

AMERICANS WITH DISABILITIES ACT (ADA)

Individuals with Disabilities Education Improvement Under the Americans with Disabilities Act (ADA) of 1990, employers and certain entities must provide "reasonable accommodations" and make their programs accessible to people with disabilities. A disability is defined by ADA as a physical or mental impairment that substantially limits one or more major life activities, or has a record of such impairment, or is regarded as having such an impairment.

Employers must provide reasonable accommodations to qualified applicants and employees with disabilities under Title I of the Act. State and local government funded programs (including schools), places of public accommodations and commercial facilities must make their services and programs accessible under Title II and Title III of the Act.

EMPLOYERS AND ADA

An individual's employer is a potential source of funding for assistive technology. Under ADA, the employer has a legal mandate to provide a "reasonable accommodation" to employees and prospective employees with disabilities, if the accommodations will enable the individual to perform the essential functions of the position. A reasonable accommodation may include "acquisition or modifications of equipment or devices" as long as the accommodation does not impose "an undue hardship" on the company, determined by comparing "the nature and cost of the accommodation(s) in relation to the size, resources, nature and structure of the employer's operation." If the facility or company is part of a larger organization, the resources of the larger organization are taken into account when determining "undue hardship."

According to the regulations, the employer must work with the "qualified individual" to determine what accommodations are needed. The regulations state that "This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome the limitations." It is at this point that any assistive technology, as a "reasonable accommodation," should be investigated. An employer is not responsible for an accommodation unless the individual makes known his or her disability and need for an accommodation.

Tax Incentives

The Internal Revenue Code includes tax incentives for businesses that incur expenses in removing barriers or increasing accessibility for people with disabilities. The "Tax Deduction to remove Architectural and Transportation Barriers to People with Disabilities and Elderly Individuals" (Title 26, Internal Revenue Code, Section 190) allows a deduction for "qualified architectural and transportation barrier removal expenses" not to exceed \$15,000 for any taxable year. The "Disabled Access Tax Credit" (Title 26, Internal Revenue Code, Section 44) is available to eligible small businesses with 30 or fewer employees or \$1 million or less in gross annual receipts. This provision allows a tax credit of 50 percent of eligible access expenditures that exceed \$250, but do not exceed \$10,250 made for the purpose of complying with the ADA during the tax year.

Eligibility

All persons who fall under the definition of disabilities are covered by ADA. Title I of the Act forbids discrimination in employment on the basis of an individual disability. If a person with a disability is qualified for a job, he or she is entitled to a "reasonable accommodation." State and local governments are covered under Title II of ADA and must provide "reasonable accommodation" for employees and perspective employees under this Title of the Act. Not all employers are covered by Title I. Employers of fewer than 15 people are exempt from Title I as well as all religious organizations.

PIECES OF THE PUZZLE

- Any person who falls under the definition of disability can potentially receive assistance.
- An employer may claim an "undue hardship," especially when expensive technology is requested. This could create an adversarial situation between the individual with a disability and the employer.

EDUCATION AND THE ADA

Title II of the Act prohibits all public entities, even those completely independent from federal funding, from discriminating against people with disabilities. Title II provides protection to individuals with disabilities that are at least equal to those provided by the nondiscrimination provisions of Title V of the Rehabilitation Act, which includes Section 504. The more specific requirements imposed on a school district under Section 504 are applicable under Title II wherever necessary to ensure that

Americans With Disabilities Act (ADA), cont. . .

Title II is interpreted in a way that is consistent with the intent of the ADA. The obligations of a school district, specifically described under Section 504, to provide a Free Appropriate Public Education (FAPE) to school-age individuals with disabilities, regardless of the nature or severity of their disabilities, are incorporated in the general provisions of Title II.

Provision of FAPE requires a school district to provide regular or special education and related aids or services that are: (1) designed to meet the individual needs of persons with disabilities as adequately as the needs of non-disabled persons are met; and (2) able to satisfy requirements regarding educational setting, evaluation and placement, and due process safeguards. Examples of related aids and services that may be provided to individuals with disabilities in either regular or special education programs include: interpreters for students with hearing impairments; readers for students with visual children in activities, impairments; equipment and equipment modifications to accommodate the needs of students with mobility impairments, manual impairments, hearing impairments, or visual impairments; speech therapy; psychological services; physical and occupational therapy; school health services; or school social work services. Schools may not deny children the opportunity to take home assistive devices if those devices are needed to enable those children to have an equal opportunity to participate in school.

A school district must provide an appropriate public education to a person with a disability without cost to the person or to his or her parents or guardians, except for those fees that are also imposed on non-disabled persons or their parents or guardians.

In order to ensure the provision of FAPE to school-age children, a school district must establish standards and procedures for the evaluation and placement of persons who, because of disability, either need or are believed to need special education and/or related aids and services. An evaluation must be conducted before the child's initial placement in regular or special education as well as before any subsequent significant change in that placement. A school district is also required to periodically reevaluate students who have been provided special education and/or related aids and services.

In general, Title II does not require school districts to provide personal devices such as wheelchairs, prescription eyeglasses or hearing aids, readers for personal use or study, or services of a personal nature, including assistance in eating, toileting, or dressing. This provision serves as a limitation on the school district's obligation to comply with other Title II requirements, including the duty to provide auxiliary aids and services to facilitate communication, and the duty to modify policies, practices, and procedures to ensure accessibility. This provision does not affect the obligation of a school district to provide a personal device or service in the form of special education or a related aid or service if that device or service is necessary to provide FAPE to the individual student.

Eligibility

The ADA requires that all state and local government services be accessible to people with disabilities as defined in Section 504 of the Rehabilitation Act. Title II of the ADA provides comprehensive civil rights protection for "qualified individuals with disabilities."

An "individual with a disability" is a person who has a physical or mental impairment that substantially limits a "major life activity," or has a record of such impairment, or is regarded as having such an impairment. "Major life activities" include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. A "qualified" individual with a disability is one who meets the essential eligibility requirements for the program or activity offered by a public entity.

ADA and Section 504 protection for children with disabilities is much broader than that of the Individuals with Disabilities Education Act (IDEA). Children with disabilities or temporary disabilities who do not meet the criteria for Special Education Services under IDEA may be able to receive AT regardless of whether it is needed to allow the child to benefit from special education.



Americans With Disabilities Act (ADA), cont. . .

POST-SECONDARY EDUCATION AND THE ADA

Colleges, universities and vocational schools that receive federal funds must make their programs accessible to students with disabilities. This will include the great majority of schools, including most private ones. Previously, this was required by Section 504 of the Rehabilitation Act, but it was reinforced by the passage of the Americans with Disabilities Act (ADA).

The purchase of assistive technology for an individual may be necessary to make a post-secondary education program accessible. Computers, for example, can enable students with visual impairments or physical disabilities to take notes and complete assignments for their classes. An individual who is hard of hearing may require an assistive listening device for classes. In many instances, the school may choose to combine resources with another entity, such as the Division of Rehabilitation Services, to obtain the assistive technology that a student needs. The school may insist that these or other agencies are responsible for providing the assistive technology.

Eligibility

Any individual with a disability who has been accepted into a post-secondary institution is potentially eligible to receive aid in obtaining assistive technology. It is the responsibility of the school to make the program accessible and to provide the student with what she or he needs in order to do so. A student with a disability who feels that he or she is in need of assistive technology in order to adequately participate in the educational process should talk with the particular school's admissions counselor or to a staff member at the Student Disability Services office.

PIECES OF THE PUZZLE

- Computer-based assistive technology can be of great assistance to students with disabilities and can possibly be obtained through this source.
- The school may defer to another agency to pay for assistive technology, such as the Division of Rehabilitation Services, if the school feels that another agency has an obligation to provide the device. Post-secondary schools cannot supplant services that are the obligation of another entity.

- If the school does purchase assistive technology for a student's use, the school will maintain ownership.

FOR ADA TECHNICAL ASSISTANCE CONTACT:

Southwest Disability and Business Technical Assistance
Center For Region VI, Disability Law Resource Project
2323 S. Shepherd, Suite 1000
Houston, TX 77019
(713) 520-0232 OR (713) 520-5136 (TDD)
(800) 949-4232 (ADA Hotline)
FAX: (713) 520-5785
www.dlrp.org

The Southwest Disability and Business Technical Assistance Center provides:

- Information on specific aspects of the legislation and its regulations.
- Training on implementation of the Act and its impact on business and employers.
- Technical assistance by telephone on specific questions or problems encountered.
- Referrals for additional specialized information or expert assistance.

Office for Civil Rights, Region VI
U.S. Department of Education
8930 Ward Parkway, Suite 2037
Kansas City, MO
(816) 268-0550 (TDD) OR (800) 437-0833 (TDD)
FAX: (816) 823-1404

U.S. Department of Education, Office for Civil Rights
Customer Service Team
550 12th Street SW
Washington, DC 20202-1100
(800) 421-3481 OR (877) 521-2172 (TDD)
FAX: (202) 245-6840
E-mail: OCR@ED.Gov
www.ed.gov/offices/OCR/index

The U.S. Department of Education's (ED) Office for Civil Rights (OCR) enforces Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. OCR has the responsibility for enforcing Title II with respect to all programs, services, and regulatory activities relating to the operation of public elementary and secondary education systems and institutions, public institutions of higher education

Americans With Disabilities Act (ADA), cont. . .

and vocational education (other than schools of medicine, dentistry, nursing, and other health related schools) and public libraries. ED's Section 504 regulation applies to preschool, elementary, secondary, postsecondary, vocational, and adult education programs and activities, as well as other programs and activities that receive or benefit from federal financial assistance.

OCR investigates complaints filed by individuals, or their representatives, who believe that they have been discriminated against because of a disability. OCR also initiates compliance reviews of institutions and agencies, and monitors the progress of institutions and agencies that are implementing corrective action plans negotiated by OCR. OCR attempts to resolve compliance problems identified in the course of an investigation through negotiation. However, if negotiation fails, OCR will initiate proceedings to terminate the institution's funding or refer the case to the Department of Justice for court action.

OCR offers technical assistance to help entities with responsibilities under the civil rights laws enforced by OCR achieve voluntary compliance by understanding their legal obligations, and to help those protected by the laws it enforces to understand their rights.

As part of its technical assistance activities, OCR distributes information and materials and provides consultation on the requirements of the civil rights laws under its authority.

OCR consists of administrative offices that are located at the Department of Education's headquarters in Washington, D.C., and ten regional offices around the country.

U.S. Department of Justice Civil Rights Division
Public
Access Section
P.O. Box 66738
Washington, DC 20035-6738
(800) 514-0301 OR (800) 514-0383 (TDD)
(202) 514-6193 (electronic bulletin board)
www.usdoj.gov/crt/

The U.S. Department of Justice (DOJ) enforces ADA provisions prohibiting discrimination on the basis of disability in state and local government services (Title II) and in public accommodations and commercial facilities (Title III). DOJ provides technical assistance on the ADA. ADA specialists are available to provide technical assistance on the ADA Information Line 10 A.M. to 6 P.M. eastern time, Mondays through Fridays, except Thursdays when the hours are 1 P.M. to 6 P.M. Publications available from DOJ include the Title II and Title III regulations, the Americans with Disabilities Act Title II Technical Assistance Manual, and the Americans with Disabilities Act Title III Technical Assistance Manual, as well as pamphlets and fact sheets explaining responsibilities and rights under Title II and Title III of the ADA.

U.S. Equal Employment Opportunity Commission
1801 L Street, N.W.
Washington, DC 20507
(800) 949-4232 (TDD) OR (800) 669-6820 (TDD)
(800) 669-3362 (to order publications)
To specific offices:
(800) 669-4000 OR (800) 669-6820 (TDD)
www.eeoc.gov

The U.S. Equal Employment Opportunity Commission (EEOC) enforces Title I provisions prohibiting discrimination in employment against qualified individuals with disabilities. The EEOC investigates complaints filed by job applicants or employees who believe they have been discriminated against in employment on the basis of disability. The EEOC also provides information, speakers, technical assistance, training, and referral to specialized resources to employers and people with disabilities. Publications available from the EEOC include the Title I regulation, "A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act," as well as booklets and fact sheets that explain employer responsibilities and rights of individuals with disabilities.