

American with Disabilities Act – Frequently Asked Questions

Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, including courts. The ADA applies to all state and local governments, their departments and agencies, and any other instrumentalities or special-purpose districts of state or local government.¹

1. What is a "disability" under the ADA?

A “disability” is a physical, mental, or communication condition that substantially limits one or more of the major life activities such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working. Some examples include mobility or other motor disabilities, vision disabilities, speech and hearing disabilities, environmental sensitivities, learning disabilities, and psychological disorders. The disability makes it hard for the person to do activities that most other people can do. It also may restrict the person’s way of doing things and/or where and for how long the person can do a certain activity or function. People who have a record of such disability or are regarded as having such disability also meet the definition of "disabled" for purposes of having a reasonable accommodation made.

2. Who is a "qualified" person with a disability?

A qualified person with a disability is one who meets the essential eligibility requirements for the program or service offered by the court with or without reasonable accommodation. For example, in order to be eligible for jury service the statute requires that persons be able to read, speak, and understand the English language. A deaf person reads, speaks, and understands the English language, so that person is qualified. However, an accommodation must be made in order for that person to fully participate in jury service. Because the attorney, who must use a wheelchair, is a qualified person with a disability, and is licensed to practice law in the state, the court must make a reasonable accommodation to assure that the courtroom is accessible for all facets of any proceeding in which the attorney must participate.

3. How does Title II affect participation in a court’s programs, activities, and services?

A court 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 court 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 court must reasonably modify its policies, practices, or procedures to avoid discrimination.

¹ <http://www.ada.gov/t2ht95.htm>

4. Are there any limitations on the program-accessibility requirement?

Yes. A public entity does not have to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity, or in undue financial and administrative burdens. This determination can only be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that undue burdens would result must be based on all resources available for use in the program. If an action would result in such an alteration or such burdens, the public entity must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

5. What are some examples of the types of modifications in policies and practices that would be reasonable in most cases?

Examples include rewriting policies that categorically exclude people with disabilities from serving on juries, such as people who are deaf or blind; permitting a witness or spectator with diabetes to consume a snack, such as candy, as needed to maintain blood sugar levels; permitting persons with celiac disease who require gluten free meals to bring them to court; or explaining the words on an instruction sheet to a citizen who is mentally challenged.

6. Who may request an accommodation?

Any qualified person with a disability who has business in a state court, including attorneys, litigants, defendants, probationers, witnesses, potential jurors, prospective employees, and public observers of court services and programs may request reasonable accommodation by contacting the local ADA Coordinator.

7. May spectators obtain reasonable accommodation in the courtroom?

Yes, the courts must provide auxiliary aids to courtroom spectators as needed to ensure their equal participation in and benefit from court programs and services. Access to these services must be provided unless the court can demonstrate that the accommodation would result in a fundamental alteration of the nature of a service, program, or activity, or cause an undue financial or administrative burden. For example, an untimely request for accommodation by a spectator need not be granted if it would require a continuation of the court proceedings that would cause the undue administrative burden of rescheduling the parties, attorneys, and witnesses.

8. How is a request for reasonable accommodation submitted?

Each court has an ADA Coordinator who is responsible for arranging reasonable accommodations for people with disabilities. You can access the list of court ADA Coordinators at:

<http://courts.michigan.gov/scao/services/access/ADA-Coordinators.pdf>

In addition, the ADA Online Request form is available at:

<http://courts.michigan.gov/scao/services/access/MC70.pdf>

The request should identify the particular court activity or service for which accommodation is sought; the date, time, and location where the accommodation is needed; a description of the disability; and the type of accommodation being requested. All requests for an accommodation will be held confidential.

9. When must the request for accommodation be made?

To avoid causing undue disruption of court proceedings or processes, requests for accommodation must be given with reasonable notice. If the request relates to a jury summons, the individual should contact the Jury Clerk for the court in question as soon in advance as possible. If the request concerns a particular court proceeding, the request should be made as soon in advance as practicable to allow time to consider the request and arrange for reasonable accommodation.

10. Is the court required to provide the requested accommodation?

The court, with assistance from the local ADA coordinator, decides what reasonable accommodation can be made. Primary consideration is given to the request of the individual with the disability; however, an alternative accommodation may be offered if equally effective. The court is not required to make modifications that would fundamentally alter the service or program or cause an undue administrative or financial burden.

11. Who pays for the auxiliary aids and services?

Auxiliary aids and services necessary for effective communication or to enable participation in services, other than devices of a personal nature, are to be provided at no cost to the person with the disability. The court is responsible for providing the accommodation and paying the incurred costs.

12. What kinds of accommodation are available?

The court must ensure that court programs are physically accessible to people with disabilities by removing architectural barriers. Examples of architectural accommodations to facilitate accessibility to people with disabilities are: providing wheelchair ramps (at proper pitch and in safe locations) and wheelchair accessible restrooms in compliance with ADA accessibility standards, as described in the response to FAQ 21; allowing sufficient time for people with disabilities to travel to and from a barrier free restroom; adjusting the height of public information counters; labeling facilities with Braille lettering; providing adequate lighting in the courtrooms for those with vision disabilities; providing adjustable microphones for witnesses; altering openings to the well so that wheelchairs can pass through; allowing jurors and prospective jurors to sit outside the jury box or allowing witnesses to sit outside the witness box, as applicable, if those are not accessible for a wheelchair or if steps are required for persons who cannot easily climb up or down them. For additional accommodations that may be provided to people with specific disabilities, see the answers to FAQs 14 through 18.

13. What does the requirement for effective communication mean in a court?

The court must ensure that its communications with people with disabilities are as effective as communications with others so that all can fully participate and enjoy the services and programs provided. The provision of auxiliary aids and services, at no charge, may be a reasonable accommodation to ensure effective communication for a person with a hearing, visual, or speech disability. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved and the individual's specific disability and preferred mode of communication. Every effort shall be made to meet the specific needs of the individual. The court is not responsible, however, for providing devices of a personal nature such as prescription eyeglasses, hearing aids, wheelchairs, and/or personal medical or attendant care.

14. What types of accommodations are available to assist people who are deaf or hard of hearing?

Depending on the needs of the individual and the nature of the impairment, an accommodation may involve:

- allowing the person to sit where he or she can hear better;
- allowing use of a telecommunication system to communicate;
- providing a qualified sign interpreter appointed by the court;
- or providing an assistive listening system or computer-aided transcription device.

Some deaf and hard of hearing people rely on written notes to communicate with hearing people. Although writing can supplement other modes of communication, using it exclusively is tedious, cumbersome, and time-consuming. Also, because literacy levels vary, it is not accurate to assume that written notes will be effective for all deaf or hard of hearing people.

A common misconception is that all deaf and hard of hearing people can read lips. However, very few people can read lips well enough to understand speech, even under optimum conditions.

Below are several effective ways to telecommunicate with deaf, hard of hearing, and speech impaired people:

A. Text Telephone (TTY)

This is a special type of telephone with a keyboard and a small screen where typed text appears. Every court should consider having a TTY to handle incoming calls and for the public to use - the equivalent of a public phone booth.

B. E-mail

Another text-based way to communicate is to use e-mail through a computer, a web-enabled pager system, or a personal digital assistant.

C. Telecommunications Relay Service (TRS)

Telecommunications Relay Service (TRS) is a telephone service that allows persons with hearing or speech disabilities to place and receive telephone calls. TRS is available in all 50 states, the District of Columbia, Puerto Rico, and the U.S. territories for local and/or long distance calls. TRS providers – generally telephone companies – are compensated for the costs of providing TRS from either a state or a federal fund. There is no cost to the TRS user.

1. How Does TRS Work?

TRS uses operators, called communications assistants (CAs), to facilitate telephone calls between people with hearing and speech disabilities and other individuals. Either a person with a hearing or speech disability, or a person without such disability may initiate a TRS call. When a person with a hearing or speech disability initiates a TRS call, the person uses a TTY or other text input device to call the TRS relay center, and gives a CA the number of the party that he or she wants to call. The CA in turn places an outbound traditional voice call

to that person. The CA then serves as a link for the call, relaying the text of the calling party in voice to the called party, and converting to text what the called party voices back to the calling party.

2. **What Forms of TRS are Available?**

There are several forms of TRS, depending on the particular needs of the user and the equipment available.

- a. **Text-to-Voice TTY-based TRS** - With this type of “traditional” TRS, a person with a hearing or speech disability uses a special text telephone, called a TTY, to call the CA at the relay center. TTYs have a keyboard and allow people to type their telephone conversations. The text is read on a display screen and/or a paper printout. A TTY user calls a TRS relay center and types the number of the person he or she wishes to call. The CA at the relay center then makes a voice telephone call to the other party to the call, and relays the call back and forth between the parties by speaking what a text user types, and typing what a voice telephone user speaks.
- b. **Voice Carry Over** - Voice Carry Over (VCO) is a type of TRS that allows a person with a hearing disability, who wants to use his or her own voice, to speak directly to the called party and receive responses in text from the CA. No typing is required by the calling party. This service is particularly useful to senior citizens who have lost their hearing, but who can still speak.
- c. **Hearing Carry Over** - Hearing Carry Over (HCO) is a type of TRS that allows a person with a speech disability, who wants to use his/her own hearing, to listen to the called party and type his/her part of the conversation on a TTY. The CA reads the words to the called party, and the caller hears responses directly from the called party.
- d. **Speech-to-Speech (STS) Relay Service** - This form of TRS is used by a person with a speech disability. A CA, who is specially trained in understanding a variety of speech disorders, repeats what the caller says in a manner that makes the caller's words clear and understandable to the called party. No special telephone is needed. For more information regarding STS visit www.fcc.gov/cgb/consumerfacts/speechtospeech.html.
- e. **Shared Non-English Language Relay Services** - Due to the large number of Spanish speakers in the United States, the FCC requires interstate TRS providers to offer Spanish-to-Spanish traditional TRS. Although Spanish language relay is not required for intrastate (within a state) TRS, many states with large numbers of Spanish speakers offer this service on a voluntary basis. The FCC also allows TRS providers who voluntarily offer other shared non-English language interstate TRS, such as French-to-French, to be compensated from the federal TRS fund.
- f. **Captioned Telephone Service** - Captioned telephone service, like VCO, is used by persons with a hearing disability but some residual hearing. It uses a special telephone that has a text screen to display captions of what the other party to the conversation is saying. A captioned telephone allows the user, on one line, to speak to the called party and to simultaneously listen to the other party and read captions of what the other party is saying. There is a “two-line” version of captioned telephone service that offers additional features, such as call waiting, *69, call forwarding, and direct dialing for 911 emergency service. Unlike traditional TRS (where the CA types what the

called party says), the CA repeats or re-voices what the called party says. Speech recognition technology automatically transcribes the CA's voice into text, which is then transmitted directly to the user's captioned telephone text display.

- g. **Video Relay Service (VRS)** - This Internet-based form of TRS allows persons whose primary language is American Sign Language (ASL) to communicate with the CA in ASL using video conferencing equipment. The CA speaks what is signed to the called party, and signs the called party's response back to the caller. VRS is not required by the FCC, but is offered by several TRS providers. VRS allows conversations to flow in near real time and in a faster and more natural manner than text-based TRS. TRS providers that offer VRS must provide it 24 hours a day, 7 days a week, and must answer incoming calls within a specific period of time so that VRS users do not have to wait for a long time. For more information regarding VRS visit: www.fcc.gov/cgb/consumerfacts/videorelay.html.
- h. **Internet Protocol (IP) Relay Service** - IP Relay is a text-based form of TRS that uses the Internet, rather than traditional telephone lines, for the leg of the call between the person with a hearing or speech disability and the CA. Otherwise, the call is generally handled just like a TTY-based TRS call. The user may use a computer or other web-enabled device to communicate with the CA. IP Relay is not required by the FCC, but is offered by several TRS providers. For more information regarding IP Relay, visit www.fcc.gov/cgb/consumerfacts/iprelay.html.
- i. **IP Captioned Telephone Service** – IP captioned telephone service, one of the newest forms of TRS, combines elements of captioned telephone service and IP Relay. IP captioned telephone service can be provided in a variety of ways, but uses the Internet – rather than the telephone network – to provide the link and captions between the caller with a hearing disability and the CA. It allows the user to simultaneously listen to, and read the text of, what the other party in a telephone conversation is saying. IP captioned telephone service can be used with an existing voice telephone and a computer or other Web-enabled device without requiring any specialized equipment. For more information regarding IP captioned telephone service, visit www.fcc.gov/cgb/consumerfacts/ipcaptioned.html.

3. **711 Access to TRS**

Just as you can call 411 for information, you can dial 711 to connect to certain forms of TRS anywhere in the United States. Dialing 711 makes it easier for travelers to use TRS because they do not have to remember TRS numbers in every state. Because of technological limitations, however, 711 access is not available for the Internet-based forms of TRS (VRS and IP Relay).

For more information regarding 711, visit www.fcc.gov/cgb/consumerfacts/711.html

D. Sign Language and Interpreters

Many deaf and hard of hearing people use American Sign Language (ASL) rather than spoken English as their primary mode of communication. ASL is a natural language recognized globally and used by members of the deaf community here in

the United States. It is linguistically complete with unique rules for language structure and use that include phonology, morphology, syntax, semantics, and discourse.

Family members or amateurs who know some sign language should never interpret for a court-related process. They may lack the techniques and skills needed for effective interpretation, generally are not familiar with court terminology and protocols, and have difficulty being neutral in the process.

Not all deaf or hard of hearing people are proficient in American Sign Language. Occasionally, it will be necessary to use other means of ensuring communication. A person who is both deaf and blind may need an interpreter skilled in tactile communication. Some deaf and hard of hearing people do not use sign language but require an "oral" interpreter who silently mouths the speaker's words to them.

Complete information on sign language interpreters can be found at:
<http://www6.dleg.state.mi.us/interpreter/>

E. Assistive Listening Systems

Assistive Listening Systems transmit sound as directly as possible to a hearing aid. Such systems should not be confused with audio systems that are designed to make the sound louder. Rather than enhancing all the sounds in the room, an assistive listening device can bring specific sounds directly to the user's ears.

F. Real-Time Transcription

Real-time transcription works effectively for individuals who have strong reading skills and for those who do not know sign language. Because of the speed of the transcription, it will not work for slow readers.

15. What types of accommodations are available to assist people who are legally blind or visually disabled?

Depending on the needs of the individual and the nature of the disability, accommodation may involve: providing forms and instructions in Braille, large print, or on audio tape; providing assistance at the counter in filling out necessary paperwork; having written materials read out loud in the courtroom; allowing the person to sit closer than usual if they have limited vision; or providing additional lighting if the lighting is a problem.

People who are blind or visually disabled often can be assisted by increasing the size of an object, by changing viewing distance, by improving illumination, and by improving contrast. Changing size and distance go hand in hand. Size can be changed in several different ways: an object can be made larger (such as a big-button telephone), materials can be reproduced in a larger size (such as large print), a nearby object can be enlarged (using a magnifier), or a far-away object can be enlarged (using a telescope). Devices can be set into glass frames, some of which are bi-optic.

The most critical consideration for a low-vision individual is lighting. The midday offers the best light. Halogen bulbs and lamps that place direct light on a subject are highly recommended. When considering which bulbs to use, incandescent bulbs with a high

wattage are preferred over florescent. Florescent bulbs throw off a glaring blue light. If the person with a visual disability is referring to notes, additional light (such as a gooseneck lamp) may be necessary.

Contrast in written materials also can be important. The more words crowded onto a page and the more similar the ink and paper colors, the less one can discriminate. Using 14-point or larger black type on yellow paper will greatly increase the readability of materials.

16. What types of accommodations are available to assist people with mobility disabilities?

Depending on the needs of the individual and the nature of the disability, accommodation may include: having the clerk mail out forms to a person limited in his or her ability to visit the courthouse; or holding a proceeding in a more accessible location.

Depending on the nature of the disability and the preferences of the person with the disability, it may be a reasonable accommodation to allow the testimony of a witness to be videotaped, or the use of video conferencing technology in lieu of a personal appearance. These types of accommodations may be offered, but should not be forced on a person with a mobility disability. Often, the types of accommodations discussed in the response to FAQ 12 are preferable to the person with the disability and are perceived to be more respectful of that person's individual rights to appear and participate in court proceedings.

Many persons with limited mobility do not initially appear to have a disability, particularly if they do not use a cane or other assistive device. A disability may become apparent only when the person moves about the court facility with difficulty or when a crowd or rush of people affects the person's balance. Signs of a limitation of mobility include unsteadiness, walking slowly, aberrations in gait, holding back, or requiring unusual time to get around the court facility or to follow instructions related to movement. When these conditions are observed, it may be appropriate for court personnel to ask if any assistance is required and, when necessary, to alert the judge that the individual may need more time. Accommodations for such persons usually require no extra court personnel or other additional expense.

Loss of balance and falling are significant risks to persons of limited mobility in unfamiliar public places. What accommodations are reasonable and helpful to minimize these risks?

- Proactively anticipate and minimize these risks. Conspicuously mark changes in elevation and mark the top of steps or stairs. Don't overly polish floors, and use products that minimize slipperiness. Have consistent and adequate lighting.
- Have adequate seating for persons who have to wait.
- Offer adequate time for breaks when a person with limited mobility is in the courtroom so the person does not have to rush.
- Offer the person access to elevators, when available, and opportunities to sit and remain seated when others are expected to stand.

- Offer alternate restroom facilities if the public facilities are not close to the courtroom involved.
- Avoid risks for an individual who has difficulty climbing even a few steps or accessing positions in a jury box with different elevations by either offering a chair nearby or having a security person extend an arm to help steady the individual. This can be particularly problematic if a prospective juror of limited mobility is excused during voir dire and has to pass by other prospective jurors who are seated.
- Encourage court personnel to recognize and be responsive to mobility limitations, such as by avoiding unnecessary rushing, not walking closely behind a person who is moving slowly, and not passing the person from behind on the right side as opposed to the left side. These and other similar actions can be surprising and can affect a person's balance.
- Refrain from giving hands-on assistance without first asking (except when a person is in the process of falling), as an unexpected touching may affect the person's balance.
- Ask how best to help a person who has fallen; don't attempt to assist the person without consent. Falls are inherently unexpected. The person may need time to gather composure, assess whether there is an injury, or use individual means that work best for that person to get to a standing position. After the person is up, it is helpful to offer a chair and offer water.
- Don't move a person who has fallen and cannot move, does not want to move, or is unconscious. Call an emergency medical service or other trained personnel to minimize further injury. Block off the area until help arrives.

Re-evaluate handicap parking. All too frequently, handicap spaces are not the closest to the main building entrance. At least some spaces should be near the entrance. If a ramp starts at some distance from the entrance, some handicap spaces should be near the entrance and some near the bottom of the ramp.

17. What types of accommodations are available to assist people with cognitive or developmental disabilities?

Developmental disability is an umbrella term referring to disabilities present before an individual reaches 22 years of age. Examples of developmental disabilities are cerebral palsy, epilepsy, autism, hearing loss, Down syndrome, mental retardation, spinal injury, or brain injury. Cognitive disabilities refer to any disability affecting mental processes. Examples include mental retardation, attention deficit hyperactivity disorder (ADHD), dyslexia, Alzheimer's disease, aphasia, brain injury, language delay, and learning disabilities. Remember that many individuals with developmental and cognitive disabilities may not have limited intellectual functioning. Those that do may require accommodation.

Depending on the needs of the individual and the nature of the disability, accommodation may include: having the court and witnesses talk slowly or write things down; when