. The time period depends on factors including the type of modification requested, and the consequences to the individual of failing to provide it immediately.
- b. When feasible, Department staff should encourage persons who may need a modification to request it in advance. This encouragement may include advising persons how to request needed modification.
- c. DCS shall begin to accommodate the individual with a disability while gathering documentation when:
  - i. the individual with a disability is unlikely to have such documentation with him or her, or had no reason to know that he or she should bring documentation;
  - ii. the individual with a disability does not have documentation for disability-related reasons (e.g., the individual with a disability has severe mental disability, and as a result of the disability, denies that a disability exists);
  - iii. the individual with a disability does not have a regular treatment provider and has no present means to obtain medical or mental health appointments, examinations, and tests necessary to obtain documentation (e.g., the individual with a disability is not yet receiving Medicaid);
  - iv. the individual with a disability needs a modification immediately, and failure to provide it immediately would result in discrimination or would result in denial of an equal opportunity to obtain benefits or services;

- v. the individual with a disability needs a modification to participate in a program, but has not been evaluated for a disability.

5. Modifications Needed on an Ongoing Basis

DCS programs, services, or activities shall ensure that modifications needed on an ongoing basis are provided on that basis, so that a person with a disability does not have to request the same modifications each time it is needed.

6. Individuals with Disabilities Cannot be Required to Accept a Modification

Individuals with a disability shall not be required to accept a modification, service, opportunity, or benefit provided under this policy and cannot be excluded from programs, services, or activities because they refused a modification. If, however, as a result of refusing it, an individual with a disability does not fulfill program, service, or activity requirements, the Department, having advised the individual with a disability of the consequences of the refusal and the continued refusal of the individual with a disability, can act against the individual with a disability on the basis that the individual with a disability does not comply with program, service, or activity requirements.

7. Reasonable Modification Available Regardless of Whether a Disability is Apparent

The appearance or lack of appearance of a disability shall not be a factor in determining whether the Department provides a reasonable modification. Department employees not trained in determining disability modification shall not make determinations on the need of clients requesting these services.

8. Denial of Requests for Reasonable Modification

If the Department denies a request for a modification, the DCS ADA Coordinator ensures that a written notice is sent to the individual. This notification, the Reasonable Accommodation/Modification Grievance Decision, includes an explanation for why the request is being denied, or why the program decided to offer a modification other than the one that

was requested. The notice should also identify any alternative modifications that are offered. The written notice of denial also informs the individual how to file an ADA grievance.

9. No Requirement to Provide Personal Devices

This policy does not require a program, service, or activity to provide individuals with disabilities with any personal devices unless they are customarily provided to the individuals participating in the program, service, or activity. In some instances, the Department may choose to provide equipment or services of a personal nature as an alternative to providing another type of modification.

G. Ensuring Access to Programs, Services, or Activities for Individuals with Disabilities

1. DCS shall ensure that each program, service, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.
2. Nonessential program rules shall be applied in a flexible manner for individuals with disabilities when necessary to avoid denial of meaningful access to programs, services, or activities.
3. If an individual with a disability meets the essential requirements of a program, reasonable modifications in other program rules and procedures shall be made to ensure a meaningful opportunity to participate and benefit.
4. Regarding existing facilities, new constructions and alterations, DCS shall comply with applicable law and this policy.
  - a. The Department may comply with program accessibility requirements through such means as:
    - i. redesign or acquisition of equipment;
    - ii. reassignment of services to accessible buildings;
    - iii. assignment of aides to service recipients;



- iv. home visits;
- v. delivery of services at alternate accessible sites;
- vi. alteration of existing facilities and construction of new facilities;
- vii. any other methods that result in making its programs, services, and activities readily accessible to and usable by individuals with disabilities;

- b. DCS is not required to make each of its existing facilities accessible to and usable by individuals with disabilities. DCS is also not required to take actions regarding existing facilities that would result in a fundamental alteration in the nature of a program, service, or activity or would result in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, DCS shall take any other action that would not result in such an alteration or such burdens but would ensure that individuals with disabilities receive the benefits or services.

#### H. Disability-Related Non-Compliance with Program, Service, or Activity Requirements

The DCS ADA Coordinator shall consider the potential impact of known disabilities when making a finding of willfulness or intent to refuse to comply with programmatic requirements. The Department shall offer reasonable modification when the modification will allow the individual with a disability to comply.

- 1. Department staff shall be sensitive to the conditions that some individuals with disabilities have that make it difficult to meet DCS program, service, or activity requirements, including attending appointments, complying with program notices, gathering documents, engaging in work activities, or complying with other program, service, or activity requirements;
- 2. Department staff shall consider the needs of participants who, although they do not have disabilities, may be caring for a family member who is

disabled. Reasonable modification may be required in these instances to enable an individual to participate in program activities and still be able to provide required care for the disabled family member.

## I. Grievances

Persons who believe they or someone in their care has been discriminated against in violation of Title II of the ADA or Section 504, or discriminated against on the basis of disability regarding DCS programs, services, or activities, may file an ADA grievance by contacting the DCS ADA Coordinator. Refer to Procedures section (VI.E) for information on filing a grievance.

## J. Fundamental Alteration or Undue Administrative or Financial Burden

1. When a fundamental alteration of a program, service, or activity, or undue financial or administrative burden would occur by providing program access, the Department takes such action to provide program access that will not result in a fundamental alteration of the program, service, or activity, or result in an undue financial or administrative burden. DCS may achieve access by:
  - a. providing services, activities, and programs in facilities that are accessible to individuals with disabilities;
  - b. transferring programs, services, and activities from any building that becomes temporarily or permanently inaccessible to an alternate location that is accessible;
  - c. modifying, when reasonable, the structure of a facility to ensure that individuals with disabilities have access to programs, services, and activities;
  - d. making reasonable modifications of policies and procedures, or providing auxiliary aids and services within available resources.
2. Any denial of a request for access, auxiliary aids, or services, or request for reasonable modification of policy due to a finding of fundamental alteration or undue administrative or financial burden, shall be in writing with the reason for denial provided by the individual who denied the request. Notice of denials resulting from a grievance review shall be

provided by the DCS ADA Coordinator.

3. In those circumstances where DCS personnel believe that the proposed action would fundamentally alter the program, service, or activity or would result in undue financial and administrative burdens, DCS has the burden of proving that compliance would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the DCS Chief Human Resources Officer or designee after considering all resources available for use in the funding and operation of the program, service, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion.

#### K. Release of Information

If the DCS ADA Coordinator believes there is a need to share information about an individual's disability with any entity outside of the Department, the Department shall follow applicable federal and state law and Department policy regarding any such disclosure. The DCS ADA Coordinator shall utilize the *Authorization to Release Information* form to secure the customer's authorization for release of the information.

#### L. Notice of Rights

DCS shall provide individuals and members of the public with information about their rights under the ADA.

1. DCS offices in which individuals are served shall display an approved poster or flyers that highlight individual rights under the ADA, and a "We Can Help You" notice.
2. The Department shall provide information to explain rights of applicants and recipients in relation to services for those with disabilities. The information shall be made available where information about DCS programs and services are available.
3. Employees shall read and explain the information to the individual whenever a recipient of DCS services has a disability that interferes or may interfere with the ability to read and/or understand written material.

M. Illegal Drug Use

1. DCS shall not discriminate against an individual on the basis of illegal drug use if the individual is not currently engaging in illegal drug use.
2. DCS shall not deny health services or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current use of drugs, if the individual is otherwise entitled to such services. However, a drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.
3. Department programs, services, or activities may adopt reasonable policies related to drug testing, that are designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in the current illegal use of drugs.
4. An individual with a psychoactive substance use disorder resulting from current illegal use of drugs is not considered to have a disability under this policy unless the individual has a disability due to another condition. However, the Department reserves both the right and the responsibility to develop prudent service plans and to implement applicable decisions regarding the safety and welfare of vulnerable children.

N. Direct Threat to Health and Safety of Others

1. DCS is not required to permit an individual to participate in or benefit from its programs, services, or activities when that individual poses a direct threat to the health or safety of others.
2. In determining whether an individual poses a direct threat to the health or safety of others, the DCS ADA Coordinator makes an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:
  - a. the nature, duration, and severity of the risk;
  - b. the probability that the potential injury will actually occur; and
  - c. whether reasonable modifications of policies, practices, or

procedures or the provision of auxiliary aids or services will mitigate the risk.

O. Training

DCS will provide training to employees to facilitate their understanding of DCS responsibilities under the ADA, this policy, and supporting procedures.

## VI. PROCEDURES

A. Requesting Reasonable Modifications

1. Individuals with disabilities have a right to ask for reasonable modifications of DCS programs, services, or activities via the following options (the request need not reference the ADA):
  - a. Requests are made orally or by completing a *Request for Reasonable Accommodation* form. The employee receiving a request incorporates the information into a *Request for Effective Modification to Participate in a Program, Service, or Activity* form within 24 hours of the request and emails it to [FMLA@azdcs.gov](mailto:FMLA@azdcs.gov). Programs, services, or activities cannot require individuals to use or sign forms to make requests or waive a right for reasonable modifications;
  - b. When a Department employee becomes aware that an individual has a disability that is causing the individual to have difficulty accessing services or participating in a program, service, or activity, the employee advises the individual that he or she may request a reasonable modification and shall offer assistance, as appropriate. The offer is recorded in the case file, including the perceived disability, the date of the offer, and the response, if any, from the customer.

Department customers are under no obligation to accept an offered modification and may decline a request at any time.

Individuals with disabilities have the right to accept or request a reasonable modification that was previously offered and declined.

## 2. Dispositions of Requests for Reasonable Modification

- a. Upon review of the completed *Request for Effective Modification to Participate in a Program, Service, or Activity* form, the DCS ADA Coordinator or his designee determines if any additional information is necessary in order to decide if the request is appropriate. Additional information may include medical information to determine the limitation of a disability and/or the modification needed.
- b. The staff person receiving the request obtains the necessary information from the customer and documents the request on the *Request for Reasonable Accommodation* form. The customer may choose to either provide the information or sign an *Authorization to Release Information* form, allowing the Department to obtain the information necessary to make a determination about the request.
  - i. Only information necessary to determine if a modification is required will be collected;
  - ii. When the disability is obvious, no verification is requested.
- c. Department staff may authorize an interim modification (pending receipt of required documentation):
  - i. pending a final determination on the modification request, an interim modification may be provided in order to ensure the customer is able to access the requested services as appropriate;
  - ii. when a decision is made to provide an interim modification, the staff person receiving the request enters the information on the *Request for Reasonable Accommodation* form and obtains a signature from the customer. This confirms their understanding and acceptance of the modification, pending a final determination.

- d. Once all necessary information is received, the DCS ADA Coordinator makes a determination on the modification request. The DCS ADA Coordinator must determine if:
  - i. there is a need for a modification to enable the customer to receive the Department service; and
  - ii. the modification can be provided without a fundamental alteration to the nature of the program or an undue burden to the Department, as described in Section V.J.
- e. If the DCS ADA Coordinator believes that the modification is not necessary or that it would create an undue burden on the Department or would fundamentally alter the nature of the program, he/she consults with the DCS Chief Human Resources Manager.
  - i. If the modification would require a substantial alteration to a Department-occupied building, the Office of Real Estate must approve the modification.
  - ii. If the modification would require purchase of equipment or software, the appropriate Assistant Director or their designee must approve the modification.
- f. Once a determination is made, the DCS ADA Coordinator:
  - i. documents the decision on the *Request for Effective Modification to Participate in a Program, Service, or Activity* form;
  - ii. requests the customer to sign acknowledgement of the determination.
- g. The DCS ADA Coordinator advises the customer that they must sign the *Request for Effective Modification to Participate in a Program, Service, or Activity* form and indicate whether they agree with the determination or wish to grieve the determination.
  - i. If the customer wishes to grieve the determination, any

interim modification must be continued pending resolution of the grievance.

- ii. Refer to Section VI.E for grievance procedures.

## B. Communications

### 1. Auxiliary Aids and Services

For individuals with visual disabilities, this includes:

- a. qualified readers;
- b. taped texts;
- c. audio recordings;
- d. Braille materials and displays;
- e. screen reader software;
- f. magnification software;
- g. optical readers;
- h. secondary auditory programs (SAP);
- i. large print materials;
- j. accessible electronic and information technology;
- k. other effective methods of making visually delivered materials available to individuals who are blind or have low vision.

For individuals with audible disabilities or those who are deaf or hearing-impaired, this includes:

- a. qualified interpreters on-site or through video remote interpreting (VRI) services;



- b. note takers;
- c. real-time computer-aided transcription services;
- d. written materials;
- e. exchange of written notes;
- f. telephone handset amplifiers;
- g. assistive listening devices/assistive listening systems;
- h. telephones compatible with hearing aids;
- i. closed caption decoders;
- j. open and closed captioning, including real-time captioning;
- k. voice, text, and video-based telecommunications products and systems including text telephones (TTYs), videophones, captioned telephones, or equally effective telecommunications devices;
- l. videotext displays;
- m. accessible electronic and information technology;
- n. other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing.

Auxiliary Aids and Services also include the acquisition or modification of equipment or devices and other similar services and actions.

DCS programs, services, or activities provide appropriate auxiliary aids and services (including, sign language interpreters, where necessary) to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a DCS program, service, or activity unless it would result in a fundamental alteration or an undue financial or administrative burden.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with 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.

In determining the type of auxiliary aid or service necessary, DCS gives primary consideration and shall honor the request of the individual with a disability. To be effective, auxiliary aids and services must be provided in accessible formats and in a timely manner that protects the privacy and independence of the individual with a disability.

DCS does not require an individual with a disability to bring another individual to interpret for him or her.

DCS does not rely on a person accompanying an individual with a disability to interpret or facilitate communication except:

- when there is no interpreter available and there is an emergency involving an imminent threat to the safety or welfare of an individual or the public; or
- when the person accompanying the individual is an adult and the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

DCS may use contract service providers that interpret on an as-needed basis, including sign language interpreter services.

DCS staff may choose to provide qualified interpreters via VRI (Video Remote Interpreting) only if the VRI provides:

- real-time, full-motion video and audio over a dedicated high-speed, wide bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;

- a sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;
- a clear, audible transmission of voices; and
- adequate set-up and operation without undue delay.

Procedures for accessing and using auxiliary aids and services can be found on [www.azrelay.org](http://www.azrelay.org).

## 2. Telecommunications

- a. DCS may use several options for communicating by telephone with deaf and hard of hearing individuals, including Teledex typewriters (TTY), Video Relay Services, and Video Interpreting Services.
- b. DCS responds to telephone calls from a telecommunications relay services in the same manner that it responds to other telephone calls.
- c. As DCS develops and installs automated-attendant systems, including, but not limited to, voice mail and messaging, or an interactive voice response system for receiving and directing incoming telephone calls, those systems will consider the needs of persons who may use auxiliary aids and services.
- d. Department staff will consider the needs of persons with hearing loss or hearing impairments when program guidelines require participants to make telephone calls.

## 3. E-mail Communications

E-mail may be an effective way to communicate with individuals with disabilities. Staff who use e-mail to communicate with clients must ensure that they check and respond to such messages regularly, and designate a

back up to access and respond to email when the primary contact is unavailable. Refer to [DCS 05-20 Email Encryption](#) policy.

4. Notice to Individuals and the Public about Effective Communication with Individuals with Disabilities

DCS ensures that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities, and about the methods by which the program, service, or activity communicates with individuals with disabilities, the fact that auxiliary aids and services are available, and how to request them. For example, information may be provided in posters at DCS program sites, as well as consumer education materials that individuals can take home with them.

DCS meets the obligation to provide this notice by including information about effective communication in consumer education materials that provide information about other ADA rights. If the program or service has a TTY number, that number is included in notices, brochures, and other written materials that include a voice telephone number for the program.

5. Website Accessibility

DCS provides access to DCS material to individuals with disabilities in a way that is as effective as access provided to individuals without disabilities. In accordance with the *[World Wide Web Consortium's Web Content Accessibility Guidelines](#)* (WCAG), the Department is committed to making its website accessible to people with disabilities by observing the four WCAG principles of accessibility:

- a. Perceivable: Information and user interface components must be presentable to users in ways they can perceive – it can't be invisible to all of their senses;
- b. Operable: User interface components and navigation must be operable – the interface cannot require interaction that a user cannot perform;
- c. Understandable: Information and the operation of user interface must be understandable – the content or operation cannot be

beyond their understanding;

- d. Robust: Content must be robust enough that it can be interpreted reliably by a wide variety of user agents, including assistive technologies – as technologies and user agents evolve, the content should remain accessible.

## 6. Scope of DCS Duties

DCS is not required to take any action relating to this section on Communications that it can demonstrate would result in a fundamental alteration in the nature of a program, service, or activity or in undue financial and administrative burdens. If an action required to comply with this Communications policy would result in such an alteration or such burdens, DCS shall take any other action that would not result in such an alteration or such burdens but would ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services DCS provides.

## C. Service Animals

1. DCS permits the use of a service animal by an individual with a disability (see Definitions section of policy for definition of "service animal"). The following procedures apply.
2. A person with a disability cannot be asked to remove his service animal from the premises unless:
  - a. the dog is out of control and the handler does not take effective action to control it, or
  - b. the dog is not housebroken.

Service animals must be harnessed, leashed, or tethered unless these devices interfere with the service animal's work or the individual's disability prevents using these devices. In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

3. Allergies and fear of dogs are not valid reasons for denying access or

refusing services to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility (for example, in a school classroom or at a homeless shelter), they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.

4. When there is a legitimate reason to ask that the service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal's presence.
5. DCS and DCS employees are not required to supervise or otherwise provide care or food for a service animal. The handler is responsible for caring for and supervising the service animal, which includes toileting, feeding, grooming and veterinary care.
6. When it is not obvious what service an animal provides, only limited inquiries are allowed. DCS staff may ask two questions: (1) is the dog a service animal required because of a disability? and (2) what work or task has the dog been trained to perform? Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task. Generally, DCS may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision).
7. People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals.

Some people with disabilities may use more than one service animal to perform different tasks. For example, a person who has a visual disability and a seizure disorder may use one service animal to assist with way-finding and another that is trained as a seizure alert dog. Other people may need two service animals for the same task, such as a person who needs two dogs to assist him or her with stability when walking. Staff may ask the two permissible questions (see above) about each of the dogs. If both dogs can be accommodated, both should be allowed in. In some

circumstances, however, it may not be possible to accommodate more than one service animal.

8. In addition to the provisions about service dogs, the Department of Justice's revised ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities. (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.)

Entities covered by the ADA must modify their policies to permit miniature horses where reasonable. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility.

The assessment factors are (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

#### D. Mobility Devices

Where and when building and personal safety concerns are not raised, the following procedures apply:

1. DCS permits individuals with mobility disabilities to use wheelchairs and manually powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices in any areas open to pedestrian use.
2. DCS makes reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility devices, unless DCS can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that DCS has adopted.
3. In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification under section (2) above, the Department considers such factors as:

- the type, size, weight, dimensions, and speed of the device;
  - the facility's volume of pedestrian traffic;
  - the facility's design and operational characteristics (e.g., whether its program, service, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if required by the user);
  - whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and
  - whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the facility, or poses a conflict with other existing laws or regulations.
4. Department staff does not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability.
  5. Department staff may ask a person using another power-driven mobility device to provide a credible assurance that the mobility device is required because of the person's disability, such as a valid, state-issued, disability parking placard or card, or other state-issued proof of disability. In lieu of a valid, state-issued disability parking placard or card, or state-issued proof of disability, DCS accepts a reasonable verbal statement from the individual or their companion.

#### E. Grievance Procedures

1. Notice of Right to File a Grievance
  - a. Individuals are informed of their right to file such grievances by posters or flyers in program waiting rooms and fliers distributed to individuals.
  - b. Posters or fliers include contact information (name, address, and phone and fax numbers) for the DCS ADA Coordinator.



- c. Notices informing individuals that the request for a reasonable modification or modifications has been denied contain information about how to file an ADA grievance with DCS.
- d. The DCS ADA Coordinator ensures that notices to customers contain a statement advising them of their grievance rights in relation to ADA reasonable modification. This will include at a minimum:
  - i. all notices of adverse action taken on the customer's case;
  - ii. all notices regarding a decision on a request for a reasonable modification.

## 2. Methods of Filing a Grievance

Individuals may file a grievance by phone, in writing, in person, or on a grievance form. Anyone seeking to file a grievance is entitled to help from DCS staff to complete the form, if needed. Grievants who wish to file by phone should be directed to the DCS ADA Coordinator, who will take down the information over the phone and provide the person filing the grievance with a copy of the form or other document describing the grievance, so that the person filing the grievance can review it and make changes if necessary. Alternate formats are provided if needed as a modification regarding the grievance process.

- a. Department staff provides customers wishing to file a grievance the contact information for the DCS ADA Coordinator, should they need assistance with their grievance.
- b. Any Department employee shall accept a grievance by phone, in person, or in writing.
  - i. If the grievance is received in person or by phone, the employee receiving the grievance writes the information regarding the grievance and provides the customer with a copy of the information for their review.
  - ii. Written grievance information will be available to the

customer in alternate formats when needed or requested.

- c. The employee receiving the grievance forwards all grievance filings to the DCS ADA Coordinator.
  - i. All grievances shall be documented to include the name of the grievant, the issue grieved, and the date of the grievance.
  - ii. The employee shall forward the grievance information within twenty-four hours of the grievance being filed.
  - iii. The employee forwarding the grievance may provide the DCS ADA Coordinator with recommended actions for resolution.
- d. The DCS ADA Coordinator receives all ADA related grievances.
  - i. Grievances must be received by the DCS ADA Coordinator within ten days of the grievance being filed.
  - ii. The DCS ADA Coordinator shall issue their decision within 30 days of receipt of the grievance.
  - iii. The notification of the grievance decision is provided to the grievant and the appropriate Program Administrator.
  - iv. The DCS ADA Coordinator maintains a record of all grievance appeals. The record includes the grievance package and the information received and issued concerning the resolution of the appeal.
  - v. The decision of the DCS ADA Coordinator is final.

### 3. Deadline for Deciding ADA Grievances

The DCS ADA Coordinator, as applicable, investigates and resolves grievances as soon as possible and in any event within 30 days after receipt of the grievance. A decision is provided to the grievant in writing.

#### 4. Appeal

The DCS ADA Coordinator notifies any grievant who indicates they are not satisfied with the grievance decision that they may appeal to a federal entity. The DCS ADA Coordinator offers assistance in identifying the appropriate federal entity.

#### 5. Record Keeping Requirements for ADA Grievances

All ADA grievances are documented to include the name of the grievant, the grievance, the date of the grievance, the investigation, the resolution of the grievance, and any documents concerning the grievance, including the written decision.

### F. Allegations of Retaliation

1. Any Department employee who receives a complaint from a customer involving alleged retaliation for exercising their rights under the ADA forwards the information to the DCS ADA Coordinator.
2. The DCS ADA Coordinator contacts the customer who has allegedly been retaliated against to confirm that an investigation is being conducted.
3. The DCS ADA Coordinator works with the appropriate persons to conduct the investigation. This may include Department managers, staff, and/or federal ADA officials.
4. The DCS ADA Coordinator advises the DCS Chief Human Resources Officer at the conclusion of the investigation to report the findings and any recommended actions necessary to resolve the situation.
5. The DCS Chief Human Resources Officer uses the ADA Coordinator findings and recommendations when deciding on the resolution to be pursued.

## VII. FORMS INDEX

[Authorization to Release Information \(DCS-1097A\)](#)

[DCS Non-Discrimination Policy](#)

[Reasonable Accommodation/Modification Grievance Decision \(DCS-1089A\)](#)

*Reasonable Accommodation Request (DCS-1086A)*

*Request for Effective Modification to Participate in a Program, Service, or Activity (DCS-1088A)*

*We Will Give You Help Poster (DCS-1096A)*