




State and Local Governments and the ADA

Access to Programs, Services, and Facilities
by People with Disabilities

By William Milzarski and Scott Norris



“What must I do? What can I do? What do I do?” The answer is usually the same every time: *make it work for the individual.*

The intent of the Americans with Disabilities Act of 1990 (ADA) is to provide equal opportunity for people with disabilities. A large part of this opportunity is equal access to the programs, services, and facilities that a governmental body offers. Whether the government agency is a township, city, county, or state, the rules for equal opportunity are the same: the agency has an affirmative duty to make itself accessible to persons with disabilities. Over the years, many governmental agencies have asked, “What must I do? What can I do? What do I do?” The answer is usually the same every time: make it work for the individual. Making it work may be as simple as Brailleing a form or making a bathroom accessible, or as complicated as balancing historic preservation and public access. Either way, a reasonable solution must be found per the ADA equal opportunity requirements.

The Rules

Title II of the ADA¹ applies to any state or local government, department, agency, special-purpose district, or other instrumentality of a state or local government.² This includes all agencies such as townships, cities, counties, and the state itself. Basically, if you have taxing authority, Title II applies to you. The “other instrumentality” clause would also make agents of a governmental entity subject to the ADA. For instance, if a county contracts all of its public works to a private company, both the county (because it is a government agency) and the private company have Title II responsibilities.

Questions often asked include, “Who is this person with a disability, and can I ask for proof of the disability? What proof can or can’t be asked for?” An example will be provided later in this article, but in short, if an individual indicates that he or she needs an accommodation, work with the individual to allow access. The ADA addresses a “qualified individual with a disability”³ as someone who “meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.”⁴

The Americans with Disabilities Act, as amended,⁵ has very specific rules where public access is concerned. A governmental entity shall ensure that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”⁶ This is extremely strong language that has been tempered by the Supreme Court in certain circumstances, “but Title II does not require states to employ any and all means to make judicial services accessible or to compromise essential eligibility criteria for public programs. It requires only ‘reasonable modifications’ that would not fundamentally alter the nature of the service provided, and only when the individual seeking modification is otherwise eligible for the service.”⁷

Although public transit is also covered by Title II, it will not be addressed in this article.

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Reasonable Accommodations

A reasonable accommodation is a common-sense solution to an accommodation request. For example, it may be a reasonable accommodation for a person who is blind and uses Braille as his or her primary written method to request that a public information brochure on a new zoning ordinance be Brailled. Notice the word “may.” Every reasonable accommodation is a case-by-case balance review. Not all people who are blind use Braille, and many may prefer the requested information in an electronic format so it may be read by their computers. Therefore, a government agency faced with this issue should ask the person making the request how he or she would like to be accommodated. On the other side of this issue, not all requests are reasonable. For example, a person approaches a library and asks that a 400-page book be made into Braille for that person’s sole use. The cost of this may exceed \$2,000. Given this, the library can say, “No, this is not reasonable when we can order and deliver it on audio tape/CD or in another version usable by you.” Notice in this example that the library is still providing access. If an accommodation request is not reasonable, it is not a required solution under the ADA.

Modification of Policies and Procedures

Modifications because of a person’s disability may be necessary for equal opportunity. This often occurs in test-taking situations.

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When a university accommodates a student with a developmental disability by allowing extra time to take a test, the university applies this part of the ADA. When a person approaches an agency with such a request, the agency has the right to ask for professional proof of the need for an accommodation. A letter from a health professional stating that the person has a developmental disability and needs extra time in taking a test is reasonable. Therefore, modifying the policy or procedure for taking tests is acceptable under the ADA.

This is not an unlimited excuse for waiving all essential requirements of policies or procedures, however. Fundamental alterations are major modifications that completely change the policy and procedures offered. It is not reasonable to waive vision requirements for a pilot’s license because of a disability under the ADA. Safety can trump equal opportunity. If a fundamental request to alter policies or procedures is unreasonable, steps should be taken to ensure as much accessibility as possible can be accomplished. Another example of modifying a policy is the “No Dogs Allowed” ordinances in reference to service animals. A person



Resources

- U.S. Department of Justice, Americans with Disabilities Act home page <<http://www.ada.gov>>
- U.S. Department of Justice Civil Rights Division, Disability Rights Section, *The ADA and City Governments: Common Problems* <<http://www.ada.gov/comprob.pdf>>
- U.S. Department of Justice, Americans with Disabilities Act, *An ADA Guide for Local Governments: Making Community Emergency Preparedness and Response Programs Accessible to People with Disabilities* <<http://www.ada.gov/emergencyprepguide.htm>>
- U.S. Department of Justice ADA Information Line: (800) 514-0301, voice; (800) 514-0383, TTY

who uses a wheelchair and a service animal to assist with mobility has the equal-opportunity right under the ADA to the same programs, services, and facilities as someone who does not require the use of a wheelchair or service animal. A service animal has the same legal standing under the ADA as a tool or piece of equipment such as an individual's wheelchair, except where food is being prepared or where wild animals are present, such as in a zoo or circus. Persons with disabilities use both tools for assistance in their daily activities.

Facilities

When agencies address facilities, they often address only the main offices of facilities. There is more to a facility than access to bathrooms, drinking fountains, and parking spaces. Facilities include pathways in parks and access to public pools, ballparks, meeting rooms, and a multitude of other places. Paths and trails in parks should be accessible and made of a firm and stable material usable by all people. Public pools must have facilities that will accommodate a child in a wheelchair who wishes to enter the pool. Under Title II, sport fields are required to allow a grandfather with a walker the full use and enjoyment of the third-base line so he can watch his grandchild play ball. A public meeting hall should have the capability to use an FM loop system (a system that allows some hearing aids to pick up audio from microphone systems) so people with hearing disabilities can also access a public hearing. These are but a few examples of facility access. The ADA requires access to these facilities, and the agency must be prepared to make changes or accommodate a person with a disability.

Access to Voting in National, State, and Local Elections

One of the authors of this article is blind. He utilizes the AutoMark accessible voting machine during the local, state, and national elections. This machine audibly indicates the choices presented on a voting ballot. Choices are made by using a small number of easily accessed keys. This reasonable accommodation gives him the ability to vote independently.

In closing, Title II of the ADA is an equal-opportunity, civil rights law. It intends to level the playing field by allowing reasonable modifications of policies or procedures in the programs, services, and facilities that governmental agencies offer to the public. ■

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FOOTNOTES

1. 42 USC 12131.
2. 42 USC 12131(1).
3. 42 USC 12131(2).
4. *Id.*
5. See Americans with Disabilities Act of 1990, as amended, available at <<http://www.ada.gov/pubs/adastatute08mark.htm>> (accessed August 22, 2010).
6. 42 USC 12132.
7. *Tennessee v Lane*, 541 US 509, 511; 124 S Ct 1978; 158 L Ed 2d 802 (2004).

