

ADA Resources for Court-Connected Mediators and Arbitrators

Overview

1. What is the Americans with Disabilities Act (ADA)?

- a. The ADA is a federal law that prohibits covered entities from discriminating against or excluding people who have a qualified disability from participating in the benefits of a program or service. An exception exists if the accommodation needed to provide access would result in an undue burden (significant difficulty or expense). 42 USC §§ 12101 *et seq.*
 - For purposes of circuit court court-connected mediation and arbitration programs, the ADA applies to:
 1. State and local government services ([Title II](#)). 42 USC §12132.
 2. Businesses that are open to the public ([Title III](#)). 42 USC §12182(b)(1)(A)(ii).
- b. Oregon law also prohibits discrimination based on a disability.
 - It is the policy of the State of Oregon to guarantee individuals the fullest participation in the social and economic life of the state, including in:
 1. Employment
 2. Public accommodations
 3. Housing, and
 4. State government programs and activities.

[ORS 659.103\(1\)](#).

2. What is a person with a disability?

- a. **Definition:** a physical or mental impairment that substantially limits one or more of the *major life activities* of an individual.
 - The ADA also protects someone with a history or record of having an impairment (a person with cancer that is in remission), and
 - Someone who is perceived by others as having an impairment (person with scars from a severe burn).
- b. **Major life activities.** According to [U.S. Department of Justice guidance](#), major life activities may include:
 - Eating, sleeping, speaking, and breathing
 - Movements like walking, standing, lifting and bending
 - Cognitive functions like thinking and concentrating
 - Sensory functions like seeing and hearing
 - Tasks like working, reading, learning and communicating
 - The operation of major bodily functions like circulation, reproduction, and individual organs.

See also, ORS 659.104.

- c. A disability does not have to be visible for an individual to be protected by the ADA. Some **examples** [provided by the U.S. Department of Justice](#) include (but are not limited to):
- Cancer
 - Diabetes
 - Post-traumatic stress disorder
 - HIV
 - Autism
 - Cerebral palsy
 - Deafness or hearing loss
 - Blindness or low vision
 - Epilepsy
 - Mobility disabilities such as those requiring the use of a wheelchair, walker, or cane
 - Intellectual disabilities
 - Major depressive disorder
 - Traumatic brain injury

3. Types of accessibility and accommodation

- a. **Physical.** Title II and III entities must allow people with disabilities who use manual or power devices or mobility aids access to all areas where members of the public are allowed to go.
- Common access issues:
 1. Restrooms
 2. Parking
 3. Signage
 4. Stairs
 - U.S. Department of Justice Guidance and Resources: [Wheelchairs, Mobility Aids and Other Power-Driven Mobility Devices](#)
- b. **Communication.** The ADA requires state and local governments and business and nonprofits that serve the public to communicate effectively with people who have communication disabilities. This includes people who are blind, have vision loss, are deaf, have hearing loss, or who have speech disabilities. There are a variety of ways to ensure effective communication. An in-depth discussion of this topic can be found on the [U.S. Department of Justice website](#). Here are some examples:
- **Seeing**
 1. Qualified reader
 2. Large print
 3. Braille
 4. Screen reader software, magnification software, and optical readers
 5. Audio recording
 6. Accessibility features in electronic documents

- **Hearing**

1. Qualified notetaker
2. Qualified sign language interpreter
3. Oral interpreter
4. Communication Access Realtime Translation (CART) (real-time captioning)
5. Tactile interpreter
6. Captioning (open, closed, real-time, closed caption decoders and devices)
7. Telephone handset amplifiers, hearing-aid compatible telephones, text telephones (TTYs) videophones, captioned telephones, and other voice, text and video-based telecommunications products.

- a. [Oregon Relay - Free Telecommunications Relay Services](#) dial 711 to connect with an Oregon Relay Operator. Free relay services that provide full telephone accessibility (text telephone - TTY) to people who are deaf, hard-of-hearing, deaf-blind or [speech disabled](#). All calls are strictly confidential and no records of any conversations are maintained. Available 24 hours a day, 365 days a year.

- **Speech disabilities**

1. Speech-to-speech translator (a person trained to recognize unclear speech and repeat it clearly).

- c. **Service Animals**

- Must be under control of the handler, but Oregon law also allows service animal in training.
- Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals.
- Factors to consider:
 1. Is the animal housebroken?
 2. Is the animal under the owner's control?
 3. Can the facility accommodate the type, size and weight?
 4. Is there a legitimate public safety concern?
- [U.S. Department of Justice](#) guidance on the use of service animals.

4. Oregon Judicial Department Policy and Resources.

Per OJD policy, under Title II of the ADA, each OJD program or service will be accessible to and usable by qualified persons with disabilities. The following resources can be accessed through the [OJD website](#):

- [ADA Coordinator and Grievance Contact List](#)
- [ADA Request for Accommodations and Response](#)
- [ADA Compliance Notice](#)

Additional links

General

[Understand your rights and responsibilities under the ADA](#) (US Department of Justice, Civil Rights Division)

[ADA Update: A Primer for Small Business](#)

National Institute on Disability and Rehabilitation Research, [Region 10 Office](#)

The National Institute on Disability and Rehabilitation Research (NIDRR) has established ten regional Centers to provide information, training, and technical assistance to employers, people with disabilities, and other entities with responsibilities under the ADA. The Centers act as a “one-stop” comprehensive resource on ADA issues in employment, public services, public accommodations, and communications. Each Center works closely with local business, disability, governmental, rehabilitation, and other professional networks to provide ADA information and assistance.

Region 10 (AK, ID, OR, WA) DBTAC – Northwest ADA Center Western Washington University 6912 220th Street SW #105 Mountlake Terrace, WA 98043 (425) 248-2480 (V) (425) 771-7438 (Fax)
dbtacnw@wwu.edu

Online accessibility

Webex:

- [Webex Accessibility Features | Collaboration For Everyone](#)
- [Accessibility features for meetings and webinars \(webex.com\)](#)

Zoom:

- [Accessibility | Zoom](#)

Adobe:

- [Accessing PDF Documents with Assistive Technology: A Screen Reader User's Guide](#)

Microsoft PowerPoint

- [Make your PowerPoint presentations accessible to people with disabilities - Microsoft Support](#)

Mediation Specific Guidance

[Questions and Answers for Mediation Providers: Mediation and the Americans with Disabilities Act \(ADA\)](#)

[ADA Mediation Guidelines - Mediate.com](#)

[ADA Mediation Refresher](#)

[Practice Standards For ADA Mediators - Key Bridge Foundation](#)

[OMA Standards of Practice, Section 5](#) (Mediator's ethical duty to comply with ADA)