



California's protection & advocacy system
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Rights to Assistive Technology from Public Entities

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1. What are public entities?

State and federal anti-discrimination laws give people with disabilities the right to use assistive technology in programs, services and activities provided by public entities. These entities include: federal agencies such as the Social Security Administration and the U.S. Postal Service; state agencies such as the California Department of Health Care Services, which administers the Medi-Cal and California Children's Services programs, and the Departments of Education, Motor Vehicles and Rehabilitation; state courts; school districts; city and county agencies, and public transportation.

2. What laws provide access to assistive technology?

Federal Laws

I. Section 504 of the Rehabilitation Act (Section 504)

Section 504 prohibits disability-based discrimination in programs and activities provided by federal agencies, and other agencies that receive federal funds. This includes providing effective access to public programs, and providing people with disabilities reasonable modifications of policies, practices and procedures as necessary to allow them to use public services.

II. Section 508 of the Rehabilitation Act (Section 508)

Section 508 sets electronic and information technology standards for federal agencies. This includes providing people with disabilities access to and use of information and data that is comparable to

people without disabilities, unless this constitutes an undue burden on the agency.

III. The Americans with Disabilities Act (ADA)

Title II of the ADA prohibits disability-based discrimination in public programs, services and activities at the state and local levels. This provision has been interpreted to provide the same protections as Section 504 with regard to programs, services and benefits offered by state and local governments.

California State Laws

I. California Government Code Section 11135 (Section 11135)

Section 11135 gives people with disabilities the right to full and equal access to the benefits of any program or activity that is administered by the state, or receives financial assistance from the state. Violations of Section 504 and the ADA will also violate Section 11135.

II. The Unruh Civil Rights Act (Unruh Act)

The Unruh Act prohibits disability-based discrimination by any business establishment, which includes certain public agencies. Like Section 11135, violations of Section 504 and the ADA will also violate the Unruh Act. Unruh Act, Cal. Civ.Code §§ 51, *et seq.*

III. Disabled Persons Act, Civil Code Section 54

Civil Code Section 54 gives individuals with medical conditions and disabilities the same right as the general public to the full and free use of the streets, public buildings, medical facilities, and other public places. Like Section 11135, violations of Section 504 and the ADA will also violate California Civil Code Section 54. Disabled Persons Act, California Civil Code § 54, *et seq.*

3. Who is protected under these laws?

You are covered by the laws listed above if you are a “person with a disability,” and are “qualified” for the public program, benefit or activity. You are “qualified” for a benefit, program or activity of a public entity if you meet the basic eligibility criteria for participation, with or without reasonable

modifications to the programs policies, practices or procedures. 28 C.F.R. § 35.104. This means that you can be qualified even if you need a reasonable modification to participate.

Federal Law

Title II of the ADA protects individuals with disabilities from discrimination by public entities. Under the ADA, disability means:

- I. Having a physical or mental impairment that substantially limits one or more of your major life activities (such as personal care, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working).
 - a. This includes limitations of major bodily functions (such as the immune system, normal cell growth, digestive, bowel, bladder, brain, respiratory, brain, circulatory, endocrine, and reproductive functions); or
- II. Having a record of such an impairment (such as a condition in remission); or
- III. Being regarded as having such an impairment (such as a person who has severe burns but has no impairments).

42 U.S.C. § 12102(2); 28 C.F.R. § 35.104.

State Law

In contrast to federal law, state law only requires a “limitation” of a major life activity rather than a “substantial limitation” of a major life activity.

California Government Code § 12926.1(d) California Government Code §§ 12926(j)(1)(A), (m)(1)(B)(i).

4. What types of discrimination do these laws prohibit?

The law prohibits public entities from taking any action which has the purpose or effect of denying a qualified person with disabilities any right, privilege, advantage or opportunity enjoyed by others. A public entity’s failure to provide you with assistive technology might constitute discrimination if it involves any of the following actions:

- I. Using eligibility criteria that might screen out qualified people with disabilities; 28 C.F.R. § 130(b)(8).
- II. Denying you an equal opportunity to participate in, or benefit from, any program, benefit or activity of a public entity; 28 C.F.R. § 130(b)(1);
- III. Providing you with different or separate benefits or services than are provided to others, unless that is necessary to effectively provide the benefits or services to you; 28 C.F.R. § 130(b)(1), (2);
- IV. Failing to administer services, programs and activities in the most integrated setting appropriate to your needs; 28 C.F.R. § 130(d);
- V. Using criteria and methods of administration that deny you access to public programs and activities; 28 C.F.R. § 130(b)(8);
- VI. Perpetuating discrimination by providing significant assistance to any agency that discriminates on the basis of disability; 28 C.F.R. § 130(b)(1)(v);
- VII. Selecting sites that have the effect of excluding you, denying you benefits, or otherwise subjecting you to discrimination; 28 C.F.R. § 130(b)(4)(i); or
- VIII. Using discriminatory criteria in selecting contractors or granting licenses and certifications. 28 C.F.R. §§ 130(b)(5), (6).

5. When does a public entity have to provide an assistive device to allow me to participate in a public program?

A public entity must provide you with assistive technology that allows you to participate in a public program if the technology: 1) is an “auxiliary aid or service” that allows you to communicate effectively; or 2) is a reasonable modification to the entity’s policies, procedures or practice, unless that modification constitutes an undue financial burden or a fundamental alteration of the public program. Public entities must also provide auxiliary aids and services when necessary to make sure that people with disabilities have an equal opportunity to benefit from their goods and services. 42 U.S.C. § 12103. Providing assistive technology is one of the ways public entities can assist you. However, a public entity does not have

to provide assistive technology if it is a “personal device” that you would use regardless of your participation in the public program.¹

Auxiliary Aids and Services

Public entities must give qualified people with disabilities the appropriate “auxiliary aids and services” to enable them to communicate effectively in applying for or participating in a public program. 42 U.S.C. §§ 12103; 28 C.F.R. §§ 35.160(a), (b).

Examples of auxiliary aids and services are:

- Qualified interpreters, note takers, transcription services, written materials, exchange of written notes, telephone handset amplifiers, assistive listening devices. Telephones compatible with hearing aids; open and closed captioning, telecommunications devices; videotext displays, etc.;
- Qualified readers, taped texts, audio recordings; Brailled materials, large print materials, etc.;
- Acquisition or modification of equipment or devices; and other similar services and actions. 28 C.F.R. §35.104.
- Some technologies that may qualify under this section include JAWS screen reading software, ZoomText, Dragon Naturally Speaking voice recognition software, and CART (Captioned Audio Realtime Transcription). This may also include some other technology to aid communication.

In determining what auxiliary aids and services are necessary, a public entity must give primary consideration to the individual’s request. The entity must provide the aids and services in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of

¹ For more information, see U.S. Department of Justice, *Effective Communication*, at <http://www.ada.gov/effective-comm.htm>

the individual with a disability. Other factors that go into determining the appropriateness of an auxiliary aid or service include:

- I. The method of communication used by the individual;
- II. The nature, length and complexity of the communication involved;
and
- III. The context in which the communication is taking place. 28 C.F.R. §35.160(b).

Public entities that communicate with the public by telephone must provide telecommunication systems to communicate with people who have hearing or speech disabilities. 28 C.F.R. §35.161. These may include TTY (text telephone), video remote relay, VRI (video remote interpreting), videophones and similar devices.

Reasonable Modifications

Public entities must make reasonable modifications to their policies, practices, and procedures when necessary to afford equal treatment to people with disabilities. 28 C.F.R. § 35.130(b)(7). This includes a requirement to change, or reasonably modify, their policies, practices and procedures to avoid discrimination, even if their policy is not purposely intended to cause discrimination. For example, an agency may have to change its procurement policy to be sure that any computer equipment it buys is accessible.

The individual with a disability has the responsibility to request a reasonable modification, and may be required to provide medical support that the individual has a disability-related need for the modification. The medical support does not have to indicate the nature of the disability. It only has to indicate the limitations that result from the disability and, if possible, suggest reasonable modifications or assistive technology devices that may help provide access. If a reasonable modification is granted, the public agency must pay for it. 28 C.F.R. § 35.130(f).

A public entity does not have to provide assistive technology if it would create an undue financial burden on the public entity considering the resources of the entire agency, or fundamentally alter the nature of a public service or program. However, the entity must provide an alternative aid or service, if one exists, that would not result in an undue burden or

fundamental alterations. A public entity's decision that a requested modification would result in a fundamental alteration or undue burden must be made by the head of the entity and include a written statement of the reasons for the decision. 28 C.F.R. §§ 36.104; 35.164.

Personal Devices

A public entity does not have to provide assistive technology that you use outside your participation in the public program. This includes: personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; readers for personal use or study; or services of a personal nature including assistance in eating, toileting, or dressing. 28 C.F.R. § 35.135.

6. What can I do if I think that a public entity is unlawfully denying my request for assistive technology?

If you believe that a public entity is unlawfully denying your request for assistive technology, or otherwise discriminating against you on the basis of your disability, you can: file an internal grievance or appeal with the public entity; file an administrative complaint with the federal agency that has authority over the public entity; or file a lawsuit. (In employment situations, employees of public entities should start by raising concerns with the entity's Equal Employment Opportunities (EEO) Officer).

Internal Grievance

You can ask the public entity's ADA or 504 coordinator about the entity's internal grievance or appeal procedure, and how to file a grievance or appeal. If you are a public employee, you can ask the employer's EEO officer. You should file the internal grievance as soon as possible.

Administrative Complaint

Whether or not you file an internal grievance, you can file an administrative complaint with the federal agency that has authority over the public entity that you are complaining against. 28 C.F.R. § 35.170(a). The federal agency must receive your complaint no later than **180 days** from the date of discrimination. 28 C.F.R. § 35.170(b). (For employment situations, public employees seeking work-related reasonable accommodations should file complaints with the Equal Employment Opportunity Commission (EEOC)).

If you do not know which federal agency has authority over the public entity, you can file with the United States Department of Justice (DOJ), which will forward your complaint to the appropriate agency. 28 C.F.R. § 35.170(c).

The address for DOJ is:

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington, DC 20035-6738

For more information, please see:
http://www.ada.gov/fact_on_complaint.htm

Lawsuit

Whether or not you file an internal grievance or administrative complaint, you can file a lawsuit in state or federal court. If you want to sue a public entity for money damages, you must first file a Government Tort Claim within **six months** of the date of your injury. California Government Code §§ 810-996.6. Even if you do not seek money damages, court actions have strict filing deadlines called statutes of limitations. The statutes discussed here generally have a **two year** statute of limitations. However, you should consult with an attorney about deadlines, and other issues, before filing a lawsuit.

7. What are some resources?

Resources

- I. http://www.dds.ca.gov/AT/at_network.cfm (California Assistive Technology Network - The Department of Rehabilitation, in conjunction with Assistive Technology (AT) users, AT providers and state agencies, coordinates California's efforts to expand and improve access to AT under the Tech Act of 1993. AT Network primary mission is to:
 - a. Reduce barriers people with disabilities often face in obtaining AT.

- b. Promote increased public awareness of what AT can do for people with disabilities.
- c. Develop strategies to decrease duplication among state agencies and other helping organizations.

AT Network maintains a database of AT resources and providers in California, and can help locate sources of AT for specific disabilities. Referrals are made to groups that provide guidance about AT and to potential AT funding sources.

- I. California Independent Living Centers. For a list of independent living centers by county, please see:
<http://www.rehab.cahwnet.gov/ILS/ILC-List.html>.
- II. www.Askjan.org – While this federal government website is designed for employment situations it also has good information on assistive technology resources.

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.