

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

This is basic information and does not constitute legal advice.

A Guide to Title II of the Americans with Disabilities Act

What is the Americans with Disabilities Act (ADA)?

The ADA is a law that makes it illegal to discriminate against people because of their disabilities. The ADA applies to employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.

What is Title II of the ADA?

Title II of the ADA protects people with disabilities from discrimination on the basis of disability in all services provided by State and local governments. This means that any services provided by a state or local government cannot discriminate against you if you have a disability. State and local governments must give people with disabilities an equal opportunity to benefit from all of their programs, services and activities.

Who must comply with Title II of the ADA?

Title II applies to state and local governments and the programs they provide. This includes:

- activities of state legislatures
- State, county, and municipal courts
- town meetings
- police and fire departments
- motor vehicle licensing
- public education
- transportation
- recreation
- public health care services
- social services
- voting
- employment

How does Title II affect my participation in a State or local government's programs, activities, and services?

A state or local government cannot use any criterion that tends to screen out people with disabilities, unless it can show that the criterion is necessary for the program, activity, or service.

For example, certain safety rules may be enforced for the safe operation of the service, as long as those safety rules are based on real risks of danger and not generalizations or stereotypes about people with disabilities. A public program must have policies and procedures in place that prevent discrimination. This is so people with disabilities are given an equal opportunity to participate in a public program¹.

Does this mean all facilities have to be fully accessible?

The ADA requires all programs, activities, and services to be readily accessible to and usable by people with disabilities. However, this does not require public programs to make each and every existing facility accessible.

For example, when a city holds a public meeting in an existing building, the city does not need to make all areas in the building accessible, as long as the meeting room is accessible. Accessible telephones and bathrooms should also be provided where these services are available for use by those attending the meeting. A primary goal of the ADA is the equal participation of people with disabilities in the "mainstream" of American society, so public entities must take positive steps to provide the most inclusive setting².

Facilities built or changed after January 26, 1992 must be readily accessible and usable by people with disabilities. Pre-existing facilities and historical buildings do not have to make architectural changes if the public program can show that it would create an undue burden. However, they should still make changes wherever possible³.

For example, if a public service is in a historic building and making changes would destroy its historic features, alternative requirements can be used. This may mean that the building will only have one accessible route for people in wheelchairs. Or, the public program may provide alternative access to the exhibits and activities offered in an inaccessible room by making a video presentation of the exhibits available. The video can be viewed in a nearby accessible room in the building⁴.

¹ 28 C.F.R. 35.130

² Department of Justice Americans with Disabilities Act Title II Assistance Manual (hereinafter "Assistance Manual"), II-3.3000.

³ 28 CFR 35.151

⁴ Assistance Manual II-5.5000

What can public entities do to make their facilities and programs accessible?

When choosing a method of providing program access, a public program must give priority to the method that offers the most integrated setting appropriate. This encourages interaction among all users, with and without disabilities. The goal of providing accessible programs is to foster independence and give people with disabilities an equal opportunity to participate in public programs⁵.

Public programs do not necessarily have to change their buildings to be accessible. They may choose to offer other options for people with disabilities, including:

- moving programs, meetings, or hearings to accessible areas where people with disabilities are able to participate
- changing existing buildings by installing accessibility aids, such as ramps, handrails, signs, Braille pads, etc.
- offering personal aides to people with disabilities (for example, providing library staff to retrieve books from the second floor for patrons who use wheelchairs)⁶.

A public program is not required to provide people with disabilities with items such as wheelchairs, prescription eyeglasses, or hearing aids, or to provide services of a personal nature, such as assistance in eating, toileting, or dressing⁷.

Carrying a person with a mobile disability is not an appropriate accommodation. It is only allowed if there is an emergency or if there is a temporary need because of construction to the facility. In either case, the carriers must be trained on the safest and least humiliating means of carrying and the service must be provided in a reliable manner⁸.

What kinds of auxiliary aids and services are required by the ADA to ensure effective communication with people with hearing or visual impairments?

Public programs must have auxiliary aids available upon request, such as:

- qualified interpreters, note takers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of communicating with people with hearing impairments;
- qualified readers, taped texts, audio recordings, materials in Braille, large print materials, or other effective methods of communicating visual material with people with visual impairments.

⁵ Assistance Manual II-3.4000 – 3.4200

⁶ 28 CFR 35.149-35.150

⁷ 28 CFR 35.135; Assistance Manual II-3.6200

⁸ Assistance Manual II-5.2000

Public programs may also be required to obtain or modify equipment or devices to ensure effective communication⁹.

Where a public program communicates by telephone with people, the ADA requires the use of telephone relay services for people who use telecommunications devices for deaf persons (TDD's) or similar devices. The Federal Communications Commission has issued regulations specifying standards for the operation of these services¹⁰.

State and local agencies that provide emergency 911 telephone services must provide "direct access" to people who rely on a TDD or computer modem for telephone communication¹¹.

How do I make a request for accommodations?

Public programs must have a system in place so that all interested persons, including people with impaired vision or hearing, can find out about accessible services, activities, and facilities. Signage will be posted at all accessible entrances to facilities, directing users to an accessible entrance or to a place where they can get information about accessible facilities¹².

Public programs with 50 employees or more are required to have a designated employee who coordinates the program's efforts to comply with the ADA Title II provisions. The name, office address, and telephone number of that employee shall be provided¹³. Contact this designated employee to learn more about the accommodations already in place or to request the accommodations you will need. If you decide to make a request, you should make that request in writing and keep a copy of it for your records.

Can I be charged a fee if I need accommodations?

Although providing accommodations may result in some additional cost, a public program may not place a surcharge only on particular people with disabilities or groups of people with disabilities to cover these expenses.

For example, a public college cannot place a surcharge on either a student with a disability (such as a deaf student who benefited from interpreter services) or on groups of students with disabilities (such as students with mobility impairments who benefited from architectural barrier removal). It may, however, adjust its tuition or fees for all students to cover the expenses¹⁴.

⁹ 28 CFR 35.160

¹⁰ 28 CFR 35.161

¹¹ 28 CFR 35.162

¹² 28 CFR 35.163

¹³ 28 CFR 35.107

¹⁴ 28 CFR 35.130

What can I do if I think that I have been discriminated against because of my disability?

If you think you have been discriminated against and you wish to report a complaint against a public program, you can:

- file an administrative complaint with the Department of Justice,
 - To file a complaint with the Department of Justice, you may wish to download a copy of the complaint form at <http://www.ada.gov/t2cmpfrm.htm>. Once you have completed the form mail it to:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Office of the Assistant Attorney General, Main
Washington, D.C. 20530

If you have questions about how to complete the form, you may call the ADA line at:
(202) 514-4609 (TTY): (202) 514-0716

- file a complaint with the appropriate Federal agency (such as Department of Education, Department of Health and Human Services, etc.)
 - The agency you will want to file a complaint with will depend upon the type of issue you are facing.
 - For example, if your complaint involves a school district or state hospital, you will want to file a complaint with the Department of Education for issues involving a school district and the Department of Health and Human Services for issues involving a State Hospital.
 - You must be certain which agency is concerned before filing a complaint, as you must do so within 180 days from the date of the alleged discrimination.
- file a private lawsuit.

Complaints must be made within 180 days from the date of the alleged discrimination¹⁵. Also keep in mind that public programs with 50 employees or more must have a grievance procedure in place to address individual complaints within the public program. However, you do not need to go through the public program's grievance procedure before filing a complaint with either a Federal agency or a court¹⁶.

¹⁵ 28 CFR 35.170-35.190

¹⁶ Assistance Manual II-9.2000

Can the public program retaliate against me if I file a complaint?

No. People who exercise their rights under the ADA, or assist others in exercising their rights, are protected from retaliation. Retaliation includes threats, intimidation, harassment, or interference. In other words, if you are being discriminated against and you file a complaint, or if you know of someone who is being discriminated against and you help them during their grievance process, you are protected¹⁷.

¹⁷ 28 CFR 35.134; Assistance Manual II-3.11000