



MASKS AND THE ADA

This information sheet is intended as a tool to assist in clarification and decision making for Public Library Directors and Boards. It is not intended as legal advice. Library Boards and Directors should consult with their library attorneys when determining a plan or policy for their libraries.

Libraries should be sure to consult the State of Michigan Coronavirus website and their local municipal and Health Department directives for additional guidance.

November 16, 2020

Here is the deal:

The ADA's purpose is to provide people with disabilities the same opportunities and access to the same buildings and services as everyone else. ADA regulations (which implement the law) are divided into three parts. Part II concerns State and Local Governments. Part III concerns Public Accommodations.

Public Libraries, as State and Local Government entities, are under Title II. Title II's intent is to ensure that those with disabilities receive access to the same state and local government services and programs that everyone else does.

Now, The ADA, like many other Federal laws, is complex and has many components – even just with the context of State and Local Gov't entities. So, for example, first, to be covered by the ADA's protections, the person must have a qualifying disability (and there are procedures and rules regarding how that is established). Once the disability is established, the person must then be offered a reasonable accommodation (reasonable also has a series of rules to determine whether it is reasonable in light of the situation). The law tends to lean towards the disabled person being able to request the disability that works best for them, but, as I said, it is a process and there are exemptions for governments in certain circumstances where particular accommodations can be denied:

Fundamental Alteration- A particular (requested) accommodation would fundamentally alter the program or services offered (for ex- disabled patron wants the library to provide transportation to the library).

Undue Burden – A particular (requested) accommodation that places a significant financial or administrative burden. (For example, a patron with disabilities wants the library to scan every item in their collection in a digital format)

Direct Threat/Safety - A particular(requested) accommodation is not required where the individual poses a direct threat to themselves or others. Now, again, this is sticky because the identification of “direct threat” is not as simple as it may seem.:

“A direct threat is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services. The determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability. It must be based on an individual assessment that considers the particular activity and the actual abilities and disabilities of the individual.” This has been interpreted, for Covid-19 to mean that the entity offering accommodation and/ or denying access has to take into account the current information concerning the virus, as well as known CDC and local health department guidance in making their decision.

Ok, so what does this mean?

It is impractical for libraries to individually screen every patron for a true disability for purposes of entry into the building, and since the Emergency Orders indicate that masks are required UNLESS certain circumstances exist (such as “medical intolerance “ to a mask), Libraries should assume a medical condition if a patron declares one.

As far as accommodation, this is a judgment call based on the situation. ADA determinations are almost all fact-based and situational, which makes them very slippery to manage. If a patron declares a medical issue as a reason for not wearing a mask, the options are:

- Alternative face covering (such as a face shield)
- Alternative service (such as outdoor or curbside)
- Admittance with strict social distancing and/or isolation in the library.

Part of the determination is also the reason why the patron is there- books and materials can be dispensed curbside, but what about computer use? If a patron alleging a medical condition wants access to a computer available to the public, how to accommodate that, and is the “direct threat” such that there is no “*modification of policies, practices, or procedures, or by the provision of auxiliary aids or services*” that can address it (such as a laptop or tablet outside or in an isolated space in the library, or a face shield)?

The Michigan Civil Rights Commission’s recent information

<https://www.michigan.gov/mdcr/0,4613,7-138--534372--,.00.html> indicates that entities may deny access to those with medical issues not wearing a mask **IF no accommodation is available/possible or if the person with the medical issue rejects the accommodation**. It is this last phrase that determines the issue, and “no accommodation” is one of those determination that a court would determine based on the facts and circumstances of a situation.

For example, if the patron's need in the library can only be accommodated by entry (such as use of a computer), and the circumstances suggest that they are not symptomatic, your geographic area is experiencing a low infection rate, and the library is empty, there may not be a legitimate reason to not admit them. ON the other hand, in the same scenario, a crowded library **may** be a reason to offer an alternative accommodation and if they do not take it, tell them that is the best the library can do to preserve the safety of the public and staff and due to the public health threat, nothing else is feasible.

It is the nebulousness of the ADA and the fact that there are many legal unknowns with regard to the pandemic that we have been advising libraries to be cautious in refusing admittance to patrons who medically can't wear a mask.

Given the information provided by the [Michigan Civil Rights Commission](#), and other information that has emerged from [disability advocacy groups](#), it is clear that non-entry is an option for libraries.

HOWEVER, it is strongly recommended that libraries consult their attorneys for guidance on how to make these determinations on a patron by patron basis. A One-size-fits-all policy is likely not appropriate.

Clare Membiela
Library Law Consultant
Library of Michigan