



Administrative Policies and Procedures: 1.05

Subject Reasonable Modifications

Approved by

Approval Date: 01/07/2019

Effective Date: 02/01/2019

Authority

Section 504 of the Rehabilitation Act of 1973, as amended, (“Section 504”) (29 USC § 794);

Title II and III of the Americans with Disabilities Act of 1990, as amended, (“ADA”) (42 U.S.C. § 12131-12134 et seq.);

Title II and III of the ADA Amendments Act of 2008 (42 U.S.C. §12101-12213 et seq.) and all provisions required by implementing regulations at 7 CFR 15b (USDA Section 504), 45 CFR 84 (HHS Section 504), 28 CFR 42 (DOJ Section 504), 28 CFR 35 (Title II), and 28 CFR 36 Title III.

Application

All TDHS Employees

Policy Statement

The Tennessee Department of Human Services (TDHS) will adhere to all applicable federal and state laws, regulations and guidelines with respect to making reasonable modifications in policies, practices, or procedures, as necessary, to afford individuals with disabilities an equal opportunity to participate in Department programs and services.

Purpose

The Tennessee Department of Human Services (TDHS) recognizes that in order to have equally effective opportunities and access to benefits, individuals with disabilities may need reasonable modifications to policies and procedures. The purpose of this policy is to provide procedures and guidelines to ensure that TDHS allows for equal and effective opportunities and access to Department programs, services and activities to all members or the public with disabilities.

Procedures

- A. Tennessee Department of Human Services Commitment** Tennessee Department of Human Services (TDHS) is committed to providing equal access and opportunity to qualified individuals with disabilities and their companions with disabilities in the provision of Department programs and

services.

**B. Requirements of
Tennessee
Department of
Human Services**

1. TDHS shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the Department can demonstrate that making the modification would fundamentally alter the nature of the service, program or activity.
2. The Department shall take appropriate steps to ensure that communication with applicants, participants, and members of the public with disabilities are as effective as communications with others who are not disabled.
3. The Department's local office shall furnish appropriate auxiliary aids and services upon request and where necessary to afford an individual with a disability an equal opportunity to participate in, and/or receive, a service, program, or activity conducted by the Department.
4. In determining what type of auxiliary aid or service is necessary, the Department shall give primary consideration to the requests of the individual with a disability.
5. The Department shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. The Department recognizes that providing services in an integrated setting through architectural barrier removal is the most desirable method to provide equally effective opportunities and benefits for many individuals with disabilities.
6. The Department 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 any action that would result in undue financial or administrative burdens.
7. The Department has the burden of proving that compliance with federal requirements would result in such alteration or burdens. Any determination that compliance with its responsibility to provide reasonable modifications, including equally effective communication for individuals with disabilities would fundamentally alter the service, program, or activity or unduly burden the Department shall be made by the Commissioner (or his/her designee), the Department Section 504/ADA Coordinator, and considering all resources available for use in funding and operating the program, service, or activity. The decision shall be accompanied by a written statement of the reasons for reaching that determination.
8. If an action required to comply with the Section 504 of the Americans with Disabilities Act (ADA) would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such burdens, but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the Department to the maximum extent possible.
9. When barrier removal would result in "undue financial or administrative burden" or "fundamental alteration in the nature of a service, program, or activity," the procedures in this policy will help ensure that the Department adheres to the requirements of Section 504 of ADA regulations and guidelines with respect to burden and infeasibility.

C. Discrimination Prohibited

TDHS, its local agencies, and sub recipients must afford individuals with disabilities an equal opportunity to participate in the Department's programs and services. These entities may not, on the basis of disability:

1. Exclude a person with a disability from a program or activity;
2. Deny a person with a disability the benefits of a program or activity;
3. Afford a person with a disability an opportunity to participate in or benefit from a benefit or service that is not equal to what is afforded others;
4. Provide a benefit or service to a person with a disability that is not as effective as what is provided others;
5. Provide different or separate benefits or services to a person with a disability unless necessary to provide benefits or services that are as effective as what is provided others; or
6. Apply eligibility criteria that tend to screen out persons with disabilities unless necessary for the provision of the service, program or activity.

This list is not exhaustive. See 28 CFR § 35.130 General prohibitions against discrimination.

D. Additional Requirements of the Tennessee Department of Human Services

1. TDHS will conduct annual evaluations of its current services, policies, and practices regarding access for individuals with disabilities to determine if they meet the requirements of Section 504 and the ADA. If modification of services, policies, and practices is required, the Department, local agencies, and/or subrecipients must make the necessary modifications. (28 CFR § 35.105 Self-evaluation). This evaluation may occur at the State and local levels.
2. TDHS must ensure the public is notified that it does not discriminate on the basis of disability and that it provides free auxiliary aids and services and how to request such services.
 - a. Notifications must inform the public about the grievance procedures, how to file a complaint and provide the name and contact information of the Section 504/ADA Coordinator.
 - b. Notices may appear on benefit application forms, vital notices, Department websites and be posted at service locations.
 - c. Notices must be available in alternative formats such as audio tape or other recordings, large print notice and Braille and in the most frequently encountered languages spoken by persons with limited English proficiency. (28 CFR § 35.106, 28 CFR § 35.107, and 28 CFR § 35.163).
3. TDHS must ensure that communication with applicants, participants, members of the public and companions with disabilities are as effective as communications with people without disabilities through the provision of necessary auxiliary aids and services.
 - a. Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of the Department, should contact the Department Section 504/ADA Coordinator, as soon as possible, but no later than 48 hours before the scheduled event.

- b. Please include the name, location and date of the service or program, and contact information of person requesting assistance.
 - c. The request will be routed through the appropriate Departmental Section 504/ADA Liaison.
 4. TDHS must ensure that generally, upon request and as needed, appropriate aids and services leading to effective communication are provided to qualified persons with disabilities so they can participate equally in Department's programs, services, and activities.
 - a. This includes qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have limited speech, hearing, or vision.
 - b. Requests for aids or services for effective communication should be directed to the Department's Section 504/ADA Coordinator.
 5. TDHS will not require an individual with a disability to bring another individual to interpret for him or her or rely on an adult or minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.
 - a. Frontline staff may rely on an adult to facilitate communication where 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. However, frontline staff may not rely on an accompanying adult to interpret when there is reason to doubt the person's impartiality or effectiveness.
 - b. Frontline staff must notify the individual with a disability of the availability of free auxiliary aids and services prior to relying on the person whom the individual brings with them to interpret.
 6. In the case of events and circumstances where advance notice and scheduling is possible, TDHS must not place surcharges on individuals with disabilities to cover the costs involved in making programs accessible.
 7. In cases of emergency services, which are unplanned and may require complex and important communication, qualified interpretation services consistent with the requirements of Section 504 and the ADA have been contracted by TDHS to be available twenty-four (24) hours a day, seven (7) days a week.
 8. TDHS must ensure that frontline staff at its local agencies and sub recipient agencies provide individuals with disabilities with an opportunity to request auxiliary aids and services.
 9. When an auxiliary aid or service is necessary, TDHS must provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice.
 - a. In determining what type of auxiliary aid or service is necessary, the State or local agency must give primary consideration to the requests of individuals with disabilities.
 - b. This primary consideration rule requires the public entity to honor the individual's choice, unless it can demonstrate that another

- equally effective means of communication is available, or that use of the means chosen would result in a fundamental alteration in the service, program, or activity or in undue financial and administrative burdens.
- c. The primary consideration rule does not apply to nongovernmental entities. Rather, nongovernmental entities are encouraged to consult with the person with a disability to discuss what aid or service is appropriate. The goal is to provide an aid or service that will be equally effective, given the nature of what is being communicated and the person's method of communicating.
10. TDHS must ensure that frontline staff at its local agencies and sub recipient agencies document the need for communication assistance and record the type of modification or communication assistance provided to the individual with disabilities at the point of contact. Therefore, local agency reviews for Civil Rights compliance must determine whether frontline staffs are providing reasonable modifications for individuals with disabilities.
 11. TDHS must adopt grievance procedures to handle complaints of disability discrimination in its programs and activities. These procedures are located within [Policy 1.01 Civil Rights Complaints](#).
 12. TDHS staff must participate in new employee training within thirty (30) days of hire and in-service training annually that covers the Department's obligation to afford individuals with disabilities an opportunity to participate in its benefits and services equal to that afforded others, including the requirements for communicating effectively with people who have communication disabilities.
 13. TDHS will monitor the provision of auxiliary aids and services at the point of service.
 14. TDHS will allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go.
 - a. 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.
 - b. When it is not obvious what service an animal provides, only limited inquiries are allowed. 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.
 15. TDHS will allow people with disabilities who use manual or power wheelchairs or scooters, and manually powered mobility aids such as walkers, crutches, and canes, into all areas where members of the public are allowed to go.
 - a. TDHS also will allow people with disabilities who use other types of power-driven mobility devices into their facilities; unless a particular type of device cannot be accommodated because of legitimate safety requirements.

- b. Where legitimate safety requirements bar accommodation for a particular type of device, TDHS will provide the service it offers in alternate ways if possible.
- 16. TDHS will request documentation from the Tennessee Department of General Services (TDGS), not less than every two (2) years, which determines whether all office spaces are accessible in accordance with 2010 Standards for State and Local Government Facilities Title II. TDHS will work with the TDGS to correct situations of inaccessibility.
- 17. TDHS will request documentation from the state Office of Strategic Technology Solutions (STS), not less than every two (2) years, which determines whether the Department's website and telecommunication systems are accessible to persons with disabilities according to the latest U.S. Department of Justice standards. TDHS will work with the STS to correct situations of website inaccessibility.
- 18. For additional information, or to receive this document in alternate format, please contact the Department Section 504/ADA Coordinator at 505 Deaderick Street, 14th Floor, Nashville, Tennessee 37243, ComplianceOfficer.DHS@tn.gov.

Forms

NONE

Collateral Documents

[1.01 Civil Rights Complaints](#)

Additional Resources	<p>Section 504 of the Rehabilitation Act of 1973 (“Section 504”) at 7 CFR § 15b for USDA, 45 CFR Part 84 for HHS, and 28 CFR Part 42 for DOJ</p> <p>Title II and III of the Americans with Disabilities Act of 1990 (ADA) at 28 CFR Part 35 and 28 CFR Part 36</p> <p>Title II and III of the Americas with Disabilities Act Amendments Act of 2008 (ADAAA) at 28 CFR Part 35 and 28 CFR Part 36</p> <p>USDA Policy Memorandum on Modifications to Accommodate Disabilities in the Child and Adult Care Food Program and Summer Food Service Program (June 22, 2017)</p> <p>DOJ ADA: Title II Primer, June 2015</p> <p>DOJ ADA Requirements: Effective Communication, January 2014</p> <p>DOJ ADA 2010 Revised Requirements: Service Animals, July 2011</p> <p>DOJ ADA Best Practices Tool Kit for State and Local Governments</p> <p>DOJ ADA Requirements: Wheelchairs, Mobility Aids, and Other Power-Driven Mobility Devices, January 2014</p> <p>DOJ Accessibility of State and Local Government Websites to People with Disabilities, June 2003</p> <p>28 CFR § 35.130 General prohibitions against discrimination</p> <p>United States Access Board</p> <p>Accessibility of State and Local Government Websites to People with Disabilities</p> <p>Planning and Managing Web Accessibility</p> <p>Easy Checks: A First Review of Website Accessibility</p>
-----------------------------	--

Retention of Records	RDA Summary for Policy 1.05 Reasonable Modifications (For internal use only)
-----------------------------	--

Glossary

Term

Definition

Auxiliary Aids and Services

1. qualified interpreters, note takers, transcription services, written materials, assistive listening systems, and other effective methods for making aurally delivered materials available to individuals who are deaf or hard of hearing;
2. qualified readers, taped texts, audio recordings, Braille materials, large print materials, or other effective methods for making visually delivered materials available to individuals with visual impairments;
3. acquisition or modification of equipment or devices; and
4. other similar services and actions.

Companion

Any family member, friend, or associate of a person seeking or receiving an

entity's goods or services who is an appropriate person with whom the entity should communicate. Department staff also is required to provide effective communication for companions who have communication disabilities.

Disability

A physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. The term "disability" also includes many food allergies and any impairment that is episodic or in remission if it would substantially limit a major life activity when active. With the exception of ordinary eyeglasses or contact lenses, the determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures, such as medication or hearing aids.

Fundamental Alteration

A change in the essential nature of the entity's programs or services.

Other power-driver mobility device

Any mobility device powered by batteries, fuel, or other engines - whether or not designed primarily for use by individuals with mobility disabilities - that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section. This definition does not apply to Federal wilderness areas; wheelchairs in such areas are defined in section 508(c)(2) of the ADA, 42 U.S.C. 12207(c)(2).

Qualified Individual with an Disability

An individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department.

Qualified Interpreter

An interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

Qualified Reader

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

Reasonable Modification

Modifications or adjustments to a program, service or activity that will enable equal access, to the maximum extent possible, for qualified individuals with a disability.

Service Animal

Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing

to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

In a separate provision, the ADA permits access for miniature horses that have been individually trained to do work or perform tasks for people with disabilities where reasonable. (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.)

Technically Infeasible

Alteration of a building or a facility because existing structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements.

Telecommunications Device for the Deaf (TDDO or Teletypewriter (TTY)

These are devices that assist individuals who are deaf, hard-of-hearing, speech impaired and/or mute communicate with each other and with other people. Telecommunications Relay Service (TRS) means a telephone service that allows persons with hearing or speech disabilities to place and receive telephone calls. TRS is available in all 50 states, the District of Columbia, Puerto Rico and the U.S. territories for local and/or long distance calls. TRS providers – generally telephone companies – are compensated for the costs of providing TRS from either a state or a federal fund. There is no cost to the TRS user.

Undue Burden

Unreasonable difficulty or expense. In determining whether an action would result in an undue burden, the Department shall consider all agency resources available to the program or component for which the product is being developed, procured, maintained, or used.

Wheelchair

A manually-operated or power driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion.

Acronyms

Abbreviation

Expansion

ADA

Americans with Disabilities Act

STS

Office of Strategic Technology Solutions, a division within the Department of Finance and Administration

TDGS

Tennessee Department of General Services

TDHS

Tennessee Department of Human Services