



Family Services
Americans with Disabilities Act (ADA) Section 504
and Reasonable Modifications Policy

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I. INTRODUCTION

A. Purpose

The purpose of this policy is to provide child welfare staff with policies and procedures for providing services to those individuals who may have a disability, to ensure compliance with the requirements of the Americans with Disabilities Act (ADA) with Section 504 of the Rehabilitation Act of 1973 for qualified individuals with disabilities by providing equal opportunity to access and participate in services. This policy also establishes a uniform procedure for the Department to consider and respond to request for reasonable accommodations to qualified individuals receiving and participating in services and programs of the Department under the American Disabilities Act (ADA).

B. Legal Base

In accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 ("Section 504") and Title II of the Americans with Disabilities Act of 1990 ("ADA"), the Alabama Department of Human Resources (ADHR):

- Is prohibited from discriminating against qualified individuals with disabilities in the child welfare system, including parents, prospective parents, foster parents, caregivers, and children.
- Shall ensure that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of ,or otherwise ~~or~~ be subjected to discrimination under any child welfare program or activity that receives Federal financial assistance;
- Will not exclude any individual with a disability from the full and equal enjoyment of its services, programs, or activities, unless after an individualized assessment, the individual poses a direct threat to the health or safety of themselves or others, that cannot be mitigated by reasonable modifications of policies, practices or procedures, or by the provision of auxiliary aids or services;
- Shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless DFCS can demonstrate that making the modifications would result in a fundamental alteration in the nature of a service, program, or activity or would result in undue financial and administrative burdens;
- Will conduct individualized assessments of qualified individuals with disabilities before making application and retention decisions in the foster care and adoption program, and will consider, on a case-by-case basis, requests for reasonable modifications
- Shall eliminate any eligibility criteria for participation that screens out or tends to screen out a person with a disability, or any class of individuals with disabilities from full and equal enjoyment in such participation, unless it can be established that such requirement is necessary for the provision of a service, facility, privilege, advantage or accommodation;
- Will not place a surcharge on a particular qualified individual with a disability or any group of qualified individuals with disabilities to cover the cost of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide nondiscriminatory treatment required by Title II of the ADA and Section 504;
- Shall not retaliate against, intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title II of the ADA, or

because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing;

II. GLOSSARY

Disability - Disability is defined as 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.

Qualifying Disability- A qualifying disability includes but is not limited to a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment or being regarded as having such impairment.

Qualified Individual with a Disability- Title II of the ADA defines a “qualified individual with a disability” as “an individual 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 criteria for- the receipt of services or the participation in programs or activities provided by a recipient of Federal financial assistance.” Title II protects “qualified individuals with disabilities” and non-disabled individuals (and entities) that have an association or relationship with someone who is known to be disabled (e.g., the parent of a child with a disability).

Major Life Activities- The phrase “major life activities” includes, but is not limited to: caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working. It also includes the operation of a major bodily function, including but not limited to: functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

Physical or mental Impairment- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic and lymphatic, skin, and endocrine- ; or any mental or psychological disorder such as intellectual disability, organic brain syndrome, mental health condition, and specific learning disability. This includes but is not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, mental health condition, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, substance use disorder, alcohol use disorder, and long COVID. Physical or mental impairment does not include homosexuality or bisexuality.

Reasonable Modification- is a change in a policy, practice, or procedure that is done to offer equal access and equal opportunity for a person with a disability.

III. DOCUMENTATION

County staff must document in FACTS narrative when a reasonable modification or auxiliary aid or service is requested or provided to a person with a disability. The client's record must reflect the person served, the requested reasonable modification or auxiliary aid or service, the individual's disability, the modification or service provided.

IV. COMMUNICATION WITH PERSONS WHO HAVE DISABILITIES

Under the ADA, the Department must take necessary steps to provide effective communication with individuals with disabilities. Communicating effectively is an essential part of providing services. DHR must provide effective communication with applicants for and recipients of DHR services, as well as with parents, children, or others who are involved in assisting an individual in obtaining and maintaining benefits. DHR cannot require an individual with a disability to bring another individual to interpret for him or her.

DHR is prohibited from relying on a 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.

In situations not involving an imminent threat, an adult accompanying someone who uses sign language may be relied upon to interpret or facilitate communication when (a) the individual requests this, (b) the accompanying adult agrees, and (c) reliance on the accompanying adult is appropriate under the circumstances. This exception does **not** apply to minor children.

V. REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES

Individuals with disabilities may require reasonable accommodations in order to receive the benefits of activities, programs and services provided by the Department. Upon request, DHR staff, volunteers, interns, contractors, grantees, agents and providers of services will make reasonable modifications in policies, practices, or procedures for qualified individuals with disabilities. Although reasonable accommodations is not defined under ADA, it should be determined on a case by case basis and be based on the abilities and needs of the individual. Child welfare staff may ask for information necessary to determine whether an applicant or participant who has requested a reasonable modification has a disability-related need for the modification, when the individual's disability and need for the modification are not readily apparent or known. Child welfare staff will:

- a. Keep the medical records and other health information of applicants and participants in the family service programs confidential.
- b. Ensure meaningful and equal access to services for the sensory impaired, including by all entities contracting with the Department for the provision of services.

Reasonable accommodations for clients with disabilities may include but are not limited to the following:

- a. Auxiliary aids and services may include, but are not limited to, readers, note takers, sign language interpreters, assistive listening systems or devices, open and closed captioning, text telephones, videophones, large print information, Braille, audible or electronic

formats or other similar tools. Under the ADA, DHR must give primary consideration to the type of auxiliary aid or service requested by the person with a disability. The choice must be honored unless another equally effective means of communication is available or the requested aid or service would fundamentally alter the nature of the program, service or activity or would result in undue financial or administrative burdens. The decision that a particular aid or service would result in an undue burden or fundamental alteration may only be made by the Alabama Department of Human Resources Office of Civil Rights / Equal Employment Opportunity. Even if a particular aid or service requested by an individual were determined to be a fundamental alteration, DHR must still in that circumstance provide other auxiliary aids or services free of charge to ensure effective communication.

- b. The telecommunications relay service (TRS), is a free nationwide network that uses communications assistants to serve as intermediaries between individuals with disabilities who have hearing or speech disabilities who use a text telephone (TTY) and people who use standard voice telephones. The communications assistant tells the voice telephone user what the TTY user is typing and types to the TTY-user what the telephone user is saying. When a person who speaks with difficulty is using a voice telephone, the communications assistant listens and then verbalizes that person's words to the other party. This is called speech-to-speech transliteration. This service can be accessed by calling 711.
- c. Video relay service (VRS) is a free, subscriber-based service for people who use sign language and have videophones, smart phones, or computers with video communication capabilities. For outgoing calls, the subscriber contacts the VRS interpreter, who places the call and serves as an intermediary between the subscriber and a person who uses a voice telephone. For incoming calls, the call is automatically routed to the subscriber through the VRS interpreter. Staff must accept and treat relay calls just like other calls. The communications assistant or interpreter will explain how the system works.

VI. PREVENTING DISABILITY DISCRIMINATION IN THE CHILD WELFARE SYSTEM

No qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any child welfare program or activity that receives Federal financial assistance. Prohibited discrimination includes but is not limited to :

- Decisions based on speculation, stereotypes, or generalizations that a parent, caregiver, foster parent, or prospective parent, because of a disability, cannot safely care for a child; and
- Decisions based on speculation, stereotypes, or generalizations about a child with a disability.
- Deny a qualified parent with a disability custody or control of, or visitation to, a child;

- Deny a qualified parent with a disability an opportunity to participate in or benefit from any and all services provided by a child welfare agency, including but not limited to, family preservation and reunification services equal to that afforded to persons without disabilities;
- Terminate the parental rights or legal guardianship of a qualified individual with a disability
- Deny a qualified caregiver, foster parent, companion, or prospective parent with a disability the opportunity to participate in or benefit from child welfare programs and activities; or
- Require children, on the basis on the disability, to be placed outside the family home through custody relinquishment, voluntary placement, or other forfeiture of parental rights in order to receive necessary services.
- Parenting evaluations that focus solely on a person's disability nor be based on a single general intelligence quotient (I.e. a single IQ test result). They must be based on their parenting ability.

VII. COMPLAINT PROCEDURES

Alabama Department of Human Resources as well as the Department of Health and Human Services has Civil Rights Divisions that enforce civil rights laws. Whenever individuals with disabilities believe their civil rights have been disregarded, they can file a complaint with either the state agency or the federal agency.

- A. Alabama Department of Human Resources Civil Rights / Equal Employment & Civil Rights
 1. The Civil Rights / Equal Employment/Civil Rights Division serves as the focal point for the State Department and local County Departments in activities involving Civil Rights and Equal Opportunity.
 2. Its staff maintains a system to ensure the Department and its sub-grantees' compliance with appropriate laws and regulations.
 3. The staff also:
 - a. Conducts reviews and audits of Department and its sub-grantees' programs
 - b. Investigates and mediates complaints and other charges alleging discrimination or unequal treatment from employees and program participants
 - c. Provides technical assistance, training and counseling to managers, supervisors, employees, clients, and the general public.

B. How to File a Civil Rights Complaint

1. Complaint Requirements

Alabama DHR will accept all complaints, whether written or verbal. Complaints may be submitted on the Alabama Department of Human Resources (Division of Family and Children Services) Notice of Discrimination Complaint Form or any other form of writing.

Staff should assist a client who wishes to file a complaint to ensure that the complaint contains the following information:

- a. Include the name, address, and telephone number or other means of contacting the person alleging discrimination
- b. Include the location and name of the organization or office that is accused of discriminatory practices;
- c. The nature of the incident or action or the aspect of program administration that led the person to allege discrimination;
- d. The names, titles (if appropriate), and address of persons who may have knowledge of the alleged discriminatory acts; and
- e. The date or dates on which the alleged discriminatory actions occurred.

2. The complaint may also include:

- a. Any special accommodations for communication about the complaint
- b. Contact information for someone who can help reach the person if Alabama Equal Employment Civil Rights Division cannot contact them directly

1. Completed written complaints may be mailed to:

State of Alabama Department of Human Resources
Civil Rights/Equal Employment Office
50 N. Ripley Street
Montgomery, AL 36130

2. The completed complaint and consent forms may be emailed to

oeecr@dhcr.alabama.gov (Please note that communication by unencrypted email presents a risk that personally identifiable information contained in such an email, may be intercepted by unauthorized third parties).

3. Verbal complaints can be made in person at the address above or via telephone at 334-242-1550.

Additionally, individuals with disabilities can also make their complaint with the U.S. Department of Health and Human Services, Office for Civil Rights, electronically through the Office for Civil Rights Complaint Portal, by mail or phone at:

U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 509F, HHH Building
Washington, D.C. 20201
1-800-368-1019, 800-537-7697 (TDD)

VII. MONITORING

Each county office must display the current Civil Rights / Nondiscrimination poster provided by EECRD. Each county office has a Civil Rights Coordinator as the point of contact for all Civil Rights issues. The Americans with Disabilities ACT (ADA)
Section 504 and Reasonable Modifications
Effective September 1, 2020

County Civil Rights Coordinator shall work with the Office of data Analysis to provide guidance and assistance on any civil rights issues.