



Provided By:
Pacific ADA Center
1-800-949-4232 (Voice/TTY)
(510) 285-5600 (Voice/TTY)
adatech@adapacific.org
www.adapacific.org

ADA Mediation Program

Department of Justice

In 1994, the Department of Justice established the ADA Mediation Program. Initially funded through the ADA Technical Assistance Program, the Mediation Program now operates under a contract with the Key Bridge Foundation.

Many ADA disputes can be resolved successfully through informal methods. In enacting the ADA, Congress specifically encouraged the use of alternative means of dispute resolution, including mediation, to resolve ADA disputes.

What is mediation?

Mediation is an informal process where an impartial third party helps disputing parties to find mutually satisfactory solutions to their differences. Mediation can resolve disputes quickly and satisfactorily, without the expense and delay of formal investigation and litigation.

Mediation proceedings are confidential and voluntary for all parties. Mediation typically involves one or more meetings between the disputing parties and the mediator. It may also involve one or more confidential sessions between individual parties and the mediator.

Mediation is neither therapy nor a "day in court." Rather, mediation should provide a safe environment for the parties to air their differences and reach a mutually agreeable resolution. Mediators are NOT judges. Their role is to manage the process through which parties resolve their conflict, not to decide how the conflict should be resolved. They do this by assuring the fairness of the mediation process, facilitating communication, and maintaining the balance of power between the parties.

Representation by an attorney is permitted, but not required, in mediation. While mediators may not give legal advice or interpret the law, they will refer parties to impartial outside experts within the disability and legal communities when questions or issues needing clarification arise.

A successful mediation results in a binding agreement between the parties. If mediation is unsuccessful and an agreement can not be reached, parties may still pursue all legal remedies provided under the ADA, including private lawsuits.

Complaints under both title II (public entities) and title III (private entities) can be mediated. Disputes involving barrier removal or program accessibility, modification of policies, and effective communication are most appropriate for mediation.

Through its program, the Department refers appropriate ADA disputes to mediators at no cost to the parties. The mediators in the Department of Justice program are professional mediators who have been trained in the legal requirements of the ADA by the Key Bridge Foundation. The Department's program has already resolved many ADA disputes quickly and effectively. Examples of some successful resolutions are described below. Additional examples of successfully resolved disputes are described in the Department's quarterly ADA Status Reports.

If you want to work with a mediator and the other party to resolve an ADA dispute through the Department's program, you must simply follow the usual procedure for filing a complaint (title II, title III) with the Department and note on the complaint that you want to take your dispute to mediation. While we cannot guarantee that everyone who wants mediation will be able to participate in the program, the Department will make every effort to comply with requests for mediation.

Selected Mediation Case Summaries

Barrier Removal

1. A Michigan bowling center agreed to install a platform and ramp to one of its bowling lanes within one month. The center also renovated its entire second floor to make it accessible and added accessible parking spaces.
2. An Ohio shopping mall and movie theater agreed to make renovations to provide accessible restrooms, parking, and movie theaters within three months. Three of the five movie theaters will be made accessible and movies will be rotated between theaters so all movies will be shown in the accessible theaters. In addition, the theater will provide accessibility symbols in its advertisements to show which movies are in the accessible theaters.
3. An Ohio hotel agreed to remodel its lobby restrooms to be accessible to persons with disabilities, increase the number of accessible parking spaces near the hotel pool, research the cost of installing accessible restrooms by the pool, and train personnel about how better to respond to the needs of persons with disabilities. The hotel also apologized to the complainant and her family and provided a free weekend package for them at the hotel.
4. A restaurant in Texas agreed to provide directional signage at an inaccessible restroom to indicate the location of the accessible restroom, write a letter of apology, and provide \$2,000 in compensation to the complainant.
5. A country club in Florida will remodel its facilities to provide accessible restrooms, train personnel about the ADA, and pay the complainants \$1000.
6. A Missouri college agreed to develop a plan to provide access to a historical building, including installation of a ramp. Until these changes are implemented, the college agreed to provide assistance for individuals in entering the building and to make a video describing the historical information about the building available for individuals who prefer that format. The college also agreed to install a ramp to provide access to the bleachers in its sports facility, to provide van accessible parking spaces with appropriate signage, and to train personnel to assist individuals with disabilities.

7. A wheelchair user complained that an Ohio restaurant did not have an accessible smoking section. The restaurant manager agreed to create another smoking section that is accessible to people with disabilities and to instruct the staff about this new section. The manager agreed to consult with the complainant about making the bar accessible. The manager also agreed to make the modifications necessary for a van accessible parking space.

8. In Virginia, a wheelchair user complained that a condominium sales office did not have an accessible entrance. The condominium builder agreed to renovate the sales office entrance to make it accessible. The builder agreed to display a sign stating the policies they have created to comply with the ADA. The policies include providing auxiliary aids and services upon request as needed to ensure effective communication, making informational videos available upon request, and providing a method of requesting any other accommodation that a person with a disability may require. The builder agreed to donate \$2,500 to a disability rights organization and to pay the complainant \$1,000.

9. In Pennsylvania, a person with a mobility impairment complained that a professional building did not have an accessible entrance or accessible parking. The building owner agreed to install a ramp and build a walkway at the front entrance to make it accessible for people with disabilities and to create an accessible parking space near the ramp. The owner also agreed that the complainant, who cannot stand for long periods of time, could call the manager or one of the tenant's of the building to have a chair placed in the building's lobby when needed.

Effective Communication

1. A Maryland doctor who had refused to pay for a qualified sign language interpreter for a patient's office visit agreed to institute a policy for hiring interpreters and notifying deaf patients that sign language interpretation will be provided on request at no cost to deaf patients. The doctor also agreed to train office staff about effective communication with patients with hearing impairments and to pay the complainant \$300.

2. In New York a person who represents people who are deaf or hard of hearing complained that a doctor refused to hire qualified sign language interpreters for patients with hearing impairments. The doctor agreed to provide a qualified sign language interpreter for a patient's office visit when a request is made at least one week in advance. The doctor agreed that the request may be made by the patient's representative, or via a telephone relay communication, or by any other means chosen by the patient. The doctor also agreed to educate his office staff regarding this policy and the ADA.

3. A person with a visual impairment complained that a Massachusetts educational institute did not provide information about course offerings in alternative formats and did not make reasonable modifications in their procedures and practices to enable people with disabilities to take the courses. In addition, the person complained that the institute had a safety policy that excluded people with disabilities based on broad generalizations instead of actual risks. The institute agreed to make information about registration times and course offerings available on audio tape on a telephone information service used by people with disabilities. The information will also be available for distribution on audio tape and in large print if requested. The institute agreed to modify its admission policy and make determinations on a case-by-case basis as to whether a particular individual with a disability is able to function adequately and safely in a class. The institute agreed to make every effort to assist a person with a disability to attend the class of his/her choice. Technical assistance will be requested from various disability organizations so that all available information may be considered in order to assist a person with a disability to participate in a class in the most effective way.

4. A person with a hearing disability complained that a Michigan court failed to provide a qualified sign language interpreter during crucial proceedings. In mediation, the court agreed to provide a qualified sign language interpreter for the complainant if she or her attorney requests one at least three working days in advance of the date of the proceeding. The court agreed to engage in a process of self-evaluation to determine its level of compliance with all the other provisions of the ADA.

5. A deaf individual complained that a Maryland doctor refused to pay for a qualified sign language interpreter for the complainant's office visits. The doctor agreed to pay the outstanding bill for interpreter services. The doctor agreed to change the office policy and establish a protocol for addressing the needs of people with disabilities. Specifically, a list of qualified sign language interpreters will be maintained by the office staff, potential patients who are deaf will be notified that qualified sign language interpreters will be provided free-of-charge for office visits, if requested in advance, and a sign stating this policy will be displayed in the office. The doctor agreed to have the staff educated regarding the ADA. The doctor also agreed to write an article for publication in a newsletter addressing the obligations of doctors under the ADA. Finally, the doctor agreed to arrange for an advocate of the ADA to speak at a gathering of physicians.

6. In California, a person who is deaf complained that an attorney refused to pay for a qualified sign language interpreter for the complainant's office visit. The attorney established a policy for providing effective communication for clients in the future. The attorney agreed to reimburse the complainant for the fee paid to the interpreter and to issue the complainant a refund check for his fee.

Policies and Procedures

1. In suburban Maryland, a wheelchair user complained that a restaurant refused to allow her mobility assistance dog to enter. The restaurant owner apologized and agreed to educate himself and his staff about the ADA. He agreed to contact other professionals in his field, as well as a restaurant trade organization, to inform them of his experience and educate them about the ADA. He agreed to make a donation to a charitable organization for service animals.

2. A private Virginia preschool agreed to hire a specialist to educate staff about behavior modification techniques to be used with children with behavioral disabilities and to have an ADA specialist educate staff about the requirements of the ADA. The preschool also agreed to formulate a new policy to address problems identified by parents of children with disabilities and to make a \$150 donation every year for five years to an advocacy training center for parents of children with disabilities.

3. A New York dance club agreed to institute a policy to accommodate people with disabilities when they call to make arrangements to attend functions and to review all future contracts with performers to ensure that performers do not interfere with accessibility. The club also agreed to identify barriers and remove them if readily achievable, to provide four complimentary tickets to the complainant for any performance the complainant chooses and to make a substantial compensatory payment to the complainant.

4. A sports arena in California agreed to change its ticketing policy to make tickets for wheelchair-accessible seats available for all events through box office and telephone sales without the necessity of providing a "plaque" as proof of disability, allow companions to accompany individuals who use wheelchairs, and allow exchanges of inaccessible seats for accessible seats for individuals who use wheelchairs. The arena announced the changes in a press release.

5. A New Jersey professional school agreed to change its policy barring the complainant from attending because she has leukemia, to change its policy requiring the complainant to sign a special release form,

and to refrain from disclosing the complainant's condition to other students.

6. A New York restaurant that had refused to allow a person with a hearing dog to enter agreed to post signs notifying the public that service animals are permitted to enter, train personnel regarding title III of the ADA, write a letter of apology to the complainant, and pay the complainant \$200.

7. A person with a disability complained that a Maryland beauty salon denied service to her because she used a service animal. The owner agreed to notify each employee in writing that the management supports the ADA. In addition, the owner agreed to require employees to sign a form stating that they had received and read the Department's "Commonly Asked Questions About Service Animals in Places of Business" and agree to abide by its contents. Finally, the owner agreed to contribute \$500 to a charitable organization for service animals.

8. Two Florida wheelchair users complained that a restaurant located in a shopping center refused to allow them to enter or to provide them service because they used wheelchairs. The owner agreed to welcome and serve both complainants as patrons. The owner agreed to post a sign in the front window of the restaurant stating a policy of nondiscrimination against people with disabilities. The owner agreed to educate all employees about the rights of people with disabilities. The shopping center owner agreed to provide space for a disability awareness event to be held at the shopping center, cooperate with the organization presenting the event, and contribute \$250 towards publicity for the event. The restaurant owner agreed to contribute some of the refreshments for the event. Finally, the restaurant owner agreed to pay the complainants \$500 and the shopping center owner agreed to pay \$500 in attorney's fees.

9. In Pennsylvania a wheelchair user complained that a restaurant seated him only after he agreed to move from his wheelchair to a seat in a booth. The restaurant owner apologized and agreed to instruct her staff on managing the space in the restaurant so that it is accessible for patrons with disabilities.