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## THE AMERICANS WITH DISABILITIES ACT TITLE II - GENERAL NONDISCRIMINATION REQUIREMENTS

In September 2010, the Department of Justice revised its regulations implementing the Americans with Disabilities Act (ADA). To assist state and local government officials in understanding and complying with the ADA requirements, in June 2015 the Department of Justice published a technical assistance document entitled, *ADA Update: A Primer for State and Local Governments*.

The following is a brief summary of the recent guidance as it relates to program accessibility, service animals, wheelchairs and other power-driven mobility devices and communicating with people with disabilities .

### Reasonable Modification of Policies and Procedures

The ADA requires public entities to make “reasonable accommodations” in their usual way of doing things when necessary to accommodate people who have disabilities. It is important to note that only “reasonable” modifications are required. Any modification that would result in a “fundamental alteration,” or a change in the essential nature of the entity’s programs or services is not required. For instance:

- At a museum’s coffee shop, accompanying and assisting a customer who uses a wheelchair may not be reasonable when there is only one person on duty.
- At a hot lunch program for the elderly, the staff are not obligated to feed a man with a disability who needs assistance in eating if the program does not provide this service for others. However, it would be a reasonable accommodation to allow the man to bring an attendant to assist him or for staff to assist him with cutting his food.

### Service Animals

Under the ADA, a service animal is defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability. Allowing service animals into a “no pet” facility is a common type of reasonable modification necessary to accommodate people who have disabilities. Service animals must be allowed in all areas of a facility where the public is allowed unless the service animal’s presence would create a legitimate safety risk or fundamentally alter the nature of a public entity’s services. The ADA does not override public health rules. For that reason, service animals may be prohibited from public swimming pools.

The ADA requires service animals to be under the control of the handler at all times. It also requires the service animal to be harnessed, leashed or tethered unless the device interferes with the service animal’s work or the individual’s disability prevents him from using these devices.

Public entities may not require documentation such as proof that the animal is trained, certified, or licensed as a



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condition for entry. In situations where it is not apparent that the dog is a service animal, a public entity is limited to asking two questions:

- whether the animal is required because of a disability; and
- what work or task the animal is trained to perform.

The ADA does not restrict the breeds of dogs that may be used as service animals. Public entities have the right to determine, on a case-by-case basis, whether use of a particular service animal poses a direct threat, based on the animal's history or behavior. Public entities, however, may not exclude a service animal based solely on fears about how a particular breed might behave.

The ADA provides that public entities may exclude service animals if (1) the dog is out of control and the handler cannot or does not regain control; or (2) the dog is not housebroken. If a service animal is excluded, the individual must be allowed to enter the facility without the service animal.

### Wheelchairs and Other Power-Driven Mobility Devices

The ADA regulations defines the term "other power driven mobility devices" as any mobility device powered by batteries, fuel or other engines, whether or not designed primarily for use by individuals with a mobility disability, for the purpose of locomotion.

Public entities may allow individuals with disabilities who use these devices into all areas where the public is allowed to go, unless the entity can demonstrate that the particular type of device cannot be accommodated because of legitimate safety requirements.

Public entities must consider these factors in determining whether to permit other power-driven mobility devices on their premises:

- the type, size, weight, dimensions and speed of the device;
- the volume of pedestrian traffic;
- the facility's design and operational characteristics such as the square footage, whether it is indoors or outdoors, the placement of stationary equipment, devices or furniture, and whether it has storage space for the device if requested by the individual;
- whether legitimate safety standards can be established to permit the safe operation of the device; and
- whether the use of the device creates a substantial risk of serious harm to the environment or natural or cultural resources or poses a conflict with federal land management laws and regulations.

Public entities may not ask individuals using such devices about their disability but may ask for a credible assurance that the device is required because of a disability. If the person presents a valid, state-issued disability parking placard or card or a state-issued proof of disability, that documentation must be accepted as credible assurance on its face. If the person does not have this documentation, but states verbally that the device is being used because of a mobility

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disability, that also must be accepted as credible assurance, unless the person is observed doing something that contradicts the assurance.

## Communicating With People Who Have Disabilities

The ADA requires public entities to take the steps necessary to communicate effectively with people who have disabilities. The ADA uses the term “auxiliary aides and services” to refer to readers, note takers, sign language interpreters, assistive listening systems and devices, open and closed captioning, text telephones, videophones, information provided in large print, Braille, audible or electronic formats, and other tools for people who have communication disabilities. The regulations also permit the use of new technologies including real-time or remote captioning and video remote interpreting, which is a fee based service that allows public entities with video conferencing equipment access to a sign language interpreter off-site.

Public entities are required to give primary consideration to the type of auxiliary aide or services requested by the person with the disabilities. They must honor that choice, unless they can demonstrate that another equally effective means of communication is available or that the aid or services requested would fundamentally alter the nature of the program. If the choice expressed by the person with a disability would result in an undue burden or a fundamental alteration the public entity still has an obligation to provide another aid or service that provides effective communication, if possible. The decision that a particular aid or service would result in an undue burden or fundamental alteration must be (1) made by a high level official, and (2) accompanied by a written statement of reasons.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.