

Americans with Disabilities Act, Disability Rights, and the Legal System: An Introduction for Advocates

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Today's Presenter



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Disclaimer

Information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA.

The Northeast ADA Center is authorized by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the ADA. The contents of this presentation were developed under a grant from NIDILRR, grant number 90DP0088. NIDILRR is a Center within the Administration for Community Living (ACL), Department of Health and Human Services (HHS). The contents of this presentation do not necessarily represent the policy of NIDILRR, ACL, HHS, and you should not assume endorsement by the Federal Government.

About the Northeast ADA Center

The Northeast ADA Center is a member of the [National Network of ADA Centers](#) funded by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR), a Center within the Administration for Community Living (ACL), Department of Health and Human Services (HHS).

Our mission is to provide information, referrals, resources and training on equal opportunity for individuals with disabilities and on the Americans with Disabilities Act to individuals and organizations in **New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands**. Our center is located at the Yang-Tan Institute at Cornell University. Our staff consists of individuals with and without disabilities who have extensive experience in the disability field.

Today's Agenda

- Review what the Americans with Disabilities Act “is” and “is not”
- Dive into Title II of the ADA in particular
- Examine Department of Justice activities related to the criminal justice system
- Learn what rights individuals with disabilities and their companions have through the ADA
- Share resources, questions, and conversation

For your consideration...

"We know that equality of individual ability has never existed and never will, but we do insist that equality of opportunity still be sought."

Franklin Delano Roosevelt

Disability Prevalence Rate in New Jersey 2018

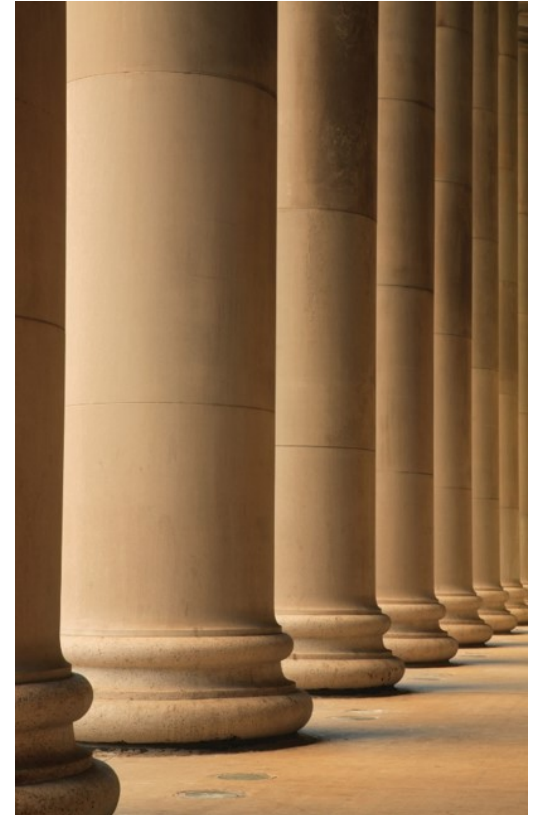
- Overall Disability Rate in NJ: 10.2%
- Visual Disability: 1.9%
- Hearing Disability: 2.6%
- Ambulatory Disability: 5.8%
- Cognitive Disability: 3.9%
- Self-care Disability: 2.5%
- Independent Living Disability: 4.9%
- Erickson, W., Lee, C., von Schrader, S. (2018). Disability Statistics from the American Community Survey (ACS). Ithaca, NY: Cornell University Yang-Tan Institute (YTI). Retrieved from Cornell University Disability Statistics website:
<http://www.disabilitystatistics.org/>

What is the ADA?

- Civil rights law passed in 1990 and amended 2008
- Provides protections for the rights of individuals with disabilities
- Aims to ensure equal opportunity and equal access in all aspects of community life

How is it Enforced?

- Different Titles and sections have different federal enforcement agencies
- The Equal Employment Opportunity Commission enforces employment regulations
- Department of Transportation enforces public transportation regulations
- Department of Justice enforces most of everything else
- Individuals can file private lawsuits



Five Titles of the ADA

Title I Employment

Prohibits disability discrimination in all employment processes **(EEOC Enforces)**

Title II Accessibility in State/Local Government

Physical and program accessibility in state/local govt. entities **(U.S. DOJ and DOT Enforce)**

Title III Accessibility in Public Accommodations

Physical and program accessibility in restaurants, hotels, stores, places of business **(U.S. DOJ Enforces)**

Title IV Telecommunications

Telephone and communications systems for the public **(FCC and U.S. DOJ Enforce)**

Title V Miscellaneous

Protection from retaliation

What the ADA is Not:

- Is not an agency
- Is not a social service program
- Is not applicable to every situation
- Does not require “certification” for a person to be covered

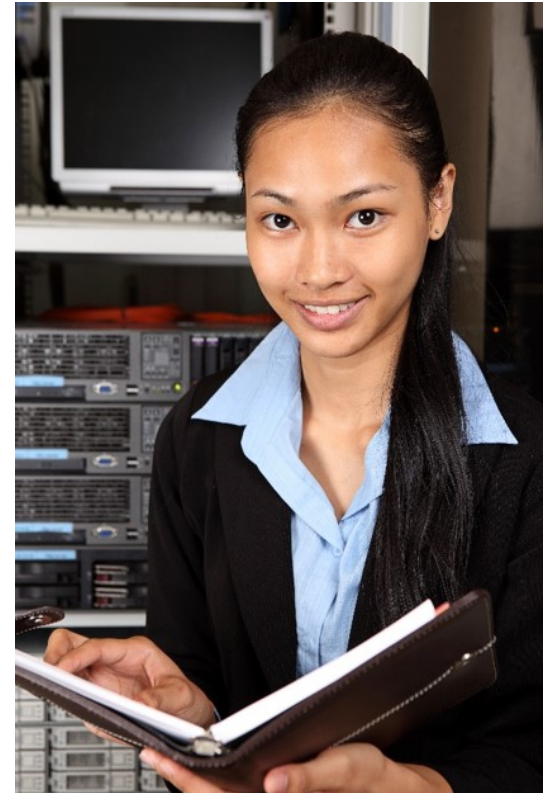
What Does Disability Mean Under the ADA?

From the ADA's point of view:

- A person with a physical or mental impairment that substantially limits one or more major life activities
- A person with a record of such an impairment
- A person who is regarded as having such an impairment

Qualified Individual with a Disability:

- An individual who, with or without reasonable accommodation, can perform the essential functions of the job in question or complies with the legitimate requirements to receive a public or private service.



Title II -State and Local Government Services

Requires that individuals with disabilities are not excluded from programs, services and activities provided by state and local government entities.

Title II applies to agencies such as:

- Public Libraries
- Public Schools
- Local/State Courts
- Town Halls
- Police Departments
- Public Streets & Sidewalks
- Public Transportation

A Key Principle

“No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

Title II Requirements in General

- Programs and services must be usable by everyone
- Essentially, “Program Access” must be achieved to ensure access for people with disabilities unless doing so causes a fundamental alteration in the nature of a service or program or cause excessive financial and administrative burden.
- In addition, new construction and alterations of facilities must comply with the 2010 ADA Standards for Accessible Design.

Some Specific Requirements

Public entities:

- May not impose eligibility criteria that either screen out or tend to screen out persons with disabilities unless necessary for provision of the service
- May impose legitimate safety requirements based on real risks, not on speculation, stereotypes, or generalizations
- May offer separate programs for persons with disabilities, but cannot require individuals to choose the separate program

Program Access

- A public entity's services, programs, and activities, when viewed in their entirety, must be readily accessible to and usable by people with disabilities
- A program must be evaluated both in terms of the parts or elements that make up the program AND in terms of the way they work together as a whole

Physical Access

- Title II Entities must provide “Program Access” unless it’s an “Undue Burden”
- Unlike private entities under Title III, public entities are not required to remove barriers from each facility, even if removal is readily achievable
- All new construction or alterations must comply with the 2010 ADA Standards for Accessible Design
- May need to make a reasonable modification if a barrier to physical access exists



Reasonable Modification

"A public entity must make reasonable modifications in policies, practices, or procedures when 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."

NOTE: The public entity still must find a way to ensure access to benefits and services of the program or activity

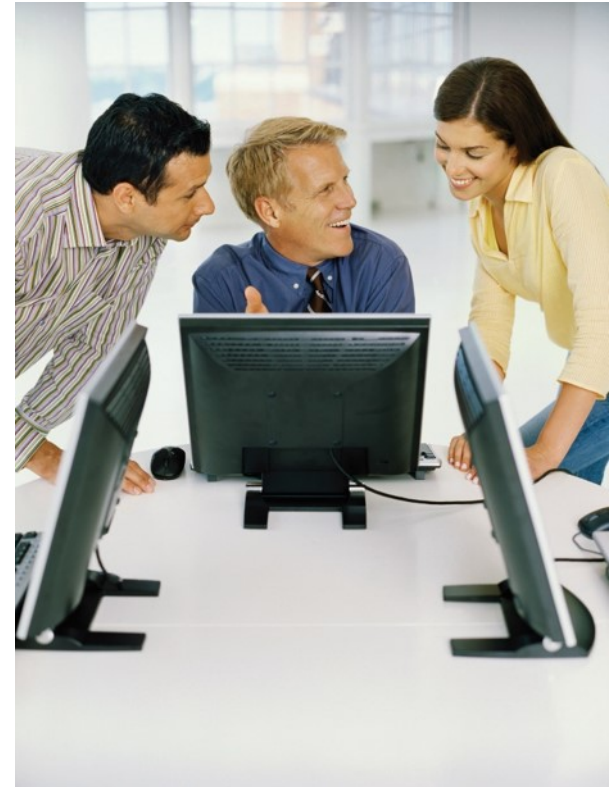
Examples of Reasonable Modifications

- Reassigning services to accessible locations
- Home visits
- Purchase of equipment
- Offering aide/assistance
- Auxiliary aids and services to ensure effective communication
- Structural change if no other option available

Effective Communication

“Effective communication” means that communication:

- must be as clear and understandable to people with disabilities as it is for people who do not have disabilities.
- Applies to individuals with communication related disabilities such as those affecting vision, hearing, or speech.
- Applies to companions with communication disabilities
- Must be provided unless would cause an undue burden; even so alternate means of communication must be provided
- Title II entities must give primary consideration to the individual’s preferred method of communicating



- Both Parties Need to be Able to Clearly Understand and Communicate with One Another
- Communication is both receiving (receptive) and sending (expressive).
- The standard for achieving effective communication is on the outcome of the communication.

Effective Communication Essentials (Cont.)

- Effective communication may require an auxiliary aid or service which is “a device or service that enables effective communication for people with disabilities”
Examples:
 - Hearing disabilities — Qualified interpreters, written materials, assistive listening devices & technology, closed captioning, transcription services, note-takers, video remote interpreting (VRI)
 - Visual disabilities — Braille, audio descriptions and recordings, large print, CDs/tapes, qualified readers, physical guidance

When Determining an Auxiliary Aid or Service

Consider:

- Duration and complexity of the communication
- Context of communication
- Number of people involved and/or in need of the communication
- Importance and potential impact of the communication

Title II Justice System Related Enforcement Activity

Let's look at a few examples of the Department of Justice enforcing Title II in criminal justice.



Effective Communication

Example 1

Settlement agreement with the City of Philadelphia and the Philadelphia Police Department (Failure to provide effective Communication for Deaf and Hard of Hearing Individuals throughout detention).

https://www.ada.gov/ppd_sa.html

Effective Communication

Example 2

Settlement agreement with Harrison County, Mississippi
Complainant was charged for the provision of an interpreter and claimed he was disqualified or otherwise excused from serving as a juror for the Harrison County Circuit Court because he is deaf

<https://www.ada.gov/harriss.htm>

Effective Communication

Example 3

Settlement agreement with the Orange County Clerk of Courts in Florida

Clerk of Ninth Judicial Circuit Court of Florida failed to provide blind attorney with accessible electronic format documents despite multiple requests

<https://www.ada.gov/occ.htm>

Effective Communication and Physical Access Example

Settlement agreement with Lancaster County, PA

A military veteran with a physical and hearing disability could not access county court proceedings, or the restroom in the courthouse, because of architectural barriers at several court facilities and was not provided an assistive listening system

https://www.ada.gov/lancaster_pca/lancaster_factsht.htm

Example of Reasonable Modification

Robinson v. Farley

Case in which plaintiff alleged that D.C. police officers violated Title II of the ADA when they failed to reasonably accommodate his disabilities during his arrest and post-arrest proceedings

https://www.ada.gov/briefs/robinson_soi.pdf

A Supreme Court Decision

Tennessee v. Lane

- Supreme Court found ADA allowed individual to file claim against a state (no sovereign immunity protection)
- Two plaintiffs who use wheelchairs filed lawsuit against Tennessee for inaccessible court facilities



<https://www.law.cornell.edu/supct/html/02-1667.ZO.html>

An Important DOJ Letter

Statement of Interest in Steven Prakel, et al v. the State of Indiana

- Steven who is Deaf is the son of Carolyn Prakel, a defendant in a criminal proceeding
- Steven's multiple requests for a ASL interpreter for his mother's pretrial hearings were denied
- DOJ affirm that members of the public with disabilities can access public court proceedings as fully as those without disabilities and that a spectator can be a qualified individual

https://www.ada.gov/briefs/prakel_soi.pdf

Some Take-aways for Advocates

- Know what is and is not a right under the ADA and who is covered
- Remember the ADA is about equality of opportunity and access
- If you know of a need for a modification, engage the system/process
- Find the court ADA coordinator

Some Take-aways for the Justice System

- Staff need training on disability and awareness of how to effectively interact with people with disabilities
- Must carefully consider their policies to be certain that they align with ADA; may well require flexibility
- Should develop partnerships with state/local disability agencies/departments to assist in properly serving individuals with disability related needs

Resources

[ADA Criminal Justice: Ensuring Equality in the Criminal Justice System for People with Disabilities](#)

[Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the Americans with Disabilities Act](#)

[Criminal Justice & the ADA \(Legal Brief by Equip for Equality\)](#)

To File a Complaint Under the ADA

To file a complaint with the Department of Justice, you can call the Department's ADA line at 1-800-514-0301.

You can also file electronically with the Civil Rights Division by visiting <https://civilrights.justice.gov/report/>

New Jersey Resources

[Americans with Disabilities Act \(information and processes related to the ADA in NJ Courts\)](#)

[Title II ADA Coordinator Directory for Court Users](#)

[New Jersey Judiciary's ADA Procedures for Access to the Courts](#)

QUESTIONS?



Joe's Contact info

If you think of questions or concerns
contact me.

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