



Disability Law Center's Self-Advocacy Materials

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Community Integration

This document is designed for people with disabilities. The information is about your legal rights and how to advocate for yourself as a resident in Massachusetts.

Contact us to request this information in an alternative format.

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Funding

DLC receives funding from government grants, private foundations, and individual contributions. For details about our funding and programs, please visit:

<http://www.dlc-ma.org/about/funding/>

Equal Access to Public Services Under Title II of the Americans with Disabilities Act (ADA)

You Will Learn About:

- Title II of the Americans with Disabilities Act
- Reasonable Modifications under Title II of the Americans with Disabilities Act
- Other Resources
- A Sample Request Form for Reasonable Modifications

This document includes general information about legal issues and is intended to be used for informational purposes only. These informational materials should not be taken as legal advice, and do not create an attorney-client relationship. The outcome of any particular matter will depend on a variety of factors. For specific legal problems you would need to contact an attorney.

Title II of the Americans with Disabilities Act (ADA)

What Is Title II of the ADA?

Title II of the ADA is a federal law that **forbids discrimination by public entities** based on disability. It also requires **public entities** to provide **equal access** to people with disabilities.

- **‘Public entities’** means any state or local government, or any department or agency of a state or local government. In other words, it can apply to **any service** provided by a state or local government. Some examples of public entities are courts, town agencies, school districts, voting, recreation, community colleges and housing authorities.

Does Title II Of The ADA Apply To Federal Government?

No. However, a different federal law – Section 504 of the Rehabilitation Act – does apply to **federal executive agencies**, including the U.S. Postal Service. Section 504 also applies to any program that receives **federal financial assistance**. The requirements of Section 504 are very similar to Title II of the ADA.

Who Is Covered By Title II Of The ADA?

Qualified individuals with disabilities are protected from discrimination. ‘Individual with a disability’ is defined as a person with a **physical or mental impairment** that causes a **substantial limitation** of one or more **major life activities**.

- You are also protected if you have a **record of** such impairment, or if you are **regarded as (incorrectly)** having such impairment.
- **‘Qualified’** means that the person with a disability meets the basic eligibility requirements for the receipt of services or for participation in the program or activity, either with or without **reasonable accommodation**. Reasonable accommodation can be modification of a rule or policy, removal of a physical barrier, or the provision of an auxiliary aid or service, like an ASL interpreter.
- For example, a state housing agency that administers vouchers for people who have low income is a public entity under Title II. Having low income is a basic eligibility requirement. If you have income that is higher than the limit, even if you have a disability, you are not a ‘qualified individual with a disability.’ If you do have low income, and you have a disability, you are qualified, even though you may need a reasonable accommodation to have equal access to the program. For instance, you may need an ASL interpreter to go through the application process.

What Type Of Conduct Is Prohibited?

These laws **prohibit discrimination** and seek to **ensure equal access and opportunity**.

- **Discrimination** can include not allowing a person with a disability to participate in a service, program or activity of a public entity. It can also mean providing a service or benefit to a person with a disability that is **not equal** to the service or benefit that is provided to individuals without disabilities.
- **Equal access** means that a person with a disability should have the same opportunity to benefit from a service, program or activity as a person without a disability. So for example, **effective accommodations** must be provided in some instances.
- People with disabilities cannot be given **different or separate benefits** or services, unless the difference is necessary to give them an effective service. In general, people with disabilities must be provided aids and services in the **most integrated setting** possible. For example, states must do their best to serve people with disabilities in the community, instead of in an institution.

Reasonable Modifications under Title II of the Americans with Disabilities Act (ADA)

What Is A Reasonable Modification?

Title II of the ADA uses the term 'reasonable modification' to mean any change in a policy, practice or procedure that is necessary for a person with a disability to have equal access. It is similar to the term '**reasonable accommodation**' that is used in other areas of disability law. A reasonable modification is some sort of **change or assistance** that a person with a disability needs from a public entity.

What Are Examples Of Reasonable Modifications?

Below are some examples of reasonable modifications:

- If a state agency that administers welfare benefits needs to meet with an applicant in person, it would need to do so in a location that is physically accessible. If the agency has forms that need to be filled out, it would need to make sure a person who has low vision can read and understand the forms. This may include reading the forms to a person who is blind.
- A public building would be required to allow a person who uses a service animal to bring their dog into the building even if there is a 'no pets' policy.
 - Under Title II of the ADA, service animals are limited to **dogs that have been trained to perform a specific task for a person with a disability**.
- A public pool may not allow people to bring food, but would be required to make an exception for a person who has diabetes and needs to eat frequently to control their glucose level. But, they can place reasonable restrictions on where the person eats.
- A city agency that provides job search assistance should provide an ASL interpreter for meetings with an individual who is deaf. This is an example of **effective communication**.
- Large print or Brailled materials should be provided for a person who has low vision or is blind. This is an example of an **auxiliary aid and service**.

- An application process for subsidized housing includes numerous forms to fill out. The housing authority may have to provide extra assistance to a person with an intellectual disability in understanding and completing the forms, even though they do not usually do that for applicants.
- It would **not** be a reasonable modification for a public entity to **fundamentally alter** their program or activity for a person with a disability. For example, at a polling place, officials may be required to allow a person who cannot stand for long periods of time to sit and note where he is in line so that he does not lose his place. But, it would be a fundamental alteration for that person to ask an official to stand in line and vote for him.
- It would also not be reasonable to allow something that would be a **direct threat** to the health or safety of others. For example, a public library does not need to allow a person to intimidate or threaten other people in the library, even if they claim they are doing so because of a disability-related reason.

How Do I Get A Reasonable Modification If I Need One?

You must make a request. If your need for a modification is clear, then your request should be simple. For example, if you are blind and you need help locating audio materials in a library, just ask for help.

But, if you do not make a request, and the need is not obvious, a public entity does not need to provide you with a modification unless you take a few extra steps.

- For example, if you have a learning disability and need extra assistance filing for state benefits, like unemployment, you may need to present a simple **letter from your healthcare provider** along with a written request.
- **Make the request in writing, date it, and keep a copy.** The public entity may have special forms that you can use to do this. If you do make your request orally, follow it up with a letter confirming that you made the request, and keep a copy.
- **Your request can come from someone else**, like a family member or service provider.
- **You may need to get medical support.** You can be asked for **limited** medical support for your request (indicating that you have a disability-related need for the modification you have requested). You may want to get this first and submit it with your request for the modification to save time. If your disability and need for the modification are obvious, then you do not need to provide medical support.
- **Be prepared to discuss your request with the public entity.** This is sometimes called an interactive process. The purpose of the interactive process is to determine what modification the public entity will provide.

What Should Be In My Reasonable Modification Request?

See the attached Request Form. You are free to write your own request with similar content and do not need to use this form.

Does The Public Entity Have To Provide The Exact Modification That I Asked For?

No. public entities only need to provide a modification that is **reasonable and effective**. This means that the modification gives a qualified person with a disability **meaningful access** to the benefit or service being provided.

Other Resources

How Do I File A Complaint Against A Public Entity?

You can file a complaint alleging a violation of Title II with the U.S. Department of Justice. Go to https://www.ada.gov/filing_complaint.htm. You must file within **180 days** of the act of discrimination.

Where Can I Find More Information On These Laws?

- U.S. Department of Justice – https://www.ada.gov/ada_title_II.htm
- ADA.gov – <https://www.ada.gov/law-and-regs/title-ii-2010-regulations/>
- New England ADA Center – <https://www.adaactionguide.org/>

(Note: keep a copy of your request for your records and for verification purposes)

Date: _____

Request for Reasonable Modification Pursuant to Title II of ADA
(for state agency or local government)

To: (name of entity) _____

I am requesting a reasonable modification of a policy, practice or procedure of _____ [name of state agency or city or town], under Title II of the Americans with Disabilities Act, 42 U.S.C. 12131-12134, which prohibits discrimination on the basis of disability by public entities.

_____ [name of state agency or city or town] is a public entity subject to Title II of the ADA because it is either state or local government entity or a department, agency, special purpose district or other instrumentality of a State or local government.

Public entities must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination on the basis of disability. See 28 C.F.R. 35.130(b)(7)(i). This includes providing for effective communication for people with disabilities.¹

I have _____ [please describe your disabilities] and am therefore a person with a disability as defined by 28 C.F.R. 35.108. I meet the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity and therefore I am a qualified individual with a disability. See 28 C.F.R. 35.104.

The reasonable modification I am requesting is as follows:

(1). Identify the policy, practice or procedure to be modified:

I am requesting changes in how you _____ [describe the type of change you are seeking, for example “conduct hearings by your select board / city council / city and town committees”; “communicate with people you serve in services, programs or activities of local or state government” etc.]

(2). Describe the modification necessary:

I am requesting these accommodations:

x

[Describe accommodations, which may be how or when the agency communicates with you, or in what way they communicate with you, or additional supports or services which are related to your disability, and more. If possible, consult with an attorney or experienced advocate.]

(3). Describe the connection between your disability and the requested modification. Why will this modification provide you an equal opportunity to receive services or participate in the programs or activities of the entity?:

I have _____ [describe your disabilities] and as a result, I need _____ [describe your requested accommodations] in order to be able to have an equal opportunity to participate in services, programs or activities of local or state government. The reason why is because:

(4). If you have medical support for the requested modification, describe it and attach it to this request:

Please see attached medical letter.

If you have any questions, I can be reached by telephone at _____ or by email at _____ . I would also appreciate a written response to this request by email for my records.

Thank you in advance for your assistance and cooperation with my reasonable modification requests.

Sincerely,

[Name]

Address:

_____.

