



DISABILITY ACCESS IN THE COURTS

OCTOBER 19, 2020

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PRESENTERS

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TOPICS

- Americans with Disabilities Act
- Disabilities can be visible and invisible
- Cultural competency
- Equal Access
 - Reasonable modifications
 - Sign language interpreters
- Statewide protocol for requests for reasonable accommodations
- Challenges
 - Coronavirus



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AMERICANS WITH DISABILITIES ACT (ADA)

- The Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in several areas, including employment, transportation, public accommodations, communications and access to state and local government programs and services. <https://www.ada.gov/>

Source 7/27/20: <https://www.dol.gov/general/topic/disability/ada>



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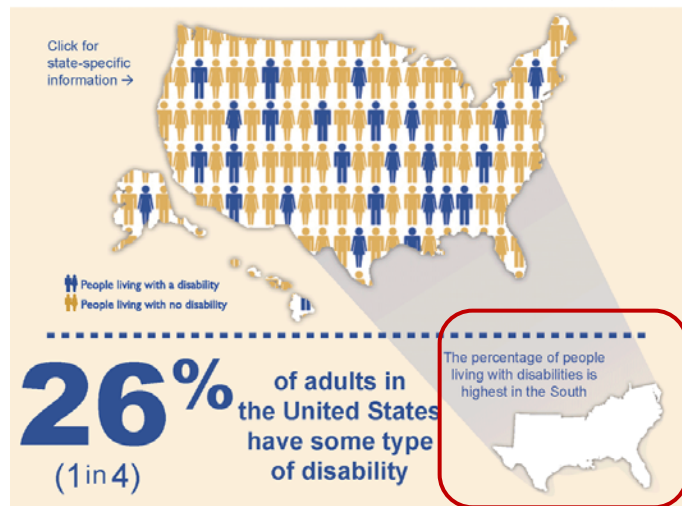
DISABILITY

- An individual with a **disability** is **defined** by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.

Source as of 7-1-20, <https://www.ada.gov/cguide.htm>

Image source, as of 6-30-20, <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>

61 million adults in the United States live with a disability



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TYPES OF DISABILITY: VISIBLE

- Senses
 - Blind, Colorblind
 - Deaf
 - DeafBlind
 - Smell
 - Touch (Autism)
- Mobility
 - Uses a wheelchair, cane, crutches
 - Support animals



Photo source as of 9-21-20, http://a.abcnews.com/images/Health/abc_blind_woman_dog_jef_110608_wmain.jpg



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TYPES OF DISABILITY: INVISIBLE

- Cognitive
 - Traumatic Brain Injury (TBI)
 - Autism Spectrum Disorder (ASD)
- Emotional
 - Depression
 - Anxiety
 - Post Traumatic Stress Disorder (PTSD)



Image source as of 9-25-20,
<https://pixabay.com/vectors/boy-child-cooperation-dad-daughter-2026064/>



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ADULTS WITH FUNCTIONAL DISABILITY TYPES

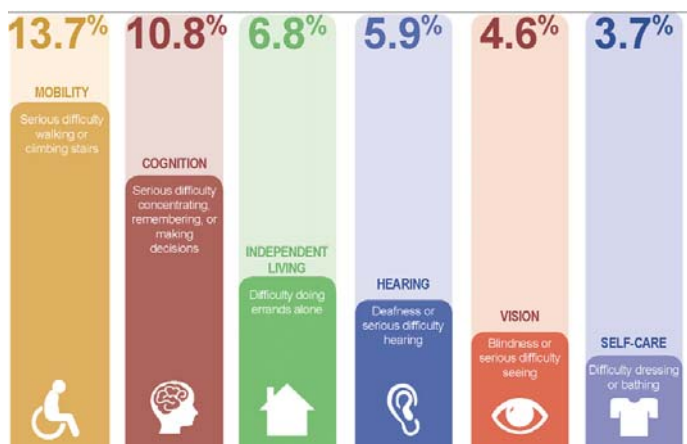


Image source as of 6-30-20, <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>



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HIDDEN DISABILITIES: MENTAL HEALTH

- Wide range of mental health conditions also qualify as a disability
 - For example, depression: <https://youtu.be/IQhpetkwWnM>
- Statistics from the **National Institute of Mental Health**: Prevalence of major depressive episode among U.S. adults aged 18 or older in 2017.
 - An estimated 17.3 million adults in the United States had at least one major depressive episode. This number represented 7.1% of all U.S. adults.
 - The prevalence of major depressive episode was higher among adult females (8.7%) compared to males (5.3%).
 - The prevalence of adults with a major depressive episode was highest among individuals aged 18-25 (13.1%).
- **Mental Health First Aid** class reviews major diagnosis, how to respond if someone is in crisis – www.mentalhealthfirstaid.org



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CULTURAL COMPETENCE: BEYOND UNDERSTANDING

- Disability is part of someone's self identity
- Perfectly acceptable not to know, unacceptable not to care
- Developing cultural competence
 - Reveals why disability is a cultural experience, rather than merely a medical status.
 - Helps you to provide appropriate, culturally sensitive access to people with congenital or acquired disabilities.



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WHAT IS EQUAL ACCESS?

- As a government service, courts may not:
 - Deny a disabled individual the opportunity to participate in or benefit from an aid, benefit, or service; or
 - Afford a disabled individual an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others; or
 - Exclude a disabled individual from participation in or benefitting from programs or activities because a public entity's facilities are inaccessible to or unusable by individuals with disabilities.

Source: 28 C.F.R. §§ 35.130, 35.149 (federal regulations implementing Title II of ADA)



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EQUAL ACCESS: PHYSICAL / STRUCTURAL ACCESS



- Some examples of physical or structural access issues:
 - Elevators; curb cut-outs; ramps; wheelchair accessible doorways; signage; and hard-wired assistive listening devices.
- Counties are legally required to provide adequate court facilities, N.C.G.S. § 7A-302, so these issues must be addressed in conjunction with your local county government.

Photo source as of 9-21-20, <https://www.compliancesigns.com>; Durham courthouse courtesy of E. Smith



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EQUAL ACCESS: POLICY / PROCEDURE ACCESS

- Some examples of policies that can limit access for disabled individuals:
 - Prohibitions on animals
 - Service Animals
 - Prohibitions on electronic devices
 - Pace-maker apps, voice recorder app for taking notes, ultrasound app to detect obstacles for the blind...
 - Mask requirements/Limitations on public attendees
 - Health conditions may prohibit wearing masks (e.g., COPD)
 - Prohibition on tools
 - Wheelchair repair tools



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EQUAL ACCESS: REASONABLE MODIFICATIONS

- ADA requires that courts make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.
- Reasonable modifications are not required if the modifications would **fundamentally alter** the nature of the service, program, or activity.
- Disability Access Coordinators should direct requests for reasonable modifications to policies/procedures/programs to the individual who has authority to provide the accommodation.
 - SRSJ, CDCJ, presiding judge, Clerk, magistrate, DAC, sheriff/security?



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EQUAL ACCESS: EFFECTIVE COMMUNICATION

- A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others unless the steps would:
 - **Fundamentally alter** the nature of a service, program, or activity; or
 - Result in **undue financial and administrative burdens**.

- Not required to provide personal-use devices such as eyeglasses, hearing aids, wheelchairs, etc.



Photo source as of 9-21-20,
<https://www.pulsetv.com/prodinfo.asp?number=9323>

Source: 28 C.F.R. §§ 35.135, 35.160, 35.164

As of 9-24-20, NAD position statement on masks and the ADA <https://www.nad.org/position-statement-on-communicating-with-dhh-while-wearing-masks/>



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EQUAL ACCESS: EFFECTIVE COMMUNICATION

- Examples of ACTIONS that may be needed to ensure effective communication:
 - Writing notes to a hearing-impaired individual
 - Arranging for sign-language and certified deaf interpreters
 - Creating electronic documents formatted with optical character recognition (OCR)
 - Providing assistive listening devices
 - Reading signs or documents to a visually impaired person

- Disability Access Coordinators should direct requests for effective communication to the persons who are going to be engaged in the communication and to those with authority to provide any requested aids/services.



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ARRANGING FOR SIGN LANGUAGE INTERPRETERS

- Contact the local Disability Access Coordinator directly
<https://www.nccourts.gov/documents/publications/disability-access-coordinator>
- The DAC will schedule sufficient sign language interpreter coverage by:
 1. Not relying on agencies to locate sign language interpreters
 2. Using the NCDHHS statewide directories by region that are available online:
<https://www.ncdhhs.gov/documents/sign-language-interpretertransliterator-directory>
 3. Choosing interpreters with licensure levels appropriate for court, e.g., SC:L, NAD IV, NAD V, NIC-Master, RID CI/CT combined with a CSC.
- Use **AOC-G-116**, an all-inclusive form that covers authorization for sign language services from Motion to Order for Payment <https://www.nccourts.gov/documents/forms/motion-appointment-and-order-authorizing-payment-of-sign-language-interpreter-or-other-communication-access-service-provider>
- On-demand training about the deaf community: **Do You Understand Me?**



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STATEWIDE PROTOCOL HOW TO REQUEST A REASONABLE ACCOMMODATION

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3. The local Disability Access Coordinator will ask the individual making the request for information:
- a. County in which assistance is needed
 - b. Name and contact information of the individual needing the assistance
 - c. Whether the individual needing assistance is the plaintiff, defendant, juror, witness, or court observer
 - d. Case file number
 - e. Date and time of the hearing or other judicial activity
 - f. If applicable, the name and contact information for the attorney representing the individual
 - g. Explanation of the nature of the disability
 - h. Exact type of reasonable accommodation(s) needed

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<https://www.nccourts.gov/documents/publications/how-to-request-a-reasonable-accommodation>



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FAQS

[HTTPS://WWW.NCCOURTS.GOV/HELP-TOPICS/DISABILITY-AND-SPECIAL-NEEDS/DISABILITY-ACCESS](https://www.nccourts.gov/help-topics/disability-and-special-needs/disability-access)

PROGRAM & COMPLIANCE

[HTTPS://WWW.NCCOURTS.GOV/PROGRAMS/DISABILITY-ACCESS](https://www.nccourts.gov/programs/disability-access)



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WHO KNOWS THE ANSWER?

- **Who is the best contact with questions about when to grant accommodations to litigants with disabilities?**
 - Court staff can ask the individual what accommodations they need
 - Public / attorneys can ask the local Disability Access Coordinator (refer to the online list)
 - All can ask the state Disability Access Coordinator (Lori)



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IS CORONAVIRUS A DISABILITY?



- Do I have to give accommodations to
 1. Someone with coronavirus? No
 2. Someone suspected of having coronavirus? No
 3. Someone quarantining? No
 4. Someone living with/caring for someone with coronavirus or quarantining? No
 5. Someone living with/caring for someone else who is at risk?
 - No. The person making the request needs to have the disability. But judicial employees are encouraged to be considerate and try to accommodate the person anyway.

Photo source as of 9-21-20, <https://www.cdc.gov/index.htm>



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