Ensuring Meaningful Access for the Deaf, Hard of Hearing, and DeafBlind Community

This document contains general information for educational purposes and should not be construed as legal advice. It is not intended to be a comprehensive statement of the law and may not reflect recent legal developments. If you have specific questions concerning any matter contained in this document or need legal advice, we encourage you to consult with an attorney. Created in 2022 by Disability Rights NC.
What Will I Learn Today?

• How do anti-disability discrimination laws apply to providers who serve domestic violence survivors and offenders?

• What is disability discrimination?

• What is ineffective communication and when to provide auxiliary aids and services?

• What are the differences between service and emotional support animals?
Part I: Anti-Disability Discrimination Coverage

- Rehabilitation Act of 1973
- NC Persons with Disabilities Protection Act of 1985
- Fair Housing Act Amendments of 1988 and State Fair Housing Act Amendments of 1989
- Americans with Disabilities Act of 1990
Rehabilitation Act

Prohibits disability-based discrimination by any federal agency, federal contractor, or recipient of federal funds.

Section 504 of the Rehabilitation Act applies to VOCA and VAWA grants.

Rehabilitation Act provides almost identical protections to people with disabilities as the Americans with Disabilities Act.
North Carolina Persons with Disabilities Protection Act

Prohibits disability-based discrimination in employment, public accommodations, and public services. Includes all state-grant contracts for social services.

NCPDPA provides almost identical protections to people with disabilities as the Americans with Disabilities Act and the Rehabilitation Act, except it applies only to North Carolina.
Fair Housing & State Fair Housing Acts

Provides protections to people with disabilities living in “dwellings,” which includes:

- (Almost all) residential rental units
- Single and multi-family housing and homeowner associations
- Group homes and assisted living housing
- Shelters and long-term transient housing
Americans with Disabilities Act of 1990


• Civil rights laws designed to eliminate disability-based discrimination and remove architectural and programmatic barriers that prevent individuals from enjoying the same opportunities that are available to persons without disabilities.

• According to census data, 1 in 5 Americans have a disability eligible for the protections of the ADA.
Structure of the ADA

- **Title I:** Employment
- **Title II:** State and Local Government Services and Programs
- **Title III:** Private Entities Operating Public Accommodations or Commercial Facilities
- **Title IV:** Telecommunications
- **Title V:** Miscellaneous
Places of Public Accommodation Coverage

Title III of the ADA covers private entities that operate public accommodations –aka private and non-profit businesses open to members of the public.

ADA prohibits disability-based discrimination by any place of public accommodation.
Disability Coverage

• Physical or mental impairment that **substantially limits** one or more **major life activities**

  OR

• Person with a record of such an impairment

  OR

• Person who is regarded as having such an impairment

42 U.S.C. § 12102
Definition of Disability

Substantially Limits
An impairment is a disability if it substantially limits the condition, manner, or duration under which an individual can perform a major life activity as compared to most people. 29 C.F.R. § 1630.2(j)(2).

Duration
• Temporary, non-chronic impairment of short duration (like broken bone) usually not substantially limiting
• Impairments that are episodic or in remission are disabilities if substantially limiting when active
Major Life Activities

- Seeing
- Hearing
- Walking
- Speaking
- Breathing
- Learning
- Working
- Caring for oneself
- Performing manual tasks
- Standing
- Lifting

- Bending
- Eating
- Sleeping
- Reading
- Concentrating
- Thinking
- Communicating
- Major Bodily Functions

42 U.S.C. § 12102(2)
Disregard Mitigating Measures

• Courts can no longer consider:
  – Medication,
  – Medical supplies and equipment,
  – Low vision and hearing devices,
  – Prosthetics, mobility devices, etc.
  – Use of assistive technology
  – Learned behavioral or adaptive neurological modifications
  – Reasonable accommodations
Different Types of Disability Discrimination
Negative Rights

Must not:

• Limit, exclude, harass, segregate, inquire, or classify based on disability,
• Use non essential eligibility standards that have the effect of screening out people with disabilities,
• Use non essential administrative methods that perpetuate disability-based discrimination,
• Exclude or deny benefits because of one’s association with a person with a disability,
• Deprive a person with a disability an opportunity because you may have to provide a reasonable accommodation.
Affirmative Rights

Must:

• Provide reasonable accommodations that are needed for meaningful access,
• Permit the use of personal aids and services,
• Provide auxiliary aids and services to ensure effective communication,
• Remove architectural barriers in existing facilities when such removal is readily achievable.
Reasonable Accommodations

Reasonable accommodation is any modification or adjustment that will enable a qualified person with a disability the same benefit equal to that of a person without a disability.

Failure to provide a reasonable accommodation is a disability discrimination, unless granting the accommodation would fundamentally alter the service or program.
Intent Doesn’t Matter for Accommodations

• “Discrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference.”

• “Because failure to accommodate claims concern discrimination in the form of a failure to meet an affirmative obligation, there is no action that must be shown to have been taken with any particular intent.
  – Exby-Stolley v. Bd. of Cty. Comm’rs, 979 F.3d 784, 798 (10th Cir. 2020) (en banc)
Auxiliary Aids & Services

These are communication-related accommodations, e.g. sign language interpreters, captioning, assistive listening devices and headsets, TDD/TTY (text telephones).

They must be provided to clients in a timely fashion and protect their privacy and independency when needed for effective communication.

Presumption to use the requester’s preferred communication aid/service and not impose alternatives. More critical the communication is the more important it is to provide the preferred auxiliary aid/service.
Qualified Interpreter Services

These are a type of auxiliary aid/service. To be qualified, the interpreter must be able to sign to the deaf individual what is being said by the hearing person and voice to the hearing person what is being signed by the deaf individual. Interpreter services must be:

– effective, accurate, and impartial,
– use any necessary specialized vocabulary
Service Animals / ESAs

Service Animals – are a special type of accommodation under the ADA, Rehabilitation Act, and NCPDPA

Emotional Support Animals – are a special type of accommodation under the Fair Housing and State Fair Housing Acts
Service Animals / ESAs

Service animals are dogs or miniature horses individually trained to do work or perform tasks for the benefit of a person’s disability.

Emotional support animals are not individually trained. The presence of the animal is therapy for the person’s disability.

*Psychiatric/PTSD service animals are individually trained to perform tasks (e.g. alert people to take meds, prevent/interrupt impulsive behaviors)
Service Animals

May only ask two questions to determine if animals are service animals: (1) is this a service animal and (2) what tasks is the animal trained to help you with. There are no certification requirements for service animals. NC’s registry is voluntary.

Under state law, it is a class 3 misdemeanor to deny a person the use of a service animal or charge a fee for the use of a service animal. NC Gen. Stat. § 168-4.5.
Service Animals

Service animals may be lawfully excluded when:

– The animal is out of control and the handler does not take effective action to control it; OR

– The animal is not housebroken
Emotional Support Animals

Are a type of reasonable accommodation in dwellings to alter “no pet policies” and “pet deposits” for residents with disabilities who use animals as a form of therapy.

If the need for an emotional support animal is not known or obvious, a landlord can require medical documentation to verify that the use of the animal is related to a person’s disability.
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