Creating Access in Nonprofits: Disability Rights under ADA and 504
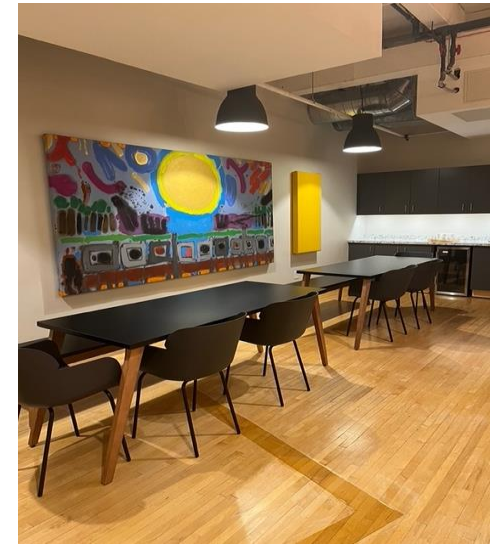
Stacy Hart, ADA Trainer at the ADA Center
Jan Majewski, Director, Inclusive Cultural and Educational Projects
March 8, 2023

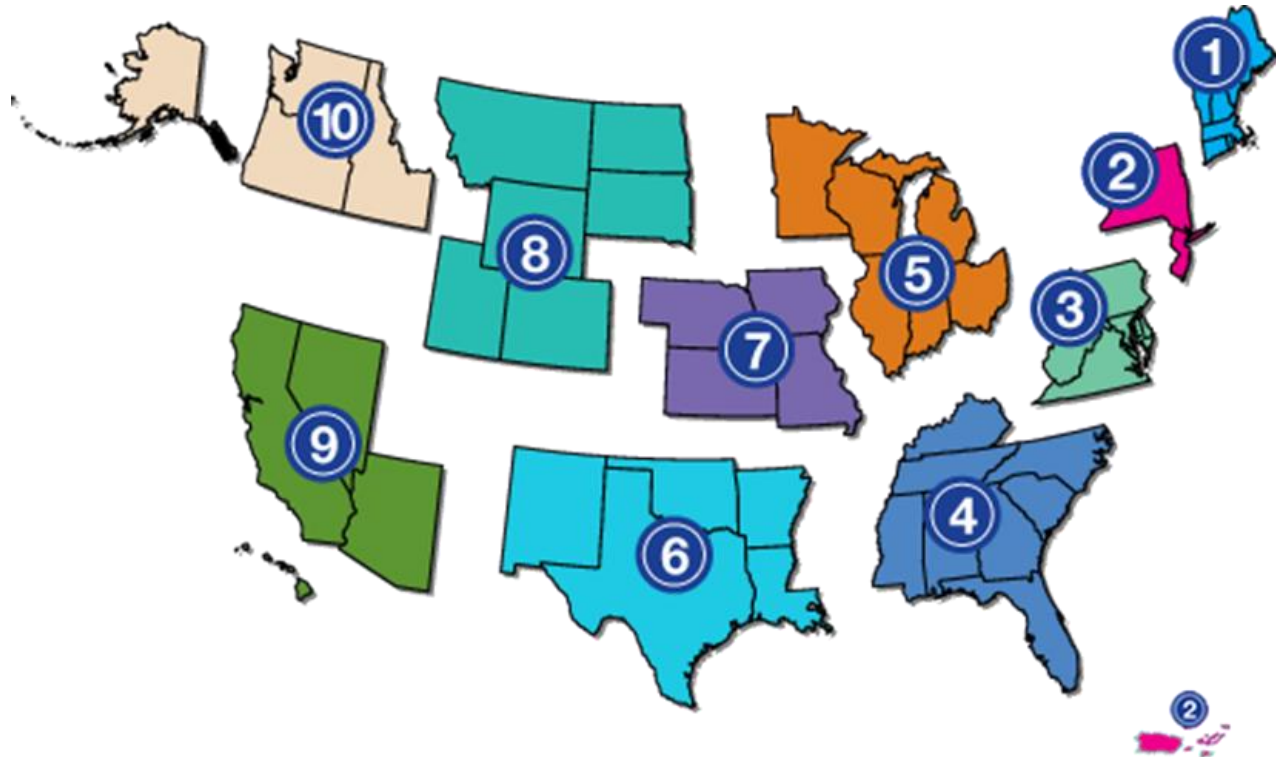Institute for Human Centered Design

A 45-year old international education and design non-profit dedicated to the role of design in social equity across the spectrum of ability, age, culture, gender and economic status.

National Network

Information, Guidance, and Training on the
Americans with Disabilities Act

1-800-949-4232

ADAta.org

Funded by the National Institute on Disability, Independent Living and Rehabilitation Research through the Administration for Community Living and .US Health and Human Services.

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www.NewEnglandADA.org

ADA Title II Action Guide for State and Local Governments

7 Steps to Implement the ADA

Produced by
Institute for Human Centered Design

Step 1 - Start Implementation

Step 2 - Appoint an ADA Coordinator

Step 3 - Provide Public Notice

Step 4 - Adopt a Grievance Procedure

Step 5 - Conduct a Self-Evaluation

Step 6 - Develop a Transition Plan

Step 7 - Create an Action Plan

Self-Evaluation Forms   Sample Documents

www.ADAActionGuide.org

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Agenda

- Brief Overview of Section 504 and the Americans with Disabilities Act

- Snapshot of Disability Demographics Today

- Effective Communication

- Modifications to Policies and Practices

- Administrative Requirements

- Program and Facility Access

- Access in Cultural Organizations

A Little History

Many examples of discrimination against people with disabilities.

- In 1972 a man with cerebral palsy went to dinner with a friend in a restaurant in Chicago. He was arrested for being in public.

- People with intellectual disabilities (what used to be called mental retardation) institutionalized for life.

- Children with disabilities of all sorts isolated in inferior "special education" classes.

- Assumptions that people who are d/Deaf are unintelligent.

Civil Rights Laws

Section 504 of the
Rehabilitation Act, 1973

Americans with
Disabilities Act, 1990

In 1977, disability rights activists in San Francisco held a rally in support of Section 504, and then streamed into the Health, Education and Welfare building, where they stayed for 25 days. Photo by Anthony Tusler.

https://abilitychicagoinfo.blogspot.com/2016/07/americans-with-disability-act-ada.html

Section 504 of the Rehabilitation Act of 1973, as amended (Section 504)

"…no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under any program or activity that either receives federal financial assistance or is conducted by any Executive agency or the United States Postal Service

National Endowment for the Arts Section 504 Regulation

45 C.F.R. PART 1151—NONDISCRIMINATION ON THE BASIS OF HANDICAP

"State arts agencies are obligated to develop methods of administering federal funds so as to ensure that handicapped persons are not subjected to discrimination on the basis of handicap either by sub-grantees or by the manner in which the funds are distributed."

The ADA is one of the most comprehensive pieces of civil rights legislation in U.S. history

"No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any private entity who owns, leases (or leases to), or operates a place of public accommodation."

"INJUSTICE ANYWHERE IS A THREAT TO JUSTICE EVERYWHERE." Martin Luther King, Jr.

Advocates, including Justin Dart (right), marched to spur passage of the ADA. Photo by Tom Olin

Americans with Disabilities Act

Title I   Employment

Title II   State and Local Governments

Title III Public Accommodations and Commercial Facilities

Title IV Telecommunications

Title V   Miscellaneous

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End of Brief Overview

Next: Snapshot of Disability Demographics Today

The face of disability is our face.
People with disabilities are in all walks of life, in all professions, and in all ages.
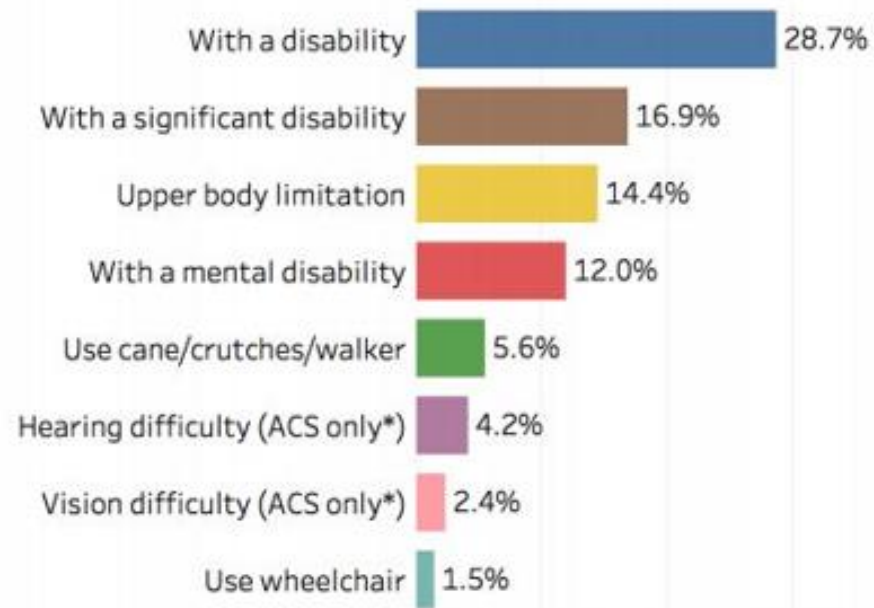
Definition of Disability

A person who:

- has a physical or mental impairment that substantially limits a major life activity;

- has a record or history of such an impairment; OR

- is regarded as having an impairment

To be protected under Section 504 and/or ADA a person only has to meet one of the three conditions

Rhode Island

Percentage of Adults 18+ with Disabilities in Rhode Island

Category	Percentage
With a disability	28.7%
With a significant disability	16.9%
Upper body limitation	14.4%
With a mental disability	12.0%
Use cane/crutches/walker	5.6%
Hearing difficulty (ACS only*)	4.2%
Vision difficulty (ACS only*)	2.4%
Use wheelchair	1.5%

If you don't serve people with disabilities, you don't serve many other audiences completely either.

AN ESTIMATED 3-5 MILLION LGBT PEOPLE HAVE DISABILITIES

2 in 5 transgender adults[1]

&

1 in 4 LGB adults[2] in California

40% of bisexual men
36% of lesbian women
36% of bisexual women
26% of gay men[3] in Washington

reported having a disability

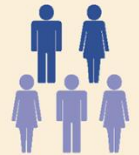https://www.lgbtmap.org/file/LGBT-People-With-Disabilities.pdf

Disability and COMMUNITIES

Disability is especially common in these groups:

2 in 5 adults age 65 years and older have a disability

1 in 4 women have a disability

2 in 5 Non-Hispanic American Indians/ Alaska Natives have a disability

https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html

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End of Snapshot of Disability Demographics Today

Next: Effective Communication

Communication with people with disabilities must be effective.

Effective Communication Auxiliary Aids and Services
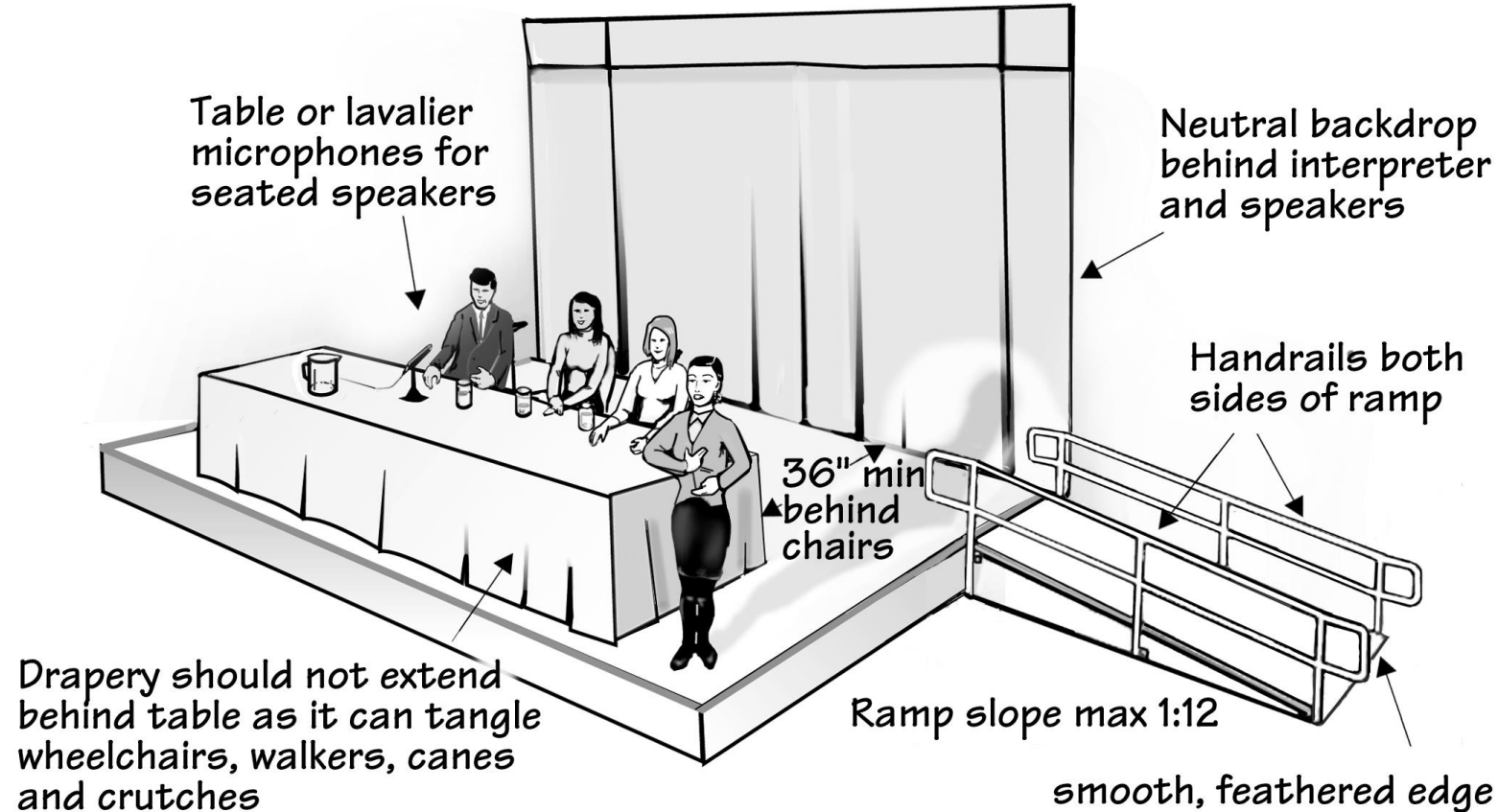
To ensure effective communication:

- Provide "auxiliary aids and services"

- Auxiliary aids and services are for the benefit of the both people: the person with a disability and the person without a communication disability

The Interpreter Needs to be Qualified

Interpreter

You

Person who is deaf

When using a sign language Interpreter face and look at the person who is deaf.

Speakers Platform with Interpreter

Table or lavalier microphones for seated speakers

Neutral backdrop behind interpreter and speakers

Handrails both sides of ramp

36" min behind chairs

Drapery should not extend behind table as it can tangle wheelchairs, walkers, canes and crutches

Ramp slope max 1:12

smooth, feathered edge

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Video Remote Interpreting One on One

Interpreter is anywhere, signing to deaf woman, listening and speaking to hearing/speaking man

Man hears doesn't sign

Woman is deaf and signs

Need:
Computer and video cam
Microphone/speakers or telephone
Good internet connection

Video Telecommunication Relay Service

- People who are d/Deaf call the relay service and communicate in sign language to a Communication Assistant.

- The CA places the phone call and speaks to the called party.

- The CA signs the called party's vocal response to the person who is d/Deaf.

- Video TRS may be used in either direction: to receive a call or to call someone who is d/Deaf.

- VRS is a telephone service and is not intended to be used as an interpreting service.

Video Relay Service

1. Deaf user signs to the interpreter
2. Interpreter speaks to the hearing user
3. Hearing user speaks to interpreter
4. Interpreter signs to deaf user

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Assistive Listening Devices

Devices amplify sound for an individual
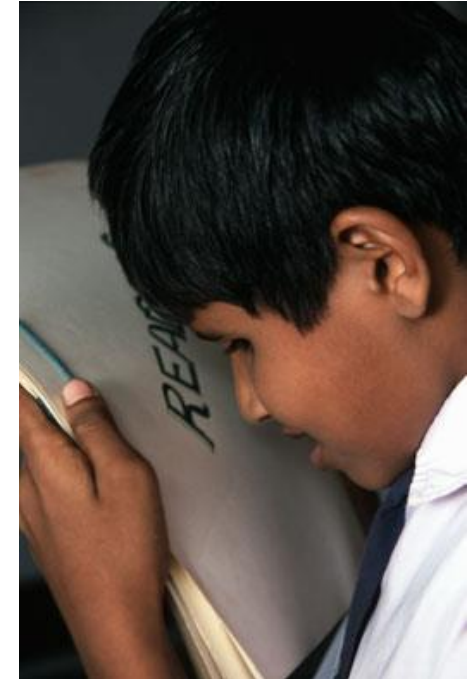
Assistive Listening Devices Signage

Note the Sign

People need to know devices are available.

Closed or Open Captions on Video

we aim to deliver the very best healthcare in a safe, compassionate environment;

Peter Slavin, MD
President, Massachusetts General Hospital

Videos need captions for effective communication.

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People Who Are Blind or Low Vision

Provide Materials in Braille

The file must be in an format that's accessible to screen reading software

Many people who are blind use screen reading technology

With audio output

With refreshable Braille

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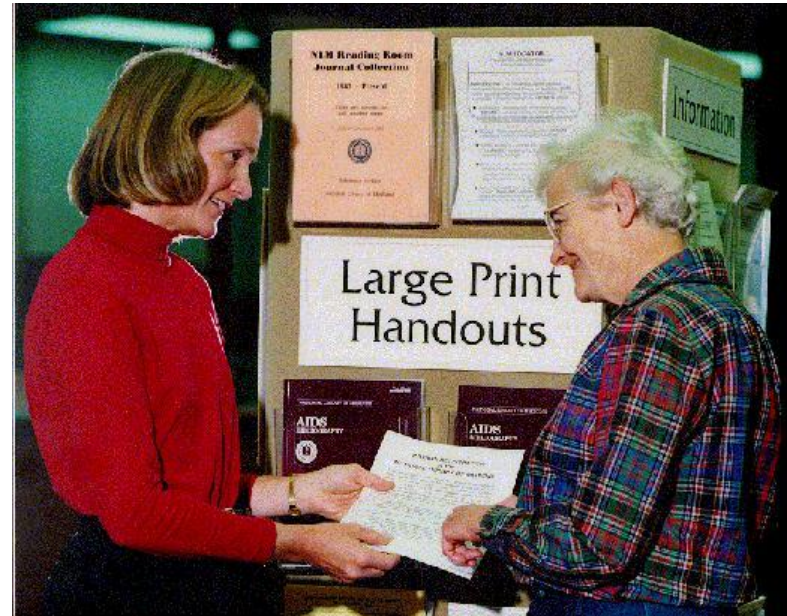
www.NewEnglandADA.org

Material must be in a format that can be read by screen reader software

The file must be in an format that's accessible to screen reading software

- Word document **IF** formatted to be accessible
- Text document
- HTML **IF** formatted to be accessible
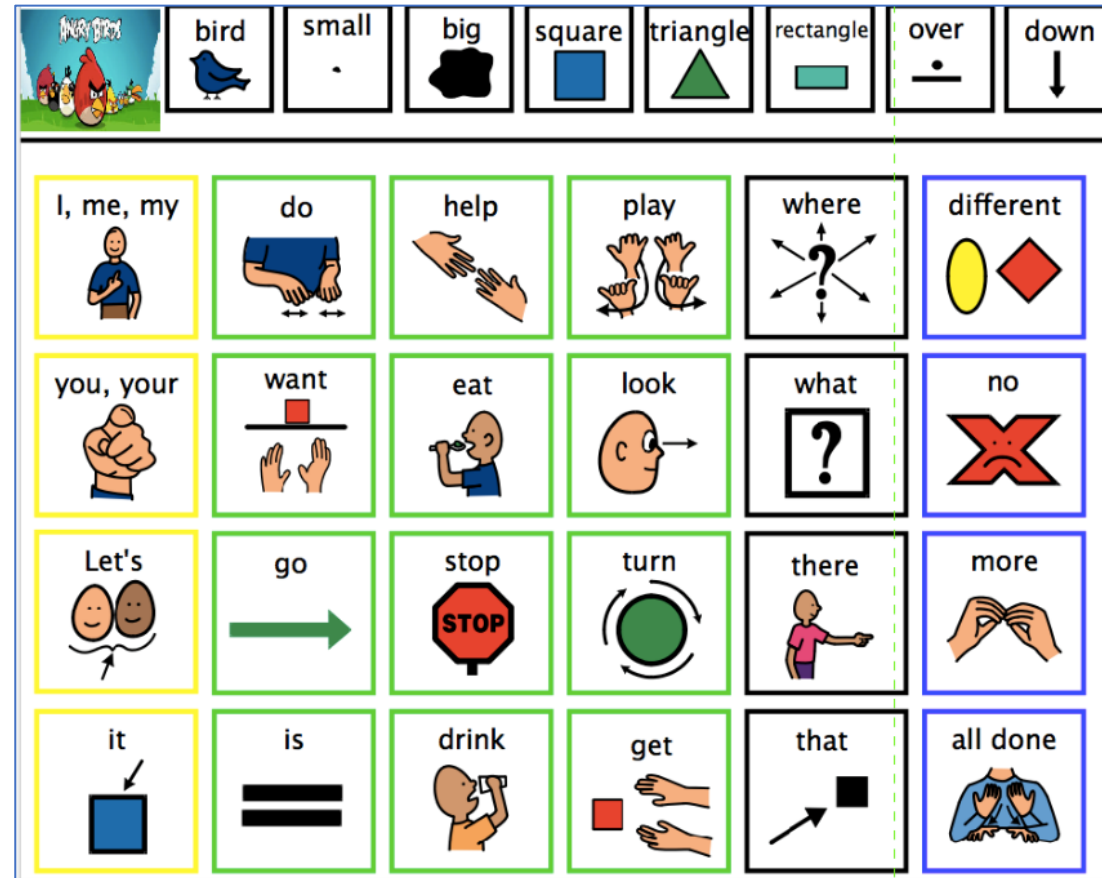- PDF **IF** formatted to be accessible (the most tricky)

Accessibility Services

- Staff assistance
- Large print
- Audio description

Large Print Handouts

Large Print

People Who Have Speech Disabilities

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Web Accessibility

- Websites should conform to Web Content Accessibility Guidelines (WCAG) 2.0, available at www.w3.org/TR/WCAG/.

Web Accessibility

What does access mean?

- Be able to use website without a mouse

- Provide a text description for photos and images

- Design websites so the users can adjust color and font size in web browsers and operating systems

- Minimize blinking, flashing, or other distracting features

- Organization of website

- Plain language

Auxiliary Aids and Services
Undue Burden

- Not required if it would result in undue financial or administrative burden.

- Consider all resources available for funding and operation not just the budget for the service.

End of Effective Communication

Next: Modifications of Policies and Practices

Modifications of Policies and Practices

"When necessary to ensure equal opportunity to participate, 'reasonable modifications' must be made to policies, practices, procedures."

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ADA Service Animal Definition

"Any dog individually trained to do work or provide tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability"

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Not considered work or tasks

The crime deterrent effects of animal's presence

The provision of

- emotional support
- well-being
- comfort
- companionship

Only Two Questions

Is the dog a service animal required because of a disability?

What work or task has the animal been trained to provide?

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Service Animals

Must be under control of handler at all times (on leash except in narrow circumstances)

Ticketing

If you are selling tickets for specific seats in a theater:

1. Know where the accessible spaces are.

2. If you have a seating map or chart include the accessible spaces.

3. People need to be able to purchase those spaces in the same manner as others.

4. Hold accessible spaces until you are sold out of non-accessible seating.

So what do you do when . . .

Current wheelchair seating is limited to the first row and the last row of the theater. The theater makes available online accessible seating tickets. What are some good ways to solicit information in advance about seating needs?

So what do you do if . . .

A person with diabetes comes to a Sunday museum class and has a backpack with a bottle of water and a few small snacks. The museum cafe is closed on Sundays. The museum prohibits food in the museum class areas. What do you tell that person?

End of Modification of Policies and Practices

Next: Administrative Requirements

Section 504 of the Rehab Act and Title II of the ADA

Administrative Requirements

1. Designate a responsible employee
2. Notify the public about obligations under Section 504 and the ADA
3. Adopt a grievance procedure
4. Conduct a Self-Evaluation
5. Develop a Transition Plan

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1. Designate a Responsible Employee

- Sometimes called "Section 504 Coordinator" or "ADA Coordinator"
- Rarely a full time job
- Could be more than one person

Role of the Section 504 / ADA Coordinator

1. Ensure that people with disabilities and employees have an opportunity to participate in programs, activities and services in a full, integrated and meaningful way.

2. Ensure that violations don't occur OR are remedied if they do.

3. Serve as primary point of contact for Section 504 / ADA compliance for your colleagues and for members of the community.

4. Plan and coordinate compliance efforts.

Role of the Section 504 / ADA Coordinator

5. Develop and distribute notice about Section 504 / ADA compliance.

6. Coordinate requests for auxiliary aids and services, such as sign language interpreters.

7. Respond to requests for reasonable accommodations

8. Develop a grievance procedure.

9. Investigate complaints.

Role of the Section 504 / ADA Coordinator

10. Conduct a self-evaluation.

11. Develop a transition plan.

12. Train staff and boards on Section 504 of the Rehab Act/ ADA Title II requirements.

13. Interact and consult with staff and board about the Section 504 of the Rehab Act / Title II requirements

14. Be a busybody

2. Notify the Public About Section 504 and the ADA

- Include a statement –"The recipient does not discriminate in admission or access to, or employment in, its programs or activities."

  - Entity's compliance with Section 504 / ADA

  - How to request auxiliary aids and services, accommodations

  - How to file a complaint

Provide Public Notice

Where? How?

- Website

- Program brochures

- Event announcements

- Social media

- On bulletin boards in buildings

- Radio and television public service announcements

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3. Adopt a Grievance Procedure

- To resolve complaints

- Establish time frames and appeal process

- Samples available in the ADA Title II Action Guide

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4. Self-Evaluation

- Identify all of your programs, activities, and services.

- Review all the policies and practices that govern the administration of programs, activities, and services.

Policies and Practices

- Do policies or practices screen out or prohibit people with disabilities from participating in and enjoying the benefits of the municipality's programs, activities, and services?

- Do people with disabilities have an equal opportunity to participate in the municipality's programs, activities and services?

Auxiliary Aids and Services

- How do people make requests for auxiliary aids and services such as sign language interpreters, assistive listening devices, print material in large font?

- Is the process clearly communicated to the public?

- How do staff arrange for auxiliary aids and services?

Auxiliary Aids and Services

- Have service providers such as sign language interpreters, been identified?

- Is equipment, such as an assistive listening system, in place and ready to use?

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Reasonable Accommodations

- Is there a process to evaluate reasonable accommodations requests?

- Is the process centralized or decentralized?

- Are staff aware of the obligation to make reasonable accommodations for people with disabilities?

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Websites

- Is the website in compliance with the Web Accessibility Initiative's Web Content Accessibility Guidelines (WCAG)?

  www.w3.org/WAI

Review of Documents

- Program applications

- Waivers and release forms

- Procedure manuals

- Brochures on programs, services and activities

- Rules specific to a program

- Employment applications and handbooks

Interviews/Discussions

With key staff:

- How does the organization interface with the public?

- What policies or procedures may affect how visitor participate in services?

- Are there any barriers to participation for people with disabilities?

What to Evaluate

- Physical barriers: What needs to be done to provide access?

- Assuring program accessibility.

One way to make sure that the self-evaluation is comprehensive is to identify all of the public entity's programs, services, and activities.

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Section 504 /Title II and Program Accessibility

No qualified individual with a disability shall, <u>because facilities are inaccessible</u>

- Be excluded from participation

- Be denied benefits of programs, services and activities

- Be subjected to discrimination

Programmatic Accessibility

- Program accessibility usually requires facility accessibility.

- There is no "Grandfathering!

https://www.mass.gov/info-details/historic-curatorship-program

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Program Accessibility Methods

- Reassignment to accessible building

- Assignment of aides

- Services at alternate accessible site

- Structural changes

5. Develop a Transition Plan

When structural changes are needed to achieve "program accessibility"

1. Identify physical obstacles

2. Describe remedy

3. Set timetable

4. Include name of responsible official

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Self-Evaluation/Transition Plan

- A list of the interested persons consulted

- A description of areas examined and any problems identified

- A description of any modifications made

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If Your Non-Profit is Not State or Local Government-Run

ADA Title III
Readily Achievable Barrier Removal

- Remove barriers that are "easily accomplishable, able to be carried out with much difficulty or expense"

- Tax credits and deductions available

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What do Section 504 and the ADA look like in cultural organizations?

The ADA, Section 504, and DEAI —two are federal laws, one a moral imperative — ensure people with disabilities are part of society's story.

"Museums are a vital part of how we tell the stories of who we are, who we've been, and how we will live together. We cannot claim to be truly essential to society if we are not accessible to all."

American Alliance of Museums

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Integrated setting is a major goal of the ADA

"A public accommodation shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability **in the most integrated setting appropriate to the needs of the individual."**

Cultural organizations must think in terms of layers of access and patron choices for how accessibility is provided.

Morning at the Museum

https://access.si.edu/program/morning-museum

Separate programming can meet the visitor where he is, but it can also prove to be a bridge to where he could be.
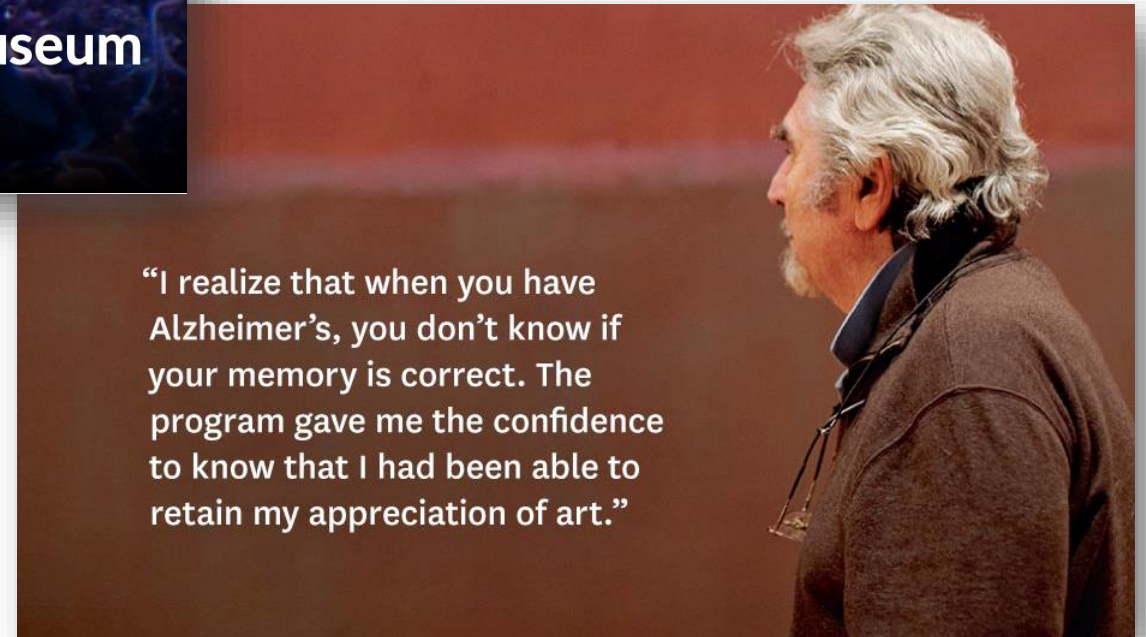
"I realize that when you have Alzheimer's, you don't know if your memory is correct. The program gave me the confidence to know that I had been able to retain my appreciation of art."
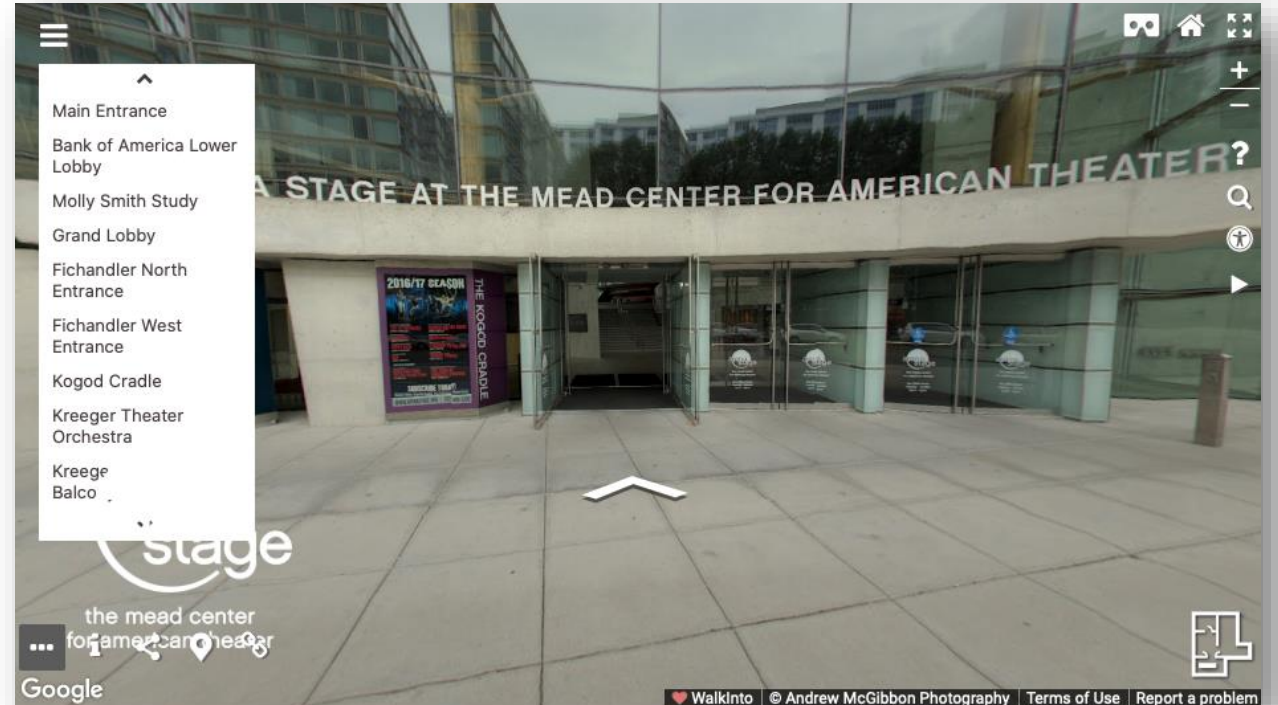
https://www.moma.org/visit/accessibility/meetme/perspectives/

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ADA and 504 goals, beyond separate programs

The ADA and 504 in cultural organizations are not only about programming — particularly not only segregated programming – or only entrances, ramps, and toilets.
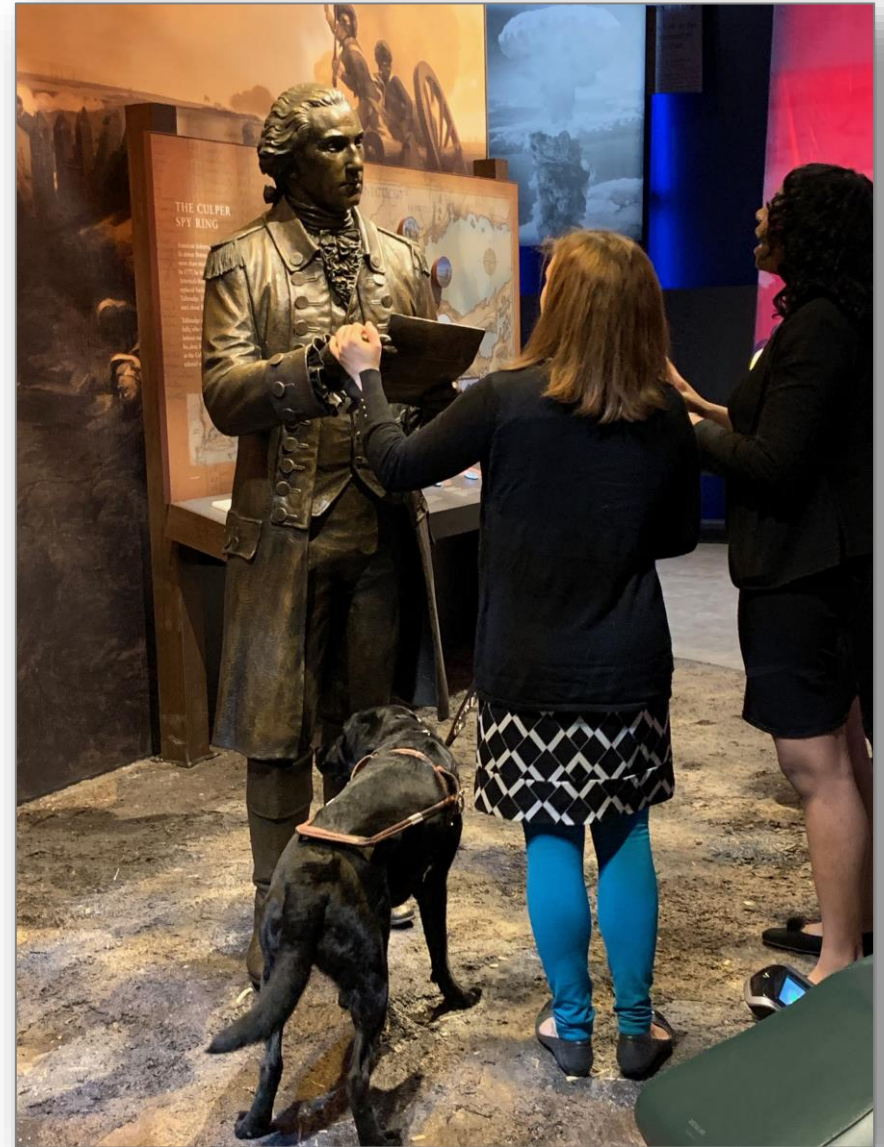
Common physical access issues in cultural organizations

- Route from parking and public transit to the entrances

- Entrances

- Accessible route/elevators (visible to all)

- Information/welcome/ticketing desks

- Stanchioned barricades that form lines and protect areas (width, turning, no cane detection)

- Shops, cafes

- Exhibit layout, furniture, protruding objects

- Theater entrances, seating, stages

- Restrooms

- Signage

- Classrooms, labs, studios

- Seating (recommended)

- Acoustics (no ADA standards)

- Lighting (no ADA standards)

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Areas of primary function

A "primary function" is a major activity for which the facility is intended."

The ADA requires that if there is an alteration to **an area of a facility that contains a primary function** there needs to be an accessible path of travel to the area.

Areas of Primary Function:
- exhibitions
- theaters
- lobbies, atriums where programs are held
- classrooms
- studios
- displays in visitors centers

Common cultural historic preservation access issues

- Buildings with historic and non-historic sections – both must provide access to the programs

- Alternative programs may be a solution – video, photographs, virtual reality — but that should be the last, not the first choice

- Historic houses, theaters, parks, streets with historic cultural landscapes

- Historic preservation and accessibility can become allies for both concerns

U.S. DOJ Settlement Agreement with The Mount Vernon Ladies' Association: https://www.ada.gov/mt_vernon/mtvernon.htm

https://www.ada.gov/mt_vernon/mtvernon.htm

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Common modifications in policies, practices, or procedures required in cultural organizations
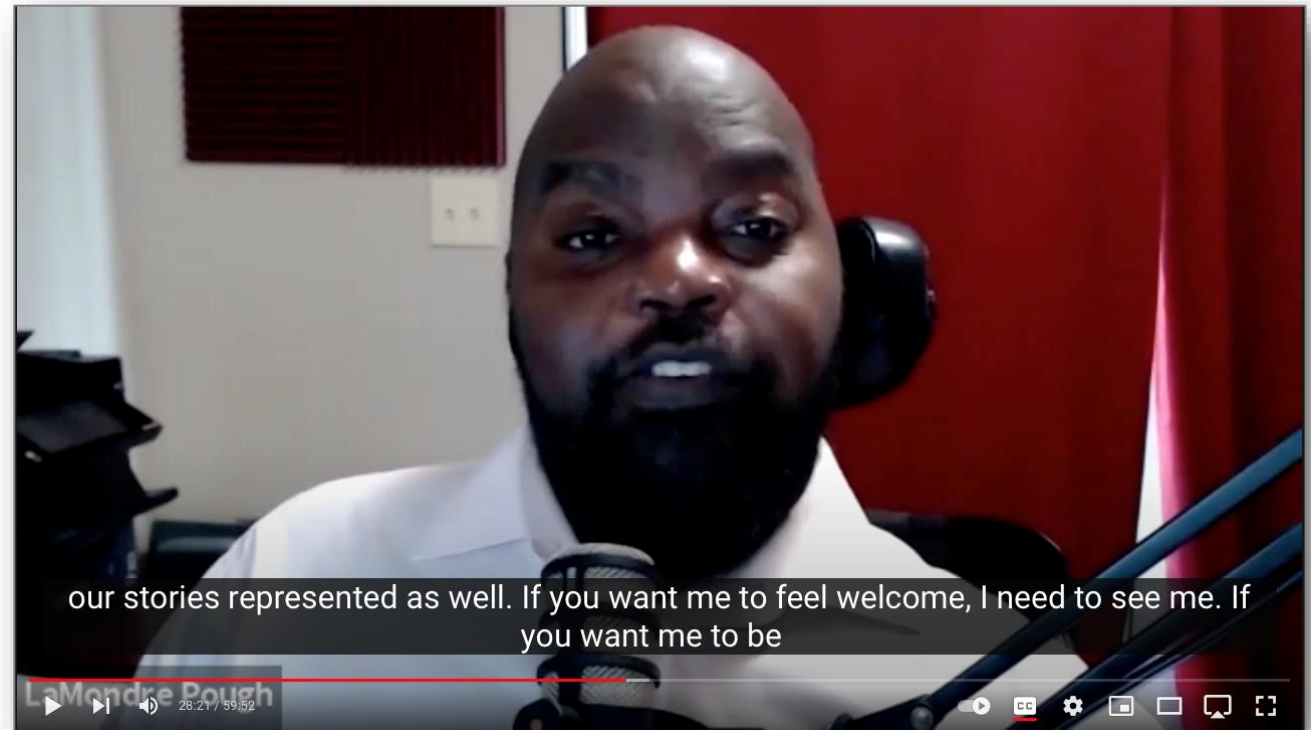
- Exhibition design that is accessible for people with mobility disabilities and brain-based disabilities

- Accessible mechanical interactive controls

- Ticketing kiosk design

- Exhibition content (recommended strongly; certainly DEAI)

- Use of other power-driven mobility devices OPDMDs

- Eating and drinking within exhibits and program areas

- Carrying a backpack within an exhibition

- Service animals

10-11
©2021 Bil Keane, Inc.
Dist. by King Features Synd.
www.familycircus.com

"We've been in this part already, Mommy. I remember this vent."

Common cultural organization issues with auxiliary aids and services

The purpose of this requirement is to provide effective communication between patrons and staff with sensory disabilities and cultural organizations.

- Captioning, interpreting, assistive listening, audio description, audio wayfinding, accessible digital interfaces, tactile experiences, accessible formats of print materials

- Accessible label and graphics design

- Accessible linear media and digital interactives programs, including AR/VR

- Museum, classroom, studio programs

- Online programming and videoconferencing

our stories represented as well. If you want me to feel welcome, I need to see me. If you want me to be

LaMondre Pough

28:27 / 59:52

Title III ADA Regulation: Movie theater captioning and audio description

Nondiscrimination on the Basis of Disability by Public Accommodations
Movie Theaters; Movie Captioning and Audio Description

"The Department intended this definition to exclude drive-in movie theaters as well as facilities that screen movies if the facility is not used primarily for the purpose of showing movies for a fee, such as museums, hotels, resorts, or cruise ships, even if they charge an additional fee."

"The Department's title III regulation has always made clear that **all public accommodations must provide effective communication to the public through the provision of auxiliary aids and services, including, where appropriate, captioning and audio description.**"
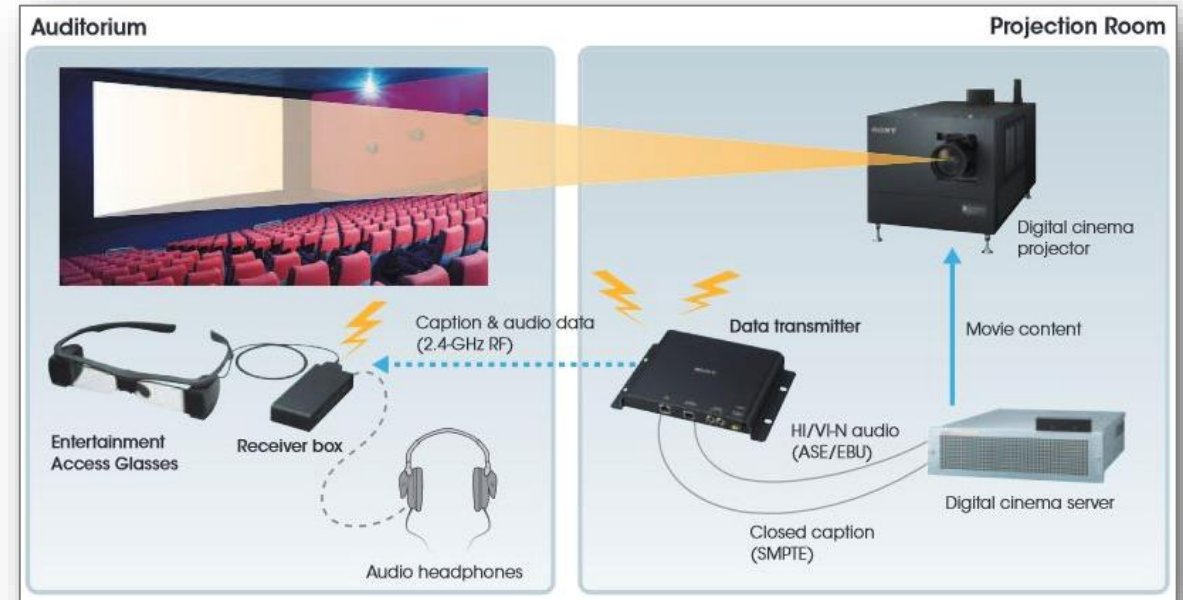
Common issues with access to website information and digital tools

- Websites WCAG 2.0 compliant, including graphics and online videos (NOT unedited auto captions)

- Information about the organization's accessibility – physical, program, auxiliary aids and services, scheduling services as well reservations in programs, classes, if needed

- Online ticketing – timed ticketing, performances, events, classes

- Online programming – lectures, workshops, videos

- Supplemental services that provide accessibility (e.g., label text, theater program information, building layout/wayfinding in accessible format)

Accessibility For Patrons and Visitors With Disabilities

Upcoming Accessible Performances   VSA   Sensory   Mobility   Hearing   Visual

The Kennedy Center strives to make its performances and facilities accessible to all.

Due to the ongoing pandemic and in an effort to keep our guests, artists and staff safe, some services may have changed or been temporarily suspended.

We are eager to ensure full and safe participation for all. If you have any other questions or concerns, need assistance, or would like to request an accommodation for a person with a disability related to the Center's COVID Safety Plan, please contact the Office of Accessibility in advance of your visit at 202-416-8727 or access@kennedy-center.org.

Map of the Kennedy Center

Patrons who are Blind or Have Low Vision

Large Print and Braille Playbills

Audio-Described Performances

Parking

Touch Tours

Patrons who are Deaf or Have Hearing Loss

Telephones

Assistive Listening Devices

Sign Language Interpretation

Captioned Performances

Parking

Patrons who have Mobility Disabilities

Courtesy Wheelchairs

Parking

Accessible Entrances

Accessible Seating

Accessible Restrooms

Telephones

SF

Sensory-Friendly Performances

Sensory-Friendly Performances

https://www.kennedy-center.org/visit/accessibility

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Other issues: personal devices and services

The ADA does not require a public accommodation to provide its customers, clients, or participants with personal devices, such as wheelchairs, individually prescribed devices, or services of a personal nature.

Many cultural organizations loan wheelchairs and walkers. That is a courtesy. It is different than providing assistive listening devices or audio description services for effective communication.

Services requested may include pushing an elderly person through a large facility. Decide whether this is done by policy; make sure your decision is sound, and your staff is trained.

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Common issues of maintenance of accessible features

- Exhibition design changes, malfunctions

- Stanchions for lines are moved

- Floor polishing to high sheen

- Lighting – aging bulbs dim, darkened areas

- No maintenance of charged auxiliary aids

- Staff/volunteers not knowledge of accessible features, where they are, that they are maintained

- Websites not maintained to WCAG compliance and contain old information

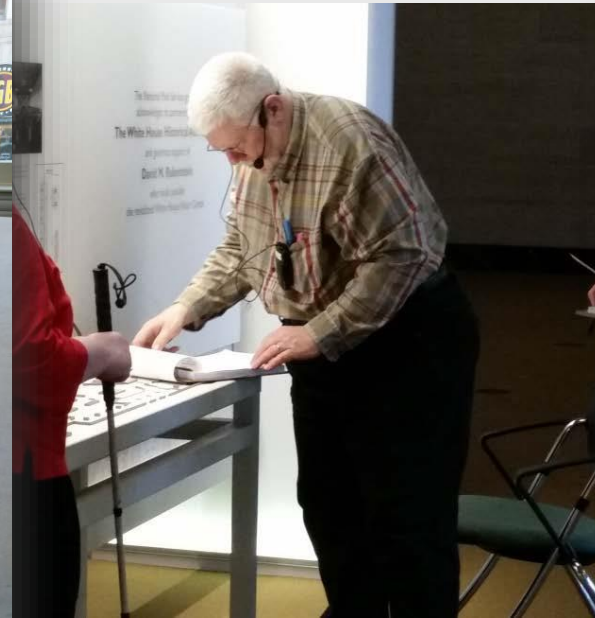- Sales counters with unusable accessible counters

ADA recommends working with people with disabilities: IHCD user/expert program

Courtesy of The Children's Museum of Indianapolis

Courtesy of the International Spy Museum

Courtesy of the National Park Service

Courtesy of the National Air and Space Museum

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Questions?

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- **ADA Questions**

- **Events Planning Activity**

New England ADA Center Inquiries

1. I am Deaf and want to attend a performance at XXX Theater. They have three performances with sign language interpreters. I'm not available any of those dates. Can I ask for interpreters for another day?

2. We got a call from a woman who wants to volunteer at our museum. She said she has a disability, asked if we have an accessible toilet room and mentioned that she might occasionally need help getting on and off the toilet. Is this our responsibility?

3. I run the box office at ZZZ theater. We received a request from a woman with a large service animal asking if she could use one of the wheelchair spaces because her animal won't fit under her seat. Can we do this?

New England ADA Center Inquiries

4. John here from ZZZ theater again. Someone came in without a wheelchair with a ticket for a wheelchair space. He said that his sister uses a wheelchair and was unable to attend so the sister gave him her ticket. We weren't sure what to do. Guidance please!

5. My daughter wants to attend a summer program run by our local museum. She has type 1 Diabetes. I want to understand her rights before I put in her application.

Public Event Planning

You are on a committee planning a two-day event that will include:

- Arts and crafts sales on the town green
- Three outdoor theatrical productions
- Two concerts indoors
- Face painting
- Arts games for the children
- Food trucks
- Portalets

There will be a website and brochures distributed around town.

What does the committee need to do to ensure the participation of people with disabilities?

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www.NewEnglandADA.org