

# Americans with Disabilities Act

## Title II: State and Local Government Overview

Title II prohibits public entities from discriminating against qualified individuals with disabilities. A public entity is any state or local government and their agencies. Specific provisions of Title II apply to public transportation and are not addressed here. These entities may not subject people with disabilities to discrimination or discriminate in their services, programs, or activities. 42 U.S.C. § 12132. Title II applies to everything from public education to sidewalk accessibility to public health programs to prisons.

Individuals must be qualified, either with or without reasonable modifications, to participate in public programs or receive services. Like Title I, discrimination under Title II includes disparate treatment, disparate impact, and the denial of reasonable modifications. Public entities must also provide programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 28 C.F.R. § 35.130(d). They must avoid unnecessarily institutionalizing or segregating people with disabilities. Covered entities must also communicate with people with disabilities as effectively as they communicate with others and must respect a disabled person's preferred communication aids and services.

As under Title I, public entities need not provide modifications they show pose a fundamental alteration or undue burden, nor must they allow a direct threat to safety that a reasonable modification cannot mitigate.

The Department of Justice is the primary enforcement agency for Title II, although it coordinates with other agencies, particularly those that fund relevant public entities. Victims of discrimination may file an administrative complaint before a lawsuit, but they do not have to. The remedies under Title II derive from those under Section 504. Claimants can recover some types of monetary damages which are uncapped against localities for intentional discrimination. Courts have not resolved the extent to which damages are available against states. Unlike Title I, courts increasingly find that emotional distress damages are unavailable under Title II. Injunctive relief and attorneys fees are available for any claim.