

FAIRFAX COUNTY OFFICE OF HUMAN RIGHTS AND EQUITY PROGRAMS Policies and Procedures	Memorandum Number: 39-05
	Dated: May 16, 2014
	Approved By: Kenneth Saunders, Director Office of Human Rights & Equity Programs 
Title: POLICY AND PROCEDURE FOR REASONABLE ACCOMMODATION SERVICES AND DEVICES	

1. PURPOSE

To establish the Fairfax County Government Policy and procedure for implementing Title II of the Americans with Disabilities Act (ADA), relating to nondiscrimination on the basis of disability in state and local government services.

2. POLICY

This directive establishes the definitions of key terms, the how to steps to process reasonable accommodation requests as they relate to service animals, video remote interpreting and power driven mobility devices and designates the responsibilities for agency officials in implementing and managing the county's ADA procedures. For information on the reasonable accommodation process in employment, see the Office of Human Rights and Equity Programs (*OHREP*) Procedural Memorandum No. 4 on the Policy and Procedure for the Reasonable Accommodation Process in Employment.

3. BACKGROUND

Title II applies to state and local government entities and protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs and activities provided by State and Local government entities whether they receive federal financial assistance.

4. DEFINITIONS

Definitions were taken in part from the corresponding Federal regulations (*see Federal Register, 28 CFR Parts 35 and 36*).

A. Auxiliary Aids and Services

An auxiliary aid is a service or device that individuals with disabilities can use to overcome some of the limitations caused by their disabilities. These may include, but

are not limited to, qualified interpreters on-site or through video remote interpreting (*see definition below*) services; note takers; real-time computer aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video based telecommunications products and systems, including text telephones (*TTY's*) videophones, and captioned telephones, or equally effective telecommunication devices. Auxiliary aids and services may also include, but are not limited to, qualified readers; taped texts; audio recordings; brailled materials and displays; screen reader software; magnification software; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision.

B. Other Power-Driven Mobility Device

Any mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use 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 means of this section.

C. Qualified Interpreter

An interpreter who, via a video remote interpreting 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.

D. Reasonable Accommodation

Any adjustment to job duties or to the work environment that assists a qualified individual with a disability in performing the essential functions of his/her position; or a modification of or adjustment to the job application process that enables a qualified applicant with a disability to be considered for the position sought.

Reasonable accommodations may include, but are not limited to:

- 1) Making facilities readily accessible to, and usable by, individuals with disabilities;
- 2) Job restructuring
- 3) Allowing a part-time or modified work schedule
- 4) Obtaining or modifying equipment or devices
- 5) Providing readers or interpreters, and other auxiliary aids, and
- 6) Reassignment to another position.

E. Service Animal

Any dog or miniature horse 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 purpose of this definition.

F. Video Remote Interpreting (VRI)

VRI is an interpreting service that uses video conference technology over dedicated lines or wireless technology offering a high-speed, wide-bandwidth video connection that delivers high-quality video images.

G. 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.

5. RESPONSIBILITIES

A. ADA Coordinator

1. Fairfax County Government designated staff who coordinates the county's overall efforts to comply with the Americans with Disabilities Act.
2. The ADA Coordinator designated for the county is the Equity Programs Manager of the OHREP.

B. Office of Human Rights and Equity Programs

1. Provides leadership and sponsorship of various disability related contracts, including but not limited to sign language and assistive listening devices;
2. Provides direction for diversity and disability policies and procedures; and
3. Provides information and guidance through the ADA Coordinator and staff.

C. Agency Coordinators or ADA Representatives

1. Responds to department disability discrimination complaints in accordance with the Fairfax County Government Complaint Procedure under the Americans with Disabilities Act;
2. Ensures all front line service personnel are trained on the Americans' with Disabilities Act; and
3. Ensures that ADA Policy and relevant information is posted in reception areas and employee conference rooms & kitchen areas; and
4. Serves as a resource for his/her department's employees, managers and supervisors on ADA policy and procedures, including reasonable accommodations.

D. Department Directors

1. Ensures that the ADA Policy is disseminated to all employees; all employees are notified of the department's ADA Representative's name and contact information, the process to request reasonable accommodation and the process to file a complaint under the county's ADA processes; and
2. Ensures that all supervisors and managers are trained on the Americans with Disabilities Act concerning employment and customer service related issues.

6. GENERAL PROHIBITIONS AGAINST DISCRIMINATION

No qualified individual with disability may be excluded from participation or be denied the benefits. Services, programs or activities of the county or be subjected to discrimination

by the county. Fairfax County Government may impose legitimate safety requirements necessary for the safe operation of its services, programs or activities. However, the county must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

7. SPECIFIC REGULATION: SERVICE ANIMALS

The work or tasks performed by a service animal must be directly related to the handler'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. Note that emotional support, comfort animals, and therapy dogs are not service animals under Title II of the ADA.

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 task for the purposes of this definition.

A. Modifications to Policies

Fairfax County Government shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

B. Exceptions

Fairfax County may ask an individual with a disability to remove a service animal from the premises if—

- 1) The animal is out of control and the animal's handler does not take effective action to control it; or
- 2) The animal is not housebroken.
- 3) If Fairfax County properly excludes a service animal it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.

C. Animal under handler's control

A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (*e.g., voice control, signals, or other effective means*).

D. Care or supervision

Fairfax County is not responsible for the care or supervision of a service animal. The employee is responsible for taking care of the service animal, including making sure

the animal is not disruptive, keeping it clean and free of parasites, and taking it out to relieve itself as needed. When an employee is allowed to bring a service animal to work, the employer should consult with the employee to find out what accommodations are needed to care for the animal. An employee might need to adjust his break times to take his service animal outside.

E. Inquiries

When acting on behalf of the county, staff shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. Staff may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. Documentation is not required, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, inquiries are not needed about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (*e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheel chair, or providing assistance with stability or balance to an individual with an observable mobility disability*).

F. Access to areas

Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of Fairfax County's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.

G. Surcharges

Fairfax County departments shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a Fairfax County department normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his/ her service animal.

H. Miniature horses

Fairfax County shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

I. Assessment factors

In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, Fairfax County departments shall consider—

- 1) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
- 2) Whether the handler has sufficient control of the miniature horse;
- 3) Whether the miniature horse is housebroken; and
- 4) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

J. Other requirements

(B) through (F) of this section, which apply to service animals, shall also apply to miniature horses.

8. SPECIFIC REGULATION: WHEELCHAIRS AND OTHER POWER-DRIVEN MOBILITY DEVICES (PDMD)

A. Wheelchairs and Mobility Devices

Wheelchairs and other devices designed for use by people with mobility impairments must be permitted in areas open to pedestrian use. Examples of manually-powered mobility aids include but are not limited to walkers, crutches, canes, braces or other devices designed for use by individuals with mobility impairments.

B. Other power-driven devices

Other power-driven mobility devices, such as the Segway ®, must be permitted to be used in public pedestrian areas unless their use would fundamentally alter a Fairfax County Government program, service or activity, create a direct threat, or create a safety hazard.

C. Assessment factors

When assessing a particular power-driven mobility device, the following must be considered:

- 1) The type, size, and weight, dimensions, and speed of the device;
- 2) The facility's volume of pedestrian traffic which may vary at different times of the day, week month, or year;
- 3) The facility's design and operational characteristics (*e.g., whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user*);
- 4) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and
- 5) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or culture resources.

Prior to determining that the use of the PDMD would fundamentally alter a program, service or activity or create a direct threat, or create a safety hazard, please consult with the Fairfax County Government's ADA Coordinator.

D. Questioning consumers about their PDMD

Employees may not ask consumers about the nature and extend of the individual's disability; however, they may ask a person using a power-driven mobility device to provide a credible assurance that the mobility device is required because of the person's disability. The presence of a valid, state issued, disability parking placard or card, or other state issued proof of disability as a credible assurance that the use of the other power-driven mobility device is for the individual's mobility disability. In lieu of this information, an employee shall accept as a credible assurance a verbal

representation, not contradicted by observable fact, that the power-driven mobility device is being used for a mobility disability.

9. SPECIFIC REGULATION: VIDEO REMOTE INTERPRETING (VRI) SERVICES

The county must provide accessibility in communications to people with hearing, visual and speech impairments. Communications accessibility can be provided through provisions of auxiliary aids and services. VRI, like sign language interpreters and cued speech transliterations, may be used as an auxiliary aid that provides effective communication. Fairfax County Government maintains as contracts with vendors to provide sign language, cued speech transliteration and VRI. Please contact OHREP for further information.

10. DIRECT THREAT

Fairfax County staff is not required to permit an individual to participate in or benefit from the services, programs, or activities of that department when that individual poses a direct threat to the health or safety of others.

In determining whether an individual poses a direct threat to the health or safety of others, Fairfax County must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

Any questions relating to this policy and procedures should be directed to the Office of Human Rights and Equity Programs at 703-324-2953 (V) or 711 (TTY).

Attachment: Fairfax County Government Notice under the Americans with Disabilities Act