Mediating with Parties Protected by the ADA

ANNUAL DRC CONFERENCE
JULY 30 – AUGUST 1, 2015
Learning Objectives

As a result of attending this course, participants will be able to:

1. Discuss how the ADA applies to mediators.
2. List examples of policy modifications and auxiliary aids and services that a mediator may be required to provide pursuant to the ADA.
3. Locate resources to assist with ADA situations that may arise in the mediation setting.
Americans with Disabilities Act

- Title I – Employment
- Title II – Public Entities (State and Local Government)
- Title III – Public Accommodations and Commercial Facilities
- Title IV – Telecommunications
- Title V – Miscellaneous
ADA Defines a Disability As:

1. A physical or mental impairment that substantially limits one or more major life activities; or

2. A record of such an impairment; or

3. Being regarded as having such an impairment.
Title II – Public Services: State and Local Government
Title II General Rule

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.
Protected Individuals

To be an individual protected by title II . . . the individual with a disability must meet the essential eligibility requirements for receipt of services or participation in a public entity’s programs, activities, or services with or without:

1) Reasonable modifications to a public entity’s rules, policies, or practices;
2) Removal of architectural, communication, or transportation barriers; or
3) Provision of auxiliary aids and services.
Notice

A public entity is required to disseminate sufficient information to applicants, participants, beneficiaries, and other interested persons to inform them of the rights and protections afforded by the ADA and the federal regulations.
Effective Communication

Effective communication means that whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people who do not have disabilities.

Equal access to communications may be provided through auxiliary aids and services.
Auxiliary Aids and Services

Device or aid that is designed to afford effective communication:

- Qualified interpreters, note takers, computer-aided transcription services, written materials, assistive listening devices, captioning, TDDs, videotext displays, or other methods of making materials available to individuals with hearing impairments
- Qualified readers, taped texts, audio recordings, Braille or large print materials, or other methods of making materials available to individuals with visual impairments
- Acquisition or modification of equipment or devices
Auxiliary Aids and Services

- Public entity may not charge a fee or surcharge to the individual, or any group of individuals with disabilities, to cover the costs of making its programs or services accessible.

- In determining what type of auxiliary aid or service is necessary, a public entity shall give *primary consideration* to the requests of the individual.
Service Animals

A service animal is a dog that is individually trained to do work or perform tasks for a person with a disability.

Must modify policies to permit miniature horses where reasonable.

Generally must permit service animals to accompany persons with disabilities in all areas where members of the public are allowed to go.
Title II Entities NOT Required to:

- Provide personal devices or services, such as wheelchairs; individually prescribed devices such as eyeglasses or hearing aids; readers for personal use or study; services of personal nature

- Take any action that would result in a fundamental alteration in the nature of a service, program, or activity

- Take action that would result in undue financial or administrative burdens
Title III – Public Accommodations and Services Operated by Private Entities
Title III General Rule

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.
Public Accommodations

- Places of lodging
- Serves food or drink
- Places of exhibition or entertainment
- Places of public gathering
- Sales or rental establishments
- Services establishments
- Public transportation terminals & stations
- Places of public display or collection
- Places of recreation
- Places of education
- Social service centers
- Places of exercise or recreation
Modifications in Policies and Practices

A public accommodation shall make reasonable modifications in policies, practices or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.
Auxiliary Aids and Services

Public accommodation shall furnish appropriate auxiliary aids and services necessary to ensure effective communication, including to companions.

Public accommodation shall take steps necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.

Cannot charge the individual for costs.

Limited by fundamental alteration/undue burden.
Service Animals

A service animal is a dog that is individually trained to do work or perform tasks for a person with a disability

Must modify policies to permit miniature horses where reasonable

Generally must permit service animals to accompany persons with disabilities in all areas where members of the public are allowed to go
Resources

Department of Justice:  www.ada.gov

EEOC:  www.eeoc.gov

Access Board:  www.access-board.gov

Southeast ADA Center:  www.adasoutheast.org

Job Accommodation Network:  www.askjan.org

Florida State Courts:  www.flcourts.org

The Florida Bar:  www.floridabar.org
Professional Interactions

As you are meeting a mediation participant, you notice she has a prosthesis and shakes with her right hand. You should:

A. Withdraw your hand and continue to introduce yourself
B. Offer your right hand as you would with anyone
C. Offer your left hand
Professional Interactions

When meeting a mediation participant who is deaf and is communicating through a sign language interpreter, you should:

A. Maintain eye contact with the person who is deaf
B. Maintain eye contact with the interpreter
C. Look back and forth between the person who is deaf and the interpreter
Professional Interactions

You are speaking with a litigant who is hard of hearing and he asks you to repeat a statement. You should:

A. Repeat the statement in a louder voice
B. Repeat the statement more slowly
C. Rephrase the statement
D. Use gestures to act out your statement
E. Offer to write your statement
Professional Interactions

You see a member of the public at the courthouse who has a disability and the person appears to be struggling. You should ignore the person so as not to embarrass, draw attention, or infringe upon the person’s independence.

True or False?
Professional Interactions

You are mediating a session with a person who has difficulty speaking. You are only able to understand a few words and phrases. What should you do?

A. Pretend you understand what was said
B. State what you understood and ask the person to repeat the rest of the info
C. Smile and end the session as soon as possible
Professional Interactions

When conversing with a person who uses a wheelchair, it is preferable to pull up a chair, if available and convenient, and converse at eye level.

True or False?
Take Aways:

- People with disabilities are just as likely to be caught up in a dispute
- **All** mediators need to know how to set up and run an accessible mediation session
- If you don’t know, ask
QUESTIONS?