



EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

December 18, 2012

ADMINISTRATIVE DIRECTIVE NO. 12-06

TO: All Department and Agency Heads

SUBJECT: Accessibility to State Government by Persons with Disabilities

This Administrative Directive supercedes, consolidates, and updates the previous Administrative Directives (AD) and Executive Memorandum (EM) relating to accessibility and persons with disabilities as listed below:

- AD 97-01 Responsibilities for Americans with Disabilities Act Coordination and Implementation,
- AD 97-02 Communication Access for Persons with Disabilities to Programs, Services, and Activities of the State of Hawaii,
- AD 97-03 Non-Discrimination to Programs, Services, and Activities of the State of Hawaii on the Basis of Disability,
- AD 98-01 Reasonable Accommodation for Persons with Disabilities,
- AD 98-02 Facility Access, and
- EM 06-02 Access to State Government by Persons with Disabilities.

The State of Hawai'i, as an employer and an operator of government programs, services, and activities, is committed to the needs and civil rights of individuals with disabilities through compliance with the Americans with Disabilities Act (ADA), Public Law 101-336, and the ADA Amendments Act (ADAAA), Public Law 110-325. As stated in the aforementioned Administrative Directives and Executive Memorandum, we remain committed to our legal obligation to provide equal access to employment, programs, services, and activities of State government for persons with disabilities in the State of Hawai'i. On September 15, 2010 and March 25, 2011, the U.S. Department of Justice (DOJ) and the U.S. Equal Employment Opportunity Commission (EEOC), respectively, issued new federal administrative rules relating to the ADA. The rules related to ADA Titles II and III became effective on March 15, 2011. Other portions of

the rules relating to the 2010 ADA Standards for Accessible Design went into effect on March 15, 2012. The EEOC rules for the ADAAA became effective on May 24, 2011. This directive reaffirms the State's commitment to accessibility for individuals with disabilities set forth under the ADA, the previous directives, and highlights the changes found in the new administrative rules promulgated by the DOJ and EEOC.

Although the following sections summarize portions of the ADA, the ADA provides the broad framework for equal opportunity and access to agency programs, services and activities, including state government, for individuals with disabilities. This memorandum focuses on the following topics:

- a. Facility Access;
- b. Access to State Programs, Services, and Activities;
- c. Communication Access;
- d. Employment; and
- e. ADA Coordination.

Facility Access

Facility accessibility involves new construction and alteration of buildings, facilities, and sites by the State (or on behalf of the State), existing state facilities, state agencies occupying space in leased facilities, and a state facility that is leased to a private entity. Each type of facility shall be fully accessible to and usable by individuals with disabilities.

For new construction and alteration, the State of Hawai'i adheres to legal requirements set forth under §103-50, Hawai'i Revised Statutes (HRS) that provides for the review of state and county construction projects by the Disability and Communication Access Board (DCAB) as well as the issuance of interpretive opinions. The Americans with Disabilities Act Accessibility Guidelines (ADAAG), Federal Fair Housing Amendments Act Accessibility Guidelines (FHAG), and DCAB interpretive opinions are the guidelines reviewed under §103-50, HRS.

Each department and agency shall ensure that all plans and specifications are submitted to DCAB for timely review prior to construction consistent with Hawai'i Administrative Rules (HAR), Title 11, Chapter 216, *Disability and Communication Access Board Rules of Practice and Procedure*.

If a department or a state agency plans to lease an existing facility from a private entity for office space, the responsible party should contact the Department of Accounting and General Services (DAGS). DAGS has a checklist that will assist the agency to select a site that is accessible to individuals with disabilities. A copy of the checklist can be obtained from the DAGS, Public Works Division, Leasing Branch at (808) 586-0508.

Access to State Programs, Services, and Activities

Policies and practices of the State of Hawai'i departments and agencies shall be non-discriminatory and inclusive of the whole community (including individuals with and without disabilities). This right includes not only the opportunity to participate, but an opportunity that is equally effective as that provided to individuals without disabilities. Policies, practices, and procedures of departments and agencies shall be modified to provide equal access to individuals with disabilities, unless doing so would fundamentally alter the nature of the program, service, or activity or create undue administrative or financial burden to state government.

Programs, services, and activities of the State of Hawai'i shall be delivered in the most inclusive setting appropriate to the individual's level of need. The inclusion of individuals with disabilities is the goal of the ADA and the goal of the State of Hawai'i. In the delivery of programs, services, and activities, the State of Hawai'i departments and agencies shall not use eligibility criteria that screen out or tend to screen out individuals with disabilities unless such eligibility criteria are a necessary provision for the program, service, or activity. Access shall also be provided to ongoing programs as well as periodic events such as conferences, workshops, public hearings, and all events sponsored or co-sponsored by the state.

Departments and agencies shall not charge individuals with disabilities a fee to offset the costs associated with providing access.

State websites provide access to information about programs, services, and activities to the public twenty-four hours a day, seven days a week (24/7). Departments and agencies shall ensure such information is accessible to everyone, including individuals with disabilities by complying with the DAGS, Information and Communication Services Division (ICSD) policy for accessibility of state department and agency websites in Comptroller's Memorandum (CM) 2010-28. Creating and maintaining accessible websites allows individuals with disabilities access to information 24/7, similar to anyone in the general public using a State website.

Guidance regarding access to programs, services, and activities of State government is available in the *Programs and Services Manual for Persons with Disabilities* published by DCAB.

Communication Access

To ensure that all individuals with disabilities be they consumers, companions, or family members have equal opportunity to participate in programs, services, and activities of the State of Hawai'i, auxiliary aids and services shall be provided upon request of the qualified individual with a disability. Auxiliary aids or services may be for individuals who are deaf, hard of hearing, deaf-blind, blind, have low vision or have speech

disabilities. When the department or agency chooses an auxiliary aid or service, preference should be given to the request of the individual with a disability.

State agencies shall reference the guidelines set forth in the *Communication Access Services for Persons who are Deaf, Hard of Hearing, and Deaf-Blind*, pursuant to HAR Title 11, Chapter 218, as adopted by DCAB to follow when hiring sign language interpreters and communication assistants for persons requesting such services.

State agencies shall also ensure that all contact points where the agency interacts with the public are accessible to persons with communication access needs.

State agencies may establish reasonable timeframes for individuals to request auxiliary aids or services in order to fill those requests. For a list of Communication Access Providers (i.e., American Sign Language (ASL)/English interpreters, real-time captioners, or computer-assisted notetakers), contact DCAB at (808) 586-8121.

Employment

As a major employer, the State of Hawai'i will provide equal opportunity in State employment to qualified individuals with disabilities. This commitment includes a legal obligation to provide reasonable accommodation to facilitate the employment of qualified individuals with disabilities. Reasonable accommodation is a logical adjustment made to the application process, in the work environment to enable the person to perform the essential functions of the job, or to receive benefits of employment.

The ADAAA of 2008 expanded the definition of "disability," so that the determination about whether or not an individual has a disability does not require extensive analysis. The expanded definition adds two non-exhaustive lists to clarify the meaning of "major life activities," as well as a list defining "major bodily functions." The expanded definition overturns previous Supreme Court decisions that narrowly construed the definition of disability.

When a person with a disability is an applicant or employee of the State of Hawai'i, the department or agency with the job vacancy has the primary responsibility to provide and pay for a requested accommodation. Guidance on the provision of reasonable accommodation for State job applicants and employees is available in the *Reasonable Accommodation for State Employees with Disabilities Manual* published by DCAB.

ADA Coordination

The State of Hawai'i reaffirms its commitment to equal opportunity for individuals with disabilities by designating DCAB to coordinate ADA compliance efforts for the Executive Branch.

Each department and agency head shall continue its responsibility and effort to provide equal opportunities to individuals with disabilities in the provision of programs and services, equal access to employment, and effective communication in all aspects of State government. Each department shall designate an ADA coordinator/liaison to work with DCAB to effectuate this directive.

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