

	<b>GEORGIA DIVISION OF FAMILY AND CHILDREN SERVICES CHILD WELFARE POLICY MANUAL</b>			
	<b>Chapter:</b>	(1) Administration	<b>Effective Date:</b>	June 2023
	<b>Policy Title:</b>	Americans with Disabilities Act (ADA)/Section 504 and Reasonable Modifications		
<b>Policy number:</b>	1.5	<b>Previous Policy #:</b>	NA	

### CODES/REFERENCES

O.C.G.A. § 30-4-5 (2019) Prohibition on discrimination against legally blind in matters of child custody, guardianship, foster care, visitation, placement, and adoption  
 Title II of the Americans with Disabilities Act of 1990, as amended (ADA) Section 504 of the Rehabilitation Act of 1973  
 U.S. Department of Justice regulations (28 CFR Part 35)  
 U.S. Department of Health and Human Services' regulations (45 CFR Part 84)  
 U.S. Department of Health and Human Services, Office for Civil Rights and the Georgia Department of Human Services' Settlement Agreement, OCR Transaction Number: 09-102792

### REQUIREMENTS

In accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 ("Section 504") and Title II of the Americans with Disabilities Act of 1990 ("ADA"), the Division of Family and Children Services (DFCS) Shall:

1. Be prohibited from discriminating against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.
2. Assure that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of its services, programs, or activities, or be subjected to discrimination by any such entity.
3. Not exclude any individual with a disability from the full and equal enjoyment of its services, programs, or activities, unless the individual poses a direct threat to the health or safety of themselves or others, that cannot be mitigated by reasonable modifications of policies, practices or procedures, or by the provision of auxiliary aids or services. When "direct threat" is the justification for the screening out of individuals with disabilities, the decision must be based on individualized assessments that rely on the following:
  - a. Current medical evidence or the best available objective evidence in determining:
    - i. The nature, duration, and severity of the risks;
    - ii. Probability that potential injury will occur; and
    - iii. Whether reasonable modification in policies, practices, or procedures will mitigate the risk.
  - b. The actual abilities and inabilities of the prospective adoptive or foster caregiver.
  - c. Decisions must never be made based on speculation, stereotypes, generalizations, or unfounded fears about individuals with disabilities.

**NOTE:** A “direct threat to the health or safety of others are factors that can be applied to justify the use of disability-related screening criteria for prospective adoptive and foster caregivers. Direct threat is defined as a significant risk of harm to the health or safety of others that cannot be eliminated by modifications in policy, practice, or procedures or by the provision of auxiliary aids or services. An agency is not required to permit an individual to participate in or benefit from a service when “that individual poses a direct threat to the health or safety of others.”

4. Make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless DFCS can demonstrate that making the modifications would result in a fundamental alteration in the nature of a service, program, or activity or would result in undue financial and administrative burdens. The determination of whether a modification is reasonable depends on the specific facts of each case and is not based on generalizations and stereotypes.

**NOTE:** The term “reasonable modifications” is sometimes referred to as “reasonable accommodations.”

5. Conduct individualized assessments of qualified individuals with disabilities before making foster care and adoption program application and retention decisions, using the individualized assessment tool and consider, on a case-by-case basis, requests for reasonable modifications (see policy [14.11 Resource Development: Individualized Assessments](#); and the “Individualized Assessment Tool” for Prospective & Existing Foster Caregivers).
6. Eliminate any eligibility criteria for participation that screens out or tends to screen out a person with a disability, or any class of individuals with disabilities from full and equal enjoyment in such participation, unless it can be established that such requirement is necessary for the provision of a service, facility, privilege, advantage, or accommodation.
7. Not place a surcharge on a particular qualified individual with a disability or any group of qualified individuals with disabilities to cover the cost of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide nondiscriminatory treatment required by Title II of the ADA and Section 504.
8. Not retaliate against, intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title II of the ADA, or because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.
9. Ensure that no party, as defined by O.C.G.A. § 15-11-2(52) (e.g., the state, a child, parent, guardian, legal custodian) is denied child placement, child custody, visitation, guardianship, foster care, or adoption solely because the party has a disability (including a party who is Legally Blind) as prohibited by the ADA/Section 504 and O.C.G.A. § 30-4-5.
10. Ensure that no prospective or existing foster/adoptive caregiver is discriminated against or denied the opportunity to participate in the foster care or adoption programs, solely because of such individual’s disability (including individuals who are Legally Blind) as prohibited by the ADA/Section 504 and O.C.G.A. § 30-4-5.
11. Ensure that communications with applicants, participants, members of the public and

companions with disabilities are as effective as communications with others.

**NOTE:** Please also refer to the DFCS [MAN3600: Section 3601 Americans with Disabilities Act/Section 504](#). Refer to policy [19.26 Case Management: Case Management Involving Substance Abuse or Use](#) for specific guidance pertaining to ADA and individuals with a history of substance use disorders, current substance use disorders and those participating in medication assisted treatment.

This policy of non-discrimination is equally applicable to all DFCS staff, volunteers, interns, contractors, grantees, agents and providers of services.

## PROCEDURES

Upon request by or on behalf of qualified individuals with disabilities, DFCS staff, volunteers, interns, contractors, grantees, agents and providers of services will:

1. Make reasonable modifications in policies, practices, or procedures on a case-by-case basis as provided by federal law, unless DFCS can demonstrate that making the modifications would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. The determination of whether a modification is reasonable depends on the specific facts of each case and is not based on generalizations and stereotypes.
  - a. Social Services Case Managers (SSCM) have the responsibility and authority to offer, grant, and implement necessary reasonable modifications to customers with disabilities, if such modifications can be readily provided.
  - b. While SSCMs are authorized to grant customer requests for reasonable modification, they do not have the authority to deny, in whole or in part, such requests or to otherwise refuse requests for reasonable modifications. If SSCMs are unsure about whether a reasonable modification can or should be provided, they shall be required to consult with a Social Services Supervisor (SSS) at the time the request for reasonable modification is received or as soon as reasonably possible thereafter (be sure to adhere to DFCS' reasonable modification request processing timeframes, if/when applicable).
  - c. If a supervisor agrees that a reasonable modification can and should be provided, the SSCM will be required to provide the requested modification to the customer. However, if the SSS recommends that the request for reasonable modification be denied, the SSS shall be required to submit that recommendation for review and written decision by the appropriate Regional ADA/Section 504 Coordinator.
  - d. Direct all written requests for reasonable modifications, made by or on behalf of applicants and participants with disabilities in the foster care and adoption programs, to the Regional ADA/Section 504 Coordinator, if assistance is needed.
- NOTE:** Contact the County DFCS Office or the DFCS State Civil Rights, ADA/Section 504 Coordinator to obtain information about the Regional ADA/Section 504 Coordinator.
2. Regarding a housing situation ONLY, ask for information, if necessary, to determine whether an applicant or participant who has requested a reasonable modification has a disability-related need for the modification, when the individual's disability and need for the modification are not readily apparent or known.

3. Keep the medical records and other health information of applicants and participants in the foster care and adoption program confidential.
4. Ensure meaningful and equal access to services for the sensory impaired, including by all entities contracting with the Department for the provision of services.
  - a. The ADA/Section 504 protect individuals who are sensory impaired (“SI”). SI individuals either have no ability or a limited ability to see and/or hear. Sensory impairments are considered physical impairments under the ADA.
  - b. The DFCS Civil Rights and ADA/Section 504 Coordinator provides technical guidance and assistance to DFCS offices and programs in securing interpreter services for the sensory impaired and auxiliary aids. To contact the DFCS Civil Rights and ADA/Section 504 Coordinator, please refer to the list of DFCS ADA/Section 504 District and Regional Coordinators found on the DFCS Nondiscrimination and Disability webpage: <https://dfcs.georgia.gov/adasection-504-and-civil-rights>.
- NOTE:** For language access (i.e., translation, interpretation) refer to policy [1.04 Non-Discriminatory Child Welfare Practices](#) and [Office of General Counsel MAN2001 Limited English Proficiency/Sensory Impairment \(LEP/SI\)](#).
5. Assess requests for reasonable modifications on a case-by-case basis.
  - a. Seek approval from the County Director of the local DFCS Office before taking action which might adversely affect the ability of applicants and participants with disabilities to participate in the foster care and adoption program;
  - b. The Regional ADA/Section 504 Coordinator will serve as the second level reviewer/approver in cases where the prospective or current foster caregiver has a known disability;
  - c. The Regional ADA/Section 504 Coordinators may contact DFCS’ ADA/Section 504 Coordinator at the State Office if technical assistance is needed.
6. Consider whether a parent or prospective parent is having difficulty with program requirements due to the disability of the child. For instance, if regular visitation is required but the child cannot meet with the parent due to medical care the child is receiving, then the program requirements will likely need to be modified.
7. Adhere to the key provision of the ADA which prohibits imposing or applying eligibility criteria that screen out or tend to screen out individuals with disabilities, unless the criteria can be shown to be necessary for the provision of the services. Applicants with disabilities must be assessed on an individualized basis and determinations regarding their parental capacity must be based on objective facts and not on stereotypes or generalizations about individuals with disabilities. Additionally, such determinations must consider the individual’s existing supports, as well as any disability-related reasonable modifications or services the DFCS could provide to ensure the individual can fully and equally participate in DFCS’ foster care program.

Although the ADA contains no specific definition of reasonable modification and no specific limits are established for what is reasonable, examples are provided. Providing a reasonable modification may take many forms including, but not limited to:

1. Policy, practice, or procedural modifications;
2. Deferral from certain activities;

3. Extensions of deadlines;
4. Granting of waivers;
5. Making existing facilities readily accessible to and usable by an individual with a disability;
6. Alteration of existing facilities;
7. Acquisition or construction of additional facilities;
8. Relocation of a service or program to an accessible facility;
9. Provision of services at accessible alternate sites;
10. Acquiring or modifying equipment;
11. Providing services for the sensory impaired, such as qualified readers, taped text audio recordings, and Brailled materials.

## **PRACTICE GUIDANCE**

Title II of the ADA prohibits discrimination against a qualified individual with a disability in programs, activities, and services of public entities. It applies to all state and local governments, their departments, and agencies, and to any entities with which a government agency contracts for services. DFCS must ensure that its service providers agree to comply with the provisions of the ADA when providing services to DFCS and its clients. DFCS is prohibited from making decisions based on unfounded stereotypes, such as application and retention decisions in the foster care and adoption program, about what individuals with disabilities can do, or how much assistance they may require.

### **Qualified Individual with a disability**

Title II of the ADA defines a “qualified individual with a disability” as “an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” Title II protects “qualified individuals with disabilities” and non-disabled individuals (and entities) that have an association or relationship with someone who is known to be disabled (e.g., the parent of a child with a disability).

### **Disability defined under the ADA**

Disability is defined as a physical or mental impairment that substantially limits one or more of the “major life activities” of such individual, a record of such an impairment, or being regarded as having such an impairment. The phrase “major life activities” includes, but is not limited to: caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working. It also includes the operation of a major bodily function, including but not limited to: functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

The ADA provides examples of various “impairments” that constitute protected disabilities. Protected physical or mental impairments include, but are not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or non-symptomatic), tuberculosis, drug addiction, alcoholism (but not current illegal drug use). Protected mental and psychological disorders include, but are not limited to, mental retardation, emotional or mental illness, organic brain syndrome, and specific learning disabilities.

The ADA excludes homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, current illegal drug use and psychoactive substance use disorders resulting from current illegal use of drugs.

### **Legally Blind as defined by O.C.G.A. § 30-4-5 (2019)**

As referenced in this policy, the phrase “Legally Blind” means:

1. Having vision that is 20/200 or less in the best corrected eye; or
2. Having vision that subtends an angle of not greater than 20 degrees in the best corrected eye.

### **Supportive Parenting Services as defined by O.C.G.A. § 30-4-5 (2019)**

Supportive parenting services are services that may assist a Legally Blind parent or prospective Legally Blind parent in the effective use of nonvisual techniques and other alternative methods to enable such parent or prospective parent to successfully discharge parental responsibilities.

### **Foster and adoptive caregiver applicants and participants with disabilities**

The purpose of the DFCS foster care and adoption program is to promote the safety and well-being of children in DFCS’ care. As defined by the Administration for Children and Families, foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the title IV-E agency has placement and care responsibility (45 C.F.R. Section 1355.20). The recipient of the services of the DFCS foster care program is the child in foster care. DFCS seeks to identify qualified individuals to partner with it in caring for, supervising, protecting and promoting the welfare of children in foster care because of abuse or neglect, twenty-four hours a day and seven days a week.

DFCS is prohibited from establishing policies and practices that categorically limit or exclude qualified individuals with disabilities from participating in the DFCS foster care and adoption program. Individuals with disabilities must be treated on a case-by-case basis consistent with facts and objective evidence. Upon request from qualified foster care and adoption program applicants with disabilities, DFCS will make reasonable modifications and provide auxiliary aids which would not fundamentally alter the nature of the service, program, or activity, or result

in undue financial and/or administrative burdens. The determination of whether DFCS is required to provide a prospective or current foster caregiver an auxiliary aid or modify its policy, practice, or procedures is a fact-specific, case-by-case inquiry that depends on DFCS individually assessing the disabled prospective or current foster caregiver.

For instance, DFCS may modify its training courses to extend the frequency and/or duration of the courses to accommodate a prospective or current foster caregiver whose disability is connected to the modification request. DFCS may also provide a qualified interpreter for a training course and translate applications/course materials to provide a meaningful opportunity for the prospective or current foster caregiver to participate.

DFCS is not required to permit an individual to participate in or benefit from the services, programs, or activities when that individual poses a direct threat to the health or safety of a child(ren) in DFCS care. In determining whether an individual poses a direct threat to the health or safety of others, DFCS must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk (see policy [14.11 Resource Development: Individualized Assessments](#)).

DFCS shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless DFCS determines that the modification would fundamentally alter the nature of the foster care and adoption program or would result in undue financial and administrative burdens. Considerations for requests for reasonable modifications, such as those concerning respite care, are to be evaluated on a case-by-case basis and processed in accordance with policy [1.4 Administration: Non-Discriminatory Child Welfare Practices \(Procedures section\)](#). Denials of requests for reasonable modification are to be made by the State DFCS Civil Rights, ADA/Section 504 Coordinator (or by the DFCS Division Director or his/her designee). Questions should be directed to the appropriate Regional ADA/Section 504 Coordinator and the State DFCS Civil Rights, ADA/Section 504 Coordinator.

### **How should applicants and participants in the foster care and adoption programs make requests for reasonable modifications?**

Requests for reasonable modifications made by or on behalf of applicants and participants with disabilities in the foster care and adoption programs shall be handled as described in this policy and [MAN3600: Section 3601 Americans with Disabilities Act/Section 504](#). Refer to the Forms and Tools section below for a link to the directory of the Regional ADA/504 Coordinator. The directory includes the State and Regional ADA/504 Coordinators and provides a list of counties in each region. The local County Department may also be contacted for information on how to reach the Regional ADA/Section 504 Coordinators.

### **ADA Application to DFCS Service Providers**

DFCS collaborates with many service providers in an effort to provide an array of services to

meet the needs of the children and families served. The ADA requirements also apply to agencies and private entities that have entered into contracts or agreements with DFCS. DFCS must ensure that its service providers agree to comply with the provisions of the ADA when providing services for DFCS.

## Complaints

Complaints alleging disability discrimination are to be filed within 180 days of the date of alleged discrimination. For more information about filing a complaint, refer to policy [1.4 Administration: Non-Discriminatory Child Welfare Practices](#) and policy [1.16 Administration: Civil Rights Complaint Process](#).

If additional information is needed regarding DFCS' civil rights/disability compliance, refer to <https://dfcs.georgia.gov/adasection-504-and-civil-rights>. The DFCS Civil Rights, ADA/Section 504 Coordinator may also be contacted at 1-877-423-4746.

FORMS AND TOOLS
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[DFCS ADA/Section 504 District and Regional Coordinators](#)

[Civil Rights Protections for Individuals with a Disability: The Basics \(Part 1\) \(Webinar- 24 minutes\)](#)

[Civil Rights Protections for Individuals with an Opioid Use Disorder \(Part 2\) \(Webinar- 19 minutes\)](#)

[Drug Addiction and Federal Disability Rights Laws \(Fact Sheet\)](#)

[Information and Technical Assistance on the American with Disabilities Act - United States Department of Justice Civil Rights Division](#)

[National Council on Disability. Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children](#)

[Nondiscrimination and Opioid Use Disorder \(Fact Sheet\)](#)

[Reasonable Modification or Communication Assistance](#)

[Reasonable Modification or Communication Assistance \(large print\)](#)

[Reasonable Modification or Communication Assistance \(Spanish\)](#)

[Reasonable Modification or Communication Assistance \(Spanish large print\)](#)