

# ADA Title II Regulations

## Applicable to Guardianship and Conservatorship Proceedings

### Summary:

**Complaints.** An ADA complaint may be filed by an individual who believes that a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity. (Section 35.170(a)) Complaints may be filed on behalf of classes or third parties. (Section 35.104)

**Government Services.** The prohibitions against discrimination on the basis of disability apply to all services, programs, or activities of a public entity. (Section 35.102(a)) A public entity includes a state or local government, or any department, agency, or instrumentality of a state or local government. (Section 34.104)

**Notice, Self Evaluation, Complaint Procedure.** A public entity shall make available to the beneficiaries of its services information about the ADA and its applicability to the entity's services. (Section 35.106) A public entity shall conduct a self evaluation of its services and programs to determine if they comply with the requirements of the ADA and if they do not then to modify them in a manner to make them compliant. (Section 35.105) A public entity with 50 or more employees shall adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would violate the ADA. (Section 35.107)

**ADA Duties.** A public entity shall not deny the **benefit of its services** to someone on the basis of his or her disability. (Section 35.130(a)) The opportunity to benefit from services shall be provided on an **equal basis** as provided to participants without a disability. (Section 35.130(b)) A public entity shall make **reasonable modifications** to policies, practices, or procedures in order to avoid discrimination on the basis of disability. (Section 35.130(b)(7)) A public entity shall take appropriate steps to ensure that **communications** with service recipients with disabilities are as **effective** as communications with others. (Section 35.160)

### Regulations:

#### **§ 35.101 Purpose and broad coverage.**

(a) *Purpose.* The purpose of this part is to implement subtitle A of title II of the Americans with Disabilities Act of 1990 (42 U.S. C. 12131–12134), as amended by the ADA Amendments Act of 2008 (ADA Amendments Act) (Public Law 110–325, 122 Stat. 3553 (2008)), which prohibits discrimination on the basis of disability by public entities.

#### **§ 35.102 Application.**

(a) Except as provided in paragraph (b) of this section, this part applies to all services, programs, and activities provided or made available by public entities.

(b) To the extent that public transportation services, programs, and activities of public entities are covered by subtitle B of title II of the ADA, they are not subject to the requirements of this part.

### **§ 35.104 Definitions.**

For purposes this part, the term—

*Complete complaint* means a written statement that contains the complainant's name and address and describes the public entity's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of this part. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

*Public entity* means—

- (1) Any State or local government;
- (2) Any department, agency, special purpose district, or other instrumentality of a State or States 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).

### **§ 35.105 Self-evaluation.**

(a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.

(d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.

### **§ 35.106 Notice**

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

### **§ 35.107 Designation of responsible employee and adoption of grievance procedures**

(a) *Designation of responsible employee.* A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

(b) *Complaint procedure.* A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

### § 35.130 General prohibitions against discrimination

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b) (1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an **opportunity to participate** in or benefit from the aid, benefit, or service that is not **equal to that afforded others**;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(b) (7) (i) 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.

### Subpart E—Communications

#### § 35.160 General.

(a) (1) A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

## **Subpart F—Compliance Procedures**

### **§ 35.170 Complaints**

- (a) *Who may file.* An individual who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint under this part.
- (b) *Time for filing.* A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency for good cause shown. A complaint is deemed to be filed under this section on the date it is first filed with any Federal agency.
- (c) *Where to file.* An individual may file a complaint with any agency that he or she believes to be the appropriate agency designated under subpart G of this part, or with any agency that provides funding to the public entity that is the subject of the complaint, or with the Department of Justice for referral as provided in §35.171(a)(2).

### **References:**

These excerpts have been taken from the regulations found online at:

[https://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.htm#a35101](https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm#a35101)

Title II applies to state and local courts. [Tennessee v. Lane, 541 U.S. 509, 531 \(2004\).](#)

Courts must comply with the ADA in judicial proceedings. <https://www.ada.gov/cjta.html>

Guardianship proceedings are services that are subject to the mandates of the ADA.

[https://www.ada.gov/doj\\_hhs\\_ta/child\\_welfare\\_ta.html](https://www.ada.gov/doj_hhs_ta/child_welfare_ta.html)

### **§ 35.172 Investigations and compliance reviews.**

- (a) The designated agency shall investigate complaints for which it is responsible under § 35.171. (b) The designated agency may conduct compliance reviews of public entities in order to ascertain whether there has been a failure to comply with the nondiscrimination requirements of this part.

### **§ 35.190 Designated Agencies.**

- (6) *Department of Justice:* All programs, services, and regulatory activities relating to law enforcement, public safety, and the **administration of justice, including courts** and correctional institutions . . .