

# ADA Title II: Program Access and Structural Accessibility

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## 1. ADA Title II: Program Accessibility and Structural Accessibility

### 2. Disclaimer

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### 3. Five Titles of the ADA

▶ **Title I. Employment**

Prohibits disability discrimination in all employment processes

▶ **Title 2. Accessibility in public entities**

**Physical and program accessibility in state/local govt. entities**

▶ **Title 3. Accessibility in businesses**

Physical and program accessibility in restaurants, hotels, stores, places of business

▶ **Title 4. Telecommunications**

Telephone and communications systems for the public

▶ **Title 5. Miscellaneous**

Protection from retaliation

### 4. Program Accessibility

A public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible.

**A public entity's services, programs, or activities**, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to all existing facilities of a public entity.

### 5. Grandfathered In?

- Facilities built before the ADA are **NOT** "grandfathered in"
- They may not have to do structural renovations to become accessible but they are still **responsible for ensuring program accessibility**.

### 6. Program Accessibility Options Include

- 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

## 7. Program Accessibility: Examples

- Public hearings, meetings, information, etc. need to be accessible.
- Moving to an accessible location.
- Providing ASL interpreter.
- Providing handouts or meeting minutes in alternative formats.
- Going to a person's home to give them necessary information, etc.

## 8. "In Its Entirety" (slide 1 of 3)

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.

## 9. "In Its Entirety" (slide 2 of 3)

Public entities are not necessarily required to make each of their existing facilities accessible or every aspect of a facility structurally accessible. This allows for both structural and non-structural methods of achieving program accessibility.

## 10. In Its Entirety" (slide 3 of 3)

Example: A city library system has six branches. To evaluate the accessibility and usability of the library system in its entirety, it is necessary to consider:

- The resources and activities provided in each library and facility
- The operation of the libraries in the system as a network
- Any out-of-building activities that are part of the operation of the system.

Answering these questions will determine whether all the services and resources available in the system are available in accessible locations.

## 11. Important Point A

I Unlike private entities under Title III, public entities are not required to remove barriers from each facility, even if removal is readily achievable.

A public entity must make its programs accessible. Physical changes to a building are required only when there is no other feasible way to make the program accessible.

## 12. Limitations to Program Access

- A public entity does not have to take any action that would:
- Result in a fundamental alteration in its program or activity.
- Cause undue financial or administrative burdens.
- The “undue burden” 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.
- **NOTE:** The public entity still must find a way to ensure access to benefits and services of the program or activity.

## 13. Effective Communication

Public entities must ensure that applicants, participants, and members of the general public have communication access that is as effective as that provided to people without disabilities.

## 14. Examples of Auxiliary Aids & Services for People with...

- **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.

## 15. Producing Effective Communication

- Public entities must give “primary consideration” to the communication **preference (choice)** of the person with a disability. The public entity must honor that choice unless it can demonstrate that another equally effective means of communication is available or that the aid requested would result in a fundamental alteration of the service or in undue financial or administrative burdens.
- Communication provided must be **effective**.
- If undue burden exists, entities must still provide the next best means of effective communication.

## 16. Factors to 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.

## 17. Structural Accessibility of Public Entities: Title II – Part B

### 18. New Construction and Alterations

- All new construction and alterations to existing facilities (those built before the ADA) must be readily accessible to and usable by people with disabilities.

### 19. Existing Facilities

- Facilities built before the ADA are not required to make their property structurally accessible **if** they can provide non-structural program accessibility to their services, programs, and activities.
- If non-structural program accessibility is not possible, then structural accessibility must be provided unless it would result in undue burden or fundamental alteration.

## 20. What do you think?

A public school was built in 1985. It has five main entrances, three of which are accessible. It is about to undergo renovations on the side of the building that has one of the inaccessible entrances. Since the building already has three accessible entrances and was built before the ADA, it does not have to renovate that entrance to be ADA-accessible.

Is this correct?

## 21. The law says...

- Since part of the school is undergoing renovations, it is considered “new construction” and therefore that part of the building, including the entrance, must be renovated to be accessible to and usable by people with disabilities.
- There is no such thing as “grandfathered in” under the ADA. Renovations are considered new construction.

## 22. Overview of Design Standards

### —Who Should Follow What?

## 23. State & Local Building Code Official

Each state has its own building codes, which are based on the International Code Council (ICC) — set minimum standards for each state.

Some states have stricter regulations than ICC.

For new construction or renovations to existing facilities you must contact your building code official first & **follow the strictest code.**

*\*Exception:* State Agencies don't have to contact their code official because they write their own building permit.

## 24. U.S. Access Board & Standards for Accessible Design

- The Access Board is a federal agency that develops accessibility standards.
- The Department of Justice (DOJ) actually enforces them. Formerly called ADAAG, they are now known as the 2010 Standards for Accessible Design.
- The Standards cover everything from signage, to bathrooms, etc.
- On the local level the Human Rights Commission is the enforcer.

## 25. The 2010 ADA Standards ...

- related to construction and alterations had to be complied with beginning **3/15/12**
- are more "in harmony" with state codes.
- have clearer illustrations/diagrams.
- do not have a "retrofit" requirement, meaning existing buildings that are already accessible will not be required to redo what they already have unless they do new construction in the future.

## 26. 2010 ADA Standards for Accessible Design (slide 1 of 3)

- Minimize compliance burdens on entities subject to more than one legal standard.
- Harmonize with the federal standards implementing the Architectural Barriers Act with the private sector model codes that are adopted by most states.

## 27. 2010 ADA Standards for Accessible Design (slide 2 of 3)

### Element by Element Safe Harbor

- This rule includes a general “safe harbor” which means the 2010 Standards do not require “retrofitting” of existing buildings and facilities.
- Elements in covered facilities that were built or altered in compliance with the 1991 Standards are not required to comply with 2010 Standards until the elements are subject to a planned alteration. Similar safe harbors were adopted for elements associated with the “path of travel” to an altered area.

## 28. 2010 ADA Standards for Accessible Design (slide 3 of 3)

### Element by Element Safe Harbor:

- provide an accessible path of travel are required to the extent that they are not "disproportionate" to the original alteration, that is, to the extent that the added accessibility costs do not exceed 20 percent of the cost of the original alteration to the primary function area.

## 29. Uniform Federal Accessibility Standards (UFAS)

- Standards for facility accessibility for federal and federally-funded facilities
- Standards are to be applied during the design, construction, and alteration of buildings/facilities
- Can be accessed at: [www.access-board.gov/ufas/ufas-html/ufas.htm](http://www.access-board.gov/ufas/ufas-html/ufas.htm)



## 30. Important Point B!

When doing new construction or alterations, up until 3/15/12, Title II entities could use either the ADAAG or UFAS depending on which worked best for them.

Now, all new construction or alterations must comply with the 2010 ADA Standards for Accessible Design.

## 31. Design Priorities

- Getting to the door (parking, route, entrances, and doors).
- Accessing the service (merchandise, food, services inside the establishment).
- If public bathrooms are available, be sure there are accessible ones.

## 32. Smith v. TransCor America

Title II Cases

Western District Court of Kentucky

September 5, 2007

## 33. Smith v. TransCor America (slide 1 of 4)

- Mr. Jake Dean Smith is an incarcerated man who describes himself as handicapped because his left leg was amputated, and his right knee is "very weak." TransCor America was responsible for transporting Mr. Smith between jails but allegedly did not operate an accessible bus. He was kept on the bus for up to three days on two different occasions without rest. Furthermore, Mr. Smith alleged a bus operator took some of his belongings before he entered the bus and threw them away.

### 34. Smith v. TransCor America (slide 2 of 4)

- During trips between jails, Mr. Smith stayed at Christian County Jail (KY), which allegedly also was not accessible. While there, Mr. Smith was unable to get around independently and relied on inmates to carry him to the bathroom, shower and to get his meals. At one point, he hurt himself while trying to enter a shower.

### 35. Smith v. TransCor America (slide 3 of 4)

- Mr. Smith filed suit, without an attorney, under Title II of the Americans with Disabilities Act (ADA), alleging TransCor America and the Christian County Jail failed to accommodate his disability.

### 36. Smith v. TransCor America (slide 4 of 4)

- Mr. Smith also asserted claims for cruel and unusual punishment and deprivation of property under the Eighth and Fourteenth Amendments. While Christian County Jail is a public entity subject to Title II, TransCor America is a limited liability company (according to their website), which more commonly would be a public accommodation subject to Title III. However, the court treated TransCor America as an instrumentality of the state and Title II entity.

### 37. Is TransCor America a “public” entity under Title II?

- The court treated TransCor America as an instrumentality of the state and Title II entity because it was under contract to manage a public facility.

### 38. Issues of the Case

- Does Mr. Smith
- Have a claim against TransCor America and the Christian County Jail for failing to accommodate his disability under the ADA.
- Have a claim against Christian County for cruel and unusual punishment.
- Have a claim against TransCor America for deprivation of property.

### 39. Consider This (slide 1 of 2)

- ADA Title II prohibits public entities from discriminating against individuals who have a disability "in operation of services, programs, or activities."
- State and local prisons and jails are public entities subject to Title II of the ADA. Mr. Smith asserts the TransCor America and Christian County failed to accommodate his disability in providing their services.

### 40. Consider This (slide 2 of 2)

- The Fourteenth Amendment Due Process Clause protects pretrial detainees like Mr. Smith from cruel and unusual punishment.
- Accordingly, the basic needs of prisoners, including hygiene, are protected from intentional indifference on the part of prison officials. Mr. Smith further claims that TransCor America intentionally deprived him of his property without due process under the Fourteenth Amendment when his possessions were taken from him and thrown away.

### 41. The Ruling

- The court held that Mr. Smith can proceed against TransCor America and the Christian County Jail for his ADA claims
- And may proceed against Christian County for cruel and unusual punishment.
- The court did not permit his deprivation of property claim to continue because he failed to show that TransCor America refused to remedy this loss of property.

### 42. Human Development Institute

- University Center on Disability for Kentucky
- Near 60 projects across disability, serving the community, state, and nation.
- [www.hdi.uky.edu](http://www.hdi.uky.edu)

## 43. Southeast ADA Center

**Phone:** 800-949-4232 or 404-541-9001

**E-mail:** [adasoutheast@syr.edu](mailto:adasoutheast@syr.edu)

**Web:** [adasoutheast.org](http://adasoutheast.org)

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Image: Southeast ADA Center, Burton Blatt Institute - Syracuse University.

## 44. HDI – Center for Assistive Technology Services (CATS)

- Regional AT center of the KATS Network
- Lending Library, Training and Demonstration
- [www.hdi.uky.edu/HDICATS](http://www.hdi.uky.edu/HDICATS)

## 45. SEADA Kentucky Affiliate

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