

WELCOME TO  
THE 2019 FRPA  
CONFERENCE!

## THE NEW ADA: FLORIDA IMPLICATIONS

# LEARNING OBJECTIVES



- Understand ADA enforcement trends with local governments
- Apply to P&R operations
- Discuss smart practices for ADA compliance
- Gain resources for compliance

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## PROCESS TODAY

- Pohlman and McGovern play-by-play
- Florida smart practices in parks and recreation
- Audience questions, success stories, and maybe not-so-successful stories
- Resources

## METHODS OF ENFORCEMENT

- **Internal solutions process**
- **Department of Interior administrative complaint**
- **Lawsuit in Federal District Court**
- **Project Civic Access (PCA)**

## GENERAL MUNICIPAL ISSUES

## **AN ADA VIEW: WHAT IS DISCRIMINATION IN MUNICIPAL OPERATIONS?**

- **West Palm Beach**
- **“extreme disparity”**
- **Budgets control operations**

## **A MUNICIPAL VIEW: BUDGETS AND SERVICES FOR PEOPLE WITH DISABILITIES**

- **Budget processes**
  - **Town of Davie’s Strategic Priorities**
    - **Commitment to customer satisfaction**
    - **Dedication to excellence in service delivery**
    - **Respect, promote diverse, sustainable community, and neighborhood values considering our historic roots**
- **Programs and services**
- **Parks and facilities**



## A MUNICIPAL VIEW: CIP AND OTHER SITE AND FACILITY PLANS

- **Duration...5 years, ten years, rolling plans**
- **Priorities: new sites, maintenance of existing sites, lifecycle**
- **Built by consensus, reflects believed community needs**
- **Current Projects**











## AN ADA VIEW: SITE AND FACILITY ISSUES AND PROJECT CIVIC ACCESS

- **City and County of Denver**
- **City of Cedar Rapids**
- **San Juan County**
- **City of Milwaukee**

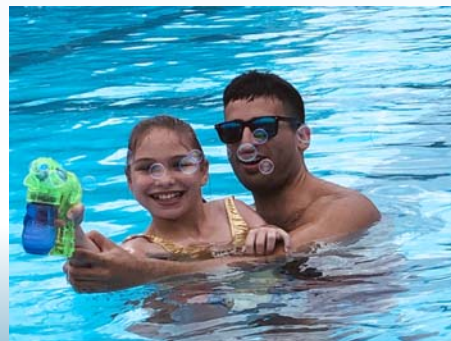
# RECREATION PROGRAMS

## AN ADA VIEW: REQUIREMENTS FOR PROGRAMS AND CONTRACTORS

- **Title II section 35.130(d) “most integrated setting”**
- **Title II 35.130(b)(1) and 35.130(b)(3)**
- **FDOA vs Florida DEP**
- **What is substantial support?**

## A MUNICIPAL VIEW: USE OF INDEPENDENT CONTRACTORS

- **Contractors are used for...**
- **Parks and Recreation agencies as facilitators**
- **Contractors comply with state and federal nondiscrimination laws**
- **Policy Change**



## AN ADA VIEW: PERSONNEL AND ADA COMPLIANCE IN PROGRAMS

- **What is “direct threat” and why is it important?**
- **How do you invite, analyze, and fulfill requests for supports by people with disabilities?**
- **Who conducts assessments of registrants with disabilities?**
- **Who makes the final call...yes or no to support request**

## A MUNICIPAL VIEW: HOW AGENCIES MANAGE PERSONNEL AND PEOPLE WITH DISABILITIES

- **ADA Coordinator at <https://www.adacoordinator.org/>**
- **Program Managers – staff training**
- **Assessments for inclusion in programming**
- **Get someone who knows disability and recreation**

## SMART PRACTICE...COULD IT WORK IN FLORIDA?

- **Intergovernmental partnership**
- **Share the cost of personnel**
- **Provide more service for less \$\$\$**
- **Minnesota, Missouri, Illinois, New York, and more states**

## A MUNICIPAL VIEW: SUPPORT FOR INCLUSION

- **Inclusion is here to stay**
- **Mission statements and strategic plans in action**

*The Department of Parks, Recreation and Cultural Arts is committed to providing superior parks and recreation facilities and services to the citizens of the Town of Davie. In addition, the department actively promotes Davie's rich history and heritage of open space, environmental awareness, and community values of inclusiveness and **recreation equality**.*



## **SMART PRACTICE... HAVE AN INCLUSION PROCESS**

- **“I need a modification because of disability for this program”    YES    NO**
- **Your staff then call or email registrant, set time to meet**
- **May lead to a sign language interpreter, extra staff, or other supports**

## **AN ADA VIEW: DECISIONS ABOUT STAFF SUPPORT IN RECREATION PROGRAMS**

- **Burriola vs Greater Toledo YMCA**
- **Barrington Park District**
- **Pocantico Hills**
- **YMCA (Texas, California, Illinois)**

# FACILITY AND TRANSPORTATION ISSUES

## A MUNICIPAL VIEW: FACILITY AND TRANSPORTATION ISSUES

- **Ongoing renovation at parks and facilities**
- **Modernization efforts and link to accessibility**
- **Aging Infrastructure or Historic Sites and the SHPO**
- **Service Animals are not Emotional Support Animals**



## AN ADA VIEW: FACILITY AUDITS AND TRANSITION PLANS

- **35.105 access audit requirement**
- **35.150(d) transition plan requirement**
- **Four plus one**
- **Cost references...and how long can it stretch?**

## **AN ADA VIEW: WHAT ARE THE TRANSPORTATION REQUIREMENTS?**

- **Title II Part B**
- **What is fixed route transportation?**
- **What is demand responsive transportation?**
- **Must every city or county van be lift equipped?**

## **A MUNICIPAL VIEW: TRANSIT SOLUTIONS**

- **In-house program transportation**
- **Davie fixed route**

## RESOURCES

- US DOJ at 202-514-0301 or [www.ada.gov](http://www.ada.gov)
- US Access Board at 202-272-0080 or [www.access-board.gov](http://www.access-board.gov)
- National ADA Network at <https://adata.org/> or 800-949-4232
- John McGovern at [john.mcgovern@rac-llc.com](mailto:john.mcgovern@rac-llc.com) or 224-293-6451

## CONCLUSION

- Exceed the minimum
- Follow the court decisions and settlement agreements
- Build a relationship with the disability communities
- Start planning for this now, do not be reactive





**FRPA**  
FLORIDA RECREATION  
& PARK ASSOCIATION

FOR MORE INFORMATION ABOUT THE FLORIDA RECREATION AND PARK ASSOCIATION VISIT [FRPA.ORG](http://FRPA.ORG)

FLORIDA RECREATION AND PARK ASSOCIATION CONFERENCE  
THE NEW ADA: FLORIDA IMPLICATIONS  
SPECIAL FOCUS: SERVICE ANIMALS ARE NOT EMOTIONAL SUPPORT ANIMALS

August 28, 2019

**Introduction**

The title II regulation, at 35.136, requires Florida agencies to permit a person with a disability to use a service animal in parks, programs, and facilities. This requirement has been in place for 27 years and it is still frequently misinterpreted. In FAQ format, we will set the record straight!

1. ***What is a service animal?*** A service animal is an animal that has been specifically trained to carry out a task related to the disability of the person using the service animal.
2. ***What species can be a service animal?*** Only two...dogs and miniature horses.
3. ***Our City Council wants to ban “dangerous” breeds as service animals...can they do so?*** No. Any breed, with the proper training, must be allowed as a service animal.
4. ***Can I ask the person with an animal any questions?*** Yes. Ask these two:
  - A. ***“Welcome to Jones Park. Is that a service animal with you because you have a disability?”*** If yes, welcome them. If no or none of your business, tell them that pets are not permitted in the park and that the dog must go.
  - B. If the person responds yes to your first question, you can ask ***“What tasks is your dog trained to perform?”*** If this is asked though, be prepared to evaluate the literally thousands of correct answers. We do not recommend that this question be asked.
5. ***Must a service animal be “under control” of the person with a disability?***  
Yes. A service animal should be next to the person with a disability, prepared to perform a task related to that person’s disability. Typically, this means a leash too. However, if the tasks to be performed would be hindered by the leash, the leash is not necessary.
6. ***How can we evaluate “under control”?*** A dog that wanders, continuously barks, snaps at or bites others nearby, pays attention to others, or chases after other dogs is not likely “under control”. Parks and recreation staff can tell the person with the dog that is not under control that they must leave the site.

7. ***Do service animals have to be housebroken?*** Yes. This is clearly stated in the US DOJ regulation and is probably the first time the word “housebroken” made it into a federal regulation. Service animals are well trained on this subject. However, in the event an incident does occur, staff can tell the person with the dog that they must leave the site.
8. ***Can I ask what the disability of the person is?*** NO! This is forbidden.
9. ***Can I ask where the service animal went to school?*** NO! This is forbidden.
10. ***Can I require that the service animal wear a vest?*** NO! This is forbidden. Some service animal users, as a courtesy, have their animal wear a vest. But this is not a requirement.
11. ***The only people who use a service animal are people who are blind or use a wheelchair, right?*** Wrong! A ***person who is blind*** might use a service animal as a guide to stay on the sidewalk or not walk into a meter. A ***person with a physical disability*** might use a service animal to grab something in its mouth and bring it to the person. But others can use a service animal. A ***discharged Marine with PTSD*** might use the service animal to identify his signs of anxiety and calm him down. A ***person with a seizure disorder*** might use a service animal to detect his pre-seizure aura and warn the person so he can get in a safe space. A ***person with diabetes*** might use a service animal to detect low blood sugar.
12. ***Can I limit where people with a service animal go at my park?*** No. A person with a service animal can go wherever any other members of the public can go. At least one state allows service animals in swimming pool water. Check with your state department of public health.
13. ***An emotional support animal is a service animal, right?*** No. An emotional support animal is not trained to do a specific task related to the disability of the owner. An emotional support animal may make the owner feel good, but that is not a task.
14. ***Some of my other patrons are afraid of dogs, or have allergies. Can I keep a service animal out because of that?*** No. A general fear of dogs, or an allergy, does not justify removing a service animal.

### **Conclusion**

Almost every week an agency, store, restaurant, tavern, or nonprofit removes someone from a site because they won't believe the animal with the person is a service animal. Do not make that mistake. Focus on these issues: is it housebroken, and is it under control? Feel free to greet visitors to your site with the first question within item 4 on the first page.

**FLORIDA RECREATION AND PARK ASSOCIATION CONFERENCE**  
**THE NEW ADA: FLORIDA IMPLICATIONS**  
**SPECIAL FOCUS: PROVIDING EXTRA STAFF FOR INCLUSIVE RECREATION**

**August 28, 2019**

**Introduction**

The title II regulation, at 35.130(d), requires Florida agencies to make recreation programs for people with disabilities available in “the most integrated setting”. This handout summarizes some key court decisions and settlement agreements. Remember the rule...providing extra staff, at your expense, is a reasonable support per the ADA.

**Pocantico Hills NY Settlement Agreement**

A New York school district operated a summer recreation program. The secretary to the Principal was the recreation program registrar. A parent of a ten-year-old boy registered her son. The school secretary wrote on a post-it note that as the boy needed a one-to-one aide in school, the school certainly could not afford that for the summer. The secretary sent to registration form and check back in the mail to the parent.

The parent filed a complaint with the US Department of Education. The school district was required to provide one-on-one staff support for her son in the recreation program. This is an early decision about providing a higher staff ratio for kids with disabilities.

**Barrington Park District (IL)**

This Illinois special purpose district served an affluent community. A parent registered her son with ADHD for a nine-month afterschool program. Correctly, the agency conducted an assessment and determined that the boy needed a one-on-one aide. The boy had no incidents while with a one-on-one aide. At the end of the year the finance head met with the recreation head and remarked that while revenue was good in the program, expenses were high (this was because of the one-on-one aide). Finance told Recreation that the extra staff had to go, and so Recreation released the staff member.

Not long after that, with no one managing his behavior, the boy was involved in an altercation with another boy without a disability. The park district expelled him from the program with no notice. The parent filed a complaint with the US Department of Interior (DOI). DOI required the park district to re-enroll the boy, and provide a one-on-one aide.

**Burriola vs Greater Toledo YMCA (YMCA #1)**

Parent of 12-year-old on the autism spectrum registers her son for a YMCA afterschool program. The Y program director refuses the offer of free staff training regarding autism.

Unknown to the program director, two employees working with the boy voluntarily receive the training and there are no issues while those part-time staff are working with the boy. But...part-time staff leave. Both do for different reasons. Shortly after their departure, with no trained staff to supervise the child, he and another boy are seen pushing and shoving each other. The boy with autism is kicked out of the program.

The parent sues the Y. In court, Y employees acknowledge that other kids push other kids in the program, but that "Johnny was the only one we kicked out of the program." That looks like discrimination. The Y is ordered to reenroll the boy, apologize to the mother, invite all people with disabilities to consider Y programs, and provide training to not some, not half, but all Y employees regarding autism.

### **YMCA #2**

The YMCA in Chicago received a request from a parent of a girl with diabetes to have staff monitor her blood sugar and if necessary, inject her with insulin. The girl was participating in a swim club program. The Y refused, and said this was a personal service it is not required to provide. The parent reached out to the US Department of Justice (US DOJ) and US DOJ reached the Y. After a day of negotiation, the Y agreed to train staff on how to inject insulin, and hired a nurse educator to provide the training.

The head coach and assistant coach of the swimming program quit. The Y replaced them and trained the replacements on how to monitor blood sugar and how to, if necessary, inject insulin.

### **YMCA Too Many to Count...**

Settlement agreements with Y's from California to Texas to New Jersey to Georgia to North Carolina to Pennsylvania have addressed kids with diabetes, kids with autism, kids with intellectual disabilities, and kids with physical disabilities. Take these rules from these many decisions:

1. Conduct an assessment of registrants with disabilities.
2. Where the assessment shows a need for it, provide one-on-one staff.
3. DO NOT argue with the parent.
4. Diabetes is on the rise...train staff regarding how to monitor blood sugar.
5. Diabetes is on the rise and new treatment methods are on the market every year. Stay current with new treatments for diabetes and epilepsy.
6. Log and track all modification requests in one digital file. Identify requester, staff manager, decision, training, costs, and evaluation.
7. Lean towards "yes" and save your agency a lot in legal fees.