

Americans with Disabilities Act (ADA) Title II

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I. PURPOSE

The purpose of this policy is to establish guidelines, consistent with the Americans with Disabilities Act (ADA), for department employees to follow when providing services to all members of the community.

II. POLICY

It is the policy of the Cheswold Police Department to ensure that a consistently high level of service is provided to all community members, including people who may require special consideration in order to access these services. This includes, but is not limited to, services such as first responder recognition of the nature and characteristics of various disabilities and the appropriate support to people with disabilities who seek to access police services or who come into contact with the police.

In accordance with the requirements of Title II of the Americans with Disabilities Act (ADA), the department will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs or activities.

III. DEFINITIONS

Americans with Disabilities Act (ADA): The Americans with Disabilities Act (ADA) of 1990 (revised in 2010) is a Federal civil rights law that prohibits discrimination against people with disabilities. Under this law, people with disabilities are entitled to all of the rights, privileges, advantages, and opportunities that others have when participating in civic activities.

Lipreading: Also referred to as speech reading; the ability to use information gained from movements of the lips, face, and body to increase understanding.

Other Power-Driven Mobility Device (OPDMD): OPDMD is defined as any mobility device powered by batteries, fuel, or other engines...that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices...such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair.

Qualified Interpreter: A person who is capable of interpreting and translating criminal, civil and administrative proceedings for people who are deaf or hard of hearing and provide their responses. The qualified interpreter must be able to interpret effectively, accurately, and impartially using any necessary specialized vocabulary and be available as a witness.

Service Animals: (See Section V. G. Service Animals)

Sign Language: American Sign Language (ASL) is the form of sign language most often used in the United States. Signs convey concepts or ideas even though a sign may stand for a separate English word. Signing individual letters by finger spelling can supplement sign language.

Wheelchair: The term “wheelchair” is defined as a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or both indoor and outdoor locomotion.

IV. PROCEDURES

- A. Title II of the ADA prohibits discrimination by public entities on the basis of disability by making all programs, services, and activities accessible to persons with disabilities.
- B. The ADA covers a wide range of individuals with disabilities. An individual is considered to have a “disability” if they have a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.
 - 1. To be substantially limited means that such activities are restricted in the manner, condition, or duration in which they are performed in comparison with most people.
 - 2. Major life activities include such things as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- C. The ADA affects virtually everything that department employees do including, but not limited to, the following:
 - 1. Receiving public complaints
 - 2. Interviewing or interrogating victims, witnesses or suspects
 - 3. Arresting, booking, and holding suspects
 - 4. Enforcing laws
 - 5. Resolving issues
 - 6. Answering questions
 - 7. Providing general customer service

D. The ADA requires the following of law enforcement agencies:

1. Sensitivity to and appropriate physical support in aiding people who are mobility challenged.
2. Rapid access to interpreters for people with hearing and/or speech disabilities who have a need to communicate with police employees.
3. 24-hour access to professional support systems for people with mental disabilities (e.g. Crisis Intervention Team [CIT]).
4. Access to police information, programs and publications for people who have impaired vision or hearing.
5. Recognition of the difference between characteristics common to certain disabilities (such as epilepsy, diabetes and deafness) and those associated with anti-social or criminal behavior or a reaction to alcohol and drug abuse.
6. Other accommodations to ensure service and access to all people with visual, mental, physical, emotional and medical disabilities, including invisible disabilities such as diabetes, epilepsy, multiple sclerosis, loss of hearing and others.

E. Employee Responsibilities

1. It is the responsibility of every employee to ensure that the rights of disabled persons are adequately protected. Many individuals with disabilities are targets of criminal activity as a direct result of their disabilities.
2. Disabled persons will be treated with care, patience and understanding, in both actions and communication, by employees.
3. Employees should recognize the signs, symptoms and reactions of mental, physical and developmental disabilities and act accordingly. In some cases, an employee may not be able to immediately recognize that an individual is disabled and may not be able to recognize that a person's actions may be the result of their disability. The invisible disability becomes apparent to others when the individual's outward behavior is affected. Many disabled persons will either physically or verbally inform the employee that they have a disability.

Note: Employees are not expected to diagnose people with disabilities or to provide services or accommodations without proper recognition or notification. However, the more knowledge they have about general behaviors, conditions or characteristics of people with disabilities the more likely employees can provide services or accommodations that may not be apparent.

4. An employee's failure to recognize characteristics associated with certain disabilities may have serious consequences for the person with the disability. For example:
 - a. Outward signs of a disability such as epilepsy generally do not exist unless the person experiences a seizure.
 - b. People with diabetes may have reactions from increased or decreased insulin levels. Employees may confuse these behaviors with the person being intoxicated or combative. Low blood sugar reactions are common and are usually treated by ingesting sugar. Preventing someone from getting sugar may have serious health implications for the individual.
5. If an individual with a disability is arrested or restrained, the nature of the disability will be considered before restraint and/or transport.
6. If the use of restraint may cause undue harm to the individual, alternative measures will be considered.
7. If the nature of the disability prevents the use of seatbelts or a vehicle with a safety barrier for transportation, the officer will request their supervisor's assistance with arranging alternative transportation.
8. The Training Section will provide training for employees on recognizing different types of disabilities and the provision of appropriate law enforcement services to people with disabilities.

V. COMMUNICATION (HEARING, VISION, OR SPEECH) DISABILITIES

A. Auxiliary Aids and Services

1. The ADA requires that title II entities (State and local governments) communicate effectively with people who have communication disabilities.
2. The purpose of the effective communications rules is to ensure that the person with a vision, hearing, or speech disability can communicate with, receive information from, and convey information to, the department.
3. The ADA uses the term "auxiliary aids and services" to refer to the ways to communicate with people who have communication disabilities.
 - a. For people who are blind, have vision loss, or are deaf-blind, this includes providing a qualified reader, information in large print, Braille, or electronically for use with a computer screen-reading program; or an audio recording of printed information.

b. For people who are deaf, have hearing loss, or are deaf-blind, this includes providing a qualified notetaker, a qualified sign language interpreter, oral interpreter, cued-speech interpreter, or tactile interpreter; real-time captioning; or written materials.

c. For people who have speech disabilities, this may include providing a qualified speech-to-speech transliterator (a person trained to recognize unclear speech and repeat it clearly), especially if the person will be speaking at length, or just taking more time to communicate with someone who uses a communication board.

4. In addition, aids and services include a wide variety of technologies including, and not limited to, assistive listening systems and devices, open, closed, and real-time captioning and closed caption decoders and devices, text telephones (TTY's), videophones, and other voice, text, and video-based telecommunications products.
5. The free nationwide telecommunications relay service (TRS), reached by calling 7-1-1, uses communications assistants (also called CAs or relay operators) who serve as intermediaries between people who have hearing or speech disabilities who use a text telephone (TTY) or text messaging and people who use standard voice telephones. The communications assistant tells the voice telephone user what the other party is typing and types to tell the other party what the telephone user is saying. TRS also provides speech-to-speech transliteration for callers who have speech disabilities.
6. Video relay service (VRS) is a free, subscriber-based service for people who use sign language and have videophones, smart phones, or computers with video communication capabilities. For outgoing calls, the subscriber contacts the VRS interpreter, who places the call and serves as an intermediary between the subscriber and a person who uses a standard voice telephone. The interpreter tells the telephone user what the subscriber is signing and signs to the subscriber what the telephone user is saying.

Note: The department is required to accept telephone calls placed through TRS and VRS, and employees who answer the telephone must treat relay calls just like other calls. The communications assistant will explain how the system works if necessary.

B. Deciding Which Aid or Service Is Needed

1. The department must provide auxiliary aids and services when needed to communicate effectively with people who have communication disabilities.
2. The key to deciding what aid or service is needed to communicate effectively is to consider the nature, length, complexity, and context of the communication, as well as the person's usual method(s) of communication.

3. When choosing an aid or service, title II entities are required to give primary consideration to providing the choice of aid or service requested by the person who has a communication disability.
4. The department must honor the person's choice, unless it can demonstrate that another equally effective means of communication is available, or that the use of the means chosen would result in a fundamental alteration or in an undue burden.

Note: An undue burden is defined as significant difficulty or expense.

5. Only the Chief of Police or their designee can make the determination that a particular aid or service would cause an undue burden or a fundamental change in the nature of law enforcement services being provided.

Note: The decision that a particular aid or service would result in an undue burden must include a written statement of the reasons for reaching that conclusion.

6. If a particular aid or service would result in an undue burden, the department must provide another effective aid or service, if possible, which would not result in an undue burden.
7. The department cannot charge the person for the communication aids or services provided.
8. The department may require reasonable advance notice from people requesting aids or services, based on the length of time needed to acquire the aid or service, but may not impose excessive advance notice requirements. "Walk-in" requests for aids and services must also be honored to the extent possible.

C. People Who Have Hearing Disabilities

1. People who are deaf or hard of hearing are entitled to a level of service equivalent to that provided to other persons. The department will make certain that its employees communicate effectively with people who are deaf or hard of hearing.
2. Effective communication with a person who is deaf or hard of hearing and who is involved in an incident -- whether as a victim, witness, suspect, or arrestee -- is essential in determining what actually occurred, the urgency of the matter, and type of situation.
3. Employees should be aware that an individual's failure to comply with, or respond to, verbal orders may be the result of that individual's inability to hear or respond verbally and that they are not being uncooperative, combative or confrontational.

4. When encountering a deaf or hard of hearing person, employees can take, but are not limited to, the following steps:
 - a. Determine if the person is deaf or hard of hearing.
 - b. Before speaking, get the person's attention with a wave of the hand or a gentle tap on the shoulder.
 - c. Speak in a well-lit area facing the person and with minimal distractions.
 - d. If the person cannot understand, write a note or ask what communication aid or service is needed.
 - e. Use auxiliary aids to communicate. The type of aid that will be required for effective communication will depend on the individual's usual method of communication and the nature, importance and duration of the communication. Auxiliary aids include:
 1. Use of gestures or visual aids to supplement oral communication
 2. Use of notepad and pen/pencil to exchange written notes
 3. Use of a computer or typewriter
 4. Use of assistive listening devices to amplify sound
 5. Use of the Video Relay Service (1-866-FAST-VRS)
 6. Use of qualified oral or sign language interpreters
 - a. Use a paid interpreter, if necessary. The more lengthy, complex and important the communication, the more likely a qualified interpreter will be required for effective communication.
 - b. When using an interpreter, look at and speak directly to the disabled person. A qualified oral interpreter may be required to communicate with someone who has been trained to speech read (read lips).
 - f. Employees should be careful about miscommunication in the absence of an interpreter. A nod of the head may be an attempt to appear cooperative in the midst of a misunderstanding, rather than giving consent or making a confession.

D. Interpreters

1. The ADA places responsibility for providing effective communication, including the use of interpreters, directly on the department. The department cannot require a person to bring someone to interpret for them.
2. The department can rely on a companion to interpret when:
 - a. In an emergency involving an imminent threat to the safety or welfare of an individual or the public, an adult or minor child accompanying a person who uses sign language may be relied upon to interpret or facilitate communication only when a qualified interpreter is not available.

b. In situations not involving an imminent threat, an adult accompanying someone who uses sign language may be relied upon to interpret or facilitate communication when:

1. The individual requests this,
2. The accompanying adult agrees, and
3. Reliance on the accompanying adult is appropriate under the circumstances.

Note: This exception does not apply to minor children.

c. Even under exception (b), the department may not rely on an accompanying adult to interpret when there is reason to doubt the person's impartiality or effectiveness.

3. In general, if an individual who does not have a hearing disability would be subject to police action without interrogation, then an interpreter will not be required, unless one is necessary to explain the action being taken.
4. If an officer is unable to communicate effectively with a victim or witness by use of a notepad or by some other means of communication, the officer shall request that a supervisor assist with requesting an interpreter through E911. If court proceedings are likely to occur, a qualified interpreter shall be used in communicating with victims or witnesses.
5. Officers have an obligation to provide qualified interpreters to people who are deaf or hard of hearing, who are under arrest, prior to any questioning. If the legality of a conversation will be questioned in court (e.g. where Miranda warnings were issued, Citizen complaint, witness to a crime, etc.), a sign language interpreter may be necessary.
 - a. Failure to protect the rights of deaf or hard of hearing individuals during arrests and interrogations presents risks to the integrity of the investigation.
 - b. Officers must recognize that miscommunication during the interrogations or crime witness interviews may have a substantial impact on the evidence presented in any related criminal prosecution.
 - c. A qualified interpreter shall be used for any interrogation, or taking of a formal statement, where the suspect's or witness' legal rights could be adversely impacted.
6. The State of Delaware Court Interpreter Program is responsible to annually identify, and contract with as needed, various interpreters and qualified interpreters (including and not limited to qualified sign language, oral, cued-speech, tactile, speech-to-speech transliterators).
 - a. Officers can contact the Justice of the Peace court for interpreters.

E. Text Telephones (TTY)

1. In situations when a nondisabled person would have access to a telephone, employees must provide persons who are deaf or hard of hearing the opportunity to place calls using a text telephone (TTY).
2. TTY relay calls are generally made using a text telephone, also known as TTY, which is a communications device equipped with a keyboard for typing messages and a screen for reading messages.
3. A TTY device connects to a standard phone line. TTY callers call the Federal Relay TTY Toll-Free Number to reach a Communication Assistant (CA) who processes their call. Once connected, the TTY user types messages to the CA, who relays the conversation by reading it aloud to the hearing person. The CA then listens to the hearing person's reply and types it to the TTY user.
4. Arrestees who are deaf or hard of hearing, or who have speech disabilities, may require a TTY for making outgoing calls.
5. The following Toll-Free and toll access numbers allow Federal employees or the general public to connect with Federal Relay:

(800) 877-8339 TTY / ASCII (American Standard Code For Information Interchange)-
Allows TTY users to type their conversation

(877) 877-6280 VCO (Voice Carry Over)- Allows users to voice their conversation

(877) 877-8982 Speech-to-Speech- Allows people with Speech Disabilities to re-voice their conversation

(800) 845-6136 Spanish- Allows Spanish-speaking callers type and receive their conversation in Spanish with no translation services

(888) 474-8983 Spanish to English- Allows callers to type in English or Spanish and receive translation services from Spanish to English or English to Spanish

(866) 377-8642 Voice- Allows hearing callers to connect with a CA to type their conversation to their caller

(866) 893-8340 TeleBraille- Allows a DeafBlind caller to receive their conversation at a slower pace

(605) 331-4923 From non-domestic locations (International Voice/ TTY/ VCO/ ASCII/ Spanish)- Allows an international call to connect with a CA to place a call within the US

(800) 877-0996 Customer Service (Voice, TTY, ASCII and Spanish)- Allows callers to connect with Customer Service

F. People Who Have Vision Disabilities

1. Employees may encounter individuals whose vision disability ranges from partially sighted to completely blind. The provision of appropriate assistance or services may vary depending on the individual's abilities and level of impairment.

2. When an employee interacts with a person who is visually impaired or blind, the employee should:
 - a. Identify themselves and state clearly and completely any directions or instructions.
 - b. Make sure that the individual knows that the employee is speaking to them. If needed, touch the person lightly on the arm or shoulder to gain their attention.
 - c. Describe the actions to be taken to the individual prior to taking action, if possible.
 - d. Read out loud and completely any documents that a person needs to sign.
3. If requested to lead or assist an individual with a vision disability;
 - a. Follow the individual's instructions.
 - b. Assist the individual in grasping the employee's arm, just above the elbow.
 - c. Do not grasp an individual by the arm to lead them.
 - d. Walk slightly in front of the individual.
 - e. Stop completely before going up or down stairs or curbs, and verbally tell the person about these potential hazards.
 - f. When entering a doorway, tell the individual which direction the door opens.
 - g. Offer to assist, but do not insist upon assisting if the person declines the offer of aid.

G. Service Animals

1. Service Animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities.
 - a. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties.
 - b. Service animals are working animals, not pets.

- c. The work or task a dog has been trained to provide must be directly related to the person's disability.
 - d. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.
 2. In addition to the provisions about service dogs, ADA regulations have a separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities.
 - a. Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.
 - b. Entities covered by the ADA must modify their policies to permit miniature horses where reasonable.
 - c. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility.
 1. Whether the miniature horse is housebroken;
 2. Whether the miniature horse is under the owner's control;
 3. Whether the facility can accommodate the miniature horse's type, size, and weight; and
 4. Whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.
 3. Under the ADA:
 - a. State and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go.
 - b. Service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices.
 4. When it is not obvious what service an animal provides, only limited inquiries are allowed. Employees may ask two questions:
 - a. Is the service animal required because of a disability, and
 - b. What work or task has the service animal been trained to perform.

5. Employees cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the service animal, or ask that the service animal demonstrate its ability to perform the work or task.
6. When a person with a vision disability is using a service animal:
 - a. Obtain permission from the person before having any interaction with their service animal.
 - b. Do not separate the person from the service animal, unless extenuating circumstances exist.
 - c. If it becomes necessary to arrest the disabled person and separate them from their service animal, then ask the person who should be contacted to care for the service animal.
 1. Attempt to contact that person and make arrangements for the care of the service animal.
 2. Contact a supervisor if a responsible party cannot be promptly located to care for the service animal.
7. Delaware's Equal Accommodations Act – Title 6 § 4504a3a&b & 4504b
A place of public accommodation must permit service animals as follows:
 - a. An individual with a disability accompanied by a service animal in any place of public accommodation.
 - b. An individual training a service animal to be used by persons with disabilities accompanied by a service animal in any place of public accommodation.
 - c. No person being the owner, lessee, proprietor, manager, director, supervisor, superintendent, agent or employee of any place of public accommodation, shall directly or indirectly refuse, withhold from or deny to any person, on account of disability any of the accommodations, facilities, advantages or privileges thereof. For the purpose of training support animals to be used by persons with disabilities, all trainers and their support animals shall be included within those covered by this subsection (§ 4504). Complaints is sent to State Human Relations Commission where civil penalty can range from \$5,000 to \$25,000 depending on how many prior discriminatory public accommodations practice have occurred.
8. State of Delaware Title 16, 3056F – Unauthorized Acts against Service Dogs

- a. No person shall intentionally interfere with the use of a service dog by obstructing, intimidating or otherwise jeopardizing the safety of the user or animal (class B misdemeanor).
- b. No person shall intentionally injure or disable a service dog that is being used by its owner or the officer teamed with the dog (class A misdemeanor).
- c. No person shall intentionally kill a service dog owned by a private person or agency (class D felony).
- d. No person shall intentionally steal, take or wrongfully obtain a service dog owned by a private person or agency (class E felony).

H. People Who Have Mobility Disabilities

1. People with mobility, circulatory, respiratory, or neurological disabilities use a variety of devices for mobility. Some use walkers, canes, crutches, or braces while others use manual or power wheelchairs or electric scooters, all of which are primarily designed for use by people with disabilities.
2. Covered entities must allow people with disabilities who use manual or power wheelchairs or scooters, and manually powered mobility aids such as walkers, crutches, and canes, into all areas where members of the public are allowed to go.
3. Covered entities must also allow people with disabilities who use other types of power- driven mobility devices (OPDMD) into their facilities, unless a particular type of device cannot be accommodated because of legitimate safety requirements. Where legitimate safety requirements bar accommodation for a particular type of device, the covered entity must provide the service it offers in alternate ways if possible.
4. People with disabilities have the right to choose whatever mobility device best suits their needs.
 - a. A facility may be required to allow a type of device that is generally prohibited when being used by someone without a disability when it is being used by a person who needs it because of a mobility disability.
5. Officers may encounter an individual with a mobility disability who may have to use their mobility device to comply with an officer's request (e.g. step out of a car, move to a certain location, etc.).
6. Many individuals will reach for their mobility device upon contact. Officers will be careful to not interpret this as an act of aggression.

7. Individuals with a physical disability will often inform officers that they have a physical disability and have to use their mobility device for movement.
8. Individuals with a visual impairment may also use a mobility device (e.g. cane) or a service dog to assist in movement. These individuals may ask for assistance with movement.

ORDER EXECUTED and ISSUED this 29th day of JUNE, 2020.

Christopher Workman
Chief of Police