

North Dakota Department of
Environmental Quality

Disability Nondiscrimination Plan

September 2024

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I. INTRODUCTION

North Dakota is home to people of many different backgrounds and abilities. A person's disability should not be a barrier to engagement and participation. Everyone in North Dakota deserves meaningful access and equitable opportunity to participate in the North Dakota Department of Environmental Quality's (NDDEQ) programs, services, and activities. The NDDEQ Disability Nondiscrimination Plan (Plan) was developed to ensure opportunities for access for all persons in North Dakota.

The Plan establishes department-wide guidance to provide individuals with disabilities meaningful access to NDDEQ programs, services, and activities. The NDDEQ developed this Plan to be consistent with:

1. The NDDEQ's commitment to provide persons with disabilities equal opportunity and meaningful access¹.
2. The NDDEQ's mission to conserve and protect the quality of North Dakota's air, land, and water resources, following science and the law.
3. Section 504 of the Rehabilitation Act (Section 504), located in Title 29, Section 794 of the United States Code, 29 U.S.C. § 794 et seq.
4. The Environmental Protection Agency's (EPA) Section 504 implementing regulations, published in the Code of Federal Regulations at Title 40, Chapter 1, Subchapter A, [Part 7 Code of Federal Regulations – Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency, 40 C.F.R. § 7.10 et seq.](#)

II. DEFINITIONS

Accommodation – the adjustments, including reasonable modifications, to rules, policies or practices, including the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services. Examples of accommodation include but are not limited to a sign-language interpreter, an environment free from distractions, material in Braille, tapes, or computer-assisted instruction.

Disability –the definition of "disability" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of Section 504 and the North Dakota Human Rights Act. The question of whether an individual meets the definition of "disability" should not demand extensive analysis. Disability means, with respect to an individual:

1. A physical or mental impairment that substantially limits one or more of the person's major life activities;
2. A record of such an impairment; or
3. Being regarded as having such an impairment.

N.D.C.C. § 14-02.4-02(5); 40 C.F.R. § 7.25.

¹ The NDDEQ and the State of North Dakota also prohibit discrimination in employment, including based on disability. See State of North Dakota HR Universal Employment Policies at <https://www.omb.nd.gov/team-nd-careers/state-hr-policies> at Equal Employment Opportunities.

Qualified Individual – is an individual with a disability who, with or without accommodations, meets the essential eligibility requirements for the receipt of services or the participation in programs, services or activities provided by the NDDEQ. N.D.C.C. § 14-02.4-02(5); 40 C.F.R. § 7.25.

Recipient – Refers to any state, political subdivision, or an agency or instrumentality of a state that receives federal financial assistance, which in this instance is the NDDEQ or its subrecipients. 40 C.F.R. § 7.25.

III. LEGAL AUTHORITY

As a recipient of federal funding, the NDDEQ must implement state and federal regulations prohibiting discrimination, including [Part 7 – Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency. 40 C.F.R. Part 7 Subpart C](#) specifically prohibits recipients from discrimination based on disability. Recipients of federal financial assistance must reduce barriers to government services, programs, or activities that can prevent access by persons who are disabled. 40 C.F.R. § 7.50.

The federal agencies from which financial assistance is provided, in this instance EPA, also have established guidance that provide a framework to help guide the NDDEQ's actions related to persons with disabilities. In 2022, the EPA published the [Disability Nondiscrimination Plan Sample](#) (EPA Disability Plan Sample), and in 2020, revised the [Procedural Safeguards Checklist for Recipients: Federal Non-Discrimination Obligations and Best Practices](#) (Procedural Safeguards Checklist). The EPA Disability Plan Sample and Procedural Safeguards Checklist provide a general framework that the NDDEQ uses to provide meaningful access to persons with disabilities.

Executive Order 14096, [Revitalizing Our Nations Commitment To Environmental Justice for All](#) (88 Fed. Reg. 25,251) and Executive Order 14008, [Tackling the Climate Crisis at Home and Abroad](#) (88 Fed. Reg. 7619), reinforce the federal government's commitment to ensuring all communities and persons live in a safe and healthy environment. These executive orders specifically include people with disabilities.

Finally, legal authority is provided in North Dakota's Human Rights statute ([North Dakota Century Code ch. 14-02.4](#)) and requires that North Dakota state agencies prohibit discrimination based on "the presence of any mental or physical disability." N.D.C.C. § 14-02.4-01.

IV. NONDISCRIMINATION COORDINATOR

The NDDEQ Nondiscrimination Coordinator will coordinate the NDDEQ's efforts to comply with [Section 504, 29 U.S.C. § 794](#), including ensuring the following:

1. The NDDEQ will adopt and make readily available in suitable formats (*e.g.*, enlarged, Braille, audio-taped):

- a. A procedure that allows an individual to request reasonable modifications or auxiliary aids or services needed to obtain equal access to and enable participation in NDDEQ programs, services, and activities;
 - b. A procedure for maintaining personal information in a manner that protects the privacy and independence of the individual; and
 - c. A procedure for providing reasonable modifications and auxiliary aids or services.
2. The NDDEQ will maintain data on the nature and extent of the services provided to persons with disabilities and develop data collection requirements as part of the operational guidelines for implementing this Plan.
3. The NDDEQ will administer its programs, services, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.
4. The NDDEQ will utilize the grievance procedures set forth in its [Nondiscrimination Policy](#) for providing prompt and equitable resolution of complaints alleging any action that would violate Section 504. These procedures should be applicable to any anticipated complaint, including an appeal of a denied request for reasonable accommodation.
5. The NDDEQ will provide services that are required to comply with America with Disabilities Act (ADA) and Section 504 free of charge.
6. The NDDEQ will provide periodic in-service training for staff to develop their awareness and understanding of the needs of persons with disabilities and legal compliance issues. As feasible, the Nondiscrimination Coordinator will include subrecipients in the periodic in-service training to ensure that subrecipients are compliant with the required nondiscrimination policies and procedures.

[40 C.F.R. § 785\(g\)](#).

V. FACILITY ACCESSIBILITY

Consistent with NDDEQ's review of its Nondiscrimination Policy, the NDDEQ will consider the extent to which any NDDEQ facilities are "public facilities" or will be used by the public. The NDDEQ will operate its programs, services and activities out of those facilities consistent with 40 C.F.R. § 7.65 so that, when each program, service or activity is viewed in its entirety, it is readily accessible to and usable by persons with disabilities. Evacuation procedures for NDDEQ facilities will be developed by NDDEQ for persons with disabilities.

Existing Facilities:

Structural changes in existing facilities are not required when other methods provide program accessibility. Such methods include:

- a. Redesigning equipment or the facility after case review.
- b. Providing appropriate signage directing people to accessible features.

- c. Reassigning staff, or services, to accessible sites.
- d. Providing virtual access, where appropriate.

New Construction and Alterations:

Each facility or part of a facility constructed by, on behalf of, or for the use of the NDDEQ must be designed and constructed in such a manner that the facility is readily accessible to and usable by persons with disabilities. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by persons with disabilities. [40 CFR 7.70](#)

Leased or Contractual Properties:

Contractual or lease agreements for the use of non-NDDEQ facilities should ensure that any program, service, or activity of the NDDEQ in that facility is accessible. If a program, service, or activity is not wholly operated by the NDDEQ, the NDDEQ will attempt to assure that these programs, services, or activities, as a whole, provide an equal opportunity for the participation of persons with disabilities.

VI. ACCOMMODATIONS

No participant with a disability in a NDDEQ program, service or activity will be denied the benefits of, be excluded from participation in, or be otherwise discriminated against in the provision of services available to all individuals in general.

Each individual is responsible for making timely requests regarding reasonable modifications or accommodations to meet their particular needs to enable the NDDEQ to provide an appropriate response to the request. However, the failure to request a reasonable modification or auxiliary aid or service does not always excuse the NDDEQ from providing a reasonable modification or auxiliary aid or service, as long as it does not result in a fundamental alteration or undue burden.

All auxiliary aids [and](#) services used by persons with disabilities to provide access to NDDEQ programs and activities need not always be on hand or present at the NDDEQ facilities.

The NDDEQ does not need to provide a reasonable modification or auxiliary aid or service that would fundamentally alter the nature of the program, service, or activity, for example, requiring waiver of essential program or licensure requirements; violating accreditation requirements; or pose an undue administrative burden on NDDEQ.

In determining reasonable modifications or appropriate auxiliary aids or services, the NDDEQ considers the wishes of the individual. The NDDEQ will not require an individual with a disability to accept a modification, aid, service, opportunity, or benefit under any circumstances.

VII. MONITORING AND UPDATING THE DISABILITY NONDISCRIMINATION PLAN

The NDDEQ will periodically review the Plan to determine if accessibility and accommodation measures and staff training are effective at least once every three years or more frequently as

needed. The Nondiscrimination Coordinator will be responsible for overseeing, monitoring, and updating the Plan, and maintaining a record of all reviews. Public input will continue to be taken into consideration on an ongoing basis. The NDDEQ will review and update this Plan based on the following:

- The number of individuals with a disability requesting assistance by the NDDEQ.
- Ensuring the needs of individuals with a disability can be addressed.
- Evaluating NDDEQ's programs, services and activities offered to meet the needs of individuals with disabilities.
- Whether NDDEQ received any complaints alleging failure to meet the needs of individuals with a disability.
- Ongoing dialogue with stakeholders, communities, and individuals.
- Best practices to further enhance access to programs services and activities by individuals with disabilities.

VIII. PLAN ACCESS AND REQUESTS FOR ACCOMODATION

The NDDEQ will post the Plan on its website at <https://deq.nd.gov/>. Requests for accommodation may be directed to the NDDEQ staff responsible for the program, service, or activity, or to the Nondiscrimination Coordinator directly. Copies of the Plan, in an accommodating format, will be provided upon request by contacting:

Ann Fritz
NDDEQ Civil Rights Coordinator
4201 Normandy Street
Bismarck, ND 58503-1324
(701) 328-5210 | deqEJ@nd.gov

IX. REFERENCES

Civil Rights Act of 1964 § 6; 42 U.S.C § 2000d et seq (1964). [U.S.C. Title 42 - THE PUBLIC HEALTH AND WELFARE \(govinfo.gov\)](#)

Executive Order 14096 (2023), Revitalizing Our Nations Commitment To Environmental Justice, for All, <https://www.govinfo.gov/content/pkg/FR-2023-04-26/pdf/2023-08955.pdf>.

Executive Order 14008, (2021), Tackling the Climate Crisis at Home and Abroad, <https://www.govinfo.gov/content/pkg/FR-2021-02-01/pdf/2021-02177.pdf>

Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency; 40 C.F.R. Part 7, <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-A/part-7?toc=1>

Discrimination Prohibited on the Basis of Handicap; 40 C.F.R. Part 7 Subpart C, <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-A/part-7/subpart-C>