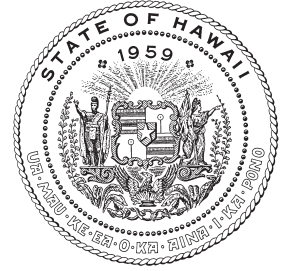


Americans with Disabilities Act - Title II

Requirements for State and Local Governments

An Overview



Public Entities

Title II of the Americans with Disabilities Act of 1990 (P.L. 101-336) applies to public entities. A public entity is any state or local government or any of its departments, agencies, or other instrumentalities.

Activities, Services and Programs

Title II applies to all activities, services, and programs of public entities, whether or not they receive Federal funds. The U.S. Department of Justice (DOJ) promulgated regulations to implement Title II at 28 CFR 35.

Title II also applies to public transportation services operated by state and local governments. The U.S. Department of Transportation (DOT) established requirements for transportation service at 49 CFR 37 and specifications for vehicles and facilities at 49 CFR 38.



Disability Defined

Title II defines disability as a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment.



The phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction, and alcoholism.

Major life activities include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Title II does not protect individuals with disabilities who currently engage in the illegal use of drugs if a public entity takes action on the basis of the current illegal use of drugs.



General Prohibitions Against Discrimination

A public entity may not refuse to allow a person with a disability to participate in a service, program, or activity because the person has a disability.

A public entity must eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy its services, programs or activities unless the eligibility standards or rules are “necessary” for the provision of the service, program, or activity.

A public entity may not establish requirements that tend to screen out individuals with disabilities, such as requiring a driver’s license as the only acceptable means of identification.

A public entity may impose safety requirements that are necessary for the safe operation of the program in question, such as requirements for eligibility for a driver’s license, if they are based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

A public entity must make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless the modification would result in a fundamental alteration in the program.

A public entity may not place special charges on individuals with disabilities to cover the costs of measures necessary to ensure nondiscriminatory treatment.

A public entity shall operate its programs so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities.



Discrimination Prohibited



The Title II regulations, with a few exceptions, provide that “no qualified individual with a disability shall, because a public entity’s facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.”

Qualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the 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.



Program Access Requirements

A public entity need not remove physical barriers, such as stairs in all existing buildings, as long as its programs are accessible to individuals who are unable to use an inaccessible existing facility. A public entity may offer services, programs, and activities to individuals with disabilities in an inaccessible existing facility through alternative methods, if it does not remove physical barriers.



Integrated Programs

A public entity may not provide services or benefits to individuals with disabilities through programs that are separate or different, unless the separate programs are necessary to ensure that the benefits and services are equally effective. However, an individual with a disability still has the right to choose to participate in the regular program.

Effective Communication



A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. Where necessary to ensure that communications with individuals who have hearing, vision, or speech impairments are as effective as communications with others, the public entity must provide appropriate auxiliary aids. Auxiliary aids include such services or devices as qualified interpreters, assistive listening

headsets, television captioning and decoders, teletypewriter devices for deaf persons (TTYs), videotext displays, readers, taped texts, Brailled materials, and large print materials. A public entity may not charge an individual with a disability for the use of an auxiliary aid.

Duties

Title II does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

New Construction and Alterations

Public entities must ensure that newly constructed buildings and facilities are free of architectural and communication barriers that restrict access or use by individuals with disabilities.

When a public entity undertakes alterations to an existing building, it must also ensure that the altered portions are accessible.



Enforcement

A qualified individual with a disability may file a lawsuit to enforce his or her rights under Title II. A court may award reasonable attorney's fees. Individuals may also file complaints with appropriate administrative agencies.

Filing a Complaint

A qualified individual with a disability may file a complaint against a public entity for violating any of the nondiscrimination provisions of Title II. The DOJ will accept complaints at the address below.

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington, D.C. 20035-6738

ADA Information

Call the DOJ Toll-Free ADA Information Line for answers to general and technical questions about the ADA and to order technical assistance materials: 800-514-0301 (voice) 800-514-0383 (TTY). Visit the DOJ ADA web site to see the Title II regulations and related guidance at ada.gov.

Also, visit the DOT web site to see the Title II transportation regulations at fta.dot.gov.



DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Blvd., Room 101 • Honolulu, HI 96814

Oahu: (808) 586-8121 (Voice/TTY), (808) 586-8129 (Fax)

Call toll free from:

Maui: 984-2400, ext. 6-8121# (Voice)

Kauai: 274-3141, ext. 6-8121# (Voice)

Molokai & Lanai: 1(800) 468-4644,
ext. 6-8121# (Voice)

Big Island: 974-4000,
ext. 6-8121# (Voice)

E-mail: dcab@doh.hawaii.gov • Web Site: hawaii.gov/health/dcab/

