

HANDY HINTS BROCHURE FOR COURT OFFICIALS



Equal Access to Justice

FOR PERSONS WITH DISABILITIES



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA



EQUAL ACCESS TO JUSTICE



A GUIDE FOR OFFICIALS WORKING WITHIN COURTS AND THE JUSTICE SYSTEM

NB: It was impossible to incorporate all impairments and disabilities in this brochure. If an impairment or disability is not specifically mentioned in this brochure, it does not mean that the disclosed impairment or disability should not be recognised and accommodated.

THE DEFINITION OF A DISABILITY

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) recognizes disability as an evolving concept that results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.

This means that national definition of disability should not only focus on the existence of an impairment resulting from a health situation, but also reflect on the role of external barriers. It should also focus on inclusion, access and participation.

The White Paper on the Rights of Persons with Disabilities (WPRPD) indicates that barriers experienced by persons with disabilities are usually inspired by economical, physical, social, attitudinal and/or cultural factors.

TYPES OF DISABILITIES

The different types of disabilities include but are not limited to:

Types	A few examples of types of disabilities
Physical	paraplegia, quadriplegia, cerebral palsy, speech impediment
Sensory	hearing disability, visual disability
Psycho-social	bipolar, schizophrenia, depression, anxiety
Cognitive	learning disability, attention deficit disorder (ADHD), dyslexia, down syndrome
Neurological disabilities	autism, epilepsy

THERE ARE DIFFERENT DEGREES OF DISABILITY:

The degree of a disability can be varied as follows:

mild	a person needing spectacles to see
moderate	a person needing spectacles, and a magnifying glass to see
severe	a blind person using a cane, or guide dog

- Some disabilities are visible and others are not visible or not clearly identifiable at a glance.
- Some people may have more than one disability which is referred to as multiple disabilities.
- Disabilities can be permanent, temporary or episodic in nature.



Persons with disabilities are not a homogenous group but have diverse needs, capabilities, cultural background, geographical location, personal circumstances and life experiences. Their needs are unique to their specific situations. Hence, we should move away from stereotyping and boxing persons with disabilities.

REASONABLE ACCOMMODATIONS

A reasonable accommodation is an adjustment made to accommodate the needs of a person with a disability. It ensures fairness, equality and equal access and participation in all processes, systems and environments.

Reasonable accommodation required can vary from one individual to another. The UNCRPD indicates that refusal to provide reasonable accommodation to persons

with disabilities can result in unfair discrimination. The UNCRPD defines reasonable accommodation as necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure persons with disabilities enjoy or exercise equally with others of all human rights and fundamental freedoms.

DISABILITES AND POSSIBLE ACCOMMODATIONS WHEN IN COURT

The table below is not exhaustive but aims to provide examples of disabilities and possible reasonable accommodations. It is crucial to consult an individual with a disability about her/his accommodation needs.

Disability	Possible accomodation
Urinary Tract Infection	Provide frequent restroom breaks during proceedings
Anxiety Disorder	Allow presence of a companion animal Provide text documents e.g. subpoena or summons in large print
Sight Impairment	Send notices in large print
Intellectual Disability	Allow the use of a cognitive interpreter
Attention Deficit Hyperactive Disorder	Reduce visual and auditory distractions
Chronic Fatigue	Allow the use of a support person or court accompanies services
Back Injury	Provide a reclining and back-supportive chair
Unable to leave home due to Multiple Sclerosis	Conduct hearing at a place of convenience for the litigant
Deaf	Provide an appropriate and accredited sign language interpreter
Mobility Impairment	Remove architectural barriers, conduct hearing in accessible court room
Manic Episode during hearing (Bipolar Disorder)	Postpone hearing or proceedings to a different date
Learning Disability (Dyslexia)	Read written information orally
Obsessive- Compulsive Disorder	Allow for a different seating arrangement
Traumatic Brain Injury	Divide longer questions into a series of shorter ones



Note: Albinism is not usually regarded as a disability, but as an inherited condition where a person is unable to produce adequate melanin to colour the skin, eyes and hair. However, most people with albinism identify with other disabled people due to the nature of discrimination they experience and also as a result of impaired vision.

Court officials should be proactive in identifying impairments and potential impairments that arise during a court proceeding

For example, someone may not generally experience anxiety attacks, but the stress of the court proceedings could lead to one unexpectedly.





Officials should take affirmative steps to implement accommodations so that all services are equally available to persons with disabilities.

Reasonable accommodation support tends to be individual and impairment specific.

For example, a person who has trouble concentrating for a longer period of time may not realise that frequent breaks may be provided.

It is the duty of all officials to gather sufficient information from a person with a disability and qualified experts as needed to determine what accommodations are necessary.

DISABILITY MAINSTREAMING

Disability mainstreaming is a process whereby government and other stakeholders ensure that persons with disabilities participate equally with others in any activity and service intended for the general public.

For example, court processes should be designed to include the possibility of in camera proceedings and video conferencing facilities to allow access and participation of persons with psycho-social and physical disabilities.



UNIVERSAL ACCESS AND DESIGN

Access must be provided at all stages of the judicial process such as:

- At the issuing of court process or notices;
- Access to the court building and court room;
- During court proceedings; and
- After court proceedings, e.g. assistance with the witness fees.

Equal access must be provided to all disabled participants including:

- parties to the case
- legal representatives
- witnesses
- presiding officers
- interpreters
- observers; and
- staff members.

A building that complies with universal design principles promotes universal access. For example as depicted in the pictures, a ramp is useful not only for a person with a physical disability.





Court officials should make reasonable efforts to identify and remove barriers to access, including physical barriers, procedural barriers, and communication barriers. Ensuring access for someone with a psychiatric or cognitive disability is just as important as accommodating a physical or sensory disability.



These images depict that the witness stands in courts, do not comply with universal access and design principles.

This narrow witness stand fails to accommodate wheelchairs and the MIC is too high, causing the witness to strain to reach it.

The witness stand must accommodate persons with visual disabilities who are assisted by guide dogs. Here, the witness is separated from the guide dog.



General guidelines

WHEN PROVIDING SERVICES TO PERSONS WITH DISABILITIES

- **Be friendly**, smile and make eye contact with persons with disabilities.
- **Speak directly** to the person with a disability rather than talking to them through their assistant.
- **Relax and be yourself.**
- **Ask if any assistance is required** as persons with disabilities have quite different capabilities and like to be as independent as possible.
- **Encourage better communication** between staff and court users by making sure all areas specifically designed for client information and complaints are accessible to all including persons with disabilities.
- **If you are unsure of** acceptable language, etiquette, or anything else, it is ok to ask the person.
- **Provide up-to-date and accurate information** when asked about accessible facilities and services.
- **Be flexible**; if the system does not fit the requirements of a person with a disability, **adapt the system** to meet individual needs without compromising equal access.
- **Clarify the assistance desired**, as preferences and accommodations are different.
- **Avoid using derogatory terms** which include but are not limited to: "handicapped", "mentally retarded", "deaf and dumb", "wheelchair-bound", "sufferer", "cripple" etc.
- Avoid using the word 'normal' to describe people without disabilities. Rather say '**persons without disabilities**' if comparisons are necessary.

If you make a mistake, apologise, learn from it and aim to do better next time.

Specific guidelines



HEARING DISABILITY



- **Speak normally:** same lip movements, pitch and volume, but a little slower to people with a hearing impairment.
- **To get the attention** of a person with a hearing disability tap the person on the shoulder or respectfully wave your hand. Look directly at the person and speak clearly, naturally and slowly to establish if the person can read lips. Face a good light source and keep your hands away from your mouth when speaking.
- **Do not pretend to understand** what a person is saying if you do not. Try rephrasing what you wish to communicate, or ask a person to repeat what you do not understand.



PHYSICAL DISABILITY



- When talking to a person who is sitting on a wheelchair, try to **sit down as well** so you are at the same eye level to facilitate conversation.
- **Allow the same, not greater or less personal space** – wheelchairs should be considered part of the person.
- **Offer help at appropriate times.** Many wheelchair users are highly independent and have found unique ways to solve life's challenges. Only offer help to a wheelchair user if you see that they are struggling. Simply offer your assistance and wait for an answer to see if they will accept your offer. (source: kdssmart.chair.com)



VISUAL IMPAIRMENT



- When greeting a person with a severe loss of vision, always **identify yourself and others** who may be with you. When conversing in a group, give a vocal cue by announcing your name and the name of the person to whom you are speaking.
- When guiding a person who is blind, **let them take your arm** (just above the elbow). Dragging someone by the hand is unsafe and discourteous.
- When addressing a person who is totally blind or severely partially sighted, alert him/her that you are talking to them by either **saying** **their name or gently touching them** on their arm or shoulder. Some eye conditions lead to a person not having central vision, resulting in them not recognising facial features or printing detail. Hence, if you see a person who is partially sighted, it is wise to **verbally greet them first** rather than smiling a greeting from a distance as it is very likely that they might not see or recognise you.
- When you are leaving a room after having spoken to a person who is visually impaired, let **him/her know that you are leaving** the room so that they are aware that you are no longer there.
- **Try not to move around** when addressing a person who is blind, as this makes it impossible for them to know where you are from one moment to the next.
- Avoid touching or patting a **Service Animal** assisting a person with a disability without their permission. Furthermore do not make noises. This will distract the animal from providing assistance to the person with the disability.

**Department of Justice and Constitutional Development
Chief Directorate: Promotion of the Rights of Vulnerable Groups**

Tel: (012) 315 1111 Fax: (012) 315 1851

www.justice.gov.za Find us on   

Issued 2019