

In accordance with § 2.2-4002.1 of the Code of Virginia, this proposed guidance document conforms to the definition of a guidance document in § 2.2-4101.



Department of Professional and Occupational Regulation

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PROPOSED GUIDANCE DOCUMENT

DIRECTOR'S POLICY #100-02 AMERICANS WITH DISABILITIES ACT COMPLIANCE

Current Document Effective Date: May 22, 2017

Amended: May 26, 2023

Anticipated Effective Date: November 9, 2023

The Department of Professional and Occupational Regulation will be taking public comment on this proposed guidance document. A 30-day comment period will begin on October 9, 2023.

If you wish to comment on the proposed guidance document, you may do so via the Town Hall website or you may submit written comments so that they are received by November 8, 2023.

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I. PURPOSE:

The purpose of this policy is to ensure full compliance with the provisions of the Americans with Disabilities Act (ADA) by establishing a sufficient, equitable and consistent process for handling requests for accommodations/modifications submitted to the Department of Professional and Occupational Regulation (DPOR) or to any contractor acting on their behalf.

II. POLICY STATEMENT:

Subtitle A of Title II of the Americans with Disabilities Act (ADA) of 1990, as amended, states, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” DPOR shall apply objective standards when processing requests for accommodations/modifications under the provisions of the ADA.

III. DEFINITIONS:

- Auxiliary aids/services** Services and devices designed to provide audio and visual communication to persons with hearing, speech and vision impairments. Examples include, but are not limited to qualified interpreters, transcription services, written materials, telephone handset amplifiers, assistive listening devices/systems, closed caption decoders, videotext displays and telecommunications devices for deaf persons (TDDs) for individuals with hearing impairments and Braille materials, audio recordings and large print materials for individuals with visual impairments.
- Disability** A physical or mental impairment that substantially limits one or more of the major life activities of an individual. The term does not include psychoactive substance use disorders (affecting the mind or behavior) resulting from the current illegal use of drugs.
- Disabled individual** An individual with a physical or mental impairment that substantially limits one or more major life activities of the individual; has a record of an impairment that substantially limits one or more major life activities; or is regarded as having an impairment that substantially limits a major life activity, regardless of whether the individual actually has an impairment.
- Major life activities** Activities including such things as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- Mental impairment** Mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness and specific learning disabilities.
- Physical 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 (including speech organs that are not respiratory such as vocal cords, soft palate, tongue, etc.), respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine.
- Qualified individual** An individual with a disability who, with or without reasonable accommodations/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 a public entity.

IV. RELATED DOCUMENTS: [Americans with Disabilities Act \(ADA\)](#)

V. GENERAL PROVISIONS:

A. GENERAL GUIDELINES

1. If the Department can demonstrate that a particular accommodation/modification would fundamentally alter the nature of the service, program or activity, it is not required to make that accommodation/modification.
2. The question of whether a temporary impairment constitutes a disability shall be resolved on a case-by-case basis, with consideration given to the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual. The ADA Committee shall determine whether the temporary impairment constitutes a disability.
3. Persons with disabilities who pose a significant health or safety risk to others may not be deemed “qualified” based on the Department’s individualized assessment of current medical evidence (or the best available objective evidence). Using this objective evidence, DPOR shall consider the nature, duration and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable accommodations/modifications of policies, practices or procedures will mitigate the risk.

B. PUBLIC MEETINGS AND HEARINGS

1. All DPOR meetings, disciplinary proceedings and hearings involving the public shall be held in locations that are accessible to disabled individuals. All public meeting notices on the Virginia Regulatory Town Hall shall indicate that the location is accessible to persons with disabilities and an interpreter for the hearing impaired will be provided upon request. All other public notices shall include the following language:

Persons desiring to participate in the meeting and requiring special accommodations/modifications or interpretive services should contact the Department at (804) 367-8519 at least ten (10) days prior to the meeting so that suitable arrangements can be made for the appropriate accommodation/modification. The Department of Professional and Occupational Regulation fully complies with the Americans with Disabilities Act.

2. All requests for accommodation/modification under the ADA shall be directed to the ADA Coordinator. The Department shall make every effort to provide reasonable accommodations/modifications for all public meetings.
3. The Department shall not place special charges on individuals with disabilities to cover the costs of measures necessary to ensure nondiscriminatory treatment, such as making accommodations/modifications required to provide program accessibility or providing qualified interpreters.

C. ADA COMMITTEE

1. The Department shall establish an ADA Committee comprised of the following positions:

ADA Committee Members	Section/Division	Status
Deputy Director	Compliance & Investigations	ADA Coordinator
Director or Assistant Director	Human Resources	Member
Director	Alternative Dispute Resolution/CID	Member
Director	Workforce Development/LRPD	Member
Board Executive Director	Licensing & Regulatory Programs Division	Member (selected by LRPD Deputy Director)
Section Director or Manager	Compliance & Investigations Division	Member (selected by CID Deputy Director)
Manager or Director	Executive	Member (selected by Agency Director)

2. The ADA Committee shall have the authority to resolve any disagreements, disputes, or grievances. The Committee shall report to the DPOR Director.
3. Committee appointments shall remain in effect until notified in writing of a replacement.

D. PUBLICATIONS

1. All Department publications distributed to the public, including employment advertising, consumer guidance, biennial reports, regulations, manuals and handbooks shall comply with Title II of the ADA. All publications shall include a statement that the Department of Professional and Occupational Regulation complies with the Americans with Disabilities Act.
2. Upon request, a publication shall be available in alternative formats unless it would place an undue financial and administrative burden on the Department, or fundamentally alter the nature of the publication.

E. EXAMINATIONS

1. General

- a. The Department shall ensure that all examinations administered by or on behalf of DPOR shall measure the actual ability of an individual rather than reflect limitations caused by the disability.
- b. The Department or any examination vendor acting on their behalf shall offer all examinations in an accessible location and provide auxiliary aids and services for qualified individuals with disabilities.
- c. DPOR or their authorized examination vendor shall bear the cost of any accommodation/modification and/or auxiliary aids provided for qualified individuals with disabilities.

2. Applications for Accommodation/Modification

- a. All DPOR and vendor examination applications shall include an area where qualified applicants indicate their need for accommodations/modifications when taking the examination.
- b. Applicants requesting accommodations/modifications under the ADA are asked to submit a completed [ADA Accommodation/Modification Request Form](#) or other similar DPOR-approved document prepared by the examination vendor to the Department. Upon request, the Department will provide assistance completing the forms.
- c. Applicants requesting accommodation/modification under the provisions of the ADA are required to meet the same application deadlines established for non-disabled applicants.
- d. Applicants with documentation of having received the same or similar accommodation/modification in a previous test situation may be permitted to submit that information instead of preparing new documentation. The Workforce Development Director shall make all decisions regarding the sufficiency of existing documentation.
- e. All disability-related candidate records shall be classified as confidential information. Access to the information shall be limited to individuals who are responsible for processing the applicant's request for accommodation/modification.

3. Approval of Requests for Accommodation/Modification

- a. Executive Directors in the Licensing and Regulatory Programs Division shall refer all requests for accommodation/modification to the Workforce Development Section for processing.
- b. Requests denied by the examination vendor shall be forwarded to the Workforce Development Section of the Department for review and possible reconsideration before it is communicated to the applicant.
- c. With the exception of national examinations, which are not covered by this policy, the Workforce Development Director shall approve/deny all accommodation/modification requests for DPOR on-site examinations and notify the ADA Coordinator of any accommodations/modifications to be made for the

candidate.

d. Examination vendors shall coordinate all approved requests for ADA accommodations/modifications.

4. Accommodations/Modifications

a. Testing accommodations shall be provided to qualified individuals with disabilities to enable the individuals to demonstrate their knowledge of the subject being tested by removing any architectural, communication, and transportation barriers or by providing auxiliary aids or services. When offering testing accommodations, DPOR shall focus on the individual need of the applicant, which may result in different accommodations for the same disability.

b. Accommodation requests that are deemed inappropriate or unreasonable by the Examinations Director or Board section may be discussed with the candidate and/or professional recommending the accommodation to reach a mutually agreeable solution.

c. Reasonable testing accommodations include a distraction-free space, an alternative location, test schedule variation, extended time, a scribed exam, sign language interpreters, readers, adaptive equipment and modifications of test presentation/response format.

d. Requests for a time extension shall be evaluated on a case-by-case basis, in which consideration is given to the type of accommodations being provided, the disability involved, and the type of test being administered. In situations where a reader is used, time and one-half is usually appropriate. A request for unlimited time shall not be considered reasonable. It is the responsibility of the professional completing the supporting documentation to recommend an appropriate time extension.

F. RECORD KEEPING

All documents related to the denial of an ADA accommodation/modification request shall be maintained by the Department for a period of one year from the date of denial. In situations where charges of discrimination are filed against the Department, all documentation shall be retained until the final disposition of the case. A copy of this information shall be provided to the ADA Coordinator upon request.

G. APPEAL/GRIEVANCE PROCEDURES

1. The Department has adopted an agency grievance procedure to provide prompt and equitable resolution of ADA violation claims. Complaints should be addressed to the ADA Coordinator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, (804) 367-8500.

2. Complaints may be filed verbally or in writing. All complaints must contain the name and address of the person filing the complaint and a brief description of the alleged violation.

3. Complaints must be filed within five (5) working days from the date the complainant becomes aware of the alleged violation.

4. Following a complaint, an informal but thorough investigation shall be conducted by the Department's ADA Committee. All interested persons and their representatives shall be afforded an opportunity to submit evidence to substantiate their position.

5. The ADA Committee's decision regarding the validity of the ADA complaint shall be issued in writing by the ADA Committee, and a copy of this decision will be forwarded to the complainant no later than five (5) workdays after its filing, if possible.

6. The ADA Coordinator shall maintain the Department's files and records related to ADA complaints for three (3) years.

7. The complainant may request reconsideration of the decision in instances where the complainant is dissatisfied with the resolution. The request for reconsideration shall be made to the Agency Director within five (5) days of receiving the committee decision. The Director shall evaluate the request for reconsideration and prepare a written response to the complainant within five (5) workdays, if possible.

8. The right of the person to a prompt and equitable resolution of the complaint filed hereunder shall not be impaired by the person's pursuit of other remedies such as the filing of an ADA complaint with the responsible federal department or agency. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.
9. These rules shall be construed to protect the substantive rights of interested persons to meet appropriate due process standards, and to assure that the Department complies with the ADA when implementing regulations.
10. The timeframes outlined above may be modified if both the Department and the complainant agree to the modification.