

ADA Title II

FAQ's for Local Governments

Section 504 of the Rehabilitation Act was signed in 1973 and prohibited discrimination against individuals with disabilities and focuses specifically on programs and activities that receive federal funds. In 1990 the Americans with Disabilities Act (ADA) was signed into law and protects individuals with disabilities against discrimination. The ADA has been broken up into five (5) titles which include:

- **Title I** Equal Employment Opportunity for Individuals with Disabilities
- **Title II** Nondiscrimination on the Basis of Disability in State and Local Government Services
- **Title III** Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities
- **Title IV** Telecommunications
- **Title V** Miscellaneous Provisions

DelDOT and other state and local public agencies fall under Title II of the ADA in the programs, services, and physical facilities (curb ramps, sidewalks, buildings, etc.) that they provide to the public. Unlike Section 504 of the Rehabilitation Act, public entities are required to meet compliance with the ADA whether or not they receive Federal funds. While a state or local public entity may also fall under ADA Title I Equal Employment provisions, this page specifically addresses items related to the ADA's Title II requirements.

We have compiled Questions and Answers from various ADA Resources in an effort to provide public entities with the support and guidance needed to meet compliance with Title II of the ADA.

Definitions:

Auxiliary Aid¹

Auxiliary aids are items, equipment or services that assist in effective communication between a person who has a hearing, vision or speech disability and a person who does not.

- (1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making audible information available to individuals who are deaf or hard of hearing;
- (2) Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;
- (3) Acquisition or modification of equipment or devices; and
- (4) Other similar services and actions.

Facility² means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Public entity² means

- (1) Any State or local government;
- (2) Any department, agency, special purpose district, or other instrumentality of a State or local government; and
- (3) The National Railroad Passenger Corporation, and any commuter authority (as defined in Section 103(8) of the Rail Passenger Service Act).

Key Terms

Public Notice- A method by which the public entity provides information to the public about the ADA and how it applies to the public entity.

Self-Evaluation- A complete review of all programs, activities, and services provided by the public entity. The self-evaluation identifies and corrects those policies and practices that are inconsistent with the requirements of Title II, as outlined in [28 CFR Part 35](#).

Transition Plan- A formal document available to the public outlining a public entity's compliance with ADA and is developed from the self-evaluation and facilities survey.

Title II Coordinator- An employee responsible for implementing ADA compliance for the public entity.

Grievance Procedure- A procedure that provides people who believe they have been discriminated against because of their disability, or others who believe they have been discriminated against because they have a friend or family member with a disability, with a formal process to file their complaint with the public entity.

The Basics

If a state or local government has fewer than 50 employees, it is required to:

- Adopt and distribute a public notice about the requirements of the ADA to all people who may be interested in the programs, activities, and services offered by the state or local government;
- Develop a Self- Evaluation.

If a state or local government has 50 employees or more, it is required to:

- Adopt and distribute a public notice about the requirements of the ADA to all people who may be interested in the programs, activities, and services offered by the state or local government;
- Designate at least one employee often referred to as A Title II Coordinator) as being responsible for coordinating compliance with the ADA and investigating ADA complaints;
- Develop a Self-Evaluation;
- Develop a Transition Plan, and;
- Develop and publish grievance procedures to provide fair and prompt resolution of complaints under Title II of the ADA at the local level.

Which employees count?³

The number of employees is based on a government-wide total, including employees of each department, division, or other sub-unit. Both part-time and full-time employees count. Contractors are not counted as employees for determining the number of employees.

Example: Jones City has 30 full-time employees and 20 part-time employees. The employees include ten police department employees and eight fire department employees.

Jones City must have an ADA Coordinator and an ADA grievance procedure. The total number of employees is 50 because both full-time and part-time employees are counted. In addition, the police and fire departments are part of the city-wide employment pool, and the requirements for an ADA Coordinator and an ADA grievance procedure cover both of those departments.

Americans with Disabilities Act and Civil Rights Standards

The Americans with Disabilities Act was signed into law in 1990 under [42 USC 12132](#). While 42 USC 12132 provides the legal code for non-discrimination based on disability, [28 CFR Part 35 Nondiscrimination on the Basis of Disability in State and Local Government Services](#) provides more in depth and enforceable regulations regarding discrimination against individuals with Disabilities.

2010 Standards for Accessible Design

Since the ADA was enacted in 1990, there have been standards published that align with 28 CFR Part 35. In 2004 the Americans with Disabilities Act Accessibility Guidelines (ADAAG) were created and provided State and Local Governments with clear ADA standards for providing accessibility in multiple areas including sidewalks, curb ramps, and indoor hallways, ramps, etc. In 2010, ADAAG was updated and is the enforceable ADA standard that is used today. The purpose of the 2010 Standards are as follows:

“The 2010 Standards set minimum requirements – both scoping and technical -- for newly designed and constructed or altered State and local government facilities, public accommodations, and commercial facilities to be readily accessible to and usable by individuals with disabilities.”

Proposed Right of Way Accessibility Guidelines

While the 2010 ADA standards provide measurable standards, they are specific to sites and may be difficult to implement in already built or existing areas such as the sidewalks in and along the right-of-way. In 2011, the United States Access Board created the Proposed Right of Way Accessibility Guidelines (PROWAG), to address issues in the built environment such as running slope, cross slope, etc. PROWAG was updated in 2013, however it is still a proposed guideline and not an adopted standard. PROWAG is currently used as a best practice to ensure consistency when providing accessible features in the right-of-way.

2018 Pedestrian Accessibility Standards for Facilities in the Public Right of Way (PAS)

The Delaware Department of Transportation has created the PAS which combines applicable standards from both the 2010 ADA Standards and PROWAG. The 2018 PAS is the current standard that DelDOT uses to evaluate pedestrian features such as curb ramps, sidewalks, crosswalks, push buttons, etc. in the right-of-way.

Delaware Architectural Accessibility Board Standards

The state of Delaware has adopted the 2009 ICC/ANSI A117.1 Standards for all state buildings and facilities built with state funds. The standards adopted by the Delaware Architectural Accessibility Board can be found [here](#) while a summary of the standards can be found [here](#).

Samples of the above-mentioned documents can be found here:

Public Notice:

- <https://www.adaactionguide.org/themes/custom/ada/docs/samples/PublicNoticeSamples.pdf>
- <https://www.ada.gov/pcatoolkit/chap2toolkit.htm>

Self-Evaluation:

- <https://www.adaactionguide.org/resources>

Transition Plan:

- <https://www.adaactionguide.org/resources#sampledocuments>

Grievance Procedure:

- <https://www.adaactionguide.org/themes/custom/ada/docs/samples/GrievanceProceduresSamples.pdf>
- <https://www.ada.gov/pcatoolkit/chap2toolkit.htm>

Appointing a Title II Coordinator

1. Do I need to designate an ADA Coordinator?³

If a public entity has 50 or more employees, it is required to select at least one responsible employee to coordinate ADA compliance. Although the law does not refer to this person as an “ADA Coordinator,” this term is commonly used in state and local governments across the country and will be used in this document.

2. What skills should an ADA Coordinator have?³

The ADA Coordinator is responsible for coordinating the efforts of the government entity to comply with Title II and investigating any complaints alleging that the public entity has violated Title II. The ADA Coordinator should be an individual who has the authority to make decisions regarding accessibility and implementing the ADA Standards mentioned in the “ADA Basics” section of this document.

Here are some of the qualifications that help an ADA Coordinator to be effective, however these are not explicitly required:

- Familiarity with the state or local government’s structure, activities, and employees.
- Knowledge of the ADA and other laws addressing the rights of people with disabilities, such as Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.
- Experience assisting and interacting with people with a broad range of disabilities.
- Knowledge of various alternative formats and alternative technologies that enable people with disabilities to communicate, participate, and perform tasks.
- Ability to work cooperatively with the local government, local community, and people with disabilities
- Familiarity with any local disability advocacy groups or other groups that represent individuals with disabilities.
- Skills and training in negotiation and mediation.
- Organizational and analytical skills.

The name, office address, and telephone number of the ADA Coordinator must be published for ease of public inquiry.

Public Notice

3. What Does It Mean to Provide Public Notice?⁴

All public entities must provide information to the public, program participants, program beneficiaries, applicants, and employees about the ADA and how it applies to the public entity.

Methods of providing Public Notice:

- Put the notice on the public entity’s website.
- Include the notice in social media such as Twitter and Facebook.
- Post the notice at facilities.
- Publish the notice in local newspapers.
- Broadcast the notice in public service announcements on local radio and television stations.
- Include the notice in program announcements and applications.

The information must be provided in alternative formats so that it is accessible to people with hearing and vision disabilities. Alternative formats include but are not limited to:

- Captioned public service announcements on television.
- Large print (recommend san-serif typeface such as Helvetica or Arial, 18-point size. If an individual requests a specific point size, provide notice in that size).
- Braille.

- Text file on a thumb drive or emailed to the person.
- HTML format on an accessible website.
- Audio recording.
- Radio announcement.

Examples of Public Entities Providing Public Notice are as follows:

- County B's recreation department has four playgrounds. Two were renovated using the [ADA Standards for Accessible Design](#) and are accessible to children and adults with disabilities, two are not accessible. County B has information on the website concerning which playgrounds are accessible and which are not. The information is also included in the recreation department's brochure.
- State D's Museum has monthly tours that include sign language interpreters for people who are deaf. The museum will also try to get interpreters for any program with 14 days' notice. This information is on the museum's website, posted in the ticket purchase area and included in the museum's brochure.
- A City Managers' office receives a call from a new resident who uses a wheelchair. The resident would like to know which city facilities are accessible (and which aren't) and the locations of the accessible entrances. The City Manager's administrative assistant can provide that information because the ADA Coordinator created a list of the accessibility features in all municipal facilities. The list is on the city's website and the ADA Coordinator sent an email to all staff with the link.

Self-Evaluation

4. What is a Self-Evaluation?

All public entities should have completed a self-evaluation by January 26, 1993. A public entity that employs 50 or more employees must retain its self-evaluation for three years. Other public entities are not required to retain their self-evaluations but are encouraged to do so because these documents evidence a public entity's good faith efforts to comply with Title II's requirements.⁴

It is important to adopt an ADA standard (listed in the [ADA Basics](#) section of this document) to evaluate your curb ramps, sidewalks, buildings, etc. to determine if they are compliant with the ADA and are in turn accessible to individuals with disabilities. Adopting an ADA standard is an important decision and should include input from the ADA Coordinator and any other government employees who have read through the various standards and have a good working knowledge of the needs of all residents and the programs offered by the local government.

5. What are some examples of programs, services, and activities that should be in self-evaluation?⁵

One way to make sure that the self-evaluation is comprehensive is to identify all of the public entity's programs, services, and activities. A city or town may have twenty or more departments, including, but not limited to:

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| • Inspector | • Parks and Recreation |
| • Building | • Police |
| • City Clerk | • Planning |
| • Council on Aging | • Public Works |
| • Fire | • Retirement |
| • Health | • School |
| • Historical | • Treasurer |
| • Hospital | • Youth Services |
| • Human Resources | • Veterans |
| • Libraries | • Voter Registrar |
| • Mayor's or Manager's Office | |

Within each department there may be many programs, services, and activities that are available to the public. A Council on Aging, for example, might provide meal programs, transportation programs, health services, recreational

activities, and referral services. A state judiciary will have many courts and might provide other services such as mediation, divorce education, legal training and a court newsletter.

Transition Plan

6. What is a transition Plan?⁴

The transition plan is a formal document available to the public outlining a state or local government's compliance with ADA and is developed from the self-evaluation and facilities survey. Public entities with 50 or more employees are required to develop a transition plan.

7. What does an ADA Transition Plan include?⁴

An ADA transition plan consists of:

1. A list of the physical barriers that limit the accessibility of programs, activities, or services.
2. The methods to remove the barriers and make the facilities accessible.
3. The schedule to get the work completed.
4. The name of the official(s) responsible for the plan's implementation.
"Officials" may and should include the ADA Title II Coordinator and any other officials with the authority to complete, monitor and address ADA features that are listed on the transition plan.

The transition plan must also include a schedule for providing curb ramps, giving priority to walkways serving entities covered by the ADA, including state and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

Complaint/Grievance Procedure

8. What is a Complaint / Grievance Procedure?⁴

A complaint/grievance procedure provides people who believe they have been discriminated against because of their disability, or others who believe they have been discriminated against because they have a friend or family member with a disability, with a formal process to make their complaint known. This procedure encourages quick and fair resolution of the problem at the local or state level without forcing people to file a federal complaint or a lawsuit.

The Title II regulations do not specify the methods for the grievance procedure. The public entity may use a grievance procedure that is already in place; there is no need to create a fully independent procedure or duplicate existing procedures. If the organization does not already have a grievance procedure, one must be established.

9. What Should a Grievance Procedure Include?⁶

A grievance procedure should include:

- A description of how and where a complaint under Title II may be filed with the government entity;
- If a written complaint is required, a statement notifying potential complainants that alternative means of filing will be available to people with disabilities who require such an alternative;
- A description of the time frames and processes to be followed by the complainant and the government entity;
- Information on how to appeal an adverse decision, and;
- A statement of how long complaint files will be retained.

10. If a person with a disability has a complaint about a public entity, are they required to file a complaint with the public entity before filing a complaint with the federal government?³

No, the law does not require that an ADA complaint has to be filed against the public entity before it is filed with the federal government, however, it is often more effective to resolve the matter at the local level first.

Making Programs and Facilities Accessible

11. How does Title II affect participation in a state or local government's programs, activities, and services?⁵

A state or local government must eliminate any eligibility criteria for participation in programs, activities, and services that screen out or tend to screen out persons with disabilities, unless it can establish that the requirements are necessary for the provision of the service, program, or activity.

The state or local government may, however, adopt legitimate safety requirements necessary for safe operation if they are based on real risks, not on stereotypes or generalizations about individuals with disabilities.

Finally, a public entity must reasonably modify its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate that a particular modification would fundamentally alter the nature of its service, program, or activity, it is not required to make that modification.

12. What changes must a public entity make to its existing facilities to make them accessible?⁵

A public entity must ensure that individuals with disabilities are not excluded from services, programs, and activities because existing buildings are inaccessible. A state or local government's programs, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to facilities of a public entity that existed on January 26, 1992. Public entities do not necessarily have to make each of their existing facilities accessible. They may provide program accessibility by a number of methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate accessible sites.

13. Are all play areas required to be upgraded to the design specifications in the 2010 ADA Standards for Accessible Design?⁷

Not all play areas must be upgraded to be accessible, but enough playgrounds must be upgraded to ensure that children with disabilities have an equal opportunity to participate. This is the program accessibility standard: A public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. State and local governments should consider where the playgrounds are located, whether there are unique features in play areas and whether they are intended for different age groups when they are determining which ones to make accessible.

14. Do all state and local buildings need to be accessible (comply with the ADA Standards for Accessible Design?)⁷

Not necessarily. New construction and alterations need to meet the Standards, but for facilities built before the ADA went into effect on January 26, 1992, the focus is on making sure people with disabilities have equal access to programs, services and activities. Sometimes this can be accomplished through non-structural methods. In a two-story town hall built in 1968 that doesn't have an elevator, staff on the second floor could meet with citizens on the first floor if meeting space is comparable to that on the second floor in terms of privacy, comfort, etc.

15. What does Title II require for new construction and alterations?⁵

The ADA requires that all new buildings constructed by a state or local government be accessible. In addition, when a state or local government undertakes alterations to a building, it must make the altered portions accessible. The State of Delaware has ADA Standards for state buildings outlined on the Architectural Accessibility Board's (AAB) [website](#).

16. How will a state or local government know that a new building is accessible?⁵

A state or local government will be in compliance with the ADA for new construction and alterations if it follows the [2010 ADA Standards for Accessible Design](#). Effective March 15, 2012, the 2010 ADA Standards must be used for new construction and alterations undertaken by state and local governments.

Miscellaneous

16. How are the ADA's requirements for state and local governments enforced?⁵

Private individuals may bring lawsuits to enforce their rights under Title II of the ADA and may receive the same remedies as those provided under Section 504 of the Rehabilitation Act of 1973, including reasonable attorney's fees. Individuals may also file complaints with eight designated federal agencies, including the Department of Justice and the Department of Transportation.

17. Are state and local government websites required to be accessible?⁷

The Department of Justice (DOJ) considers websites to be an integral aspect of how Title II entities interact with their citizens and the public and therefore they need to be accessible. The DOJ recommends compliance with the W3C Web Content Accessibility Guidelines 2.0, until there are adopted ADA Standards for accessible information technology.

18. What are Reasonable Modifications?

Title II of the ADA, Section 35.130 (7) states that "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity."

Examples of some reasonable modifications are as follows:

- If a state agency that administers business licensing 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, they will need to make sure a person who has low vision can read and understand the forms.¹⁰
 1. A reasonable modification could include the form in large print or;
 2. Reading the forms to the person.
- 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. However, they can place reasonable restrictions on where the person eats.¹⁰
- 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 they are in line so that they do not lose their place in line, however it would be a fundamental alteration for that person to ask an official to stand in line and vote for them.¹⁰

18. Service Animals: How can I tell if an animal is really a service animal and not just a pet?⁸

Under the ADA, it is training that distinguishes a service animal from other animals. The definition of service animal, under Title II, is as follows:

§ 35.104 Definitions.

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

There is an exception made in § 35.136 Service animals (i) *Miniature horses* that allows for miniature horses to be used as service animals:

A public entity shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

While some service animals may be professionally trained; others may have been trained by their owners. However, the task that the service animal is trained to do must be **directly** related to the owner's disability.

If the task that the service animal performs is **not obvious**, there are two questions that you may ask the individual with the service animal:

1. **Is the service animal required because of a disability?**
 - a. If the answer is 'no', then the animal is not a service animal;
 - b. If the answer is 'yes', then you may ask the following question;
2. **What work or task has the service animal been trained to perform?**
 - a. Work that service animal perform varies and may include (but is not limited to) Alerting the handler to various surroundings, alert to seizures, assist with mobility or stability, block from danger, carrying items, opening items, retrieving items, guiding.

If the answer is 'none', then the animal is not a service animal. You may not ask those questions if the need for the service animal is obvious. An example of an obvious task would be if a service animal is guiding an individual who is blind or if a service animal is pulling a person's wheelchair.

QUESTIONS THAT MAY NOT BE ASKED:

- About the nature or extent of an individual's disability.
- Proof that the animal has been certified, trained, or licensed as a service animal.
- That the animal should wear an identifying vest or tag.
- The handler to demonstrate the service animal's ability to perform the task or work.

Just as all disabilities vary, an individual's need for their service animal varies. The ADA does require that service animals be leashed, or harnessed, unless doing so would interfere with the task that the service animal is trained to perform. In that case the service animal must remain under the handler's supervision by voice controls, signals or other effective means.

The ADA also stipulates that the handler is responsible for the care and supervision of their service animal. If a service animal behaves in an unacceptable way or is not housebroken and the individual with a disability does not gain control the animal, representatives of state and local governments have the right to ask that the handler gain control of their service animal. If the handler is unable to gain control of their service animal, then it can be requested that the handler remove the service animal from the premises. Keep in mind that the individual is welcome to rejoin without the presence of the service animal.

References

- ¹ *What are auxiliary aids and services?* / www.adalive.org. (n.d.). ADA Live. Retrieved June 29, 2021, from https://www.adalive.org/faq_episode4_q4
- ² [Definitions, 28 C.F.R. §35.104 \(1993\).](#)
- ³ *ADA Tool Kit: Chapter 2, Addendum, Checklist.* (2006, December 5). ADA.Gov. <https://www.ada.gov/pcatoolkit/chap2toolkit.htm>
- ⁴ *ADA Title II Action Guide.* (2017). ADA.Gov. <https://www.adaactionguide.org/action-steps>
- ⁵ *The Americans with Disabilities Act Questions and Answers.* (2013). ADA National Network. <https://adata.org/guide/americans-disabilities-act-questions-and-answers#State%20and%20Local%20Governments>
- ⁶ *Grievance Procedure* / ADANW. (2021). Northwest ADA Center. <https://nwadacenter.org/toolkit/grievance-procedure>
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- ⁸ *How can I tell if an animal is really a service animal and not just a pet.* (2021, June). ADA National Network. <https://adata.org/faq/how-can-i-tell-if-animal-really-service-animal-and-not-just-pet>
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