



# **Church World Service Training**

## **December 17, 2021**

# **The Americans with Disabilities Act (ADA)**

## **and Border Shelters – Part II**

# Disclaimer

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# Agenda Part II

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- ADA and How It Applies Recap
- Reasonable Modifications
- Ground and Air Transportation Accessibility
- Resources & Close

# ADA and How It Applies Recap



# ADA & How it Applies

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Title II applies to state and local government entities, as well as organizations that receive funding from, or partner with, state and local government entities.

Title III applies to places of public accommodation, private businesses and non-profit organizations.

# Public Accommodations

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Private entities are considered public accommodations “if the operations of such entities affect commerce” and they are open to the public.

ADA requires that the services/goods/programs offered be accessible- i.e. information, transportation services, communication access.

ADA also requires that facilities be physically accessible for people with disabilities and that barriers are removed and/or remediated.

# Removing Barriers

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Making accommodations or modifications:

- Communication related
- Building/Access related
- Transportation related





# Reasonable Modifications

# Reasonable Modification Requirements

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Covered entities must modify policies, practices and procedures so that people with disabilities are not denied the opportunity to participate in or benefit from goods, services, programs, facilities, or privileges.

## **Examples where Reasonable Modifications may be needed:**

- Unable to wear a mask
- Need help completing intake forms and other paperwork



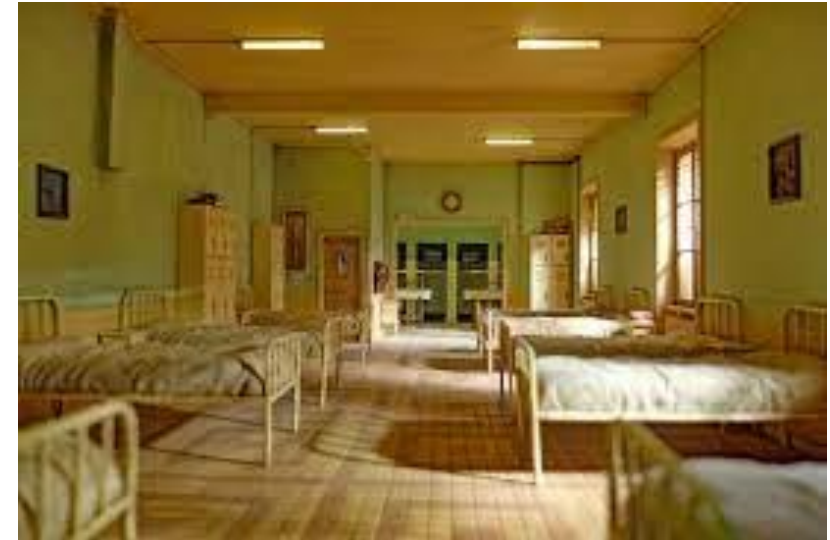
# Reasonable Modification Scenario

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Juan is 19 and has arrived at the shelter with his mother. Because of Juan's disability, he relies on his mother for his personal care needs.

The shelter has men's and women's dormitories.

**What reasonable modifications could the shelter provide?**



# Reasonable Modification Scenario Answer

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The shelter could allow Juan to be in the women's dormitory with his mother.

**Any other suggestions?**

# ADA III Defenses

# Fundamental Alteration

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A public accommodation is not required to do anything that will result in the fundamental alteration to the goods, programs, services, or activities offered.

**Scenario:** A shelter guest with diabetes requests a staff member to provide a meal in the middle of the night to help control their blood sugar. This would be a fundamental alteration of its services.

# Fundamental Alteration Scenario Response

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## **Possible Solution to Scenario:**

- The shelter staff could offer to provide the guest with snacks that they could eat when the kitchen is closed.

Other possible solutions?

# Undue Burden

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Significant difficulty or expense.

All resources of the covered entity available for use in the funding and operation of the program must be considered.

**Scenario:** Rosario's host family is requesting the shelter provide private transportation for her because she has an intellectual disability, and they are concerned she might be unsafe using public transportation.





# Undue Burden Scenario Solution

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## Possible Solution to Scenario:

- The family could come and get Rosario or the shelter could provide transportation by plane instead of using the usual long distance bus service.

## Other possible solutions?



# Direct Threat

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An individual does not need to be allowed to participate in programs, services or activities if they pose a direct threat to the health or safety of others.



# Direct Threat Considerations

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A public accommodation must assess each situation. They should use reasonable judgment based on current medical knowledge or other objective evidence, to determine:

- 1) The nature of the risk, how long it may last, and how severe it may be;
- 2) The chances that possible injury will actually occur; and
- 3) Whether reasonable modifications or providing auxiliary aids or services will reduce the risk.

# Direct Threat Scenario

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Jacques has a mental health disability and sometimes loses control over his temper. When he does, he throws things and pushes people.

What are the shelter's options in working with Jacques?



# Direct Threat Scenario Solution

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The shelter needs to look at ways to help Jacques to control his temper. If possible, they could consult with any individuals that arrived with Jacques.

**What if these possible solutions don't work?**

# Face Masks or Coverings



- If required, everyone should wear a face mask or covering unless there is a specific reason it cannot be worn.
- Public accommodations can have legitimate safety requirements under the ADA and can ask a person why they can't wear a mask.
- Once the person tells them the specific issue, the entity cannot ask for more detail about a particular disability.

# Face Masks or Coverings II

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- Public accommodations must make reasonable modifications of policy, practice or procedure (p/p/p) where they can regarding face masks.
- Documentation of the entity's efforts to modify p/p/p are often helpful.

# Questions

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# Transportation Access & Related Issues



# Remember ADA Title III Obligations

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Making goods/services accessible to all by making accommodations or modifications:

- Communication-related
- Building/Access related
- Transportation related



# General Nondiscrimination under ADA

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Qualified individuals with disabilities may not be excluded from participation in, or be denied the benefits of, the goods, services, programs, or activities of a public accommodation, or be subjected to discrimination by any public accommodation on the basis of disability.

This applies to transportation providers, public and private, who offer services to the general public.

# Transportation Requirements Overview I

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- Public and private organizations must meet ADA requirements.
- Public and private transportation providers must provide information on services in accessible formats.
- Equipment such as lifts, ramps, securement devices, signage, and communication devices must be in good working condition.

# Transportation Requirements Overview II

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- Trained service animals (not just dogs) are allowed on public transit.
- Transit systems operating on a fixed route must have signs designating seating for passengers with disabilities.
- Operators must be trained to operate vehicles and equipment safely and properly assist individuals with disabilities.

# Private Transportation Entities

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- Private entities that provide transportation services to the public are required to be accessible.
- Includes airport shuttles, hotel shuttles, private buses, commuter buses/transport and taxis.
- If these providers use vehicles that aren't accessible, they must provide equivalent service in the most integrated setting possible.

# Private Transportation Entities (Continued)

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- They must accept service animals.
- The entity may require up to 48 hours advance notice only for providing boarding assistance. If the notice is not given, the entity must still provide the service if it can do so by making a reasonable effort, without delaying the bus service.

# Non-Discrimination by Private Transportation Entities

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[42 U.S.C. § 12184](#) - Prohibition of discrimination in specified public transportation services provided by private entities

(a) General rule - No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.



# Non-Discrimination Provisions

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## Under the Federal Transit Administration - Sec. 37.5 Nondiscrimination

- No entity shall discriminate against an individual with a disability in connection with the provision of transportation service.
- An entity shall not impose special charges, not authorized by this part, on individuals with disabilities, including those who use wheelchairs, for providing services required by this part or otherwise necessary to accommodate them.
- An entity shall not require that an individual with disabilities be accompanied by an attendant.
- An entity may require up to 48 hours advance notice for accommodations that require preparation time- i.e oxygen.

# Buses & Trains



- The private entity must assist, as needed, individuals with disabilities in boarding and disembarking.
- Transportation personnel must be trained to provide this assistance safely and appropriately.
- Mobility devices (e.g., wheelchairs, walkers, etc. ) must be permitted in the passenger compartment whenever possible.
- When the bus is at a rest stop, the driver or other personnel must retrieve then re-stow mobility aids and other assistive devices in the storage area.

# Accessible Transportation Scenario 1

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Luis is traveling by bus to his uncle's home in another city. Luis is blind and will need some assistance. When he arrives at the station, the bus company operator informs him when purchasing a ticket that he is not allowed to ride the bus unaccompanied because he is blind.

**What accommodations (if any) might Luis need in this case?**



# Questions/Issues from Scenario

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- Is the bus company violating the ADA by not allowing Luis to ride unaccompanied?
- Does Luis have specific accommodation related needs that might need to be communicated to the bus carrier regarding his trip?
- Could this situation have been prevented so as not to delay Luis' travel?



# Accessible Transportation Scenario 1 Solutions

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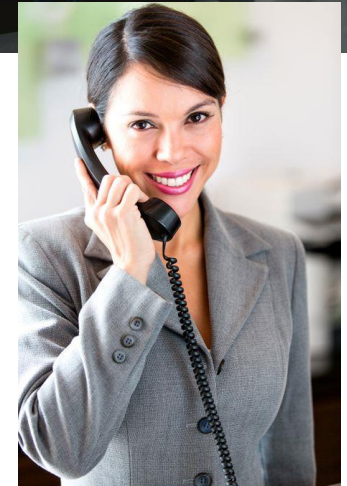
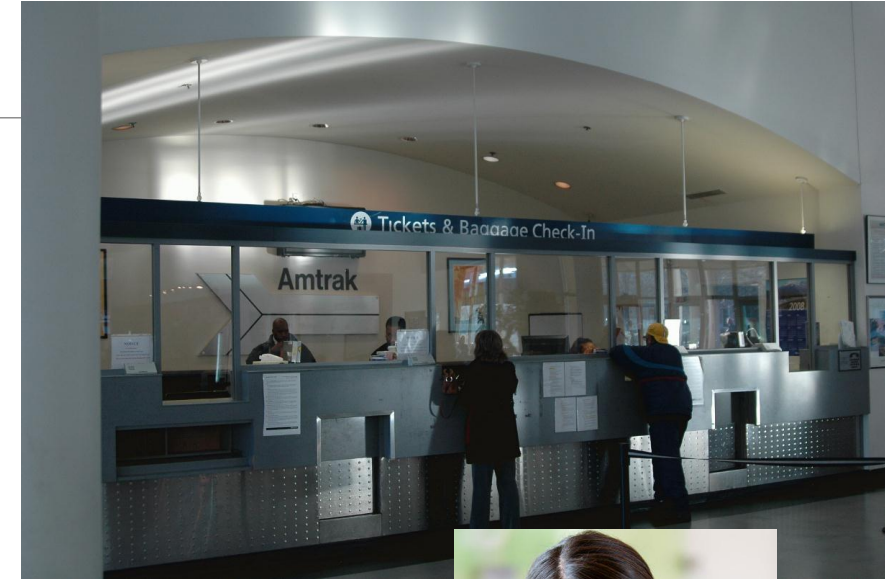
- Ask Luis! Have a discussion about his needs.
- Luis may need help boarding the bus, with his baggage and finding a seat.
- He will likely need the bus operator to alert him of upcoming stops i.e. stops for breaks/eating, final destination approaching, etc.
- He may need help getting off the bus, obtaining luggage and navigating to an area of the destination bus station.



# Accessible Transportation Scenario 1

## Solutions

- Have a staff member accompany Luis to purchase his ticket and assist during the initial communications with the agent/bus operator and possibly the boarding process.
- Have staff verify ahead of time what bus carrier Luis will be using for his trip or if shelter staff regularly use certain carriers- talk with them to let them know of Luis' accommodations/needs ahead of time.



# Accessible Transportation Scenario 1 Solutions

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- If Luis will be transferring from one bus carrier to another, it is often necessary to contact the other carrier ahead of time to alert them too. Some carriers have this requirement so it's important to verify the carriers being used ahead of time if possible.
- A discussion with Luis may be needed to make sure he understands he can ride and may need to ask for help. As this may have some cultural related issues as well; Luis should know he has the right to ask for help boarding the bus, having the driver alert him to his impending stop and assist him with getting to another area once at the stop, etc.

# Air Transportation: Air Carrier Access Act (ACAA)

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In providing air transportation, an air carrier may not discriminate against an otherwise qualified individual on the following grounds:

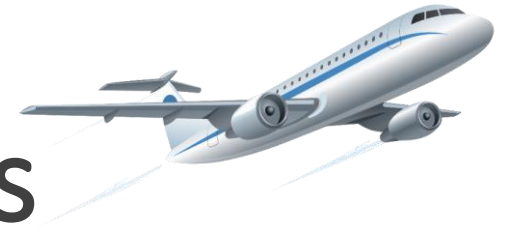
- (1) the individual has a physical or mental impairment that substantially limits one or more major life activities.
- (2) the individual has a record of such an impairment.
- (3) the individual is regarded as having such an impairment.





# ACAA Anti-Discrimination Provisions

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- Airlines may not refuse transportation to people on the basis of disability. Airlines may exclude anyone from a flight if carrying the person would be a risk to the safety of the flight. If a carrier excludes a person with a disability on safety grounds, the carrier must provide a written explanation of the decision.
- **Airlines may not require advance notice that a person with a disability is traveling but often may require up to 48 hours advance notice for certain accommodations that require preparation time (e.g., respirator hook-up, transportation of an electric wheelchair on an aircraft with < 60 seats).**
- Airlines may not limit the number of persons with disabilities on a flight.

# ACAA Anti-Discrimination Provisions II

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- **Airlines may not require a person with a disability to travel with another person, except in certain limited circumstances where the rule permits the airline to require a safety assistant. If a passenger with a disability and the airline disagree about the need for a safety assistant, the airline can require the assistant, but cannot charge for their transportation.**
- Airlines may not keep anyone out of a specific seat based on disability or require anyone to sit in a particular seat based on disability, except to comply with FAA or foreign-government safety requirements.
- FAA's rule on exit row seating says that airlines may place in exit rows only persons who can perform a series of functions necessary in an emergency evacuation.

# Air Transport Providers

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- Have an obligation to assist with boarding the aircraft.
- Have an obligation to assist with equipment arrangements for stowing mobility aids, wheelchairs and other related items if they will not fit on the aircraft.
- Have the right to verify needs by requesting documentation.
- Have an obligation to uphold reasonable modification processes of air travel- i.e., assistance with boarding passes, assistance with arrangements to/from gates for connecting flights, etc.

# Accessible Transportation Scenario 2

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Lakeisha is a wheelchair user who will be flying to stay with her host family.

- What accommodations might she need?
- Who should assist her if she has accommodations needs?



# Accessible Transportation Scenario 2 Solution

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**Ask her!!- Talk with Lakeisha about her needs!!**

She will likely need help with:

- Checking bags & possibly getting through the security check point.
- Boarding the airplane & transferring to her seat.
- Her wheelchair and any carry-on items.





# Additional Considerations

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- Communicate with the airline(s) in advance about accommodation needs.
- Can the person's wheelchair be checked or stowed? Find out their needs and discuss them with the airline(s) to request accommodations.
- Damage to wheelchairs can be a big issue!
- Contact the airline(s) regarding assistance with travel to gates. Airlines have contractors available at airports upon request.
- Contact TSA for assistance getting through security checkpoints to find out about procedures- Best to contact within 72 hours of traveling for questions or concerns.

# Questions

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# Resources



# Resources

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[ADA National Network](https://www.adata.org), <https://www.adata.org>

[Directory of Independent Living Centers](https://www.ilru.org/projects/cil-net/cil-center-and-association-directory),  
<https://www.ilru.org/projects/cil-net/cil-center-and-association-directory>

[State Assistive Technology Program Directory](https://catada.info/state.html),  
<https://catada.info/state.html>

[National Disability Resource Network](https://www.ndrn.org), <https://www.ndrn.org>

[Pacific ADA Center](https://www.adapacific.org/), <https://www.adapacific.org/>

[Southwest ADA Center](http://southwestada.org/), <http://southwestada.org/>

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Thank you!  
Please complete your  
evaluations.