

ARIZONA DEPARTMENT OF TRANSPORTATION POLICIES AND PROCEDURES

PER-2.02 EXTERNAL AMERICANS WITH DISABILITIES POLICY

Effective: July 9, 2021

Supersedes: PER 2.02 (11/7/2018)

Responsible Office: ADOT Civil Rights Office (602) 712-8946

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Page 1 of 11

2.01 PURPOSE

This policy implements the requirements of Title II of the American with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, as amended, and the U.S. Department of Transportation's implementing regulations 28 CFR Part 35 and 49 CFR Part 27.

2.02 SCOPE

This policy applies to all ADOT programs and activities as carried out by employees and other individuals who are part of ADOT's workforce.

2.03 AUTHORITY

Americans with Disabilities Act (ADA) of 1990
Section 504 of the Rehabilitation Act of 1973
28 CFR Part 35
49 CFR Parts 27, 37, and 38

2.04 BACKGROUND

This policy was developed to conform to Title II of the ADA and Section 504.

2.05 DEFINITIONS

ADA Coordinator	An ADOT employee who is responsible for administering Coordinating ADA compliance, responsibilities, and investigates ADA complaints alleging noncompliance.
Alteration	Modification made to an existing building or facility that goes beyond normal maintenance activities and affects or could affect usability.
Auxiliary Aids and Services	Include the following: <ol style="list-style-type: none">1. Qualified interpreters, note takers, written materials, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;2. Qualified readers, audio recordings, large print

	<p>materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;</p> <p>3. Acquisition or modification of equipment or devices; and</p> <p>4. Other similar services and actions.</p>
Customer	Any individual who applies for, receives, or participates in an ADOT program, services, or activity.
Disability	With respect to an individual, 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.
Existing Facility	A facility that is neither a new nor an altered facility.
Facility	All or any portion of a building, structure, site, complex, equipment, rolling stock or other conveyance, road, walk, passageway, parking lot, or other real or personal property, including the site where the building, property, structure, or equipment is located.
Grantee	An individual or entity who receives a grant from ADOT.
New Construction	A project in which an entirely new facility is built from the ground up or where a new facility is added to an existing facility.
Primary Recipient	Under Section 504, any recipient that is authorized or required to extend federal financial assistance from ADOT to another recipient for the purpose of carrying out a program.
Programs, Services, or Activities	Includes any ADOT program, service, or activity whether in ADOT or administered or operated by an ADOT contractor, consultant, external partner, grantee, etc.
Public Entity	Includes any state or local government, department, agency, special purpose district, external partner or other instrumentality of a state or states or local government.
Qualified Individual with a Disability	An individual with a disability 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 requirements for the receipt of services or the participation in programs or activities provided by a public entity.
Qualified Interpreter	An interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.
Reasonable Modification	A modification in the policies, practices, or procedures of a program, service, or activity if the modification allows an individual with a disability the opportunity to participate equally in the program, service, or activity or benefit from the service and is necessary to avoid discrimination based on disability, unless the modification would fundamentally alter the nature of the program, service, or activity.
Recipient	Recipient includes recipients such as state transportation agencies and state transportation agency sub-recipients such as metropolitan planning organizations, local governments, and other state and local government agencies that receive federal financial assistance through the state transportation agency.
Service Animal	An animal, as referenced under the ADA, including a guide dog, signal dogs, or other animals that has been individually trained to do work or perform tasks for an individual with a disability, regardless of whether they have been licensed, certified, or use any special harness, leash or jacket.
Undue Financial Burden	A significant, difficult expense or impact on ADOT if considered in light of factors such as an employer's size, overall financial resources, and the nature and structure of its operations and as defined by the ADA.

2.06 POLICY

- A. All of ADOT programs, services, and activities shall comply with ADA/Section 504.
- B. ADOT shall ensure that sub-recipients, grantees, external partners, and contractors understand their obligations under the ADA/504, inform individuals about their rights under the ADA/504, and comply with the ADA/504 and this policy.

- C. ADOT shall not, on the basis of disability, discriminate against, exclude from participation in, or deny the benefits of services, programs, or activities to a qualified individual with a disability.
- D. ADOT shall provide reasonable modifications when necessary to avoid discrimination.
- E. ADOT shall not directly or through contractual, licensing, or other formal or informal arrangements, on the basis of disability, deny a qualified individual with a disability the opportunity to participate in a service, program, or activity or to receive the benefits or services offered in accordance with law.
- F. ADOT shall not use methods of program administration that have a discriminatory effect on individuals with disabilities.
- G. ADOT shall not use eligibility criteria that unlawfully screen out individuals with disabilities.
- H. ADOT shall not make any unnecessary inquiries into the existence of any individuals disability

2.07 ADMINISTRATIVE RESPONSIBILITIES

- A. The Director or the Director's designee shall appoint a department-wide ADA Coordinator. The ADA Coordinator is responsible for Coordinating ADA compliance and investigates ADA complaints alleging noncompliance.
- B. The Facilities Management & Support Group is responsible for maintaining database of improvements for physical accessibility of program sites in which ADOT's programs, services, or activities are delivered. Functions include:
 - 1. Ensuring that existing facilities are accessible;
 - 2. Ensuring that new construction complies with accessibility guidelines;
 - 3. Ensuring building modifications are made in compliance with the ADA; and
 - 4. Negotiating accessibility issues when renewing leases, including assigning responsibility for accessibility matters between the landlord and tenant, as appropriate.

2.08 POLICY STANDARDS

- A. Ensuring Access to Program, Service, or Activity to Individuals with Disabilities. Including, but is not limited to: the application process, documentation and reporting requirements, agency appointments, public meetings, hearings and events, licensing, certification, and work activities must comply with ADA/504.
- B. ADOT shall not exclude qualified individuals with disabilities from ADOT's programs, services, or activities on the basis of disability if they meet the programs essential eligibility requirements, with or without reasonable modification of rules, policies, or procedures or the provision of auxiliary aids and services.

- C. ADOT may impose legitimate safety requirements even if the safety requirements screen out individuals with disabilities.
 - 1. The safety screening requirements shall be based on actual risk and not on speculation, stereotypes, or generalizations about individuals with disabilities or on the basis of presumptions about what a class of individuals with disabilities can or cannot do.
 - 2. ADOT shall apply safety standards to all individuals or participants, and ADOT shall limit its inquiries to matters necessary to implement the safety standard.
- D. New Construction and Building Alterations - As required by law, buildings or parts of buildings built or altered by, on behalf of, or for state and local governments, shall be designed and constructed to be accessible to or usable by individuals with disabilities.
 - 1. The Facilities Management & Support Group shall provide signage at all inaccessible entrances of ADOT's facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance for a facility.
- E. Although some ADA compliance may result in some additional cost to ADOT, ADOT shall not place a surcharge only on particular individuals with disabilities or groups of individuals with disabilities to cover these expenses.

2.09 REASONABLE MODIFICATION

- A. ADOT shall provide individuals with disabilities reasonable modifications in its policies, practices, or procedures when such modifications are necessary to avoid discrimination on the basis of disability 49 CFR 27.11. Individuals with disabilities have a right to ask ADOT's programs, services, or activities for reasonable modifications.
 - 1. Request for reasonable modifications may be made verbally or by completing a Reasonable Modifications Request Form. The employee receiving a verbal request shall document the request and maintain record of such requests. ADOT employees administering programs, services, or activities cannot require individuals to use or sign special forms to make requests or waive a right for reasonable modifications.
 - a. Whenever an individual indicates difficulty in accessing or participating in a program, service, or activity due to a disability, the employee shall advise the individual that the individual may make a request for reasonable modifications and offer assistance with making that request. In addition, individuals do not have to say the words "ADA" or "reasonable modification" to trigger ADOT's obligation to treat the statement as a request for a modification.
 - b. Individuals with disabilities have a right to refuse modifications, and cannot be excluded from programs, services, or activities because they refused a modification. They also have the right to request a reasonable modification other than the modification offered or requested in the past. If, however, as a result of refusing a

modification, an individual with a disability cannot fulfill program, service, or activity requirements, the program, having advised the individual with a disability of the consequences of the refusal and the continued refusal of the individual with a disability, the program may take action against the individual with a disability on the basis that individual with a disability is not complying with a program requirements.

2.10 GRANTING REASONABLE MODIFICATION REQUESTS

- A. If an employee believes that an individual requesting a modification is not entitled to a modification, or not entitled to specific modification requested, the employee shall consult with a supervisor before denying a modification request. Supervisors shall consult with the Civil Rights Office or the ADA Coordinator before approving or declining any request. If the request cannot be informally resolved, the individual requesting the modification may resolve any complaint resulting from the modification denial decision through the ADOT complaint process.
- B. Documentation and Disability for Modifications and Interim Modifications
 - 1. Employees must not require documentation of an obvious disability.
 - 2. In situations where there is a question about the existence of a disability or whether the modification is appropriate to address the barrier for service or participation, ADOT Civil Rights Office may seek documentation of a disability from a physician or appropriate licensed professional. The requested documentation shall verify the disability and its relationship to the barrier to service or participation, and how the requested modification would reduce or eliminate the disability to permit the individual with a disability to meet service or participation requirements. Only the information related to the disability generating the need to be accommodated may be requested; other medical documentation is irrelevant
- C. Modifications Needed on an Ongoing Basis
 - 1. ADOT programs, services, or activities shall put procedures in place to ensure that modifications needed on an ongoing basis are provided, so that an individual with a disability does not have to request the same modification each time it is needed.
- D. Time Frame to Provide Reasonable Modifications
 - 1. Modifications shall be provided in time to avoid discrimination. The time depends on factors, including but not limited to, the type of modification requested and the consequences to the individual of failing to provide it immediately. Failure to provide modifications that can easily be provided may result in a denial of equal or meaningful access.
 - 2. For activities that are scheduled in advance, ADOT staff shall encourage individuals who may need modifications to request them as early as possible before the activity.
- E. Notice of Denial

1. Divisions and programs shall only make a determination to deny a request for reasonable modification after consulting with the Civil Rights Office and the ADA Coordinator. If the division or program area denies a request for a modification, the ADA Coordinator shall ensure that a written notice is sent to the individual. This notification shall include in the denial notice an explanation for why the modification request is being denied, or why the program decided to offer a modification other than the one that was requested. The notice will identify any alternative modifications that are offered. The written notice of denial also shall inform the individual with a disability of how to file a complaint.

F. Individuals with Disabilities Cannot Be Required to Accept Modifications

- G. Reasonable Modification shall be provided regardless of the appearance or lack of appearance of a disability. ADOT employees who are not trained in determining disability accommodation or modification shall not make determinations on the need of clients requesting these services.

2.11 PROGRAM SPECIFIC PROCEDURES

- A. ADOT programs, services, or activities shall develop and implement program-specific reasonable modification procedures for individuals with disabilities.
- B. Program specific reasonable modification procedures shall ensure that, at a minimum, all ADOT policies are adhered. Additionally, program specific procedures shall be consistent with the following:
1. Reasonable modification is appropriate if there is a connection between an individual's disability and the barrier to eligibility or participation in a program, service or activity;
 2. First consideration shall be given to addressing barriers using existing program, service, or activity resources;
 3. Employees are to assist individuals requesting modification to provide the necessary information to establish a reasonable modification plan; and
 4. Reasonable modifications shall be made within a reasonable time
- C. Policy Does Not Limit Benefits or Services - Nothing in this policy prohibits ADOT from providing benefits or services to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required.
- D. No Requirement to Provide Personal Devices
1. This policy does not require a program, service, or activity to provide individuals with disabilities with personal devices such as wheelchairs; individually prescribed devices such as prescription eyeglasses or hearing aids; or services of a personal nature, unless the personal services or devices are customarily provided to the individuals participating in the program, service, or activity.

2. In some instances ADOT may choose to provide equipment or services of a personal nature as an alternative to providing another type of modification.

2.12 COMMUNICATIONS (Including Auxiliary Aids and Services)

- A. ADOT programs, services, or activities shall provide effective communication with individuals with disabilities and members of the public with disabilities if necessary to ensure an equal opportunity to participate in, and enjoy the benefits of, a program, service, or activity unless it would result in a fundamental alteration or an undue financial or administrative burden.

1. The type of auxiliary aid or service necessary to ensure effective communication shall vary depending on the needs of the individual with a disability and the length or complexity of the communication.
2. In determining the type of auxiliary aid or service necessary, ADOT shall give primary consideration to the request of the individual with a disability.

- B. Sign Language Interpreters

1. ADOT programs, services, or activities shall provide qualified sign language interpreters to individuals who are deaf or hard of hearing, who use sign language to communicate, if necessary to communicate effectively with an ADOT program, service, or activity. Individuals who are deaf or hard of hearing cannot be required to bring an interpreter with them to appointments or to pay for an interpreter provided by the ADOT program.
2. In some circumstances, ADOT employees may be able to communicate effectively with a deaf or hard of hearing individual during simple interactions with written notes. For more lengthy and complex interactions, such as interviews to determine eligibility for services, interviews to determine an individual's needs (such as those used to develop service), conciliation meetings, and administrative hearings, writing notes is not an effective means of communication and shall not be used.
3. If an individual who is deaf or hard of hearing is limited English proficient, ADOT employees must provide vital program information in the individual's preferred language.

- C. Notice to Individuals and the Public about Effective Communication and Individuals with Disabilities

ADOT shall provide information to individuals and members of the public about the methods by which the program, service, or activity communicates with individuals with disabilities, the fact that auxiliary aids and services are available, and how to request them.

- D. Web Site Accessibility

ADOT shall provide access to ADOT material to individuals with disabilities that are as effective as access provided to individuals without disabilities. ADOT is not required to

purchase computers for individuals or to pay for Internet or other computer access services for an individual.

E. Service Animals

ADOT shall allow service animals to enter all areas of ADOT's facilities, institutions, and programs to assist individuals, employees, and the public with accessibility.

2.13 UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN

When a fundamental alteration, undue financial or administrative burden occurs to the program, service, or activity by providing program access, ADOT shall take such action to provide program access that does not result in a fundamental alteration or result in an undue financial or administrative burden. Any denial of request for access, an auxiliary aid or service or reasonable modification of policy due to a finding of fundamental alteration or undue burden shall be in writing with the reason for denial provided by the responsible division to the Civil Rights Office and ADA Coordinator. ADOT may ensure program access by:

1. Providing services, activities, and programs in facilities that are accessible to individuals with disabilities.
2. Transferring programs, services, and activities from any building that becomes temporarily or permanently inaccessible to an alternate location that is accessible.
3. Modifying, if reasonable, the structure of a facility to ensure that individuals with disabilities have access to programs, services, and activities.
4. Making a reasonable modification of the policies and procedures, or providing auxiliary aids and services within available resources.

2.14 COMPLAINT POLICY AND PROCEDURES

- A. PER-18.01 External Nondiscrimination Policy procedures apply to all complaints filed under Title VI of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, Civil Rights Restoration Act of 1987 and the Americans with Disabilities Act of 1990 as they relate to any program or activity administered by ADOT, its subrecipients, consultants and contractors. Intimidation or retaliation as a result of a complaint is prohibited by law.
- B. In addition to these procedures, complainants reserve the right to file formal complaints with other state or federal agencies or to seek private counsel for complaints alleging discrimination. Every effort will be made to resolve complaints informally at ADOT and the subrecipient level.
- C. Any individual, specific class of individuals or entity that believes they have been subjected to discrimination on the basis of disability may file a formal complaint with ADOT's Civil Rights Office. A copy of the Complaint Form may be accessed electronically.
- D. Discrimination on the Basis of Association

1. ADOT shall not discriminate against individuals that do not have disabilities themselves, but have a known relationship or association with individuals who have disabilities such as family members, friends, or any other individual. An individual who experiences discrimination by association has the right to file a report of discrimination with ADOT, file a discrimination complaint with the appropriate federal or state designated agency, or to file a lawsuit.
2. The ADA Coordinator or the ADA Coordinator's designee shall investigate allegations of retaliation against individuals with disabilities or others protected under this policy.

2.15 RELEASE OF INFORMATION

If an ADOT division believes there is a need to share information about an individual's disability with another ADOT program in a separate division, or with another entity outside of the division, the program shall follow applicable federal and state law and ADOT policy regarding any such disclosure.

2.16 MONITORING

ADOT programs, services, or activities shall develop a system for monitoring compliance with the ADA in ADOT or contracted programs, services and activities. Monitoring shall take place on a regular and ongoing basis, including, but not limited to:

- A. A review of a sample of individual case records of individuals with disabilities to determine whether disabilities were identified, modification requests recorded, and modifications provided in a timely fashion;
- B. A periodic review of all of the ADA complaints filed with ADOT regarding the program, service, or activity, to identify patterns of problems that may need to be addressed through policy changes, and ensure that complaints were resolved in a timely fashion; and
- C. Analysis of customer data to identify trends that may indicate a need for policy and program changes.
 1. Interviews with front line employees to test their familiarity with ADA obligations and modification procedures; and
 2. Interviews with customers to see whether they are satisfied that their disabilities were accommodated.

2.17 NOTICE OF RIGHTS

ADOT programs and services shall provide individuals, and members of the public, with information about their rights under the ADA:

1. ADOT offices in which individuals are served shall display an approved poster or flyers that highlight individual rights under the ADA.
2. ADOT shall provide information to explain rights of applicants and recipients in relation to services for those with disabilities. The information shall be made available where information about ADOT programs and services is available.
3. Employees shall read and explain the information to the individual whenever an applicant for or recipient of ADOT programs or benefits has a disability that interferes, or may interfere, with the ability to read or understand, or both, written material.

2.18 TRAINING

ADOT shall provide periodic training to employees to facilitate their understanding of ADOT responsibilities under federal and state civil rights law and regulations, and this policy, governing the delivery of programs, services, and activities.

2.19 EXTERNAL PARTNERS, CONTRACTORS, AND GRANTEEES

If ADOT procures services by contract, grant, or intergovernmental agreement (IGA), ADOT shall include requirements in contracts and IGAs that contractors, grantees, external partners, or governmental entities under the IGA shall comply with Title II of the ADA and Section 504, in addition to other applicable civil rights laws.

All procured contracts, grants, or IGAs shall also include provisions for ADOT to periodically review contractors for compliance with Title II of the ADA and Section 504.

2.20 CORRESPONDING POLICIES

PER-2.01 Internal Americans with Disabilities Policy
PER-18.01 External Nondiscrimination Policy