

Reasonable Accommodations – Defenses for Denials

Consult with the Disability Rights and Services Specialist (ADA Coordinator) before determining that an accommodation must be denied.

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When Can a Request be Denied?

A public entity may deny a modification/accommodation request when it can demonstrate it would result in:

- A **fundamental alteration** in the nature of a service, program, or activity, or
- An **undue financial and administrative burden** (28 CFR § 35.164),

Or would pose a **direct threat to the health or safety** of others (28 CFR § 35.139).

Fundamental Alternation

A modification that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered.

Examples:

- A park would not be required to install a dry zone within a splash pad for a powered mobility user.
- A grant program to support small business would not be obligated to waive eligibility requirements as an accommodation to a Disabled business owner who has 500 employees.
- A museum would not be required to allow an individual who is blind to touch delicate works of art if doing so would damage the artwork.

Undue Financial and Administrative Burden

Public entities are not required to provide personal devices or services such as mobility devices, hearing aids, eyeglasses, or personal assistance services (28 CFR § 35.135).

The determination of an undue financial and administrative burden must be:

1. Made by the head of the public entity or their designee.
2. Accompanied by a written statement explaining the reasons for the decision.

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3. Based on all resources available for use in the program.

Example:

When only one staff person is on duty, it may or may not be possible to accommodate a person with a disability at that time without jeopardizing the safe operation of the public program or service.

Direct Threat to Health or Safety

Significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced through reasonable accommodation.

Note: There are often ways to accommodate people with disabilities who have conflicting access needs. For example, when COVID-19 infection rates were high, many entities implemented mask policies to address the health and safety needs of the public, while also offering curbside service for people whose disabilities prevented them from being able to wear a mask.

