# **ADA DOJ Updates OVERVIEW**

# **Southwest ADA Center**

# 1-800-949-4232

# **Julie Ballinger**

## Disability Rights and Issues Consultant

## StarReach Enterprises

## 505.797.8612

## julieb4@flash.net

## The information herein is intended solely as informal guidance and is neither a determination of your legal rights or responsibilities under the Act, nor binding on any agency with enforcement responsibility under the ADA.

# **DBTAC: Southwest ADA Center**

## The ADA Resource!

## The Leading Resource On

### ADA & ADAAA

### Other disability related laws such as IDEA

### Making information technology accessible

## Services a wide range of audiences including

### employers

### businesses

### government agencies

### WIA Workforce System

### schools

### people with disabilities

### Education

## Expert staff are available to provide training, publications and respond to your inquiries.

## Hot Line: 1-800-949-4232

## Web Site: www.southwestADA.org

## Podcast: www.DisabilityLawLowdown.com

# **ADA Basics**

## Title I Employment

## Title II State and Local Government

## Title III Public Accommodations

### Business and Non Profits

## Title IV Telecommunications

## Title V Miscellaneous

# **Department of Justice**

## **2010 Revised ADA Regulations**: **An Overview New Standards**

## **Architectural Barrier Removal**

# **What Standards Apply to Existing Facilities?**

## Title II (State and Local Governments)

### Program accessibility

## Title III (Public Accommodation)

### Readily achievable barrier removal (depending on date built)

## An “existing facility” is “a facility in existence on any given date, without regard to whether the facility may also be considered newly constructed or altered under this part.”

# **Title III Public Accommodations - Readily Achievable**

## **Existing facilities built before 1992:**

## “Easily accomplishable and able to be carried out without much difficulty or expense.”

## Includes “Physical Communication Barriers”

### (flashing alarms, signage, pictograms, etc.)

# **If NOT Readily Achievable**

## Alternative methods to make goods and services available if barrier removal not possible

## However it is a on going obligation to continually assess and do barrier removal

# **New Construction and Alterations**

## Americans with Disabilities Act Accessibility Guidelines (ADAAG)

### 1992 to March 15, 2012

### If presently meet this standard do NOT need to modify to 2010 standards unless those elements are altered on or after March 15, 2012.

## ADA 2010 Revised Standards for Accessible Design

### Compliance date: March 15, 2012

### Must be followed for new construction, alterations (Title II & III) and program access (Title II).

### Use before 3/15/12 allowed

# **Safe Harbor – Existing Facilities**

## Golf and Miniature Golf Facilities;

## Play Areas;

## Saunas and Steam Rooms;

## Swimming Pools, Wading Pools and Spas;

## Shooting Positions with Firing Positions; and

## Miscellaneous: Team/Player Seating, Accessible Routes to Bowling Lanes and Court Sports Facilities.

## Safe Harbor **does not apply** to those elements in existing facilities that were not subject to specific requirements in the 1991 Standards.

## Amusement Rides;

## Recreational Boating Facilities;

## Exercise Machines and Equipment;

## Fishing Piers and Platforms;

# **Noncomplying Facilities**

## Noncomplying facilities, i.e., facilities built after the compliance date for the 1991 Standards, but that are **not** in compliance with those standards, must be modified as follows:

### **Before March 15, 2012** choice of 1991 Standards, 2010 Standards, or UFAS (Title II).

### **On or after March 15, 2012,** must come into compliance with the 2010 Standards.

### **Noncomplying Facilities**

### **Before March 15, 2012** choice of**:**

#### 1991 Standards

#### 2010 Standards

#### Uniform Federal Accessibility Standards (UFAS) (Title II)

### **On or after March 15, 2012,** covered entities must bring their noncomplying facilities into compliance with the 2010 Standards.

# **Existing swimming pools, wading pools, and spas**

## On May 18, 2012 the U.S. Department of Justice issued a final rule, which extends the compliance date to January 31, 2013 for the application of the 2010 ADA Standards for Accessible Design to existing swimming pools, wading pools, and spas (pools built before March 15, 2012).

## Note: Readily Achievable for existing

## **General Non-Discriminatory Requirements**

# **2010 Revised ADA Regulations**

## General effective date March 15, 2011

## Service Animal

## Wheelchair and Other Power-Driven Mobility Device

## Revised definitions of Auxiliary Aids and Services and Qualified Interpreter

## Qualified Reader

## Video Remote Interpreting (VRI) Service

## Ticketing

## Note: Direct Threat in Title II (mirrors title III)

# **Service Animals**

## Definition is limited to a dog that is individually trained to do work or perform tasks for an individual with a disability.

### However, reasonable modifications in policies must also be made to allow individuals with disabilities to use miniature horses if they have been individually trained to do work or perform tasks for individuals with disabilities.

## The task(s) performed by the dog must be directly related to the person’s disability.

## Only **2 inquires allowed** if need is **NOT apparent**:

### 1) is the animal required because of a disability?

### 2) what work or task has the animal been trained to perform? **Do not make inquires about disability**.

# **Exclusion of Service Animals**

## General rule is that covered entities must permit service animals but

## The revised rules have 2 specific exceptions for when service animals can be excluded:

#### 1. The animal is out of control and the handler does not take effective action to control it

#### 2. The animal is not housebroken

## The handler should be given the opportunity to participate without the animal. **Under Handler’s Control**

## Must have harness, leash, or other tether.

## If handler is unable to use these because of his or her disability or because use would interfere with the safe and effective performance of work or tasks,

## then the animal must otherwise be under the handler’s control ( i.e., voice control, signals, or other effective means.)

# **Other Provisions**

## Covered entities are not responsible for the care or supervision of a service animal.

## Service animals may accompany their handlers to areas of a public accommodation or public entity.

## No paying of pet fees or surcharges that are not applicable to individuals without pets.

## Can entities ask the handler to pay for any damages a service animal makes? YES!

## DOJ Service Animal Publication at www.ada.gov/service\_animals\_2010.htm

# **Common Questions**

## Does the dog have to wear a **special harness** or have a **training certification** proving that it is a legitimate service animal?

### **NO!**

## What about **comfort or emotional** support animals? The revised 2010 regulations state that these animals do not meet the definition of a service animal.

# States May Have Service Animal Laws That Are **More Stringent** such as the **New Mexico Service Animal Act (28-11-3 NMSA 19788)**

## Passed in 2013 and Reflects the ADA

## **Plus** additional regulations

### Allows in-training service animals by training organization **or** an individual trainer in any building open to the public

### Violation of this law = a misdemeanor and can be fined up to $1,000.00 or a year in jail, or both

### A person shall not present as a qualified service animal any animal that does not meet a definition of "qualified service animal"

#### Violation = a misdemeanor

# **Who uses Service Dogs ? Individuals who**

## are blind or have low vision use dogs to guide and assist them with orientation.

## are deaf use dogs to alert them to sounds.

## have mobility disabilities can use dogs to pull their wheelchairs or retrieve items.

## have epilepsy may use a dog to warn them of an imminent seizure

## have psychiatric disabilities may use a dog to remind them to take medication.

## are service members returning from war with new disabilities are increasingly using service animals to assist them with activities of daily living as they reenter civilian life.

# **Mobility Devices / Other Power-Driven Mobility Device**

### **Manually-operated or power-driven device** - Must permit individuals with mobility disabilities to use wheelchairs and aids (walkers crutches, etc.) in any area open to pedestrian use.

## **OPDMD**

## “[A]ny mobility device powered by batteries, fuel, or other engines - whether or not designed primarily for use by individuals with mobility disabilities - that is used by individuals with mobility disabilities for the purpose of locomotion”.

## Includes:

## Golf cars, Electronic personal assistance mobility devices (e.g., Segway®); or any mobility device that is not a wheelchair that is designed to operate in areas without defined pedestrian routes.

## For more info go to www.ada.gov/opdmd.htm **Use of OPDMDs**

## Covered entities must make reasonable modifications to permit individuals with mobility disabilities to use OPDMDs, unless. . .

### the entity can demonstrate that the class of OPDMD cannot be operated in accordance with legitimate safety requirements adopted by the entity.

## Burden on entity to show it is not reasonable to allow OPDMD on premises or portion of premises.

## Assessment is made regarding the class of devices, instead of an individual's use of the device.

# **OPDMD Assessment Factors**

## Covered entities must consider specific assessment factors to determine whether a reasonable modification can be made.

### Type, size, weight, dimensions and speed of device;

### Facility’s volume of pedestrian traffic;

### Facility’s design and operational characteristics;

### Whether legitimate safety requirements can be established to permit safe operation of the OPDMD in the specific facility

### Whether there is a substantial risk of substantial harm to immediate environment or natural or cultural resources; conflicts with Federal land management laws and regulations.

# **Legitimate Safety Requirements**

## Legitimate safety requirements necessary for the safe operation are permissible.

## Must be based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

## Entities may not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual’s disability. **Permissible Questions and Creditable Assurance**

## The rules allow covered entities to ask persons using an other power-driven mobility device to provide a “credible assurance” that the device is required because of the person’s disability.

## A valid, disability parking placard or card, or other State-issued proof of disability: one that is presented by the individual to whom it was issued and is otherwise in compliance with the State of issuance’s requirements.

## In lieu of valid placard, card, or other State-issued proof of disability, verbal representation, not contradicted by observable fact, that the OPDMD is being used because of a mobility disability.

# **Effective Communication**

## Definition of auxiliary aids revised to include additional examples such as:

### Accessible electronic and information technology.

### Qualified interpreters on-site or through video remote interpreting services.

## Other examples of auxiliary aids and services:

## Voice, text, and video-based telecommunications products and systems.

## Braille or tactile displays.

## Screen reader software.

## Video remote interpreting (VRI).

# **Qualified Reader and Qualified Interpreter**

## “Qualified reader” defined as “a person who is able to read effectively, accurately, and impartially, using any necessary specialized vocabulary.”

## “Qualified interpreter” defined as “a person who is able to interpret “effectively, accurately, and impartially” using specialized vocabulary of the deaf & hard-of-hearing consumer.”

## May need to hold a special certification to be qualified in certain settings

## **Companions**

## Covered entities must communicate effectively with companions with disabilities, as appropriate.

## Companion defined as “family member, friend, or associate of an individual seeking access to a service, program or activity of a public entity, who along with such individual is an appropriate person with whom the public entity should communicate.”

# **Types of Auxiliary Aids or Services** Type of auxiliary aid or service will vary in accordance with:

### Method of communication used by individual;

### Nature, length, and complexity of communication involved; and

### The context in which communication is taking place.

## Provide auxiliary aids in accessible formats, in timely manner, and in manner that protects privacy and independence of individual.

# **Video Remote Interpreting**

## Definition: An interpreting service that uses video conference technology over dedicated lines or wireless technology offering high speed, wide-bandwidth video connection that delivers high-quality video images

### **DOJ standards require:**

### Quality of video and audio that is high quality, clear, real-time, with clear uninterrupted images.

### Dedicated high-speed connection.

### Picture: Clear, sufficiently large, and sharply delineated, showing face, arms, hands and fingers

### Voices: clear and easily understood transmission.

### Quick set-up and training of users.

# **Use of Adults Accompanying Individual With a Disability**

## Public entities shall not require individual to bring own interpreter.

## Adults accompanying individual to interpret except:

### In emergency involving imminent threat to safety or welfare of individual or public and no interpreter available, or

### Where specific request by person with disability, accompanying adult agrees, and reliance on that person is appropriate under circumstances.

### Use of Children as Interpreters is only permissible in emergency involving imminent threat to safety or welfare of an individual or the public where there is no interpreter available.

## **Ticketing: A VERY Brief Overview**

## **Revised DOJ Requirements: Tickets Sales** www.ada.gov/ticketing\_2010.htm

# **Ticketing: General Provisions**

## Policy is not new - always been DOJ’s understanding that ticketing policies are covered to provide equal opportunity.

## However, policy never been fully articulated in one document before.

# **Who Can Purchase a Seat?**

## Individuals who use wheelchairs;

## Individuals with other mobility disabilities who cannot walk for long distances (cardiac, respiratory, circulatory conditions; severe arthritis); and

## Others who require the features of accessible seat (i.e., service dog user whose dog cannot fit under a non-accessible seat or would obstruct the aisle).

# **Overview of Ticketing Provisions**

### Ticket sales: tickets for accessible seats must be sold in the same manner and under the same conditions as all other ticket sales.

### Information about where accessible seats are located:must provide the same information about accessible seats as provided about non-accessible seats, using the same text and visual representations.

### Ticket prices: May not charge higher prices for accessible seats than for non-accessible seats in the same seating section.

### Purchasing multiple tickets: People purchasing an accessible seat may purchase up to three additional seats for their companions in the same row and contiguous with the accessible seat. Accessible seats may be used as companion seats.

## Hold and Release of tickets for accessible seating: Unsold accessible seats may be released and sold to the general public only in three specific circumstances.

### Ticket transfers: An individual with a ticket for an accessible seat may transfer it to anyone, including someone who does not have a disability.

### Secondary ticket market: Must allow individual with a disability who has purchased a non-accessible seat through the secondary market to exchange theticket for a comparable accessible seat, if available. May move someone, but not required to do so.

### Fraud: Venues cannot require proof of disability as a condition for purchasing tickets for accessible seats. However, venues…

### May ask purchasers to attest to the need for the accessible seat.

### May also mark tickets to clearly identify that they are for accessible seats.

### May investigate the potential misuse of accessible seats where there is good cause to believe that seating was purchased fraudulently**.**

## **RESOURCES**

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# **U.S. Dept. of Justice** (a variety of helpful publications at www.ada.gov)

## **ADA Update: A Primer For Small Business**

### www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.htm

## **Revised ADA Regulations Implementing Title II and Title III**

### www.ada.gov/regs2010/ADAregs2010.htm

## **2010 ADA Standards for Accessible Design**

## www.ada.gov/2010ADAstandards\_index.htm

## **ADA 2010 Revised Requirements / Effective Date / Compliance Date**

### www.ada.gov/revised\_effective\_dates-2010.htm

### **Revised Requirements: Effective Communication**

### hwww.ada.gov/effective-comm.htm

### **Mobility & Other Power-Driven Mobility Devices**

### www.ada.gov/opdmd.htm

### **DOJ Service Animal Publication**

### www.ada.gov/service\_animals\_2010.htm

### **Revised DOJ Requirements: Tickets Sales**

### www.ada.gov/ticketing\_2010.htm

### **Questions And Answers: Accessibility Requirements For Existing Swimming Pools At Hotels And Other Public Accommodations**

### www.ada.gov/qa\_existingpools\_titleIII.htm

### **Accessible Pools Means of Entry and Exit**

### www.ada.gov/pools\_2010.htm

# **Architectural Access**

## **U.S. Access Board**

### (800) 872-2253 (voice)

### (800) 993-2822 (TTY)

### E-mail: ta@access-board.gov

### www.access-board.gov