

Legislative Regulation Review Committee

2009-043

Department of Social Services

RIGHTS & RESPONSIBILITIES REVISION

STATE OF CONNECTICUT
REGULATION
OF

IMPORTANT: Read instructions on bottom of Certification Page before completing this form. Failure to comply with instructions may cause disapproval of proposed Regulations.

NAME OF AGENCY

Department of Social Services

Concerning

SUBJECT MATTER OF REGULATION

Rights and Responsibilities under ADA

SECTION _____

Statement of Purpose: (A) The purpose of the regulation is to amend section 1005.10 of the Uniform Policy Manual (UPM) and to make technical corrections. The problems, issues or circumstances that the regulation proposes to address are: to amend the UPM to accurately reflect the rights and responsibilities of applicants and recipients of assistance as provided under the Americans with Disabilities Act of 1990. These changes are being made pursuant to the settlement agreement in Raymond et.al. v. Rowland, No. 3:03CV0118 (Conn. Cir. Ct., May 31, 2007).

(B) The main provisions of the regulation: (1) clarify the term "learning disabilities"; (2) provide that the existence of a disability is not sufficient to demonstrate the need for accommodation when there is an authorized representative available and able to perform the required tasks on behalf of the individual; (3) amend that the responsibility of granting accommodations involving significantly greater administrative or fiscal burden may only be granted by the Department's ADA Coordinator, not the Department's Affirmative Action Director as previously provided; and (4) clarify one of the examples provided in the UPM of an accommodation that is presumed to be reasonable and may be offered by the eligibility worker. (C) The legal effects of the regulation, including all of the ways that the regulation would change existing regulations or other laws are: to ensure that the UPM correctly and accurately reflects the provisions of the Americans with Disabilities Act of 1990 and to comply with the settlement agreement in Raymond et.al. v. Rowland. Id.

Be it known that the foregoing:

Regulations Emergency Regulations

Are:

Adopted Amended as hereinabove stated Repealed

By the aforesaid agency pursuant to:

Sections 17b-3 of the General Statutes.

Section _____ of the General Statutes, as amended by Public Act No. _____ of the _____ Public Acts.

Public Act No. _____ of the Public Acts.

After publication in the Connecticut Law Journal on November 11, 2008, of the notice of the proposal to:

Adopt Amend Repeal such regulations

(If applicable): And the holding of an advertised public hearing on _____ day of _____

WHEREFORE, the foregoing regulations are hereby:

Adopted Amended as hereinabove stated Repealed

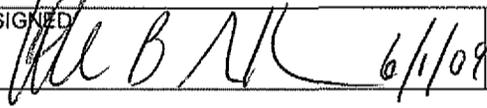
Effective:

When filed with the Secretary of the State.

(OR)

The _____ day of _____.

In Witness Whereof:	Date <u>4/29/09</u>	SIGNED (Head of Board, Agency or Commission) 	OFFICIAL TITLE, DULY AUTHORIZED <u>Deputy Commissioner</u> Commissioner
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Approved by the Attorney General as to legal sufficiency in accordance with sec. 4-169, as amended C.G.S.	SIGNED 	6/1/09	OFFICIAL TITLE, DULY AUTHORIZED <u>ASSOC. ATT. GEN.</u>
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- Approved
- Disapproved
- Disapproved in part, (Indicate Section Numbers disapproved only)
- Rejected without prejudice

By the Legislative Regulation Review Committee in accordance with Sec. 4-170, as amended, of the General Statutes.	Date	SIGNED (Clerk of the Legislative Regulation Review Committee)
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Two certified copies received and filed, and one such copy forwarded to the Commission in Official Legal Publications in accordance with Section 4-172, as amended, of the General Statutes.

DATE	SIGNED (Secretary of the State.)	BY
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INSTRUCTIONS

1. One copy of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the Attorney General for his determination of legal sufficiency. Section 4-169 of the General Statutes.

2. Seventeen copies of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the standing Legislative Regulation Review Committee for its approval. Section 4-170 of the General Statutes.

Each regulation must be in the form intended for publication and must include the appropriate regulation section number and section heading. Section 4-172 of the General Statutes.

4. Indicate by "(NEW)" in heading if new regulation. Amended regulations must contain new language in capital letters and deleted language in brackets. Section 4-170 of the General Statutes.

CONNECTICUT DEPARTMENT OF SOCIAL SERVICES
UNIFORM POLICY MANUAL

Date: 9-1-07

Transmittal: UP-07-

1005.10

Section:

Rights and Responsibilities

Type:

POLICY

Chapter:

Rights of Applicants and Recipients

Program: ALL

PROGRAMS

Subject:

Right to Fair Treatment

1005.10 A. General Principle

1. The assistance unit has the right to be treated fairly by the Department regardless of the unit's race, color, religious creed, sex, marital status, age, national origin, ancestry, criminal record, political beliefs, sexual orientation, mental retardation, mental disability, [physical] learning disability or [learning] physical disability[.] including, but not limited, to blindness.
2. The Department shall notify the assistance unit of its right to non-discrimination, of the availability of accommodations for individuals with a disability[,] and the complaint procedure on its application and redetermination of eligibility forms and on each notice of action affecting eligibility for, or the amount of, benefits. The Department shall also provide oral notice at face-to-face intake and redetermination interviews.

B. Right to Reasonable Accommodation for Assistance Units

1. An individual with a disability has a right to receive a reasonable accommodation from the Department when a reasonable accommodation is necessary to allow the individual to have an equally effective and meaningful opportunity to participate in, and benefit from, programs administered by the Department, if the individual [is] has a disability, or is regarded by the worker or the Department as having a disability, and a modification in the Department's policies, practices or procedures is required in order to allow the individual to participate. Accommodations may be appropriate at any point of interaction between the individual and the Department. Any accommodation must be reasonable and not cause a fundamental alteration in the program or cause undue administrative or fiscal burden on the Department. Reasonable accommodations do not include waivers of essential factors of eligibility.
2. When an accommodation is required, the accommodation that is provided is determined by the Department through an interactive process on a case by case basis that involves both the client and the Department. The Department takes into account both the wishes of the client and the availability of any less burdensome, alternative accommodations that would allow the client to participate in activities, program or services.

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1005.10 B. Right to a Reasonable Accommodation for Assistance Units (continued)

3. The following are not considered a reasonable accommodation as they constitute a fundamental alteration to the Department's programs:
 - a. Waiving the requirement that an applicant for benefits based on disability provide medical documentation to substantiate that he or she meets a program's disability criteria.
 - b. Waiving the requirement that verification of income or assets be provided in order to qualify for programs that require such verification.
4. If the Department determines that an individual who is applying for assistance has a disability that requires that the Department provide an accommodation of assistance in obtaining the required medical verifications, the Department shall offer to provide such assistance as a reasonable accommodation that includes, but is not limited to, writing to the medical provider to obtain existing documentation of the disability, provided:
 - a. the client cannot obtain the required verification himself or herself as a result of his or her disability; and[;]
 - b. there is no authorized representative or other person identified by the client willing and able to act on behalf of the client.
5. The Department shall inform the assistance unit in writing or orally that reasonable accommodations are available if a member of the assistance unit has a disability and an accommodation is required in order to allow the individual an equally effective and meaningful opportunity to participate in activities, services or programs provided by the Department

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1005.10 B. Right to a Reasonable Accommodation for Assistance Units (continued)

6. In addition to providing notice of availability of accommodations at the time of application, redetermination and notice of action, the Department shall inform assistance units of the availability of reasonable accommodations whenever it becomes apparent to the worker or the Department that an individual with a disability may need a reasonable accommodation in order to allow the individual an equally effective and meaningful opportunity to participate in activities, services or programs provided by the Department.
7. The Department shall review whether an accommodation is required in every case where an individual requests an accommodation, including when a client requests an accommodation after being informed of the availability of accommodations because it became apparent to the Department that the client may need an accommodation in order to participate meaningfully in Department programs, activities or services.
8. If there is no record of the individual's disability and the individual is not regarded as having a disability, then the individual has the burden of demonstrating the existence of a disability.
9. An individual with a disability must demonstrate that an accommodation is needed in order to enable the client to participate meaningfully in the Department's programs, activities or services.
10. Individuals or their representative have the option to request an accommodation, either in writing or orally, from their eligibility worker or from the [Department's Affirmative Action Division, ADA Coordinator] agency's ADA coordinator.
11. Upon receipt of a request for an accommodation:
 - a. the Department's eligibility worker or ADA [Coordinator] coordinator shall inform the client of any information that the eligibility worker or ADA [Coordinator] coordinator needs in order to make a determination on the request for an accommodation, and specify a date for the documentation to be provided; and[;]
 - b. the Department's eligibility worker shall offer assistance in obtaining existing documentation that is necessary to determine eligibility for an accommodation, if it appears likely to the worker that the client cannot obtain such documentation without assistance as a result of his or her disability and there is no authorized representative or other person identified by the client willing and able to act on behalf of the client.

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1005.10 B. Right to a Reasonable Accommodation for Assistance Units (continued)

12. The existence of a disability is not sufficient to demonstrate the need for an accommodation when:
 - a. the resulting functional limitations do not substantially interfere with the client's ability to participate in the activities, services and programs administered by the Department without an accommodation[.]; or[.];
 - b. [the resulting functional limitations do not substantially interfere with the client's ability to participate in the activities, services and programs administered by the Department without an accommodation, or;] an authorized representative identified by the assistance unit is available, willing, and able to perform the required tasks on behalf of the individual.
13. The need for an accommodation and the availability of an accommodation is determined by the eligibility worker. Approval of the eligibility worker's immediate supervisor or regional manager is secured when the accommodation requires agency resources beyond the eligibility worker's control, but within the control of the regional office. Accommodations that involve significantly greater administrative or fiscal burden may only be granted after consultation with the Department's [Affirmative Action Director] ADA coordinator. The following are examples of accommodations that are presumed to be reasonable and may be offered by the eligibility worker:
 - a. maintaining a list of visually or cognitively impaired persons requesting to be called prior to the mailing of notices;
 - b. waiving office interviews or conducting interviews via the telephone;
 - c. extending deadlines for providing documentation related to factors of eligibility;
 - d. [assigning] requesting the assistance of a specialized worker to help complete necessary forms, gather necessary documentation. Assist with making medical appointments, or assist with collecting medical documentation in order to establish disability where disability is a factor of eligibility;
 - e. providing [informational material] forms or materials in Braille, tape or large print; and

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- 1005.10 B. 13. Right to a Reasonable Accommodation for Assistance Units (continued)
- f. [conducting] requesting the assignment of a social worker to conduct a home visit to explain notices or explain or help complete forms and review and receive documentation.
14. Home visits are necessary if a face-to-face interview is required as part of the eligibility process and cannot be waived, the assistance unit cannot come to the Regional Office or sub-office because of a disability[,] and there is no authorized representative available to attend the interview.
15. The eligibility worker shall document each request for an accommodation in the client's case file, and shall indicate the result thereof in the file (including when the accommodation is granted or denied by the ADA [Coordinator] coordinator). If the accommodation is granted, the worker shall record the nature of the accommodation in the assistance unit's case record in a manner that Department staff will easily recognize and utilize when contacting the assistance unit. The worker shall also record the reason for denial in the client's file, if the request for accommodation is not granted.
16. When an accommodation is requested, whether it is granted or not, the eligibility worker shall inform the individual that he or she may request that the ADA [Coordinator] coordinator review the determination of the eligibility worker.
17. Before taking any action on a case, the worker shall review whether a need for accommodation is recorded and whether the Department provided the necessary resources required to accommodate the individual.
18. All requests for accommodation directed to the Department's ADA [Coordinator] coordinator shall be acted upon in accordance with the Department's ADA Policy Statement for Applicants/Recipients. The ADA [Coordinator] coordinator shall:
- a. acknowledge all requests for accommodation in writing within ten (10) working days of receipt of the request by the ADA [Coordinator] coordinator [,] ; and
- b. approve or deny all requests not later than twenty working days after the date of receipt, unless additional medical or technical information or evaluation is necessary.

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1005.10 B. Right to a Reasonable Accommodation for Assistance Units (continued)

19. An individual may request that the Department's Deputy Commissioner for Administration review the determination of the Department's ADA [Coordinator] coordinator. All requests for review by the Deputy Commissioner for Administration shall be:
 - a. in writing[.]; and
 - b. received by the Department's Deputy Commissioner for Administration not later than fifteen days after the date of issuance of the ADA [Coordinator's] coordinator's decision.
20. The determination by the Deputy Commissioner for Administration constitutes the Department's final administrative determination and is only subject to whatever external review may be available to the applicant or recipient by operation of law.

C. Spanish Speaking, Other Non-English Speaking, or Limited-English Proficiency (LEP) Assistance Units

1. If the head of an assistance unit or unit's representative is Spanish speaking, non-English speaking[,] or has limited-English proficiency and requests that the eligibility process be conducted in his or her primary language, the Department explains to the assistance unit that the unit has the right to an interpreter provided by the Department instead of using a family member, friend or client advocate as an interpreter.
2. The Department shall conduct the initial and periodic eligibility interviews and interim interviews in the language normally used by the assistance unit or assistance unit's representative, as follows:
 - a. The Department shall use a bilingual eligibility worker or any other interpreter provided by the Department;
 - b. the Department shall obtain an interpreter; or
 - c. the Department may use a family member or friend age 16 or older as an interpreter, if the assistance unit expressly requests such an arrangement.

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1005.10 C. Spanish Speaking, Other Non-English Speaking, or Limited-English Proficiency (LEP) Assistance Units (continued)

3. For Spanish speaking assistance units, the Department shall use applications, redeterminations[,] and interim activity forms and notices written in Spanish during the eligibility process or at time of interim contact.
4. The Department shall require that the interpreter sign all forms which the head of the assistance unit or the assistance unit's representative signs to acknowledge that he or she has informed the unit in the unit's primary language.
5. Upon request, the Department shall provide an interpreter for any Spanish speaking, non-English speaking[,] or limited-English proficiency assistance unit when such services are necessary for communicating with the unit.
6. An assistance unit speaking Spanish has the right to receive application forms and notices in Spanish.
7. The services of the interpreter are used at the time of each contact with the assistance unit during the eligibility determination process and during any interim case actions.
8. The Department uses any employee of the Department or an interpreter from outside the Department to the extent that such services are available.
9. The Department uses family members, friends or client advocates of Spanish speaking, non-English speaking[,] or limited-English proficiency (LEP) assistance units as interpreters only when assistance unit expressly requests such an arrangement.
10. Department reserves the right to provide its own interpreter to assist with communication, if the Department determines that the interpreter provided by the assistance unit is not accurately transmitting information between the Department and the assistance unit.
11. Children under age 16 are not permitted to act as interpreters for the assistance unit.
12. The Department does not require a Spanish speaking, non-English speaking, or limited-English proficiency (LEP) assistance unit to pay for the services of any interpreter used by the Department.