

NEW MEXICO ENVIRONMENT DEPARTMENT



Office of the Secretary

POLICY AND PROCEDURE 07-10

- SUBJECT:** Non-Employee Disability Accessibility and Outreach Policy.
- PURPOSE:** The New Mexico Environment Department ("NMED" or the "Department") is committed to providing meaningful access and adequate public participation opportunities for persons and populations in New Mexico who are disabled. Therefore, this policy establishes guidance and direction to NMED employees regarding NMED's standards for non-employee disability accessibility.
- POLICY:** NMED shall provide disabled persons and populations meaningful access to NMED's programs, services, activities, actions and proceedings.
- REVISIONS:** New Policy.
- APPLICABILITY:** All NMED programs and employees shall comply with this policy. This policy also applies to all NMED grant subrecipients, agents, and contractors.
- REFERENCES:** 40 C.F.R. § 7.105; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act ("ADA") of 1990, as amended by the ADA Amendments Act of 2008.
- PROCEDURES:**
- 1.0 Scope
 - 2.0 Definitions
 - 3.0 Accommodations
 - 4.0 Procedures
 - 5.0 Facility Accessibility
 - 6.0 Training
 - 7.0 Monitoring and Updating the Non-Employee Disability Accessibility and Outreach Policy
 - 8.0 Discipline

APPROVAL: Butch Tongate DATE: 2/6/18
Butch Tongate
Cabinet Secretary

Non-Employee Disability

1.0 SCOPE

1.1 NMED is committed to providing individuals with disabilities the opportunity for full participation in its programs, services, activities, actions, and proceedings through its compliance with Section 504 of the Rehabilitation Act of 1973 and the ADA of 1990, as amended by the ADA Amendments Act of 2008.

1.2 NMED recognizes that individuals with disabilities may need accommodations or modifications in order to have equal opportunities to participate in or benefit from NMED's programs, services and activities.

1.3 It is NMED's policy that no otherwise qualified individual with a disability will be denied access to or participation in any program, service, or activity offered by NMED. NMED will administer programs or activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

1.4 Individuals with disabilities have a right to request and will receive accommodations appropriate to their needs in order to fully participate in or benefit from NMED's services and activities in a non-discriminatory, integrated setting.

1.5 NMED will provide, at no cost to the individual, appropriate auxiliary aids and services including, for example, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to fully participate in and benefit from activities, programs and services provided by NMED. Appropriate auxiliary aids and services will be provided by NMED in a timely manner and in such a way as to protect the privacy and independence of the individual.

1.6 NMED and any of its agents will not coerce or intimidate, or discriminate or retaliate against any individual for exercising a right under the ADA or Section 504, or for assisting or supporting another to exercise a right under the ADA or Section 504.

2.0 DEFINITIONS

2.1 **Disability** means, with respect to an individual: 1) a physical or mental impairment that substantially limits one or more of the person's major life activities; 2) a history of such an impairment; or, 3) being regarded as having such an impairment.

2.2 **Qualified Individual with a Disability** means an individual who (with or without accommodations) meets the essential eligibility requirements for participating in NMED's programs, services, and activities.

2.3 **Accommodation** means adjustments including reasonable modifications to rules, policies, or practices; environmental adjustments such as the removal of architectural, communication, or transportation barriers; or the use of auxiliary aids and services. Examples of accommodations include, but are not limited to: scribe, interpreter, environment free of distractions, material in Braille, tapes, and computer-assisted instruction.

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3.0 ACCOMMODATIONS

3.1 No participant with a disability in an NMED program, service or activity will be denied the benefits of, be excluded from participation in, or be otherwise discriminated against in the provision of services available to all individuals in general.

3.2 Each individual is responsible for making requests regarding accommodations to meet his or her particular needs in order to enable NMED to provide an appropriate response to the accommodation request.

3.3 All auxiliary aids, services, or other accommodations used by individuals with disabilities to provide access to NMED programs, services, and activities need not be on hand or present at all times.

3.4 Accommodations are not required that fundamentally alter the nature of the program, service, or activity; require waiver of essential program or licensure requirements; violate accreditation requirements, or pose an undue fiscal or administrative burden on NMED.

3.5 In determining appropriate accommodations, NMED gives consideration to the wishes of the individual, and in certain appropriate circumstances, for example, the documentation provided and institutional expertise in working with individuals with disabilities.

3.6 NMED will not require an individual with a disability to accept an accommodation, aid, service, opportunity or benefit under any circumstances.

4.0 PROCEDURES

4.1 The NMED Non-Discrimination Coordinator will coordinate NMED's efforts and procedures to comply with Section 504 and ADA.

4.2 NMED will adopt and make readily available in suitable formats (e.g., enlarged, Braille, audio-taped): 1) a procedure that allows an individual, or designated representative, to disclose a disabling condition and request accommodations believed needed to obtain equal access to and enable participation in NMED programs, services and activities; 2) a procedure for maintaining personal information in a manner that protects the privacy and independence of the individual; and, 3) a procedure for providing appropriate accommodations in a timely manner.

4.3 NMED will maintain data on the nature and extent of the services provided to individuals with disabilities and develop data collection requirements as part of the operational guidelines for implementing this policy.

4.4 NMED will provide accommodations to allow individuals with disabilities to participate in or benefit from NMED programs, services, and activities in the most integrated setting appropriate.

4.5 NMED will utilize the grievance procedures set forth in its Non-Employee

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Discrimination Complaint Policy (NMED Policy 07-09) for providing prompt and equitable resolution of complaints alleging any action that would violate Title II of the ADA or Section 504. NMED Policy 07-09 will be applicable to any anticipated complaint, including an appeal of a denied accommodation request.

4.6 NMED will provide services that are required to comply with ADA and Section 504 free of charge.

5.0 FACILITY ACCESSIBILITY

5.1 NMED will consider the extent to which any NMED facilities are “public facilities” or will be used by the public. NMED will operate its programs and activities out of those facilities consistent with 40 C.F.R. § 7.65 so that, when each program or activity is viewed in its entirety, it is readily accessible to and usable by individuals with disabilities.

5.2 Existing Facilities: Structural changes in existing facilities are not required when other methods provide program accessibility. Such methods include:

- a. Redesigning equipment or the facility after case review.
- b. Providing appropriate signage directing people to accessible features.
- c. Reassigning staff, or services to accessible sites.

5.3 New Construction: Each facility or part of a facility constructed by, on behalf of, or for the use of NMED must be designed and constructed in such a manner that the facility is readily accessible to and usable by persons with disabilities. As the New Mexico General Services Department (“GSD”) is the state agency responsible for all state-owned or leased properties, NMED will work with GSD to ensure all accessibility requirements are met. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by individuals with disabilities.

5.4 Contractual or lease agreements for the use of non-NMED facilities should reflect efforts to secure accessibility. Any program, service, or activity in that facility must be accessible. If a program, service or activity is not wholly operated by NMED, NMED will attempt to assure that these programs, services or activities, as a whole, provide an equal opportunity for the participation of individuals with disabilities.

6.0 TRAINING

6.1 NMED will provide periodic in-service training for staff to develop their awareness and understanding of the needs of individuals with disabilities and legal compliance issues. Such training shall be provided by the Non-Discrimination Coordinator and the Office of General Counsel (“OGC”).

7.0 MONITORING AND UPDATING THE NON-EMPLOYEE DISABILITY ACCESSIBILITY AND OUTREACH POLICY

7.1 On an annual basis, the NMED Non-Discrimination Coordinator will review this Non-Employee Disability Accessibility and Outreach Policy, which shall include contacting the Bureaus to determine if they have any suggested edits based upon experiences from the past

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year. The Non-Discrimination Coordinator, with assistance from the OGC, will make any necessary updates to the Policy, and provide to the Secretary of Environment or designee for review and approval by signature. Any revised issuance of this policy shall be disseminated to the entire Department on the date the Secretary or designee signs the revised policy.

8.0 DISCIPLINE

8.1 Any employee who fails to comply in good faith with the terms and provisions of this policy may face disciplinary consequences up to and including dismissal (Please see NMED Policy 02-71, Disciplinary Action).