

Title II of the ADA:
Access to the Courts



Dean Wendy Hensel
GSU College of Law
October 20, 2016

ADA Title II: 42 U.S.C. § 12132



[N]o **qualified individual with a disability** shall, by reason of such 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 such entity.

Question: Who is an "Individual With a Disability?"

An individual with a disability is one who has:

- (A) a physical or mental impairment which substantially limits one or more of the major life activities of such individual;
- (B) a record of such impairment; OR
- (C) is regarded as having such an impairment.




GEORGIA STATE UNIVERSITY **LAW**

Tennessee v. Lane (2004)

“The unequal treatment of disabled persons in the administration of judicial services has a long history, and has persisted despite several legislative efforts to remedy the problem of disability discrimination.”


The duty to accommodate people with disabilities “is perfectly consistent with the well-established due process principle that, ‘within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard’ in its courts.”



GEORGIA STATE UNIVERSITY **LAW**

Courts may NOT exclude individuals with disabilities from participating in its services, or deny the benefits of its services, programs or activities, because its facilities are inaccessible or unusable by individuals with disabilities.

28 C.F.R. 35.149



GEORGIA STATE UNIVERSITY **LAW**

- * Accessibility is reviewed **holistically**; all areas and all facilities need not be accessible.
- * Head of agency may assert that actions taken would **fundamentally alter** nature of service or result in an **undue burden**.
- * Compliance can be achieved by reassigning services to accessible buildings. **Structural changes not required in existing facilities** where “other methods are effective in achieving compliance.”

28 C.F.R. 35.150



* New Construction, and any facility or part of a facility altered in a way that affects its usability shall, to the maximum extent feasible, be altered so that it is readily accessible and usable by individuals with disabilities. 28 C.F.R. 35.151





Courts must **make reasonable modifications** to policies and procedures where doing so **does not fundamentally alter** the nature of the goods or services being provided. 28 C.F.R. 35.130






Courts must provide **auxiliary aids and services where necessary** to enable people with disabilities to **communicate effectively**. 28 C.F.R. 35.160



GEORGIA STATE UNIVERSITY **LAW**

Examples of Auxiliary Aids & Services
28 C.F.R. 35.104

(1) Qualified interpreters, notetakers, transcription services, telephone handset amplifiers, assistive listening devices, close captioning, TDDs, and “other effective ways of making aurally delivered materials available to individuals with hearing impairments.”



GEORGIA STATE UNIVERSITY **LAW**

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective ways of making visually delivered materials accessible to individuals with visual impairments.

(3) Acquisition or modification of equipment or devices;

(4) Other similar services and actions.

