

ADA - Title II

Index

- [Fair and Equal Access - Government Programs](#)
- [Fair and Equal Access - Higher Education](#)
- [Testing Compliance](#)

[back to Title 2 Index](#)

Index

- [Need for the ADA](#)
- [Historical Summary](#)
- [General Rule - Title II](#)
- [Qualified Individual with Disability](#)
 - Definition
 - Exclusions
 - Illegal Drug Users
 - Smoking
- [Essential Eligibility Requirements](#)
- [Direct Threat](#)
- [Unnecessary Eligibility Requirements](#)
- [Program Accessibility](#)
- [Most Integrated Setting](#)
- [Equal Benefit From a Program](#)
- [Equal Quality](#)
- [Reasonable Modification Duty](#)
- [Provision of Personal Devices and Services](#)
- [Fragrances in Public Accommodations](#)
- [Communications](#)
- [Auxiliary Aids and Services](#)
- [Teletypewriters \(TTY's\)](#)
- [Voice Messaging and Hotlines](#)
- [Emergency Services - Telephone](#)
- [Auxiliary Aids and Services - Examples](#)
- [Surcharges](#)
- [Fundamental Alteration/Undue Burden](#)
- [Access to Advisory Boards](#)
- [Contractors/Subcontractors](#)
- [Licensing Certifications](#)
- [Expanded Benefits](#)
- [Retaliation or Coercion](#)
- [Documentation](#)
- [Administrative Requirements of the ADA](#)
 - Self-Evaluation
 - Notice to the Public
 - Responsible Employee - Designation
 - Grievance Procedures
 - On-Going Monitoring Requirements
 - Compliance Cannot be Accomplished by the ADA Coordinator Alone
- [Complaint Procedures](#)
 - Jurisdiction and Timeframe for Filing
 - The Resolution of Complaints
 - Complaint - Right to Remove From Government
 - Alternative Means of Dispute Resolution
 - State Immunity
 - Designated Agencies
 - Areas of Agency Responsibility

[back to ADA - Title II index](#)

Need for the ADA

The ADA was enacted in July, 1990 and provides civil rights protection to persons with disabilities. There are five (5) titles which make up this law.

Title I Covers employment practices

Title II Covers public accommodations and services operated by public entities

Title III Covers public accommodations and services operated by private entities

Title IV Covers telecommunications

Title V Covers other miscellaneous areas of access

This section will examine the requirements of the programmatic access portion of Title II. We are not going to discuss building access or employment. If you have physical access questions, please call the Department of Administration at 651-282-5004(V) or 651-297-4407(TTY). For other ADA issues, call the Department of Employee Relations, Office of Diversity and Equal Opportunity's ADA / Disability Coordinator at 651-297-8849(V) or Minnesota Relay at 800-627-3529.

[back to index](#)

[back to Title 2 Index](#)

Historical Summary

People with disabilities historically have been excluded in large numbers from participating in and benefiting from programs, services, activities and employment as a result of artificial barriers preventing their participation. For example, a person in a wheelchair cannot get up the capitol steps, and a person who is deaf may not be able to participate in and benefit from public hearings and government meetings without a sign language interpreter.

In the mid-1960's, a new collective voice emerged from the Civil Rights Movement advocating for fair and equal access for persons with disabilities. Participating in that collective voice was our own Senator Humphrey who attempted to include disability rights in the Civil Rights legislation. Even though legislation for persons with disabilities was not passed at that time, Humphrey's efforts signified a turning point in the inclusion of persons with disabilities in Civil Rights legislation.

Initially, the idea for a law which advocated for the equal rights and needs for persons with disabilities developed out of a very personal need. Senator Bartlett of Alaska employed a research aide, who needed to make frequent access to the Library of Congress. Since the aide used a wheelchair and the Library of Congress was not easily accessible to persons in wheelchairs, access was difficult; and the aide was literally subject to the whim of the librarian as to whether he could enter. If the librarian felt so inclined, he would arrange to have the aide carried in, however, if he was too busy or just didn't feel like it, the aide was ignored. Senator Bartlett requested the installation of an accessible ramp, but his request was denied. Senator Bartlett became so irritated that he included an item to an appropriations bill to build the ramp. The ramp permitting access for persons who use wheelchairs to the Library of Congress was built in 1965. The ramp was made of steel and cost \$5,000. Interestingly enough, the ramp is still in existence today. Senator Bartlett's appropriation led to the creation of the Architectural Barriers Act, which eventually led to the development and subsequent enactment of the Americans with Disabilities Act (ADA) in 1990.

[back to index](#)

[back to Title 2 Index](#)

Title II General Rule

No qualified individual with a disability shall, by reason of that disability, be excluded from participating in or be denied the benefits of services, programs or activities provided by a public entity.

"Services, programs or activities" includes just about everything a public entity provides. This includes all public contact, whether by telephone, office walk-in or appointment. Title II comprises of all programs, services and activities directly or indirectly administered by state agencies for program beneficiaries and participants.

In order to comply with Title II's general requirements, public entities:

- Must operate their programs so that, when viewed in their entirety, the programs are accessible to and useable by individuals with disabilities.
- Allow a qualified person with a disability to participate in and benefit from a service, program or activity.
- Make reasonable modifications to policies, practices and procedures and provide auxiliary aids and services to ensure equal access to individuals with disabilities, unless a fundamental alteration or "undue burden" would result.
- Provide services or benefits to individuals with disabilities which are integrated, unless separate or different measures are necessary, to ensure that benefits and services are equally effective.
- Take appropriate steps to ensure that communications with applicants, participants and members of the public with disabilities are as effective as with others.

A public entity may not:

- Discriminate against a qualified individual with a disability.
- Set eligibility criteria that discriminate or tend to discriminate against persons with disabilities.
- Select a facility that does not allow persons with disabilities to participate in programs, services or activities for which they are qualified.

An otherwise qualified individual with a disability, either directly or through contractual arrangements, cannot be denied admittance to, participation in or benefit from goods, services, facilities, programs, privileges or advantages.

Example: An agency advisory committee has a policy prohibiting persons with learning disabilities from holding a committee seat. This is discriminatory in nature because it does not allow for differences among people with learning disabilities, some of whom may be able to meet eligibility criteria. A public entity cannot automatically deny admission to a person who meets the bona-fide eligibility criteria, but requires minutes and other handouts on audio tape due to a specific learning disability.

What Type of Programs, Services and Activities Must Comply?

There are two major categories of programs, or activities covered by this regulation.

1. Programs, services and activities involving the general public.

Examples

- Issuing licenses, like driving and fishing;
- 911 and other emergency calls;
- Notification of eligibility for services;

- Providing State Park information;
- Providing public parking by the state;
- Applications for programs;
- Conducting planning council meetings;
- Conducting public hearings.

2. Those directly or indirectly administered by government entities for program beneficiaries and participants.

Examples

- Medicaid;
- Utility rate regulations;
- Zoning regulations;
- Building codes;
- Job Training Partnership Act;
- Minnesota Care.

Title II was designed to pertain to everything a public entity does, even if the goals are accomplished through a contractor. The law is not limited to executive agencies. Title II covers any state or local government, any department, agency, special purpose district or other instrumentality of a state or local government.

Example: A state operates a park containing a motel. The management of the motel is contracted to a private entity. That private entity must meet the same ADA standards as the State, even though they are a private enterprise because the motel is a part of the state park.

Example: A court has requested the testimony of a deaf person, who uses ASL to communicate. The court must provide a qualified ASL interpreter for that person.

[back to index](#)

[back to Title 2 Index](#)

Qualified Individual With A Disability

Title II's protections extend only to "qualified" individuals with disabilities.

- **A "qualified" individual with a disability is someone who, with or without:**

- **reasonable modifications to rules, policies or practices;**
- **removal of architectural, communications or transportation barriers or**
- **provision of auxiliary aids and services,**

meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Another way to consider the meaning of the term "qualified" is: The individual fulfills the legitimate skills, education, experience or other requirements of the program, service or activity and can participate with or without a reasonable modification or the provision of auxiliary aids or services.

A person must meet one of the three prongs of the definition of disability to be protected by the ADA.

Under the ADA, a disability is:

1. **An individual with a physical, mental or emotional impairment, substantially limiting one or more of his/her major life activities:**

An individual under this subsection actually has an impairment resulting in a substantial limitation to his/her ability to perform one or more major life activities.

The term "substantial" means extensive, considerable, material, essential and significant. Impairments which do not result in a substantial limitation are not protected under the ADA.

"Major life activities" include all basic life activities the average person can perform with little or no difficulty.

2. **Has a record of such an impairment:**

An individual that has a history of, or who has been wrongly classified as having a physical, mental or emotional impairment that substantially limits one or more major life activities.

This subsection is intended to protect persons who have had an impairment in the past and have recovered, but are treated as though they still have an impairment.

3. **Is regarded as having an impairment:**

Under this subsection, the individual does not have a physical, mental or emotional impairment that substantially limits one or more major life activities, but he/she is treated as if he/she does.

There are two main classifications in this definition:

1. The person has a physical or mental impairment that substantially limits major life activities *only* as a result of the attitudes of others.
2. The individual does not have a substantially limiting impairment, but is treated by the public entity as though they do.

A person would be covered by this third subsection if a public entity refused to serve him/her because of perceptions or attitudes that the individual has a substantially limiting impairment.

Association With

The ADA also protects persons from discrimination on the basis of an association with someone who has a disability. A public entity cannot deny equal goods, services, facilities, benefits, privileges or advantages to an individual because he/she is associated with or related to a person with a disability.

Example: A government program cannot expel a participant because his/her significant other or child develops AIDS.

Exclusions

The ADA excludes the following:

- Minor physical characteristics, such as blue eyes or black hair;
- Environmental, cultural, economic or other disadvantages such as, having a prison record or being poor;
- Age - by itself age is not a disability;
- Personality traits such as poor judgment or a quick temper where these are not symptoms of a mental or psychological disorder;
- Transvestitism; transsexualism; pedophilia; exhibitionism; voyeurism; kleptomania; pyromania or compulsive gambling;
- Gender identity disorders not resulting from physical impairments or other sexual behavioral disorders;
- Psychoactive substance use disorders resulting from current illegal use of drugs.

However, a person who has one or more of these excluded items and also has a physical, mental or emotional impairment which substantially limits one or more major life activities is protected by the ADA.

Illegal Drug Users

Current illegal drug users are excluded from the protection under the ADA.

Example: JJ is a drug addict and is currently using an illegal drug at the time he applies for state service. Upon review, the state agency providing the service discovers his illegal drug use and does not allow JJ to participate in the program. This decision does not violate the ADA, because *current* illegal drug use is specifically excluded in this law.

However, a person who was previously addicted to an illegal substance, but is no longer using any controlled substances is protected from discrimination by the ADA.

Example: The same instance as above, except JJ has not used any controlled substances for over six months. If the public entity refuses JJ's request because of prior drug use, they are not in compliance with the ADA.

The distinction occurs between current use and former use. "Current" means use of illegal drugs that has occurred recently enough for the public entity to reasonably believe that the person's illegal drug use is on-going.

Smoking

An organization can impose restrictions on smoking without violating the ADA.

[back to index](#)

[back to Title 2 Index](#)

Essential Eligibility Requirements

Essential eligibility requirements are those objectives, criteria and procedures a program establishes to determine who can and cannot participate in or receive benefits from a program, service or activity.

The ADA prohibits a public entity from employing essential eligibility requirements that deny or tend to deny access to programs, services and activities by individuals with disabilities, unless such criterion can be proven essential.

The "essential eligibility requirements" for public services may be minimal. For example, the only eligibility requirement to receive state agency program information may be to request that information. Other eligibility requirements, such as program participation or receipt of agency services, may be more stringent.

Example: The state offers low-cost health insurance to all state employees. If the insurance carrier increases the premium cost for persons with disabilities, the insurance program and the state, would violate the ADA. A public entity cannot refuse to offer the same low-cost health insurance to employees with disabilities on the basis of increased costs.

Example: To receive rehabilitation services through the Department of Economic Security, an individual is eligible if he/she has a qualifying disability and is either unemployed or at risk of losing his/her job. This essential eligibility requirements do not violate the ADA, because the requirements do not discriminate against persons with disabilities.

Example: The Department of Corrections is seeking volunteers to help former inmates learn to read. The location for the training is a building open to the public, which is usually rather busy. The program manager developed criteria that eliminated persons with physical disabilities from participating as volunteers, even if they had the ability to teach reading. The reason provided for this prohibition was a concern about the safety of the tutors. Keep in mind that the participants being tutored are not currently in jail. Since there are no direct threat issues, and there are interested, qualified persons with disabilities who would like to volunteer, this eligibility criteria would violate the ADA.

[back to index](#)

[back to Title 2 Index](#)

Direct Threat

A "direct threat" is a significant risk of substantial harm that is current and based on current medical or other objective evidence. Furthermore, the threat cannot be eliminated or reduced to an acceptable level by reasonable modification(s) or the provision of auxiliary aids or services.

To be a "qualified individual with a disability," the individual may not pose a "direct threat" to the health or safety of others.

The determination of a "direct threat" to the health and safety of the self or others must not be based upon generalizations or stereotypes about the effects of a particular disability. Rather, the determination of "direct threat" should be based upon an individual assessment of the nature, duration, severity of the risk, probability that the potential injury will actually occur, and whether reasonable modifications or accommodation(s) will mitigate that risk to an acceptable level.

Example: JJ has diabetes, tests her blood sugar three times a day, uses injections of insulin and maintains a prescribed diet on a strict schedule. JJ wants to volunteer for a state-wide program providing home visits to persons unable to leave their homes. One of the application questions for the volunteer position is, "do you have a disability?" (which is an illegal question). JJ answered yes. The state agency refuses to allow her to participate, because the insurance company would cancel their policy if the state permitted people with diabetes to participate due to the risk of harm if she were to have a diabetic reaction. There is no objective information to indicate the presence of a "direct threat". The public entity has violated the ADA, because it did not meet the strict criteria of a "direct threat."

Example: JJ would like to participate in a government-funded baseball program at a local park. The program requires participants to be 10-12 years old and live in the city. JJ meets these requirements. JJ is mentally retarded and is a very good player. He plays regularly on the school little league team. The program refuses to allow him to play because they fear he may injure himself. In this case, the program has eliminated a qualified person because of unfounded fears based upon what could happen to any player in the program, not just a child with a disability. This use of "direct threat" is inappropriate. JJ is able to play baseball and the league's rules are based upon fear and misconception, - not facts.

[back to index](#)

[back to Title 2 Index](#)

Unnecessary Eligibility Requirements

If eligibility requirements include unnecessary elements, which screen out people or tend to screen out individuals with disabilities, they must be removed or the public entity must be able to prove the removal of the requirement(s) would result in fundamental alternation or "undue burden."

Example: If a government entity provided a public swimming pool with a lifeguard and required persons with disabilities to be accompanied by a personal assistant to use the facility, they would be in violation of the ADA. It is an unnecessary eligibility requirement, since other members of the public can use the pool unattended.

[back to index](#)

[back to Title 2 Index](#)

Program Accessibility

Public entities must ensure that each program, service or activity is readily accessible to and usable by individuals with disabilities.

To ensure programmatic access, the public entity may have to make modifications to policies, practices, procedures and/or provide auxiliary aids and services, unless such actions result in a fundamental alteration of the program or an undue burden to the public entity.

If a program, service or activity is located in a building that is not accessible, the public entity is still responsible for offering the program to persons with disabilities. In other words, even if a building is not accessible, the programs conducted within that building must be made accessible.

Example: The Department of Natural Resources conducts a course in bird watching. If the course is offered in a facility that is not accessible to persons with mobility impairments, the program must be moved to an accessible site.

Example: A two story state building was built in 1896. It has been placed on the register of historic buildings and must retain its basic character on the exterior. Many of the services offered in the building are not available anywhere else. To address the issues of inaccessibility, the state agency convened a meeting with community members who have disabilities.

During the meetings, many issues and concerns were discussed, including traffic patterns and accessible parking. The building has bus service, but the bus stops are located on a very busy intersection with no semaphores and no accessible parking spaces. The bus company agreed to locate bus stops on the North and East corners where semaphores existed. Accessible parking spaces were added to the northeast corner of the building by making the delivery access driveway narrower. Building access was improved by paving a ramp on a small hill, which eliminated the steps, but left the historical character of the building unchanged.

Since the building had no elevator, a large room on the first floor was utilized to offer services currently located on the second floor so all services were accessible. Last, the state agreed that when it moved, the new location would be accessible and would allow for complete integration of services.

Program accessibility under the ADA is measured by viewing an agency's programs, services or activities "in their entirety." "In their entirety," means that when viewed as a whole, a person with a disability has an equal opportunity to participate in and benefit from the programs, services and activities provided.

Example: Suppose there are two Job Service offices within a one-mile radius of each other and each of them is on the same bus route. One of the offices is fully accessible, but the other does not have any accessible counters or restrooms. Because of the proximity of the two sites, programs are considered to be accessible when "viewed in their entirety."

Methods to provide program accessibility may include, but are not limited to:

- Reassignment of services to accessible buildings or areas of the current site that are accessible;
- Acquisition or redesign of equipment;
- Assignment of aides to beneficiaries and participants;
- Alteration of existing facilities;
- Construction of new facilities;
- Installation of TTY's;
- Providing program documents in alternative formats.

[back to index](#)

[back to Title 2 Index](#)

Most Integrated Setting

Persons with disabilities must be able to participate in and benefit from programs, services and activities in a setting which allows them to participate with individuals who do not have disabilities.

Facilities, services, benefits, privileges, goods and advantages must be provided to an individual with a disability in the "most integrated setting" appropriate. If a separate program exists for persons with disabilities, a public entity must allow them to participate in existing programs if they are able and desire to do so. Preference must be given to the program, service or activity that is integrated.

Example:

You may not prohibit a person with one leg from participating in a regular state park tour, even if you have to set up an adapted tour for persons with disabilities. If the person with one leg can and wants to attend the regular tour, he/ she must be allowed to do so.

Example:

If the state bookstore has several steps at its entrance, services could be made accessible by constructing a low-cost wooden ramp. The ramp would not only allow the purchase of books, but would also allow the person with mobility limitations access to all services of the bookstore. If the ramp is not possible, it could provide a special delivery service. Preference should be given to constructing a ramp, because it is the method that makes the services available in the most integrated setting.

Benefits, goods, privileges and advantages for persons with disabilities cannot be separate or different from those provided other individuals, unless necessary to achieve equally effective services.

Example:

A disabled "only" dining area would violate the ADA.

When viewed as a whole, the provisions dealing with program modification, integration, benefits and quality are designed to encourage the inclusion, not segregation, of individuals with disabilities. These provisions prohibit the denial of equal opportunities enjoyed by others because of, presumptions, patronizing attitudes, fears and stereotypes. *Integration is a fundamental element of the ADA.*

[back to index](#)

[back to Title 2 Index](#)

Equal Benefit From A Program

A public entity must provide a qualified person with a disability an equal opportunity to participate in or benefit from goods, privileges and advantages.

Example:

Every year your agency offers free seminars for high school seniors explaining how to obtain a job with state government. The format includes a question and answer session, plus time for students to visit representatives from the various divisions in your agency. In this situation, you must conduct the seminars in an accessible building. If there is no wheelchair access to the building, you are denying persons who are mobility impaired the opportunity to participate. In addition, a sign language interpreter may be necessary for students who are deaf. Written materials must be available, upon request, in alternative formats for persons with vision impairments.

The ADA requires that equal opportunity be provided, not merely equal treatment. Identical treatment may itself be discriminatory in some cases, because it would not provide persons with disabilities the modifications or auxiliary aids or services they may need in order to achieve equal opportunity.

[back to index](#)

[back to Title 2 Index](#)

Equal Quality

The law requires that persons with disabilities have access to the same quality. Benefits enjoyed by participants without disabilities.

Benefits and quality are closely related. If a program, service or activity is of poor quality, the participants are not able to benefit. When the program, service or activity is reviewed, it must provide comparable quality to that enjoyed by others participating in the program.

[back to index](#)

[back to Title 2 Index](#)

Provision of Personal Devices and Services

Public entities are not generally required to provide personal items under the ADA.

Examples:

Personal items include, but are not limited to;

- Wheelchairs
- Individually prescribed devices
- Prescription glasses
- Hearing aids
- Readers for personal use
- Personal services

[back to index](#)

[back to Title 2 Index](#)

Fragrances in Public Accommodations

A public entity does not have to prohibit the use of fragrances as a modification to policy, procedure or practice because to do so would violate the civil rights of others.

[back to index](#)

[back to Title 2 Index](#)

Communications

All communication modes used by a public entity must be equally effective for persons with disabilities as they are for individuals who do not have a disability.

It is not required that communications for people with disabilities be "the same" as they are with others. The requirement is that communication be as competent and effective as it is with others.

Example:

A person who is deaf goes shopping. When she buys film at a camera store, she communicates with the clerk using notes. Then she goes to a new car showroom. The store can communicate with brochures and written notes, but if she really wants to buy a car she may require an interpreter to help her make the purchase and the terms of the purchase agreement.

To ensure effective communication public entities must furnish appropriate auxiliary aids and services, unless such provision(s) would result in a fundamental alteration or an "undue burden" to the public entity.

Example:

JJ, a person who is deaf, was arrested for shop-lifting. The police officer read his rights out loud, without the aid of an interpreter. He was then locked in the county jail. JJ was told he could call someone, but communication was facilitated again, without the aid of an interpreter or even a written note. Since the police did not have a TTY or an interpreter available, they did not meet the minimum standards to be in compliance with the ADA.

[back to index](#)

[back to Title 2 Index](#)

Auxiliary Aids and Services

Auxiliary aids and services must be provided to ensure effective, accessible communication for applicants, participants and members of the public with disabilities.

Each public entity must invite and provide opportunities for individuals with disabilities to request auxiliary aids and/or services of their choice. The choice of the person with the disability must be given primary consideration. However, a public entity is not required to furnish an auxiliary requested by an individual, if an equally effective aid or service is more readily available or less costly. The effectiveness of the auxiliary aid is the key. The auxiliary aid or service must permit the individual with a disability to equally participate in and benefit from the program, service or activity.

Example:

The Public Utilities Commission conducts continuous regulatory hearings and the advance notice period is often short. A potential program participant requests the hearing notices to be produced in Braille. The PUC realizes that by the time the documents were converted to Braille, the notice would be outdated. Therefore, they discussed with the requesting party, the effectiveness of providing materials on audio tape, a medium with a shorter preparation time. The requesting party agrees to receive audio tapes in lieu of Braille.

Example:

The State announces a training program to be provided for all state employees. The materials invited anyone needing an auxiliary aid or service to make a request for such an accommodation. Three requests were sent to the trainer.

The requests and solutions were:

1. Alternate written format, specifically Braille. The department contracted to convert all the written materials to Braille.
2. Frequent breaks. Lunch break was reduced to 30 minutes, since there is a cafeteria in the building. The extra 30 minutes were converted to two additional 15 minute breaks.
3. A sign language interpreter. This accommodation was provided by contracting with 1-2 qualified ASL interpreters for the training.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved. For simple transactions such as paying bills, filing applications, giving oral directions or reading written instructions may be as effective for individuals with visual impairments as other individuals. However, for a lengthy or complicated licensing test, the public entity may have to provide a reader and/or notetaker, perhaps allowing for additional time.

Similar considerations as to the length and complexity of the type of communication apply when determining whether a signer or an oral interpreter is required for a deaf individual.

Example:

A residential health care facility must be able to communicate with their residents about symptoms, and residents must be able to understand information provided by the medical staff about their health and treatment. In this situation, an interpreter is necessary to ensure effective communication with individuals who are deaf or hard of hearing. Writing notes would be highly inappropriate.

In each circumstance, the public entity must ensure that the interpreter is qualified and able to communicate, both expressively and receptively, with the deaf or hard of hearing individual. There are a number of sign language systems in use by individuals who use sign language. Individuals who use a particular system may not communicate effectively through an interpreter who uses a different system. When an interpreter is required, the public entity should provide a qualified interpreter. Using a staff member who "signs a little bit" or allowing the deaf individual's friend or relative to interpret is inappropriate in many situations.

The ADA is intentionally vague on key concepts pertaining to auxiliary aids. For example, regulations state that public accommodations are required to make available *appropriate* auxiliary aids when necessary to ensure effective communications. But how do you discern if an aid is providing effective communication? Consult the recipient. The individual with the disability is the best resource for obtaining information about the specific need.

You can also receive technical assistance from:

- The Job Accommodation Network at 1-800-526-7234; or
- The Office of Diversity and Equal Opportunity, ADA / Disability Coordinator at (651) 297-8849/V or Minnesota Relay at 800-627-3529.

[back to index](#)

[back to Title 2 Index](#)

Tele-Typewriters (TTY'S)

A public entity must be able to effectively communicate with individuals who are deaf, hard-of-hearing or who have speech impairments. This includes communication that takes place via the telephone.

Programs, services or activities which regularly provide services or information to the general public by telephone should have TTY's to ensure access to persons who are deaf or who have speech impairments. If telephone communication with the public is minimal and not confidential in nature, the program, service or activity can use the Minnesota relay service and invite applicants and participants to use this service in publications. (See the State Policy on Communications on page 29).

Having a TTY installed is not sufficient by itself. Staff must be trained in the use of the TTY and Deaf and heard of hearing etiquette and also must be available to respond to TTY calls.

Relay services are not appropriate for all types of telephone communication.

- Relay systems cannot operate fast enough to convey messages on answering machines or voice-mail systems, or to permit a TTY user to leave a recorded message in the time allowed by the machine or system.
- Communication via relay systems are not appropriate in emergency or confidential situations.

The key is to provide effective communication to all stakeholders.

[back to index](#)

[back to Title 2 Index](#)

Voice-Messaging and Hotlines

When Installing a job or calendar announcement , a telephone hotline may be an effective means to communicate with people who have visual impairments. Such lines might also include school closings and emergency information from time to time in order to serve all members of the community. Hotline information must, however, be available in alternative formats to ensure fair and equal communication with individuals who are unable to use telephone voice messaging or hotline systems.

[back to index](#)

[back to Title 2 Index](#)

Emergency Services - Telephone

All emergency services, including 911 services, must be as effective for persons with disabilities as for others.

In an emergency, time is critical. Public entities must ensure all emergency telephone services are accessible to persons who are deaf, hard-of-hearing or those with speech impairments. The ADA requires that public entities offer emergency services which are "functionally equivalent," to voice services.

Example:

JJ relies on his TTY to communicate by telephone. There is an emergency situation in his home, so he calls an emergency service provider. Because the emergency service provider does not have a TTY, he must then call the relay service and have them make the call to an emergency service provider for him. To be in compliance, emergency services need a TTY and trained staff to respond to all calls as quickly as to all calls received using a standard telephone.

[back to index](#)

[back to Title 2 Index](#)

Auxiliary Aids and Services - Examples

There are numerous aids and services available to provide effective communication. The list below is not all inclusive, but represents a sample of communication aids and services.

- Assertive listening devices
- Assertive listening systems
- Audio recordings
- Braille materials
- Closed-captioned decoders
- Hearing aides
- Large print materials
- Note takers
- Open and closed-captioning
- Qualified interpreters
- Qualified readers
- Taped text
- Telephone hand-set amplifiers
- Telephones with amplifiers
- Transcription services
- TTY's
- Video tech displays
- Written materials

[back to index](#)

[back to Title 2 Index](#)

Surcharges

A public entity may not charge additional fees to an individual or a group with disabilities to cover the cost of auxiliary aids or services necessary to ensure fair and equal access.

Example:

A government entity cannot pass on the costs of providing an interpreter for a program to a Deaf or hard-of-hearing participant.

Example:

A state park with a hiking trail previously made of wood chips, remodeled the trail and put in black top. An individual with a disability who buys a park admissions sticker cannot be charged a higher fee than the rest of the public because he/she will use the paved trail.

Example:

A state agency provides optional special automobile license plates for individuals with disabilities. The agency cannot require the person with a disability to pay more for the plates than others who pay for the regular license plates.

[back to index](#)

[back to Title 2 Index](#)

Emergency Services--Telephone

All emergency services must be as effective for persons with disabilities as for others.

In an emergency, time is critical. Public entities must ensure that all emergency telephone services are accessible to persons who are deaf, hard-of-hearing or those with speech impairments. The ADA requires public entities to offer emergency services, which are “functionally equivalent” to voice services.

Example: JJ relies on his TTY to communicate by telephone. There is an emergency situation on campus and he calls campus security. Because campus security does not have a TTY, he must then call the relay service in order to have them make the call for him. To be in compliance, emergency services needs a TTY and trained staff to respond to all calls as quickly as to those calls received using a standard telephone.

[back to index](#)

[back to Title 2 Index](#)

Index

- [Introduction](#)
- [ADA Compliance Team](#)
- [Reporting Deadline](#)
- [Structuring Your Self-Evaluation](#)
- [Section 504 and the ADA](#)
- [On-going Compliance Requirements](#)
- [Summary of Title II Provisions](#)
- [Definition of Disability](#)
- [Exclusions](#)
- [Illegal Drug Users](#)
- [Qualified Individual with a Disability](#)
- [Essential Eligibility Requirements](#)
- [Direct Threat](#)
- [Program Accessibility](#)
- [Most Integrated Setting](#)
- [Equal Benefit from a Program](#)
- [Equal Quality](#)
- [Separate Programs](#)
- [Surcharges](#)
- [Reasonable Modification Duty](#)
- [Provision of Personal Devices and Services](#)
- [Auxiliary Aids and Services](#)
- [Fundamental Alteration/Undue Burden](#)
- [Physical Accessibility](#)
- [Communication](#)
- [Communication Auxiliary Aids and Services](#)
- [Choice of Auxiliary Aid or Service](#)
- [Telephone Communications](#)
- [Telephone Voice Messaging Systems or Hotlines](#)
- [Tele-Typewriters \(TTY's\)](#)
- [Emergency Services - Telephone](#)
- [Contractors/Subcontractors](#)
- [Retaliation or Coercion](#)
- [Documentation](#)
- [Administrative Requirements](#)
- [On-going Monitoring Requirements](#)
- [Glossary](#)

[back to ADA - Title II index](#)

[back to Title 2 Index](#)

Introduction

The Americans with Disabilities Act (ADA) of 1990 contains several provisions which pertain specifically to agencies, institutions and organizations that provide or have provided examinations leading to employment, licensure, or certification. Both Title I and Title II of the ADA prohibit discrimination pertaining to the offering of benefits, programs or services by state and local governments, whether administered directly by a contractor.

Thus, any examination process conducted by state or local government entities must be offered with appropriate auxiliary aids and services to preclude discrimination on the basis of disability.

The purpose of this text is to provide technical assistance to those individuals involved in the testing and examination process through public entities covered by the ADA. This document draws on extensive experience in providing and creating accommodations in the testing process under Section 504 of the 1973 Rehabilitation Act.

[back to index](#)

[back to Title 2 Index](#)

ADA Compliance Team

Disability Access Services cannot ensure compliance by themselves. Compliance efforts must be supported by all members of your college or university community in order to be successful. Complying with the ADA must be conceived of as a two-step process: determining the necessary components for compliance and implementing a process to ensure that your compliance efforts are continuous. The recommended approach to compliance is to form a compliance team to address such issues as:

- ensuring faculty and staff participation;
- ensuring feedback from the disability community;
- reviewing all written materials, policies and procedures in every academic and non-academic program;
- reviewing any existing products or services;
- identifying existing barriers especially those that are structural, attitudinal and communication-related;
- modifying policies, practices and procedures;
- providing auxiliary aids and services;
- scheduling and completing corrective actions; and
- providing a written record of all compliance activities.

You are strongly encouraged to obtain feedback from students and staff with disabilities. Such efforts could be beneficial in the event that you would be obligated to prove your “good faith” compliance efforts.

Faculty from a variety of academic departments, administrative staff, staff from key areas, such as the library, health services, financial aid, student affairs, and even student government representatives should be included as a part of your compliance team and should participate in this self-evaluation, implementation procedures and on-going compliance efforts.

The self-evaluation forms were developed so that departmental or programmatic liaisons to the ADA Compliance Team could complete them easily. It is recommended that you provide each program, service or activity liaison with a copy of this material and the appropriate forms for their use. You may also wish to provide each liaison with a copy of the Summary Report forms, located at the back of the self-evaluation forms, on which the liaison can record his/her answers, identify an existing barrier and, if a barrier does exist, to enter corrective action to be implemented, including a timeline for completion of such an action.

Final submission of your self-evaluation update need not include every departmental, program or service worksheet. The Summary Reports, along with the detailed attachments, are the only documents which need to be submitted to the State ADA/Disability Coordinator. These summary reports will be compiled in order to develop the report to the Governor. MNSCU campuses who do not submit their updated self-evaluation summary reports will be listed as out of compliance in the report to the Governor.

In subsequent years, the annual campus ADA report will consist of an update of the summary reports.

The individual departmental, program or service worksheets should be retained by the campus ADA coordinator and will be utilized in order to proceed with any corrective action necessary for compliance and to monitor on-going compliance efforts.

[back to index](#)

Reporting Deadline

Each campus is required to submit the summary report(s) resulting from the self-evaluation to the Department of Employee Relations no later than December 31, 1996. Any campus that has not submitted a report by this deadline will be declared as “out of compliance” in the report to the Governor.

[back to index](#)

[back to Title 2 Index](#)

Structuring Your Self-Evaluation

To accurately complete the self-evaluation, the MNSCU planning participants suggest the following:

- Conduct a mini-training session on campus for those unable to attend the formal training, reviewing only the essential requirements of Title II and the purpose of the self-evaluation.
- Distribute only the applicable worksheets to each department and set a due date for completion.
- Have a program liaison recommend corrective action for areas identified as out of compliance and submit their worksheets and a written report of findings and solutions to the ADA coordinator; or
- Meet individually with the program liaisons to review the completed worksheets and to discuss findings and solutions, including a timetable for implementation.

[back to index](#)

[back to Title 2 Index](#)

Section 504 and the ADA

Both the ADA and Section 504 mandate non-discrimination efforts for persons with disabilities who are “otherwise qualified.” Both require that services and programs be offered “in the most integrated setting feasible.” Neither asks you to develop “separate but equal” programs or services. Both laws require you to provide “reasonable accommodations,” but leave the specific interpretation of this term to the individual and the setting.

It is important to remember that the ADA does not invalidate or repeal Section 504. Colleges and universities subject to Section 504 must comply with that law. Since monetary damages are now available under Section 504, colleges and universities subject to both laws could be facing expensive lawsuits if they do not comply.

[back to index](#)

[back to Title 2 Index](#)

On-going Compliance

It is important that you remember that compliance is an on-going responsibility, particularly as new services are added to your campus, new alterations or construction projects are undertaken, and new staff members are added.

The key now is to make sure those efforts remain on-going. The primary issues to address when considering on-going compliance include, but are not limited to:

- problems/areas identified as necessitation in order to achieve compliance;
- policies/changes instituted to achieve compliance;
- an assessment explicating functional and non-functional aspects of compliance and the reasons for both;
- ADA compliance tasks not yet amended and explanations as to why the tasks were not completed;
- compliance projections for the future; and
- mechanisms that are currently instituted to monitor compliance.

[back to index](#)

[back to Title 2 Index](#)

Summary of Title II Provisions

Title II of the ADA mandates that no qualified individual with a disability shall, by reason of that disability, be excluded from participating in or be denied the benefits of the services, programs or activities provided by a public campus, or otherwise be subjected to discrimination by such an entity. "Services, programs or activities" include just about everything a state campus does. It includes all public contact with students, prospective students and parents or guardians, whether by telephone, office walk-in, interview or appointment, or use of the public campus's facilities by both internal and external groups. It also includes all programs and activities directly administered by state agencies for program beneficiaries and participants.

In order to comply with Title II's general requirements, state universities, community colleges and technical colleges:

1. Must operate their programs so that, when analyzed in their entirety, the programs are accessible to and useable by individuals with disabilities.
2. May not refuse to allow a person with a disability to participate in a service, program or activity simply because the person has a disability.
3. Must make reasonable modifications in policies, practices and procedures that deny equal access to individuals with disabilities, unless the result would be a fundamental alteration in the program.
4. May not provide services or benefits to individuals with disabilities through programs that are "separate" or "different" unless the separate or different measures are necessary in order to ensure that benefits and services are equally effective.
5. Must take appropriate steps to ensure that communications with applicants, participants and members of the public with disabilities are as effective as communications with others.

[back to index](#)

[back to Title 2 Index](#)

Definition of Disability

A person must meet one of the three subsections of the definition of disability in order to be protected by the ADA. Under the ADA, a disability is:

1. **An individual with a physical, mental or emotional impairment, that substantially limits one or more of their major life activities:**

An individual under this subsection actually has an impairment resulting in a substantial limitation to his/her ability to perform one or more major life activities.

The term “substantial” means extensive, considerable, material, essential and significant. Impairments which do not result in a substantial limitation are not protected under the ADA.

“Major life activities” include all basic life activities that the average person can perform with little or no difficulty.

2. **Has a record of such an impairment**

An individual that has a history of or has been wrongly classified as having a physical, mental or emotional impairment that substantially limits one or more major life activities.

This subsection is intended to protect persons who have had an impairment in the past and who have recovered, but is treated as if he/she still has an impairment.

3. **Is regarded as having an impairment:**

According to this subsection, the individual does not have a physical, mental or emotional impairment substantially limiting one or more major life activities, but he/she is treated by the public entity as if he/she does.

There are two main categories encompassed by this definition:

- The person has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others.
- The individual does not have a substantially limiting impairment, but is treated by the public entity as though he/she does.

A person would be covered by this third subsection if a public entity refused to serve him/her because of a perception or an attitude that the individual has a substantially limiting impairment.

Association With

A public campus cannot deny equal goods, services, facilities, benefits, privileges, advantages and accommodations to a non-disabled individual because he/she is associated with or related to a disabled individual.

Example: The campus cannot expel a student from campus because her boyfriend, also a student, develops AIDS and leaves school for medical reasons.

[back to index](#)

Exclusions

The ADA excludes the following:

- Minor physical characteristics, such as blue eyes, or black hair;
- Environmental, cultural, economic or other disadvantages such as, having a prison record or being poor;
- Age - by itself age is not a disability;
- Personality traits such as poor judgment or a quick temper, where these are not symptoms of a mental or psychological disorder;
- Transvestitism; transsexualism; pedophilia; exhibitionism; voyeurism; kleptomania; pyromania or compulsive gambling;
- Gender identity disorders not resulting from physical impairments or other sexual behavioral disorders;
- Psychoactive substance use disorders resulting from current illegal use of drugs.

However, a person who has one or more of these excluded items and also has a physical, mental or emotional impairment which substantially limits one or more major life activities is protected by the ADA.

[back to index](#)

[back to Title 2 Index](#)

Illegal Drug Users

Current illegal drug users are excluded from the protection under the ADA.

Example: JJ is a drug addict and is currently using an illegal drug at the time he applies for state service. Upon review, the state agency providing the service discovers his illegal drug use and does not allow JJ to participate in the program. This decision does not violate the ADA, because *current* illegal drug use is specifically excluded in this law.

However, a person who was addicted to an illegal substance in the past but is no longer using any controlled substances is protected from discrimination by the ADA.

Example: The same instance as above, except JJ has been not used any controlled substances for over six months. If the public entity refuses JJ's request because of prior drug use, they are not in compliance with the ADA.

The distinction occurs between current use and former use. “Current” refers to the use of illegal drugs that has occurred recently for the public entity to reasonably believe that the person's illegal drug use is on-going.

[back to index](#)

[back to Title 2 Index](#)

Qualified Individual With a Disability

Title II's protections extend only to "qualified" individuals with disabilities.

A "qualified" individual with a disability is someone who, with or without:

reasonable modifications to rules, policies or practices; removal of architectural, communications or transportation barriers; or provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Another way to consider the meaning of the term "qualified" is: The individual fulfills the legitimate skills, education, experience or other requirements of the program, service or activity and can participate with or without a reasonable modification or the provision of auxiliary aids or services.

An otherwise qualified individual with a disability, either directly or through contractual arrangements, cannot be denied admittance to, participation in, or benefit from goods, services, facilities, programs, privileges, advantages or accommodations at colleges and universities.

Example: Your campus has a policy of prohibiting learning disabled students from admission. This is discriminatory because it does not allow for differences among people with learning disabilities, some of whom may be able to meet your admissions criteria, with or without reasonable accommodation. You could not automatically deny admission to a prospective student who has a good grade-point average, and scores well on the Scholastic Aptitude Test (SAT), but requires books on tape because of a specific learning disability.

Colleges and universities cannot require applicants to disclose disability status prior to admission. Even once the individual has been accepted for admission, a student need not disclose a disability if he/she is not seeking an accommodation.

[back to index](#)

[back to Title 2 Index](#)

Essential Eligibility Requirements

Essential eligibility requirements are those objectives, criteria and procedures a program establishes to determine who can and cannot participate in or receive the benefits from a program, service or activity.

The ADA prohibits a public entity from using essential eligibility requirements that deny or tend to deny access to programs, services and activities by individuals with disabilities, unless such criteria can be proven to be necessary.

Eligibility criteria cannot screen out or tend to screen out individuals with disabilities, unless such criteria can be proven to be necessary for the goods, services, facilities, privileges, advantages or accommodations being offered.

Example: The campus offers low-cost health insurance to all students. However, the insurance carrier will increase your premium cost if students with certain catastrophic illnesses (such as AIDS or cancer) make claims. The campus cannot refuse to offer this insurance to these students simply on the basis of increased costs to the campus.

A campus cannot use standards, tests, criteria or methods of administration, whether directly or through contractual arrangements, that have the effect of discriminating on the basis of disability.

Example: Requiring all prospective students to present orally before the admissions committee would result in the disqualification of otherwise qualified individuals with severe auditory or speech impairments. This requirement could be modified in order to allow a written presentation.

Example: Requiring everyone to take the same written entrance exam, without making copies available in Braille or providing a reader, would be discriminatory toward individuals with visual impairments.

The “essential eligibility requirements” for some campus services may be minimal. For example, the only eligibility requirement for receipt of information from a campus may be to request the information. Other eligibility requirements, for program participation or receipt of campus services, may be more stringent.

[back to index](#)

[back to Title 2 Index](#)

Direct Threat

To be a “qualified individual with a disability” the individual may not pose a direct threat to the health or safety of others.

A “direct threat” is a significant risk of substantial harm that is current and based on current medical or other objective evidence, furthermore, the threat cannot be eliminated or reduced to an acceptable level by reasonable modification(s) or the provision of auxiliary aids or services.

The determination of a "direct threat" to the health or safety of self or others must not be based on generalizations or stereotypes about the effects of a particular disability, but on an individual assessment of the nature, duration, severity of the risk, probability that the potential injury will actually occur; and whether reasonable modifications or accommodation(s) will mitigate the risk to an acceptable level.

[back to index](#)

[back to Title 2 Index](#)

Program Accessibility

Public entities must ensure that each program, service or activity is readily accessible to and usable by individuals with disabilities.

To ensure programmatic access, the public entity may have to make modifications to policies, practices, procedures and/or provide auxiliary aids and services, unless such actions result in a fundamental alteration of the program or an "undue burden" to the public entity.

If a program, service or activity is located in a building that is not accessible, the public entity is still responsible for offering the program to persons with disabilities. In other words, even if a building is not accessible, the programs conducted within that building must be made accessible.

The concept of "program accessibility" originated with the regulations adopted by the Department of Health, Education and Welfare under Section 504 of the Rehabilitation Act. These regulations allowed campuses to comply with Section 504's non-discrimination mandate without incurring the cost of retrofitting existing facilities, so long as programs were accessible or available through alternative methods.

Program accessibility under the ADA is measured by viewing the campus programs, services or activities "in their entirety." The campus is given some flexibility in determining how to ensure accessibility.

Examples of possible modifications to ensure program accessibility include reassignment of services to accessible buildings, acquisition or redesign of equipment, assignments of aides to beneficiaries and participants, provision of services at alternate accessible sites, or alteration of existing facilities or construction of new ones.

[back to index](#)

[back to Title 2 Index](#)

Most Integrated Setting

Benefits, goods, privileges, advantages and accommodations for persons with disabilities cannot be "separate" or "different" from those provided for other individuals, unless necessary in order to achieve equally effective services.

Facilities, services, benefits, privileges, goods and advantages must be provided to an individual with a disability in the “most integrated setting” appropriate. If a separate program exists for persons with disabilities, a public entity must allow them to participate in existing programs if they are able and desire to do so. Preference must be given to the program, service or activity that is integrated.

Example: A “disabled-only” floor in a dormitory would likely violate the ADA.

In choosing amongst the available methods for providing program accessibility, the campus must give priority to the method resulting in the most integrated setting appropriate to encourage interaction among all users, including individuals with disabilities.

For example: A campus library with several steps to the entrance could make its services accessible by constructing or by providing access to individuals with mobility impairments through a bookmobile or special delivery services. Preference should be given to constructing a ramp, because it is the method which makes the services available in the most integrated setting.

If you find it necessary to set up "separate" or "different" programs or services for persons with disabilities to achieve an equal effect, you must still allow them to participate in existing programs if they are capable and desire to do so.

Example: You may not prohibit a person with one leg from participating in regular swimming class, even though you have arranged for an adapted class for persons with disabilities. If the person with one leg is able to attend class and meet the reasonable standards for established swimmers, he/she must be allowed to choose which class to attend.

[back to index](#)

[back to Title 2 Index](#)

Equal Benefit from a Program

A public entity must provide a qualified person with a disability an equal opportunity to participate in or benefit from goods, privileges and advantages as it does for others.

You must provide a qualified person with a disability an equal opportunity to participate in or benefit from goods, privileges, advantages and accommodations that are offered to others.

Example: Every year you offer free employment seminars for juniors, conducted by your cooperative education staff in conjunction with local businesses. The format includes a question and answer session, plus time for students to visit the individual exhibits set up by businesses. In this instance, you must conduct your seminars in an accessible building area. If there is no wheelchair access to the building, you are denying persons who are mobility impaired the opportunity to participate. A sign language interpreter may be necessary for deaf or hard-of-hearing students. Written materials may have to be available on tape for persons with limited vision.

The ADA requires that equal *opportunity* be implemented, not merely equal *treatment*. Identical treatment may itself be discriminatory in some cases, because it would not provide persons with disabilities the modifications or auxiliary aids or services they may require in order to achieve equal opportunity.

[back to index](#)

[back to Title 2 Index](#)

Equal Quality

The law mandates that persons with disabilities be given the same quality enjoyed by participants without disabilities.

Benefits and quality are closely related. If a program, service or activity is of poor quality, the participants are not able to benefit. When the program, service or activity is reviewed, in regard to meeting the needs of persons with disabilities, it must provide comparable quality to that enjoyed by others participating in the program.

[back to index](#)

[back to Title 2 Index](#)

Separate Programs

The primary goal of the ADA is equal participation of individuals with disabilities in “mainstream” American society. A campus may offer "separate" or "special" programs when necessary in order to provide individuals with disabilities equal opportunity to benefit from the program. However, *even* if the campus offers a "separate" or "special" program, the campus cannot deny participation to the individual with a disability in the regular program if the individual with a disability is otherwise qualified to participate in the regular program.

For example: A public campus that provides optional special automobile license plates for individuals with disabilities cannot require an individual with a disability to accept the special plates if he/she applies for regular license plates, unless to do so would result in a fundamental alteration of the program or an undue burden on the campus.

[back to index](#)

[back to Title 2 Index](#)

Surcharges

A public campus may not charge additional fees to an individual or group with disabilities in order to cover the cost of auxiliary aids or services necessary to ensure fair and equal access.

Example A campus cannot require that Deaf or hard of hearing participants fund the costs of providing an interpreter for a program.

Even though providing program accessibility may result in some additional cost, a campus may not impose a charge on a particular individual with a disability or any group of individuals with disabilities in order to cover these costs.

[back to index](#)

[back to Title 2 Index](#)

Reasonable Modification Duty

A public entity must make reasonable modifications to programs, services and activities unless to do so would fundamentally alter the program or result in undue burden to the public entity.

Reasonable modifications are voluntary. An individual with a disability is not required to accept unwanted or unrequested modifications, even if the person will be unable to participate in a program because of his/her refusal.

The duty of reasonable modification begins when a program applicant, participant or member of the general public makes it known to that program that he/she has a disability and subsequently has a need for some change or additional services. The requesting party does not have to use any particular words, like “reasonable modification,” and is not required to fill out a form. Requiring individuals with disabilities to complete a form could, in some situations, constitute discrimination because an impairment may preclude completing the form.

When a request is made, either verbally or in writing, for a modification, the receiving party should document the request as well as the subsequent responses and actions taken.

An entity is not required to change a program to the point in which the program is fundamentally altered. However, if a program, policy, procedure or practice can be modified to provide fair and equal access to people with disabilities, the modification must be completed.

Example: Requiring all prospective participants in a program to present orally before the program committee would have the effect of disqualifying otherwise qualified individuals with speech impairments and deaf and hard-of-hearing individuals. This requirement should be modified in order to allow a written presentation.

[back to index](#)

[back to Title 2 Index](#)

Provision of Personal Devices and Services

Public entities are not generally required to provide personal items as under the ADA.

Examples

Personal items include, but are not limited to;

- Wheelchairs
- Individually prescribed devices
- Prescription glasses
- Hearing aids
- Readers for personal use
- Personal services

[back to index](#)

[back to Title 2 Index](#)

Auxiliary Aids and Services

Auxiliary aids and services must be provided to ensure effective, accessible communication applicants, participants and members of the public with disabilities.

Each public entity must invite and provide an opportunity for individuals with disabilities to request the auxiliary aids and/or services of their choice. The choice of the person with the disability must be given primary consideration. However, a public entity is not required to furnish an auxiliary aid or service exactly as requested by an individual, if an equally effective aid or service is more readily available or less costly. The effectiveness of the auxiliary aid is the key. The auxiliary aid or service furnished must permit the individual with a disability to equally participate in and benefit from the program, service or activity.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved. For simple transactions such as paying bills, filing applications, giving oral directions or reading written instructions may be as effective for individuals with visual impairments as other individuals. However, for a lengthy or more complicated licensing test, the public entity may have to provide a reader and/or notetaker, perhaps allowing for additional time.

Similar considerations as to the length and complexity of communication apply when determining whether a signer or oral interpreter is required by a deaf or hard of hearing individual.

Example: A campus health care program/clinic must be able to communicate with students about symptoms and students must be able to understand information provided by medical staff about their health and treatment. In this situation, an interpreter is necessary to ensure effective communication with individuals who are deaf. Note writing would be highly inappropriate.

In each circumstance, the public entity must ensure that the interpreter is qualified and can communicate both expressively and receptively with the hard of hearing individual. There are a number of sign language systems in use by individuals who use sign language. Individuals who use a particular system may not communicate effectively through an interpreter who uses a different system. When an interpreter is required, the public entity should provide a qualified interpreter. Using a staff member who “signs a little bit” or allowing the deaf individual's friend or relative to interpret is inappropriate in many situations.

The ADA is intentionally vague on key concepts regarding auxiliary aids. For example, regulations state that public accommodations are required to make available *appropriate* auxiliary aids when necessary to ensure effective communications. But how do you know if an aid is providing effective communication? Speak with the recipient. The individual with the disability is the best resource for obtaining information about specific needs. You can also receive technical assistance from the Job Accommodation Network at 1-800-526-7234 or from the Office of Diversity and Equal Opportunity, ADA/Disability Coordinator (651) 297-8849/V or Minnesota Relay at 800-627-3529.

[back to index](#)

[back to Title 2 Index](#)

Fundamental Alteration/Undue Burden

"Fundamental alteration" refers to a modification of a policy, procedure or practice, which results in a substantial alteration of the purpose of the program, service or activity.

"Undue burden" refers to provision of an auxiliary aid or service, which requires significant difficulty or expense.

The obligation to provide auxiliary aids or services to ensure equal access and enjoyment is not meant to place an undue burden upon the public entity. The determination of whether the provision of an auxiliary aid or service is an undue burden is to be made on a case-by-case decision, and based upon the facts of the specific situation.

The following four factors should be considered:

1. The nature and cost of the auxiliary aid or service;
2. The overall financial resources of the campus involved;
3. The overall financial resources of the covered entity;
4. The type of operation(s) of the entity, including composition, structure and functions, the geographic separateness, administrative or fiscal relations of the facility to the covered entity.

Just because one way of fulfilling the obligation to provide an auxiliary aid or service may be unduly burdensome, however, it does not automatically relieve the public entity of its obligation to seek out other ways to attempt to meet its obligation. Only if there are no effective auxiliary aids or services that are not unduly burdensome would the public entity be relieved of its obligation. In other words, the ADA requires public entities to make a "good faith effort" to provide an effective auxiliary aid or service.

The determination of a fundamental alteration or undue burden must be made by the campus president, who has budgetary and spending authority, or his or her designee. All campus resources available for use in funding the service, program or activity must be considered and the campus must provide a written statement of reasons as to why the modification would create an undue burden or a fundamental alteration. Where a proposed modification would be a fundamental alteration or an undue burden, the campus need not implement the proposed modification, but must take other alternative actions to ensure accessibility.

[back to index](#)

[back to Title 2 Index](#)

Physical Accessibility (For information. Not part of this self-evaluation update)

The ADA requires that each campus maintain in operable working condition those features of facilities and equipment that are required for services, programs and activities to be readily accessible to persons with disabilities. Inoperable elevators, locked accessible doors or “accessible” routes that are obstructed by filing cabinets or furniture are not “accessible to, or “usable by,” individuals with disabilities. Temporary or isolated interruptions for maintenance or repairs do not, however, violate the ADA.

The ADA does require each campus to post signs at all inaccessible entrances, directing users to an accessible entrance or location. Structural changes in existing buildings are not required, unless there is no other feasible way to make programs and services accessible. Historic preservation programs may provide alternatives to physical access through the use of such alternatives as audio-visual materials, if the physical alteration of an historic building would destroy the historic significance of the building.

[back to index](#)

[back to Title 2 Index](#)

Communication

All communication modes used by a public entity must be equally effective for persons with disabilities as they are for individuals who do not have a disabilities.

It is not required that communications for people with disabilities be the same as with others. The requirement is that communication be as competent and effective as with others.

- A person who is deaf registers at your college/university. When she purchases books at the bookstore, she communicates with the clerk using notes. Then she has an appointment with her academic advisor to help plan her educational program. The advisor should use an interpreter due to the complexity of this communication.

To ensure effective communication, public entities must furnish appropriate auxiliary aids and services unless such provision(s) would result in a fundamental alteration or an undue burden.

- JJ, a person that is deaf, was stopped by campus security to be questioned about a recent incident. The security officer reads his rights out loud, without the aid of an interpreter. JJ was told he could call someone, again without aid of an interpreter or even a written note. Since campus security did not have a TTY or an interpreter available, they did not meet the minimum standards to be in compliance with the ADA.

[back to index](#)

[back to Title 2 Index](#)

Communication Auxiliary Aids and Services

Auxiliary aids and services must be provided to ensure effective, accessible communication to applicants, participants and members of the public with disabilities.

In order to provide equal access, a campus must make appropriate auxiliary aids and services available, where necessary, to ensure effective communication. Auxiliary aids and services include a wide range of services and devices promoting effective communication.

Examples of auxiliary aids and services for individuals who are deaf or hard of hearing include qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone hand set amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, teletypewriter (TTY), video text displays, and exchange of written notes.

Examples for individuals with visual impairments include qualified readers, taped texts, audio recordings, Braille materials, large print materials, and assistance in locating items.

Examples for individuals with speech impairments include TTYS, computer terminals, speech synthesizers, and communication boards.

[back to index](#)

[back to Title 2 Index](#)

Choice of Auxiliary Aid or Service

When an auxiliary aid or service is required, the campus must provide opportunities for individuals with disabilities to request the auxiliary aids and services of their choice. The most effective type of aid may differ, depending upon the nature of the individual's disability.

For example, some individuals are deaf at birth or have lost their hearing before acquiring language, use sign language as their primary form of communication and may be uncomfortable and/or not proficient with written English. Therefore, making use of a notepad is an ineffective means of communication. On the other hand, individuals who have lost their hearing later in life may not be familiar with sign language and are able to communicate effectively through writing.

For individuals with visual impairments, Braille materials are ineffective if the individual does not read Braille. A more appropriate auxiliary aid might be a reader, an audio recording, or large print materials. A campus should give priority to an individual's expressed choice for a particular aid and should ordinarily honor that choice unless an equally effective means of communication is available or unless the means chosen would require a fundamental alteration or an undue financial or administrative burden to the campus.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved. For simple transactions, such as; paying bills, or filing applications, giving oral directions or reading, written instructions may be as effective for individuals with visual impairments as other individuals. However, for a lengthy or complicated licensing test, the campus may have to provide a reader and/or notetaker perhaps allowing for additional time.

Similar considerations pertaining to the length and complexity of a communication apply when determining whether a signer or oral interpreter is required by a hard of hearing individual.

For example, a campus security officer must be able to communicate with victims about what crime has occurred; and the individual must be able to understand information provided about their rights, including any medical treatment necessary. In this situation, an interpreter may be necessary for communications with individuals who are deaf or hard of hearing.

In each circumstance, the campus must ensure that the interpreter is qualified and able to communicate both expressively and receptively with the deaf or hard-of-hearing individual. There are a number of sign language systems in use by individuals who use sign language. Individuals who use a particular system may not communicate effectively through an interpreter who uses a different system. When an interpreter is required, the campus should provide a qualified interpreter. Using a staff member who "signs a little bit" or allowing the hard of hearing individual's friend or relative to interpret is not appropriate.

[back to index](#)

[back to Title 2 Index](#)

Telephone Communication

Campus offices and departments that communicate by telephone must provide equally effective communication to individuals with disabilities.

This requirement can be satisfied if the campus has TTY lines to communicate with deaf, hard-of-hearing and speech impaired individuals.

Public colleges and universities are strongly urged to install TTY's to communicate with individuals who are deaf, hard-of-hearing or speech impaired. Public colleges and universities are permitted by the regulations to rely instead on telephone relay systems, if they are available. School administrators are cautioned, however, that relying on a relay system may violate confidentiality requirements because a third party is involved in the conversation. When a TTY is installed, the college/university should publicize its availability and train staff members to use it properly.

The ADA contains additional requirements for emergency telephone services. Telephone emergency services, including emergency services, must provide direct access to individuals who use TTY's and computer modems.

[back to index](#)

[back to Title 2 Index](#)

Telephone Voice Messaging Systems or Hotlines

Voice messaging the hotlines, but be accessible to persons with disabilities.

Installing a job or calendar announcement telephone hotline may be an effective way to communicate with people who have visual impairments. Such lines might also include school closings and emergency information from time to time to serve all members of the community. Hotline information must, however, be available in alternative formats to ensure fair and equal communication with individuals who are unable to use telephone voice messaging or hotline systems.

[back to index](#)

[back to Title 2 Index](#)

Tele-Typewriters (TTY's)

A public entity must be able to effectively communicate with individuals who are deaf, hard-of-hearing or have speech impairments. This includes communication that takes place via the telephone.

Programs, services or activities which regularly provide services or information to the general public by telephone should have TTY's to insure access to persons who are deaf, hard of hearing or who have speech impairments. If telephone communication with the public is minimal and not confidential in nature, the program, service or activity can use the Minnesota relay service and invite applicants and participants to use this service in publications. (See the State Policy on Communications at the end of this reference material).

Having a TTY installed is not sufficient by itself. Staff must be trained in TTY use and Deaf etiquette in addition to being available to respond to TTY calls. TTY tapes must be destroyed after the conversation is completed to ensure the same confidentiality as callers who use a standard telephone to communicate with the campus.

Relay services are not appropriate for all telephone communication.

Relay systems cannot operate fast enough to convey messages on answering machines or voice-mail systems or to permit a TTY user to leave a recorded message in the time allows by the machine or system.

Communication via relay systems are not appropriate in emergency or confidential situations.

The key is to provide effective communication to all stakeholders.

[back to index](#)

[back to Title 2 Index](#)

Emergency Services--Telephone

All emergency services must be as effective for persons with disabilities as for others.

In an emergency, time is critical. Public entities must ensure that all emergency telephone services are accessible to persons who are deaf, hard-of-hearing or those with speech impairments. The ADA requires public entities to offer emergency services, which are “functionally equivalent” to voice services.

Example: JJ relies on his TTY to communicate by telephone. There is an emergency situation on campus and he calls campus security. Because campus security does not have a TTY, he must then call the relay service in order to have them make the call for him. To be in compliance, emergency services needs a TTY and trained staff to respond to all calls as quickly as to those calls received using a standard telephone.

[back to index](#)

[back to Title 2 Index](#)

Contractors -- Subcontractors

A public entity must ensure that they contract with to see that they comply with the law and set up contract compliance rules.

[back to index](#)

[back to Title 2 Index](#)

Retaliation or Coercion

If an individual exercises his/her rights under the ADA, the public entity cannot retaliate against or coerce the individual. Situations in which a formal complaint has been filed are difficult for all parties involved. Any form of coercion, retaliation or threatening conduct increases liability. Allow the responsible entity to handle the complaint and to make a "good faith effort" to resolve it.

Example: JJ is a blind technical college student who requested all of his printed materials in advance in order to have them taped or translated into Braille. The college always neglected to provide JJ with the materials in a timely manner. He either never received the materials, or he obtained them so late in the semester that the materials were of no use. Since he didn't have access to the pertinent materials, subsequently, his grades suffered. After repeated attempts to ameliorate the situation and having no success, JJ filed a grievance with the college. Rather than attempting to alter its policies, the college retaliated against JJ and made it even more difficult for him to obtain his books or to complete his assignments. Finally, JJ filed a retaliation lawsuit against the college.

[back to index](#)

[back to Title 2 Index](#)

Documentation

Written documentation of the process supports your decision and helps protect the organization from unnecessary litigation. If your decision is challenged, the burden of proof will be on the agency.

Your written documentation should include all of the facts of the situation plus:

- What was done;
- Why was it necessary;
- The process utilized to reach this decision; and
- A list of all those who participated in the process.

[back to index](#)

[back to Title 2 Index](#)

Administrative Requirements

Title II imposes a number of administrative requirements upon campus entities to ensure compliance with the ADA and its regulations. These requirements include that the each campus complete a self-evaluation and periodic updates, and provide notice to all applicants, participants, beneficiaries and other interested persons of the protections afforded by Title II. In addition, each campus is required to (a) develop a grievance procedure; (b) designate an individual to oversee Title II compliance; (c) develop a transition plan if structural changes are necessary for achieving program accessibility; and (d) retain each self evaluation for three years.

[back to index](#)

[back to Title 2 Index](#)

On-Going Monitoring Requirements

The campus must then analyze whether these policies and practices adversely affect the full participation of individuals with disabilities in its programs, activities and services. A campus should not assume that policies and practices which appear harmless are in fact harmless. Areas that may need careful examination include the following:

- a. *Eligibility/qualification criteria.* Each campus must review its policies and practices to determine whether they exclude or limit the participation of individuals with disabilities in programs, activities, or services. The self-evaluation should identify policy modifications to be implemented, including complete justification for any exclusionary or limiting policy or practice that will not be modified.
- b. *Communication methods.* (telephone - video). Each campus program, service or activity must review its policies to ensure that communication with applicants, participants, members of the campus and the public with disabilities is conducted in a manner that is as effective as its communications with others. If a campus representative communicates with applicants and beneficiaries by the telephone, he/she should ensure that TTY's or equally effective telecommunication systems are used to communicate with individuals with speech impairments or who are deaf or hard of hearing.
- c. *Communication methods.* (readers, interpreters, notetakers). Each campus must review its policies and procedures to ensure that they include provisions for readers for individuals with visual impairments; interpreters or other alternative communication measures, as appropriate, for individuals who are deaf or hard of hearing; and assistance for individuals with manual impairments. A method for securing these services should be developed, including guidance on when and where these services will be provided. An assessment should be made to ensure that the equipment is usable by individuals with disabilities, particularly individuals with visual and manual impairments or who are deaf or hard of hearing.
- d. *Evacuation.* A review must be conducted of the procedures to evacuate individuals with disabilities during an emergency.
- e. *Non-discriminatory visual materials.* A review should be conducted of all campus written and audio-visual materials to ensure that individuals with disabilities are not portrayed in an offensive or demeaning manner.
- f. *Access for the mobility-impaired.* A campus should review its policies and procedures to ensure that individuals with mobility impairments are guaranteed access to campus meetings.
- g. *Employee training.* A review should be conducted to ascertain whether measures have been taken to ensure that employees of a campus are familiar with the policies and practices for the full participation of individuals with disabilities. Appropriate training should be provided to all employees.
- h. *Consultation with individuals with disabilities.* There is no requirement for campus hearings on a campus's self-evaluation, but campuses are required to accept comments on the self-evaluation and are strongly encouraged to consult with individuals with disabilities and organizations that represent them to assist in the self-evaluation process.

[back to index](#)

[back to Title 2 Index](#)

Glossary

Accessible

Easy to approach, enter, operate, participate in, or use safely and with dignity by people with disabilities (i.e. site, facility, service or program).

Auxiliary Aids and Services

Devices or services which accommodate a functional limitation of a person with a communication disability. The definition includes: qualified interpreters and communication devices for people who are deaf or hard-of-hearing; qualified readers, taped texts, Braille, or other devices for people with visual impairments; adaptive equipment or similar services and actions for people with other communication disabilities.

Disability

A person who has a physical or mental impairment that substantially limits one or more of the person's major life activities, has a record of such impairment, or is regarded as having such an impairment.

"Direct Threat"

A significant risk of substantial harm to the health or safety of others, based on medical or other objective information, that cannot be eliminated or reduced to an acceptable level by modifications to the policies, practices or procedures of the campus or by the provision of auxiliary aids or services.

Essential Eligibility Requirements

Criteria used to determine whether an individual qualifies for participation in and/or benefits obtained from a program, service or activity.

Major Life Activity

Basic activities that the average person in the general population can perform with little or no difficulty, including but not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Qualified Individual with a Disability

An individual with a disability who satisfies the basic requirements of the program, service or activity in which they wish to participate in and benefit from.

Readily Achievable

Able to be completed without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include the nature and cost of the action, the overall financial resources and the effect on expenses and resources, legitimate safety requirements, impact on the operation of a site, and, if applicable, the overall financial resources, size and type of operations of any parent entity.

Reasonable Accommodation

1) A modification or adjustment to the application process that enables a qualified person with a disability to be considered as a program, service or activity participant, or 2) Modifications or adjustments to the environment, or to the manner or circumstances under which participation is customarily engaged in, that enable a qualified individual with a disability to participate in an integrated setting and enjoy equal benefits and privileges of the program, service or activity as are afforded its other similarly-situated participants without disabilities.

Reasonable Modification

Changes to policies, practices and procedures to ensure that each program is readily accessible to and

usable by individuals with disabilities, unless to do so would result in a fundamental alteration of the nature of the program, service or activity or in undue financial and administrative burdens.

Title V of the Rehabilitation Act (Section 504)

Title of the law that prohibits discrimination on the basis of a disability by the federal government, federal contractors, by recipients of federal financial assistance, and in federally-conducted program and activities.

"Undue Hardship"

With respect to the provision of an accommodation or modification, significant difficulty or expense incurred by a covered entity, when considered in light of certain factors. These factors include the nature and cost of the accommodation/modification in relation to the size, resources, nature and structure of the campus operation. Where the campus making the accommodation is part of a larger entity, the structure and overall resources of the larger organization is considered, as well as the financial and administrative relationship of the facility to the larger organization.

Equal Opportunity

May not provide services or benefits to individuals with disabilities through programs that are separate or different unless the separate or different, measures are necessary to ensure that benefits and services are equally effective.

[back to index](#)

[back to Title 2 Index](#)

Access to Advisory Boards

A public entity cannot deny a qualified individual with a disability an opportunity to participate as a member of a planning, or advisory board.

Example:

An agency has a health care advisory board. The essential eligibility criterion to participate on the board are a knowledge of health care delivery systems and residence in the covered area. The agency receives an application from a person with a disability who meets the criteria for participation. The county's decision to accept the applicant to the advisory board must be based on the applicant's attributes and not on his/her disability.

[back to index](#)

[back to Title 2 Index](#)

Contractors - Subcontractors

A public entity must ensure that contractors and subcontractors comply with the law and set up contract compliance rules.

Example:

JJ is blind, however, he is mobile with the aid of a service animal. The State Arts Board funds a local arts program which is operated by a private entity. JJ is enrolled in the program. The city informs the private program provider that one of the customers in the program is blind. The provider states this is no problem, they have worked with people who are blind before and look forward to JJ's participation. When he arrives and the proprietor spots his dog, they refuse to allow JJ into the building because of his dog. The State Arts Board attempts to persuade the program provider to comply with the ADA and to modify its policy of prohibiting animals in the building, but they are unsuccessful. So, the Arts Board has no choice and suspends the contract.

[back to index](#)

[back to Title 2 Index](#)

Licensing and Certifications

A public entity cannot use standards, tests, criteria or methods of administration, whether directly or through contractual arrangements, which have the effect of discriminating on the basis of disability.

Example:

Requiring all applicants for licensure to make an oral presentation before the licensing board would have the effect of disqualifying otherwise qualified individuals with severe hearing or speech impairments. This requirement could be modified in order to allow a written presentation.

This section ensures that persons with disabilities are not precluded from educational, professional or trade opportunities because an examination or course is conducted in an inaccessible site or without an accommodation.

Appropriate auxiliary aids must be provided to an individual taking an exam or a course unless they result in an "undue burden" or if they would fundamentally alter the particular exam or course. Auxiliary aids may include, but are not limited to, taped exams or texts, interpreters or other effective methods of making orally delivered materials available to individuals who are deaf or hard-of-hearing, readers for individuals with visual impairments or learning disabilities, extended test time and other similar services and actions.

Example:

Requiring an applicant for licensure or certification to take a written exam, without making copies available in Braille or providing a reader, would discriminate against individuals with visual impairments.

[back to index](#)

[back to Title 2 Index](#)

Expanded Benefits

Nothing in the law prohibits a public entity from providing benefits, services, or advantages beyond those required.

Examples

- The State of Minnesota permits individuals with adaptive types of disabilities a \$75 per year tax break on their property taxes.
- The State of Minnesota allows people with specific disabilities to purchase lifetime fishing licenses.
- The State of Minnesota also entitles individuals with specific disabilities to purchase license plates and/or stickers for a service charge.

All three of the above are legal under this section of the rule even though they are not required.

[back to index](#)

[back to Title 2 Index](#)

Retaliation or Coercion

If an individual exercises his/her rights under the ADA, the public entity cannot retaliate or coerce that individual. Situations in which a formal complaint has been filed are difficult for all parties involved. Any form of coercion, retaliation or threatening will increase liability. Allow the responsible entity to effectively manage the complaint and to make a "good faith effort" to resolve it.

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[back to index](#)

[back to Title 2 Index](#)

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[back to index](#)

[back to Title 2 Index](#)

Administrative Requirements of the ADA

Self-Evaluation

All public entities are required to do an initial self evaluation and periodic updates. The initial self-evaluations were completed in 1991-92. All public entities are also required to develop policies procedures for amending any items identified as out of compliance. All self-evaluations must be retained and available to the public, upon request, for three years.

The self-evaluation must include:

1. A list of persons who conducted the self-evaluations, including individuals with disabilities;
2. A description of the programs, services and activities evaluated, including any problems identified;
3. A time table to restore identified deficiencies into a state of compliance;
4. Documentation of steps implemented to remedy deficiencies;
5. A description of any modification/accommodation(s) made.

Notice to the Public

All public entities must post a general notice to the public, stating its commitment to nondiscrimination and fair and equal access, and regularly distribute information about requirements of the law to applicants, participants, beneficiaries and other interested persons. (See the State Policy on Communications on page 29 and the Notice to the Public on page 36). The format(s) used for this information and notice must provide access to the greatest possible number of people.

Responsible Employee - Designation

All public entities must assign at least one employee to coordinate ADA compliance activities and attempt to resolve any disputes which may arise. The names of the ADA Coordinators, their areas of responsibility, office addresses and telephone numbers must be included on the notices directed to the public, including program advertisements.

Grievance Procedures

Each agency is required to institute a timely grievance procedure, attempting to resolve any disputes in a prompt manner.

On-Going Monitoring Requirements

Each agency must establish and implement a process to regularly monitor their programs, services, activities and communications to ensure the provision of fair and equal access for all persons. New programs, services, activities and methods of communication are frequently expanded or revised, so a continuous monitoring process enables the agency to remain in compliance.

Subjects which may require careful examination include the following:

1. *Eligibility/Qualification Criteria.* Review new or revised policies and practices to determine the possibility of any exclusions or limitations of the participation of individuals with disabilities in the agency's programs, activities, or services.
2. *Communication Methods.* (telephone, video). Review new or revised policies to ensure that it communication with applicants, participants and the public with disabilities is as effective as it is with others.

3. *Communications Methods.* (readers, interpreters, notetaker(s). Review new or revised policies to ensure the inclusion of provisions for readers for individuals with visual impairments; interpreters or other alternative communication measures, as appropriate, for individuals who are deaf or hard-of-hearing; and assistance for individuals with manual impairments. A method for securing these services should be developed, including guidance on when and where these services will be provided. An assessment should be conducted to ensure that the equipment is functional for individuals with disabilities, particularly individuals with hearing, visual, and manual impairments.
4. *Evacuation.* Regularly review procedures to evacuate individuals with disabilities during an emergency.
5. *Non-discriminatory visual materials.* Review new or revised written and audio-visual materials to ensure that individuals with disabilities are not portrayed in an offensive or demeaning manner.
6. *Access for the mobility-impaired.* Review new or revised policies and procedures to ensure that individuals with mobility impairments are provided access to new programs, services or activities.
7. *Employee training.* Review new or revised training sessions to assess their accessibility to persons with disabilities based upon available methods of publication.

Compliance Cannot be Achieved by the ADA Coordinator Alone

The agency ADA Coordinators cannot guarantee compliance by themselves. Compliance efforts must be supported by all members of your agency in order to be successful. Complying with the ADA must be considered a two-step process: determining the necessary elements for compliance, and implementing a process to ensure that compliance efforts are continuous. The recommended approach to managing compliance issues is to form a compliance team to address issues such as:

- the need to ensure leadership and staff participation;
- access to obtain feedback from the disability communities;
- the necessity to review all written materials, policies and procedures pertaining to every program, service or activity;
- the need to review any existing product or service;
- the ability to identify existing barriers, especially those that are structural, attitudinal and communication-related;
- the necessity to modify policies, practices and procedures;
- the need to provide auxiliary aids and services;
- the need to schedule and complete corrective actions;
- the obligation to provide a written record of all compliance related activities.

You are strongly encouraged to obtain feedback from staff and participants with disabilities. Such efforts could be beneficial in the event that you would be obligated to prove your "good faith" compliance efforts.

[back to index](#)

[back to Title 2 Index](#)

Complaint Procedures

Jurisdiction and Timeframe for Filing

Any individual or group that feels they have been discriminated against on the basis of disability has the right to file a complaint. The time frame for filing a complaint is 180 days from the date of the alleged act of discrimination. The time frame can be extended for a good cause. One example of a "good cause" is an internal grievance procedure.

The complaint does not need to be filed with the specific designated agency, but can be filed with any federal agency or the Minnesota Department of Human Rights. If a complaint is filed with an agency without coverage, the agency forwards the complaint to the agency that has jurisdiction, informing the complainant of the transfer.

If a complaint is filed with a department without jurisdiction, the clock still stops.

The Resolution of Complaints

The designated agency will resolve complaints and issue findings to the complainant and to the public entity. The letter of findings will contain the facts and conclusions of the law, including a description of a remedy for each party involved.

Complaint - Right to Remove From Government

At any time, the complainant may file a private suit, regardless of whether the designated agency determines that there is a violation.

When the designated agency issues a non-compliance letter, the agency will:

- Notify the Assistant Attorney General; and
- Initiate negotiations with the public entity.

Alternative Means of Dispute Resolution

Where appropriate, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, mini-trials, fact finding and arbitration, is encouraged.

State Immunity

A state shall not be immune, according to the Constitution of the United States, from an action in Federal, or State Court, for a violation of the ADA.

Designated Agencies

The Federal Assistant Attorney General coordinates compliance activities of federal agencies with respect to state and local governments. The regulations assign the Department of Justice as the designated agency responsible for all state and local government functions not assigned to other designated agencies.

The Department of Commerce preferred not to be listed as a designated agency for commerce and industry and, therefore, was excluded.

Areas of Agency Responsibility

Department of Agriculture: Farming, Raising of livestock, Extension services.

Department of Education: Elementary and secondary education, Institutions of higher education, Vocational education, Libraries.

Department of Health and Human Services: Health care, Social services, Schools of Medicine, Dentistry, Nursing, Health-related schools, Health care and social service providers and institutions.

Department of Housing and Urban Development: Public housing, Housing assistance, Department of the Interior.

Land and natural resources: Parks and recreation, Water, Waste management, Environmental protection, Energy, Museums, Historical and cultural preservation.

Department of Justice: Law enforcement, Public safety, Administration of Justice, Commerce and industry.


Department of Labor: Labor and the work force.

Department of Transportation: Transportation, Transportation management (non-law enforcement), Automobile licensing, Automobile inspection, Drivers licensing.

If two or more agencies have responsibility, the Assistant Attorney General determines who is responsible for the complaint.

[back to index](#)

[back to Title 2 Index](#)

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Index

- [Introduction](#)
 - [Overview of Legal Obligations](#)
 - [The Law and Its Implications for Testing](#)
 - [Types of Tests](#)
 - [Responsibilities of Boards of Licensure, Certification and Employers](#)
 - [Application Inquiries](#)
 - [Applications for Testing](#)
 - [Documentation of Disability](#)
 - [Confidentiality of Disability-Related Information](#)
 - [If the Requested Accommodation is Not Available?](#)
 - [Is Accommodation Always Required?](#)
 - [Cost of Accommodations](#)

- [Accommodations](#)
 - [Changes to the Test Site](#)
 - [Changes to the Test Time Limit](#)
 - [Changes to the Test Medium and/or Content](#)

- [Common Disabilities and Appropriate Accommodations](#)
 - Visual Impairments
 - Deaf or Hard-of-Hearing
 - Print Disabilities
 - Manipulative/Writing Impairment
 - Mobility Impairments
 - Debilitating Conditions
 - Changes to Test Content
 - Accommodation of Non-Written Tests

- [Testing Accommodation Request Form/Documentation of Disability-Related Need](#) or 

- [References](#)

This material is available in alternative formats upon request to the ODEO Office of the State ADA / Disability Coordinator (651)297-8849/V and Minnesota Relay at 800-627-3529.

References

Testing Accommodations for Persons with Disabilities: A Guide for Licensure, Certification and Credentialing, Association on Higher Education and Disability (AHEAD) with support from the Department of Justice, Grant #91-CR-CX-0014.

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[back to ADA - Title II index](#)

[back to Title 2 Index](#)

Introduction

The Americans with Disabilities Act (ADA) of 1990 contains several provisions which pertain specifically to agencies, institutions and organizations that provide or have provided examinations leading to employment, licensure, or certification. Both Title I and Title II of the ADA prohibit discrimination pertaining to the offering of benefits, programs or services by state and local governments, whether administered directly by a contractor.

Thus, any examination process conducted by state or local government entities must be offered with appropriate auxiliary aids and services to preclude discrimination on the basis of disability.

The purpose of this text is to provide technical assistance to those individuals involved in the testing and examination process through public entities covered by the ADA. This document draws on extensive experience in providing and creating accommodations in the testing process under Section 504 of the 1973 Rehabilitation Act.

[back to index](#)

[back to Title 2 Index](#)

Overview of Legal Obligations

- An public entity must provide an equal opportunity for an individual with a disability to participate in the application process and to be considered for licensure/certification.
- A public entity may not make any pre-employment inquiries regarding disability.
- Tests that screen out or tend to screen out persons with disabilities on the basis of disability must be job-related and consistent with business necessity.
- Tests must reflect the skills and aptitudes of the individual rather than impaired sensory, manual, or speaking skills, unless those skills are job-related skills that the test is designed to measure.

[back to index](#)

[back to Title 2 Index](#)

The Law and Its Implications for Testing

The ADA requires that examinations (and the application process leading to the examination) must be accessible to persons with disabilities, regardless of who is doing the actual testing. If the test is being administered by a state or local government, discrimination on the basis of disability is prohibited under Title II. If the test is being administered by a private entity contracted with by a state or local government, the subcontractor is also required to adhere to the provisions of Title II for the provision of the test.

In preparing the final rules for implementation of the ADA, the government reviewed thousands of comments voiced by concerned parties regarding various aspects of the new law. Of special note is the following review presented by the Department of Justice, the enforcement authority for Title II of the ADA:

"Some individuals who provide examinations for licensing or certification for particular occupations or professions, urged that they be permitted to refuse to provide modifications or aids for persons seeking to take the examinations if those individuals, because of their disabilities, would be unable to perform the essential functions of the profession or occupation for which the examination is given, or unless the disability is reasonably determined in advance as not being an obstacle to certification.

The Department of Justice has not changed its rule based on this comment. An examination is one stage of licensing or certification process. An individual should not be barred from attempting to pass that stage of the process merely because he or she might be unable to meet other requirements of the process. (emphasis added) If the examination is not the first stage of the qualification process, an applicant may be required to complete the earlier stages prior to being admitted to the examination. On the other hand, the applicant may not be denied admission to the examination on the basis of doubts about his or her abilities to meet requirements that the examination is not designed to test."

[back to index](#)

[back to Title 2 Index](#)

Types of Tests

A public entity may use any kind of test to determine qualifications for employment, licensure, certification, or credentialing. The ADA has two major requirements in relation to tests:

1. If a test screens out or tends to screen out an individual with a disability or a class of such individuals on the basis of disability, it must be job-related and consistent with business necessity. This requirement applies to all kinds of tests.
2. The ADA requires that tests be given to people who have impaired sensory, speaking or manual skills in a format and manner that does not require use of the impaired skill, unless the test is designed to measure that skill. (Sensory skills include the abilities to hear, see and to process information.)

The purpose of these requirements is to assure that tests accurately reflect a person's skills, aptitudes, or whatever else the test is supposed to measure, rather than the person's impaired skills.

[back to index](#)

[back to Title 2 Index](#)

Responsibilities of Boards of Licensure, Certification and Employers

Typically, government entities and employers are involved in the testing process in one of two ways:

- They directly administer some test of knowledge/skills/achievement to applicants; or
- They use the scores reported by some private agency who administers a similar examination.

The guidelines for compliance outlined below are pertinent to those who administer examinations. However, it is important to remember that any state or local government agency is prohibited from discrimination on the basis of disability. Thus, you have the responsibility of making sure examinations are appropriately accessible, even if you are not directly administering the test. You must assure that the entity administering the test is in compliance with ADA guidelines.

[back to index](#)

[back to Title 2 Index](#)

Application Inquiries

No application for employment, licensure, or certification can contain prohibited questions pertaining to disability status. Numerous employers and licensing/certification boards across the country have been found in violation of the ADA, because of questions regarding past history of a disability, particularly psychiatric disabilities. Application forms should be carefully reviewed to ensure that such questions are eliminated.

[back to index](#)

[back to Title 2 Index](#)

Applications for Testing

The ADA requires agencies/entities administering examinations to offer them in an accessible location and to provide auxiliary aids and services for the test-taker with a disability. It is encouraged that the application form developed for requesting testing accommodations provide ample opportunity for the applicant with a disability to clearly state disability-related needs during the application process. While the ADA does not require the agency to recruit and seek qualified persons with disabilities to be involved in the testing process, each agency has a responsibility to be proactive in meeting the needs of persons with disabilities who choose to access the examination process. *In other words, the administering agency is required to establish a process for making auxiliary aids and services available to persons with disabilities.*

In order to protect the integrity of the testing process and to avoid unnecessary preparation for disability-related needs, the law allows the administering agency to request documentation of eligibility and advance notification of disability-related needs. However, the process involved in documenting disability and requesting accommodation may not impose discriminatory timelines on the individual with the disability.

Applicants with disabilities are entitled to, and have the responsibility to meet, the same deadlines for application and submission of documentation established for pre-registration of non-disabled individuals.

The following wording is suggested to ensure inclusiveness on the standard application for testing:

If you have a disability and may require some accommodation in taking this examination, be sure to fill out and submit the 'Request for Accommodation' form along with this application. If an accommodation is not requested in advance, we cannot guarantee the availability of accommodations on-site.

Such 'Request for Accommodation' forms should be available in all locations where the application forms are available. If the individual is requesting an application to be sent, he/she should be asked if an accommodation form is needed. If the question is NOT asked, a copy of the form should be mailed along with the application.

[back to index](#)

[back to Title 2 Index](#)

Documentation of Disability

The purpose of documentation is to establish the validity of the request for accommodation and to provide information pertaining to what accommodations are required. The testing entity is not allowed to request disability-related information beyond that pertaining to a specific accommodation.

For example: Requesting test scores for a diagnosis of a learning disability is not appropriate. If the person has already been diagnosed and accommodated as an individual with a learning disability, then that person is disabled under the law and entitled to an accommodation.

For persons who have observable disabilities (for example, those who use a wheelchair, who are blind, or who are deaf or hard of hearing) the testing agency needs no further documentation to prove the existence of the disability.

For those with hidden disabilities. (for example, a learning disability or a chronic health impairment that affects energy levels or concentration) it is appropriate to request documentation illustrating the need for an accommodation.

The applicant may be required to accept the cost of providing the requested documentation. However, the agency or entity administering the examination is required to bear the cost for any modifications or auxiliary aids provided for the examination. A sample form for requesting accommodation and providing documentation is found in Appendix A.

When documentation is necessary, it should be completed and signed by a professional familiar with the applicant's disability and, if possible, the appropriate accommodation. The professional could be a physician, psychologist, rehabilitation counselor, educator or other professional. Unless the individual has been recently diagnosed or has been recently disabled, there is likely to be a history of accommodations in an employment or academic setting. Persons involved in providing the previous academic accommodations, such as a disability access provider, can provide the necessary documentation.

If the applicant already has documentation of previously receiving the same or similar accommodations in a test situation, it should be sufficient to provide that documentation instead of requiring the preparation of new documentation.

If there is not history of accommodation within an employment or academic setting, it is hoped that the applicant knows a professional who is knowledgeable of both the disabilities and the appropriate accommodations. The professional should discuss possible accommodations with the individual in order to make recommendations to the testing entity.

For example: Even though a computer with word processing software might be the appropriate accommodation for persons with a given disability, if the applicant has never used a computer, this would not be the appropriate accommodation for that individual.

Although it sounds obvious, a permanent disability is a permanent disability! Therefore, even if the diagnosis is old, the individual still has a disability. Do not assume that documentation of a disability based on testing results older than three years is not valid. Do not be concerned about the recency of diagnostic testing. It is more pertinent to ask about the testing accommodation(s) provided in the most recent testing setting. If the applicant is requesting accommodation that was not provided in a recent testing setting, then the applicant would be responsible for providing more current documentation supporting this request.

[back to index](#)

Confidentiality of Disability-Related Information

Any disability-related information is confidential. When you receive documentation of a disability from an applicant, you assume responsibility for maintaining confidentiality. Access to disability-related information within the testing agency should be on a need-to-know basis; it should be made available only for purposes of assuring the appropriate accommodation. It is legally prohibited for the agency to release to any outside entity any information or documentation provided by the applicant in requesting accommodation. Verification of disability-related accommodations provided by the testing agency can be released only upon express written request of the individual.

[back to index](#)

[back to Title 2 Index](#)

If the Requested Accommodation is Not Available?

If the requested accommodation is not available, such as an architecturally accessible site, the law requires that it be provided, but will allow the use of an alternate testing site. Such alternate sites must be reasonably convenient for the applicant in order to comply with the equal access requirement.

There may be occasions in which the requested accommodation is not available and cannot be provided at an alternate site. It may be necessary to offer an equally effective, alternative accommodation. The law does not require that the preferred accommodation necessarily be provided, however; it does require that an effective, appropriate accommodation be provided.

The accommodation is provided to permit the individual to demonstrate his/her level of understanding and/or mastery of the subject.

For example: If a computer with requested word processing software is not available, it might be appropriate to substitute a scribe to record the test-taker's answers. Both options do enable the individual who has disability-related difficulty in composing handwritten answers to be accommodated. However, if the person has never used a scribe, the unfamiliarity with the accommodation might inhibit him/her from performing at a level that truly represents his/her skill/competence.

If the availability or appropriateness of the requested accommodation is questionable, the testing entity should discuss options with the test-taker, and may wish to consult with the State ADA/Disability Coordinator.

[back to index](#)

[back to Title 2 Index](#)

Is Accommodation Always Required?

In order to be valid, the examination must be shown to accurately test the skill, aptitude, or whatever the examination purports to measure, rather than the person's disability. Appropriate accommodations must be provided if the test is measuring knowledge or expertise. In typical pencil-and-paper testing, it is very difficult to establish speed as an essential element of the test. However, the decision is not quite so clear if the test is measuring a skill.

For example: If a test for a beautician's license involves having an individual demonstrate his/her ability to give a permanent or hair color treatment within a given amount of time, it would not be expected nor required that extended time be provided to a test-taker with a disability, since speed of performance is an integral part of the skill being measured. However, other accommodations may be required.

Pertaining to the performance of a job, certain accommodations may be considered as reasonable. If these same accommodations would affect the performance on the exam, then it would be expected that these accommodations would be provided.

For example: For a test-taker in a wheelchair, the practical section of the test would need to be administered in a setting that provides architectural access to both the site and the equipment/facilities to be used in demonstrating competency.

[back to index](#)

[back to Title 2 Index](#)

Cost of Accommodations

The law requires that the agency or entity administering the examination must provide any necessary modifications and/or auxiliary aids and services at no cost to the test-taker unless they would result in an undue hardship.

An "undue burden" refers to provision of an auxiliary aid or service, which requires significant difficulty or expense on the part of the agency or entity.

The obligation to provide auxiliary aids or services to ensure equal access and enjoyment is not meant to place an "undue burden" upon the entity. The determination of whether the provision of an auxiliary aid or service is an undue burden is to be decided upon on a case-by-case basis, and based upon the facts of the specific situation.

The following four factors should be considered:

1. The nature and cost of the auxiliary aid or service;
2. The overall financial resources of the facility involved;
3. The overall financial resources of the covered entity; and
4. The type of operation(s) of the entity, including composition, structure and functions, the geographic separateness, and the administrative or fiscal relations of the facility to the covered entity.

The determination of a fundamental alteration or undue burden must be made by the state agency head who has budgetary and spending authority, or his/her designee. All agency resources available for use in funding the service, program or activity must be considered and the agency must provide a written statement of reasons as to why the modification, auxiliary aid or service would create an undue burden or fundamental alteration.

Simply because one way of meeting the obligation to provide an auxiliary aid or service may be unduly burdensome, does not automatically relieve the entity of its obligation to seek out other alternatives to attempt to fulfill its obligation. Only if there are no effective auxiliary aids or services that are not unduly burdensome would the entity be relieved of its obligation. In other words, the ADA requires entities to make a "good faith effort" to provide an effective auxiliary aid or service.

Please note that for most of the common testing accommodations requested, the costs are negligible.

Significant cost saving and peace of mind can be attained with prior planning. Sometimes, it may be possible to obtain a service or to borrow equipment from an office or agency that works with individuals with disabilities. This includes disability access offices at colleges and universities, agencies that train individuals with disabilities to use adaptive equipment, and organizations that prepare alternate media for blind individuals. A list of resources is enclosed at the end of this document.

If adapted or specialized equipment would result in an undue burden if purchased for one individual, and it is not possible to borrow the equipment, there are additional options. The person taking the test may be willing to provide his/her own equipment, however, that cannot be made a requirement.

[back to index](#)

[back to Title 2 Index](#)

Accommodations

The purpose of providing accommodations in a testing situation is to enable the individual to demonstrate his/her mastery of the subject being tested. The same accommodation may be used by individuals with different disabilities, and individuals with the same disability may use different accommodations. The emphasis should not be on the consistency of an accommodation, but rather on meeting the needs of each individual.

Test Accommodations

Most test accommodations fall into one of four categories:

- [changes to the test site](#) (e.g., assuring that the test location is accessible by mass transit, providing nearby accessible parking, ensuring wheelchair accessibility to the testing room and rest room, etc.);
- [changes to the test time limit](#) (e.g., giving the candidate additional time to complete the test);
- [changes to the test medium](#) (e.g., use of a large print format, audiotape, videotape, reader, Braille, etc., or use of an answer sheet marker); and
- [changes to the test content](#) (e.g., changing an item, item type, or changing or deleting a test content area).

[back to index](#)

[back to Title 2 Index](#)

Changes to the Test Site

Architecturally Accessible Testing Site

The testing entity shall ensure that testing sites, rooms and restrooms are physically accessible to those who use wheelchairs, canes, crutches, or other mobility aids. Others may have limited strength or flexibility, requiring a physically accessible site.

If some sites have less than complete architectural accessibility, it is incumbent on the testing agency to enable an applicant for testing to alert the agency to the need for architectural access and to provide an alternative test site upon request.

Alternative Location

There may be instances when better accommodations can be provided at a different testing site. Perhaps a specific piece of adaptive equipment is available at some sites and not at others. Arrangements for an alternative location for taking an examination and providing proctoring of performance are considered appropriate accommodations under the law. However, the alternative location should provide a comparable degree of geographic convenience for the test-taker, as do other sites.

Distraction-Free Space

Some individuals with disabilities may require a testing environment, which minimizes distraction as much as possible. This is necessary in order to maintain the level of concentration necessary for them to perform well on the test. Depending upon the disability, distraction may result from noise, movement, or both. Normally, the best way to provide a distraction-free testing space is to place the individual alone in a (proctored) room without phones, street noise, or other distractions. If this is not possible, visual distraction may be minimized by positioning the individual facing away from windows, other test-takers, and other sources of movement or distraction.

Noise distraction sometimes can be minimized through the use of sound-suppression earphones or earplugs, although some individuals may find this as distracting as the noise.

There are individuals who may require a private testing environment in order to perform at their best and not disturb others taking the test. Some, because of the way they process information, perform best if they are able to talk aloud. Others, when channeling all of their energy towards taking the test, may have verbal outbursts or body tics. Even if these manifestations can be eliminated, the effort required can result in a loss of concentration, which may affect their performance.

[back to index](#)

[back to Title 2 Index](#)

Changes to the Test Time Limit

Test Schedule Variation

For individuals with health-related disabilities, time of day and test schedule can be critical. Functioning level may vary during the day because of the effects of medications or flagging energy levels. For some, blood sugar levels must be maintained by eating several times a day at prescribed time. In these situations, the individual could be accommodated by scheduling testing around the eating schedule, or by allowing food to be taken into the testing setting.

Extended Time

This is probably the most common accommodation. It is used to accommodate a variety of disabilities. Extended time is often appropriate for candidates whose disabilities reduces available test time (e.g., because of a visual, print, or manipulative/writing impairment or because of a need for a frequent change of position, use of the lavatory, etc.).

With respect to test time limits, tests fall into *two* categories:

1. "power" tests, and
2. "speeded" tests.

"Power" tests (a "power" test is one in which speed is not a major consideration and all or nearly all candidates are expected to be able to complete the test within the normal time allowance)

When a test needs to be presented via a different medium (e.g., via a reader, audiotape, Braille, or sign language interpreter) or involves the use of an answer sheet marker (person or device), requests to extend the normal time allowance on power test components of an examination *should* be approved. Due to different and varying degrees of disability, one is often unable to establish the amount of additional time necessary. Experience has shown that applicants with approved unlimited extended time typically require 30 minutes to 2 hours additional time. In most instances, providing the applicant with *double* the regular time allowance will prove sufficient.

Appropriate accommodations on *power*

- breaks for rest or use of toilet facilities (such periods not to count toward total test time allowance);
- extra time; and
- an individual monitor.

"Speeded" tests (a "speeded" test is one in which most candidates are expected to correctly answer all items which they attempt, but not all candidates are expected to attempt all items due to the amount of time allowed).

Requests to extend the normal time allowance on speeded test components of an examination should not be approved, because they would compromise the validity of the test.

Anytime auxiliary aids such as a scribe or adaptive equipment are used, extended time should be provided.

The real question is how much extra time is appropriate. For most test-takers, the standard extension is time-and-a-half. However, this extension should not be regarded as a firm ceiling. Decisions should be reviewed on a case-by-case basis, considering the type of accommodations provided, the disability involved, and the type of test administered.

If a reader or scribe is used, double time usually is appropriate. When providing accommodations, a request for unlimited time is not considered reasonable. The applicant should be able to complete the test within a finite amount of time. It is the responsibility of the professional who completes the supporting documentation to provide the time frame that should be utilized. In those few instances in which the ability to complete the test during a specific period of time is a critical factor in the examination (as discussed earlier for skill testing), extended time may not be an appropriate accommodation.

[back to index](#)

[back to Title 2 Index](#)

Changes to the Test Medium and/or Content

Scribed Exams

The use of a scribe may be an appropriate accommodation for someone who has difficulty writing independently. An individual who serves as a scribe should be carefully prepared prior to testing in order to assure that he/she knows the vocabulary involved in the testing process, and understands the boundaries of the assistance to be provided. There are not hard-and-fast rules - it may vary depending upon the disability as to what extent the scribe can and should go. In general, the role of the scribe is to write what is dictated, no more and no less. An alternative option to the use of a scribe may be to allow the use of a word processor or other technology.

Sign Language Interpreters

Some individuals who are deaf or hard of hearing may request the use of a sign language interpreter during testing. The use of a qualified interpreter for interpreting test instructions and to assist in communication between the test-taker and the proctor is appropriate. Recognize that qualified sign language interpreters function under a strict code of ethics regarding their role and their participation does not pose a threat to test integrity.

Readers

One option in the provision of testing accommodations is to provide a qualified reader for the individual whose disability precludes independent reading of the test material. Readers should read with even inflection throughout, so that the test-taker does not receive any cues by the way the information is read. The role of the reader is simply to read, not to interpret, what is presented; interpretation of test questions is inappropriate.

While the provision of reader services is a traditional means of providing accommodations for individuals with print disabilities, this may not be the best alternative in today's high tech world. There are other options available requiring less time and/or human resources on the part of the testing agency, which still provide appropriate accommodations for the test-taker. One option is to have the test read onto audio tape in advance. Test-takers then use the tape in a private setting and can listen, and listen again if necessary. Another option is to allow the use of adaptive equipment, which replaces a live reader.

Adaptive Equipment

If the test is available on computer disk, test-takers with reading disabilities may be able to take the test independently, given access to a talking terminal to assist with reading test questions and responses. For others, use of a computer system that includes word processing software may eliminate the need for a scribe.

The use of calculators (with and without voice output) is becoming an increasingly frequent accommodation for individuals with certain disabilities. The key question here is whether the use of a calculator is a matter of convenience or accommodation. In the past, many believed philosophically that knowledge of basic mathematics facts and concepts was necessary and that the use of a calculator allowed the individual with a disability to avoid an area in which other test-takers must demonstrate competence. Today, the use of a standard four-function calculator is so prevalent in our society that knowledge of how to use and manipulate mathematics symbols and notations has replaced knowledge of times tables and square root calculation as the rudiments of knowledge for success. The Educational Testing Service, the largest private testing agency in the U.S. with its administration of the SAT, GRE, LSAT, and GMAT is exploring the use of four-function calculators for everyone during testing.

Modification of Test Presentation/Response Format

For some individuals, who read Braille, converting a test to Braille may be an appropriate accommodation. There is now technology available that will allow a fairly direct conversion of information from print to Braille. While the testing agency may not wish to purchase this technology, it is appropriate to determine where such technology can be accessed when the need arises.

Not all individuals who are blind read Braille fluently or will find Braille to be their input mechanism of choice. For some individuals, the difference between being able to take a test independently or needing a reader/scribe is a question of the size of the print and the size of the space allowed for the response. Enlarging the test may provide an effective test accommodation, promoting independence for the test-taker. Large print is generally considered to be 14 to 18 point size, the recommended font is Universal.

For some individuals with disabilities, computer score sheets may be difficult or even impossible to complete accurately and neatly. An accommodation in such instances might involve having the test-taker indicate the appropriate answer directly on the test paper and having someone from the testing agency transfer those answers to the computer score sheet when the test-taker has completed the exam.

[back to index](#)

[back to Title 2 Index](#)

Common Disabilities and Appropriate Accommodations

- [Visual-Impairments](#)
- [Deaf or Hard-of-Hearing](#)
- [Print-disabilities \(other than visually-impaired\).](#)
- [Manipulative/writing-impairments](#)
- [Mobility-Disabilities](#)
- [Debilitating Conditions](#)
- [Changes to Test Content](#)
- [Accommodation of Non-Written Tests](#)

[back to top](#)

Visual-Impairments

For testing purposes, these candidates fall into *three* categories:

- blind - must receive all written material by an aural or tactile route;
- partially sighted -- may be legally blind but have sufficient residual vision to read printed material with the aid of enlarging devices or if printed in large type, or to see the pattern or layout of charts, graphs, and diagrams (possibly drawn on an enlarged scale with dark lines). Their vision may be limited in such a way that they can use it only for parts of the test and will need a reader or other aural means for the rest of the test.
- limited vision and specialized visual problems -- typically handle reading tasks without accommodation but may encounter problems with certain types of printed material (e.g., very small or closely-spaced type). Included in this group are those who are "color blind," have sudden periods of vision loss or have unusual eye problems.

Appropriate accommodations may include:

- delivery of the test in a large print format, via a reader or an audiotape, in Braille, or under special lighting, or the use of a magnifier;
- use of a manual Braille, tape recorder, or marker for note taking and/or recording answers;
- providing an amanuensis (person who handwrites dictation);
- use of a calculating device, such as an abacus or a "talking" calculator;
- providing extra time (see section on "Time Limits");
- individual monitor to ensure the candidate encounters no unforeseen problems; and
- a test center accessible by mass transit.

[back to top](#)

Deaf or Hard-of-Hearing

For testing purposes, these candidates fall into two categories:

- prelingually deaf (i.e., loss of hearing prior to development of normal language facility) -- these candidates may have limited English language concepts, substantially limiting their ability to

comprehend some materials in standard English. They usually receive instructions in print or through American Sign Language (ASL) or English Sign Language.

- hard-of-hearing (i.e., loss of hearing after development of normal language facility) -- these candidates function in the same way as non-disabled candidates with respect to written material but must receive some accommodation with respect to oral instructions. They should be routinely seated where they are close to and have a clear view of the monitor giving instructions. Monitors for hard-of-hearing candidates should be screened and briefed on their responsibilities.

Appropriate accommodations may include:

- seating near and in the direct line-of-sight of the test monitor;
- providing written instructions for all test instructions normally delivered orally;
- providing an interpreter;
- an individual monitor to ensure that the candidate has grasped all instructions; and
- extra time.

[back to top](#)

Print-disabilities (other than visually-impaired).

May include persons with learning disabilities and developmental disabilities.

These candidates are impaired in processing information from the printed page. They vary in the degree of their impairment and its consistency from day-to-day.

Appropriate accommodations include:

- a reader or an audiotape test booklet;
- an individual monitor;
- a recording device for recording answers;
- a tape recorder for taking notes;
- amanuensis; and
- extra time.

[back to top](#)

Manipulative/writing-impairments.

May include persons with learning and developmental disabilities.

For testing purposes, these candidates require accommodation only in the recording of their responses and in the operation of any necessary test equipment, such as calculators.

Appropriate accommodations include:

- a recording device for recording answers;
- a typewriter or a personal computer;
- an individual monitor;
- a marker for note taking;
- amanuensis; and

- extra time.

[back to top](#)

Mobility-Disabilities

This group includes candidates whose disabilities limit ambulation and/or the ability to drive a car. Some candidates will drive and need special parking arrangements, others who are unable to drive may use mass transit/paratransit, while others must be transported to the test center.

Appropriate accommodations include:

- assuring that the test location is accessible by mass transit;
- providing parking for candidates with mobility impairments;
- ensuring wheelchair accessibility to testing room and restroom;
- a table or a desk with sufficient clearance and at appropriate height to permit comfortable work for a person in a wheelchair or the use of a wheelchair desk board; (Table/desk must be a minimum of 28" high no higher than 34", knee clearance at 27" high, 30" wide and 19" deep, and a toe space of 9"high.); and
- a testing room as close as possible to entrances and elevators.

[back to top](#)

Debilitating Conditions

This group includes persons with conditions which tend to impair their strength, stamina or other faculties, either chronically or on a recurrent basis. Examples of such conditions are weakness or fatigue or loss of vision found in some persons with AIDS, cerebral palsy, muscular dystrophy and related illnesses. While most persons with a debilitating condition will not require test accommodation, some will manifest conditions similar to those discussed above (including vision-related disabilities affecting the use of time), and should be treated accordingly.

[back to top](#)

Changes to Test Content

In the case of a candidate with a disability for whom accommodation on the job is reasonable, equivalent modification of test material is appropriate. Modifying test content, (e.g., changing an item, item type, or changing or deleting a test content area) which would be an essential change in what would be reasonable on the job, would not be appropriate.

[back to top](#)

Accommodation of Non-Written Tests

Although most requests for test accommodations involve written tests, other test modes may present

serious difficulties for certain candidates. These include:

Oral Exams: Oral exams are likely to pose problems for the deaf, hard-of-hearing and those with certain kinds of speech impairments. Any of the accommodations listed in the section on the deaf and hard-of-hearing should be considered. In addition, oral exam questions should be provided to deaf and hard-of-hearing candidates in hard-copy form. In the case of candidates with speech-impairments, special care should be taken to ensure that oral examiners are understanding of the disabling condition and, therefore, will fairly evaluate the candidate's responses.

[back to index](#)

[back to Title 2 Index](#)

APPENDIX A
Testing Accommodation Request Form

The information requested below and any documentation regarding your disability and your need for an accommodation in testing will be considered strictly confidential and will not be shared with any outside source without your express written permission.

Name: _____

Address: _____

Phone # _____ SS# _____

Accommodation(s) requested for the _____ examination.
(Check all that apply)

- _____ Accessible testing site
- _____ Braille _____ Large Print _____ Audio Tape
- _____ Reader
- _____ Scribe
- _____ Sign Language Interpreter
- _____ Extended Time
- _____ Time-and-a-half
- _____ Double time
- _____ More than double time (specify): _____
- _____ Separate testing area
- _____ Use of computer or other adaptive equipment (specify):

Comments: _____

Signed: _____ Date: _____

**Some accommodation requests may require additional documentation
(see reverse side)**

**Testing Accommodation
Documentation of Disability-Related Need**

If you have a learning disability, a psychological disability, or other hidden requiring an accommodation in testing, please have this section completed by an appropriate professional (education professional, doctor, psychologist, psychiatrist) to certify that your disability requires the requested test accommodation.

If you have existing documentation of having the same or similar accommodation provided to you in another test situation, you may submit such documentation instead of having this portion of the form completed.

I have known _____ since _____ in my capacity
(test applicant) (date)

as a _____.
(professional title)

The applicant has discussed with me the nature of the test to be administered. It is my opinion that due to this applicant's disability, he/she should be accommodated by providing the following: (check all that apply)

- _____ Accessible testing site
- _____ Braille _____ Large Print _____ Audio Tape
- _____ Reader
- _____ Scribe
- _____ Sign Language Interpreter
- _____ Extended Time
 - _____ Time-and-a-half
 - _____ Double time
 - _____ More than double time (specify): _____
- _____ Separate testing area
- _____ Use of computer or other adaptive equipment (specify):

Comments: _____

Signed: _____ Date: _____
Title: _____ License # (if applicable): _____