

**WESTCHESTER COUNTY  
HUMAN RIGHTS COMMISSION**

**2014 WLA ANNUAL CONFERENCE**

**The Inclusive Library: Accommodating  
Learning Differences**

*May 9, 2014*

*Double Tree Hotel, Tarrytown, New York*

# **WESTCHESTER COUNTY HUMAN RIGHTS COMMISSION**

## **Discrimination in Public Accommodations:**

Workshop F 11:30 a.m. to 12:15 p.m.

### **Accessibility and Accommodation in Libraries under the Americans with Disabilities Act and State and County Human Rights Laws”**

*Presented by*

*Mark C. Fang*

*Executive Director, Westchester County Human Rights Commission*

# WESTCHESTER COUNTY HUMAN RIGHTS COMMISSION

## **ABOUT THE WESTCHESTER COUNTY HUMAN RIGHTS COMMISSION**

### UNLAWFUL DISCRIMINATORY PRACTICES IN:

- EMPLOYMENT (HRL 700.03)
- PUBLIC ACCOMMODATION (HRL 700.04)
- CREDIT (HRL 700.04)
- FAIR HOUSING (FHL 700.19, et seq.)

# WESTCHESTER COUNTY HUMAN RIGHTS COMMISSION

## **ABOUT THE WESTCHESTER COUNTY HUMAN RIGHTS COMMISSION**

### *Mission Statement*

The mission of the Westchester County Human Rights Commission, an independent agency of the Westchester County government, is to enforce Westchester County's Human Rights Law and Fair Housing Law, engage in education and outreach to educate the public on their rights and obligations under these laws, and to help promote good racial and ethnic relations among Westchester's diverse population.

# WESTCHESTER COUNTY HUMAN RIGHTS COMMISSION

## *Vision*

- *The Human Rights Commission (HRC) aims to be a fair, open and expeditious forum for the resolution of discrimination matters occurring in Westchester County.*
- *Beyond enforcement, the HRC's vision is to prevent discrimination by educating the public on their rights and obligations under the law. The creators of the HRC envisioned that it would "foster tolerance among the inhabitants of Westchester County" and "study the problems of prejudice, intolerance, bigotry and disorder." Toward this vision, the HRC seeks to become a center for dialogue, debate and contemporary thought on policy in civil rights and race relations, grounded in the experience and empirical data gained from being on the frontlines of America's efforts against unlawful discrimination.*

# WESTCHESTER COUNTY HUMAN RIGHTS COMMISSION

## *Goals*

*The Commission's goals are to*

- Enforce Westchester County's Human Rights Law and Fair Housing Law
- Be recognized as a fair, transparent and efficient forum for the disposition/resolution of claims of unlawful discrimination occurring in Westchester County
- Educate the public on their rights and obligation under Westchester County's laws against unlawful discrimination
- Help to promote good racial and ethnic relations in Westchester County
- **Promote and assure equal access and integrated opportunities and settings in the community for individuals with disabilities**
- Affirmatively further fair housing in accordance with the commission's obligations as a participant in HUD's Fair Housing Assistance Program
- Be a center for dialogue and debate on current policy and thought on issues relating to civil rights and racial and ethnic relations and identity

# GOVERNING LAW

- **Americans With Disabilities Act (“ADA”)**, *Titles II & III, 42 U.S.C. 12131, 12182; 28 C.F.R. Parts 35 and 36* (also the Americans with Disabilities Amendments Act (“ADAA”))
- **New York State Human Rights Law**, *Executive Law, Article 15*
- **Westchester County Human Rights Law**, *Chapter 700, Article I*

# GOVERNING LAW

## Westchester County Law

### **Westchester County Human Rights Law**

“Place of public accommodation, resort or amusement shall include providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages and privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages and privileges of any kind are extended, offered, sold or otherwise made to public.”

Westchester County Human Rights Law,  
Chapter 700, Article I, 700.02 (16)



# DEFINITIONS & CONCEPTS

## Key Terms

- “Public Accommodation”
- “Public Entity”
- “Disability”
- “Reasonable Accommodation”
- “Reasonable Modification”
- “Readily Achievable”
- “Discrimination”
- “Auxiliary Aids and Services”

# DEFINITIONS & CONCEPTS :

## Public Accommodation

### ■ ADA Definition:

(7) The following “private entities” are considered public accommodations for purposes of this title, if the operations of such entities affect commerce –

(O) a museum, library, gallery, or other place of public display or collection.

42 U.S.C. 12181 (7)(H) (Title III of the Americans With Disabilities Act)

# DEFINITIONS & CONCEPTS:

## Public Library : Public Entity

A library is also a “**public entity**” under Title II of the ADA:

“The term “public entity” means

- (A) any State or local government;
- (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government

42 U.S.C. 12131 (1) (Title II of the Americans with Disabilities Act)

# DEFINITIONS & CONCEPTS:

## Public Library : Public Entity

### The Law:

Under Title II, no 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 subject to discrimination by any public entity.

ADA 42 U.S.C. 12131-12134  
28 CFR 35.101-189

# DEFINITIONS & CONCEPTS:

## Public Library : Public Entity

### Department of Justice implementing rules:

28 CFR 35.130 (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 others;

ADA 42 U.S.C. 12131-12134

28 CFR 35.101-189

# DEFINITIONS & CONCEPTS:

## Public Library : Public Entity

### Department of Justice implementing rules (cont):

28 CFR 35.130 (b)(1) (cont.):

- (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; ...

# DEFINITIONS & CONCEPTS:

## Public Library : Public Entity

### Guiding Principle

(United States Court of Appeals for the Second Circuit)

“denial of access cannot be lessened simply by eliminating discriminatory selection criteria; because the barriers to equal participation are physical rather than abstract, some sort of action must be taken to remove them...It is not enough to open the door for the handicapped...; a ramp must be built so the door can be reached.”

*Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982)

# DEFINITIONS & CONCEPTS:

## Public Library : Public Entity

A public library's affirmative obligations under Title II:

- Self-Evaluation.
- Notice
- Grievance Procedures (only libraries with 50 or more employees)

28 CFR 35-105-107



# DEFINITIONS & CONCEPTS:

## Public Library : Public Entity

### A Public Library's Obligations Under Title II:

*Self-Evaluation.* A public entity *shall* evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of Title II and 28 CFR 35.

The library *shall* provide an opportunity to interested persons, including individuals with disabilities or representative organizations to participate in the self-evaluation process

Additional Obligations for libraries employing 50 or more person

# DEFINITIONS & CONCEPTS:

## Public Library : Public Entity

### A Public Library's Obligations Under Title II:

*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.

# DEFINITIONS & CONCEPTS:

## Public Library : Public Entity

### A Public Library's Obligations Under Title II:

*Designation of responsible employee and adoption of grievance procedure.* 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 investigation of any complaint communicated to it...

*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...

# DEFINITIONS & CONCEPTS :

## “Qualified Individual with a Disability”

### ADA Definition

“a person is considered a ‘qualified individual’ with a disability under the Act if that individual (1) has ‘a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) has a record of such an impairment; and (3) is a person ‘regarded as having such an impairment’.”

42 U.S.C. 12102 (2)

# DEFINITIONS & CONCEPTS :

## “Qualified Individual with a Disability”

**II-2.8000 Qualified individual with a disability.** In order to be an individual protected by title II, the individual must be a "qualified individual with a disability". To be qualified, the individual with a disability must meet the essential eligibility requirements for receipt of services or participation in a public entity's programs, activities, or services with or without --

- 1) Reasonable modifications to a public entity's rules, policies, or practices;
- 2) Removal of architectural, communication, or transportation barriers;  
or
- 3) Provision of auxiliary aids and services.

# DEFINITIONS & CONCEPTS :

## “Qualified Individual with a Disability”

### *FAQ*

*Can health and safety factors be taken into account in determining who is qualified?* Yes. An individual who poses a direct threat to the health or safety of others will not be "qualified."

*What is a "direct threat"?* A "direct threat" is a significant risk to the health or safety of others that cannot be eliminated or reduced to an acceptable level by the public entity's modification of its policies, practices, or procedures, or by the provision of auxiliary aids or services. The public entity's determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability.

# DEFINITIONS & CONCEPTS :

## “Qualified Individual with a Disability”

**ILLUSTRATION**: An adult individual with tuberculosis wishes to tutor elementary school children in a volunteer mentor program operated by a local public school board. Title II permits the board to refuse to allow the individual to participate on the grounds that the mentor's condition would be a direct threat to the health or safety of the children participating in the program, if the condition is contagious and the threat cannot be mitigated or eliminated by reasonable modifications in policies, practices, or procedures.

ADA Title II Technical Assistance Manual, USDOJ

# DEFINITIONS & CONCEPTS :

## “Program Accessibility”

### II-5.0000 PROGRAM ACCESSIBILITY

**II-5.1000 General.** 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. Public entities, however, are not necessarily required to make each of their existing facilities accessible.

ADA Title II Technical Assistance Manual, USDOJ  
*Regulatory references: 28 CFR 35.149-35.150.*



# DEFINITIONS & CONCEPTS :

## “Program Accessibility”

- **ILLUSTRATION 1:** When a city holds a public meeting in an existing building, it must provide ready access to, and use of, the meeting facilities to individuals with disabilities. The city is not required to make all areas in the building accessible, as long as the meeting room is accessible. Accessible telephones and bathrooms should also be provided where these services are available for use of meeting attendees.

ADA Title II Technical Assistance Manual, USDOJ  
*Regulatory references: 28 CFR 35.149-35.150.*

# DEFINITIONS & CONCEPTS :

## “Program Accessibility”

- **ILLUSTRATION 2:** D, a defendant in a civil suit, has a respiratory condition that prevents her from climbing steps. Civil suits are routinely heard in a courtroom on the second floor of the courthouse. The courthouse has no elevator or other means of access to the second floor. The public entity must relocate the proceedings to an accessible ground floor courtroom or take alternative steps, including moving the proceedings to another building, in order to allow D to participate in the civil suit.

ADA Title II Technical Assistance Manual, USDOJ  
*Regulatory references:* 28 CFR 35.149-35.150.

# DEFINITIONS & CONCEPTS :

## “Program Accessibility”

- **ILLUSTRATION 3:** A State provides ten rest areas approximately 50 miles apart along an interstate highway. Program accessibility requires that an accessible toilet room for each sex with at least one accessible stall, or a unisex bathroom, be provided at each rest area.

ADA Title II Technical Assistance Manual, USDOJ  
*Regulatory references: 28 CFR 35.149-35.150.*

# DEFINITIONS & CONCEPTS :

## “Program Accessibility”

### FAQ

- *Is a public entity relieved of its obligation to make its programs accessible if no individual with a disability is known to live in a particular area?* No. The absence of individuals with disabilities living in an area cannot be used as the test of whether programs and activities must be accessible.

ADA Title II Technical Assistance Manual, USDOJ  
*Regulatory references: 28 CFR 35.149-35.150.*

# DEFINITIONS & CONCEPTS :

## “Program Accessibility”

**ILLUSTRATION:** A rural school district has only one elementary school and it is located in a one-room schoolhouse accessible only by steps. The school board asserts that there are no students in the district who use wheelchairs. Students, however, who currently do not have a disability may become individuals with disabilities through, for example, accidents or disease. In addition, persons other than students, such as parents and other school visitors, may be qualified individuals with disabilities who are entitled to participate in school programs. Consequently, the apparent lack of students with disabilities in a school district's service area does not excuse the school district from taking whatever appropriate steps are necessary to ensure that its programs, services, and activities are accessible to qualified individuals with disabilities.

ADA Title II Technical Assistance Manual, USDOJ  
*Regulatory references: 28 CFR 35.149-35.150.*

# DEFINITIONS & CONCEPTS :

## “Program Accessibility”

### *FAQ*

*Can back doors and freight elevators be used to satisfy the program accessibility requirement?*

Yes, but only as a last resort and only if such an arrangement provides accessibility comparable to that provided to persons without disabilities, who generally use front doors and passenger elevators. For example, a back door is acceptable if it is kept unlocked during the same hours the front door remains unlocked; the passageway to and from the floor is accessible, well-lit, and neat and clean; and the individual with a mobility impairment does not have to travel excessive distances or through nonpublic areas such as kitchens and storerooms to gain access. A freight elevator would be acceptable if it were upgraded so as to be usable by passengers generally and if the passageways leading to and from the elevator are well-lit and neat and clean.

ADA Title II Technical Assistance Manual, USDOJ  
*Regulatory references: 28 CFR 35.149-35.150.*

# DEFINITIONS & CONCEPTS :

## “Program Accessibility”

### FAQ

#### *Are there any limitations on the program accessibility requirement?*

Yes. A public entity does not have to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. This 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. If an action would result in such an alteration or such burdens, the public entity must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

ADA Title II Technical Assistance Manual, USDOJ  
*Regulatory references:* 28 CFR 35.149-35.150.

# DEFINITIONS & CONCEPTS :

## “Program Accessibility”

### **II-5.2000 Methods for providing program accessibility.**

Public entities may achieve program accessibility by a number of methods. In many situations, providing access to facilities through structural methods, such as alteration of existing facilities and acquisition or construction of additional facilities, may be the most efficient method of providing program accessibility. **The public entity may, however, pursue alternatives to structural changes** in order to achieve program accessibility. Nonstructural methods include acquisition or redesign of equipment, assignment of aides to beneficiaries, and provision of services at alternate accessible sites.

ADA Title II Technical Assistance Manual, USDOJ  
*Regulatory references: 28 CFR 35.149-35.150.*



# DEFINITIONS & CONCEPTS :

## “Program Accessibility”

- **ILLUSTRATION 1:** The office building housing a public welfare agency may only be entered by climbing a flight of stairs. If an individual with a mobility impairment seeks information about welfare benefits, the agency can provide the information in an accessible ground floor location or in another accessible building.
- **ILLUSTRATION 2:** A public library's open stacks are located on upper floors having no elevator. As an alternative to installing a lift or elevator, library staff may retrieve books for patrons who use wheelchairs. The aides must be available during the operating hours of the library.

ADA Title II Technical Assistance Manual, USDOJ  
*Regulatory references:* 28 CFR 35.149-35.150.

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ADA Title II Technical Assistance Manual, USDOJ  
*Regulatory references:* 28 CFR 35.149-35.150.

# DEFINITIONS & CONCEPTS :

## “Program Accessibility”

### IMPORTANT RULE

When choosing a method of providing program access, a public entity must give priority to the one that results in **the most integrated setting** appropriate to encourage interaction among all users, including individuals with disabilities.

ADA Title II Technical Assistance Manual, USDOJ  
*Regulatory references: 28 CFR 35.149-35.150.*

# DEFINITIONS & CONCEPTS :

## “Program Accessibility”

**ILLUSTRATION:** A rural, one-room library has an entrance with several steps. The library can make its services accessible in several ways. It may construct a simple wooden ramp quickly and at relatively low cost.

Alternatively, individuals with mobility impairments may be provided access to the library's services through a **bookmobile**, by special messenger service, through use of clerical aides, or by any other method that makes the resources of the library "**readily accessible.**"

**Answer????**

ADA Title II Technical Assistance Manual, USDOJ  
*Regulatory references: 28 CFR 35.149-35.150.*

# DEFINITIONS & CONCEPTS :

## “Program Accessibility”

### **Answer:**

Priority should be given, however, to constructing a ramp because that is the method that offers library services to individuals with disabilities and others in the same setting.

ADA Title II Technical Assistance Manual, USDOJ  
*Regulatory references:* 28 CFR 35.149-35.150.

# DEFINITIONS & CONCEPTS :

## “Reasonable Modification”

### ADA definition

“a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations”

42 U.S.C. 12182 (b)(2)(A)(ii)

# DEFINITIONS & CONCEPTS :

## “Reasonable Modification”

**III-4.2100 General.** A public accommodation must reasonably modify its policies, practices, or procedures to avoid discrimination. If the public accommodation can demonstrate, however, that a modification would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations it provides, it is not required to make the modification.

29 C.F.R. 36.302 (a)

# DEFINITIONS & CONCEPTS :

## “Reasonable Modification”

- **ILLUSTRATION 1:** A municipal zoning ordinance requires a set-back of 12 feet from the curb in the central business district. In order to install a ramp to the front entrance of a pharmacy, the owner must encroach on the set-back by three feet. Granting a variance in the zoning requirement may be a reasonable modification of town policy.
- **ILLUSTRATION 2:** A county general relief program provides emergency food, shelter, and cash grants to individuals who can demonstrate their eligibility. The application process, however, is extremely lengthy and complex. When many individuals with mental disabilities apply for benefits, they are unable to complete the application process successfully. As a result, they are effectively denied benefits to which they are otherwise entitled. In this case, the county has an obligation to make reasonable modifications to its application process to ensure that otherwise eligible individuals are not denied needed benefits. Modifications to the relief program might include simplifying the application process or providing applicants who have mental disabilities with individualized assistance to complete the process.



# DEFINITIONS & CONCEPTS :

## “Reasonable Modification”

- **ILLUSTRATION 3**: A county ordinance prohibits the use of golf carts on public highways. An individual with a mobility impairment uses a golf cart as a mobility device. Allowing use of the golf cart as a mobility device on the shoulders of public highways where pedestrians are permitted, in limited circumstances that do not involve a significant risk to the health or safety of others, is a reasonable modification of the county policy.

# DEFINITIONS & CONCEPTS :

## “Reasonable Modification”

### ILLUSTRATION 1 (“Reasonable Modification”):

A private health clinic, in collaboration with its local public safety officials, has developed an evacuation plan to be used in the event of fire or other emergency. The clinic occupies several floors of a multistory building. During an emergency, elevators, which are the normal means of exiting from the clinic, will be shut off. The health clinic is obligated to modify its evacuation procedures, if necessary, to provide alternative means for clients with mobility impairments to be safely evacuated from the clinic without using the elevator. The clinic should also modify its plan to take into account the needs of its clients with visual, hearing, and other disabilities.

# DEFINITIONS & CONCEPTS :

## “Reasonable Modification”

### ILLUSTRATION 2 (“Reasonable Modification”):

Under its obligation to remove architectural barriers where it is readily achievable to do so, a local motel has greatly improved physical access in several of its rooms. However, under its present reservation system, the motel is unable to guarantee that, when a person requests an accessible room, one of the new rooms will actually be available when he or she arrives. The ADA requires the motel to make reasonable modifications in its reservation system to ensure the availability of the accessible room.

# DEFINITIONS & CONCEPTS :

## “Reasonable Modification”

### ILLUSTRATION 3 (“Reasonable Modification”):

A retail store has a policy of not taking special orders for out-of-stock merchandise unless the customer appears personally to sign the order. The store would be required to reasonably modify its procedures to allow the taking of special orders by phone from persons with disabilities who cannot visit the store. If the store's concern is obtaining a guarantee of payment that a signed order would provide, the store could, for example, take orders by mail or take credit card orders by telephone from persons with disabilities.

# DEFINITIONS & CONCEPTS :

“Reasonable Modification” –

**Duty to Maintain**

## DUTY TO MAINTAIN AND FIX

### **II-3.10000 Maintenance of accessible features.**

Public entities must maintain in working order equipment and features of facilities that are required to provide ready access to individuals with disabilities. Isolated or temporary interruptions in access due to maintenance and repair of accessible features are not prohibited.

ADA Title II Technical Assistance Manual

# DEFINITIONS & CONCEPTS :

## “Reasonable Modification” –

### Duty to Maintain

#### DUTY TO MAINTAIN AND FIX (cont)

- Where a public entity must provide an accessible route, the route must remain accessible and not blocked by obstacles such as furniture, filing cabinets, or potted plants. An isolated instance of placement of an object on an accessible route, however, would not be a violation, if the object is promptly removed. Similarly, accessible doors must be unlocked when the public entity is open for business.
- Mechanical failures in equipment such as elevators or automatic doors will occur from time to time. The obligation to ensure that facilities are readily accessible to and usable by individuals with disabilities would be violated, if repairs are not made promptly or if improper or inadequate maintenance causes repeated and persistent failures.

# DEFINITIONS & CONCEPTS :

## “Reasonable Modification” –

### Duty to Maintain

#### DUTY TO MAINTAIN AND FIX (cont, 3 of 3)

- **ILLUSTRATION 1:** It would be a violation for a building manager of a three-story building to turn off the only passenger elevator in order to save energy during the hours when the building is open.
- **ILLUSTRATION 2:** A public high school has a lift to provide access for persons with mobility impairments to an auditorium stage. The lift is not working. If the lift normally is functional and reasonable steps have been taken to repair the lift, then the school has not violated its obligations to maintain accessible features. On the other hand, if the lift frequently does not work and reasonable steps have not been taken to maintain the lift, then the school has violated the maintenance of accessible features requirement.
- **ILLUSTRATION 3:** Because of lack of space, a city office manager places tables and file cabinets in the hallways, which interferes with the usability of the hallway by individuals who use wheelchairs. By rendering a previously accessible hallway inaccessible, the city has violated the maintenance requirement, if that hallway is part of a required accessible route.

# DEFINITIONS & CONCEPTS :

## “Disability Discrimination in Public Accommodations”

### ADA definition

(A) Discrimination – for purposes of the [ADA], discrimination includes:

- (i) Imposition of eligibility criteria that screen out or tend to screen out an individual with a disability...
- (ii) Failure to make a reasonable modification in policies, practices, or...
- (iii) Absence of auxiliary aids and services...
- (iv) Failure to remove architectural barriers, and communication barriers
- (v) Alternative methods



# DEFINITIONS & CONCEPTS:

## “Disability Discrimination in Public Accommodations”

### ADA definition

(A) Discrimination – For purposes of the [ADA]:

“failure to make a reasonable modification in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations”

42 U.S.C. 12182 (b)(2)(A)(ii)

# DEFINITIONS & CONCEPTS:

## “Architectural Barriers & Communications Barriers”

### General Rule on Architectural Barriers:

“(a) *General*. A public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature, where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.”

28 C.F.R. 36.104

# DEFINITIONS & CONCEPTS:

## “Architectural Barriers & Communications Barriers”

(b) Examples of steps to remove barriers include the following actions

- (1) Installing ramps
- (2) Making curb cuts in sidewalks and entrances
- (3) Repositioning shelves
- (4) Rearranging tables, chairs, vending machines, display racks, and other furniture
- (5) Repositioning telephones
- (6) Adding raised markings on elevator control buttons
- (7) Installing flashing alarm lights
- (8) Widening doors
- (9) Installing offset hinges to widen doorways

# DEFINITIONS & CONCEPTS:

## “Architectural Barriers & Communications Barriers”

(b) Examples of barriers to be removed (continued)

- (10) Eliminating a turnstile or providing an alternative accessible path;
- (11) Installing accessible door hardware
- (12) Installing grab bars in toilet stalls
- (13) Rearranging toilet partitions to increase maneuvering space
- (14) Insulating lavatory pipes under sinks to prevent burns
- (15) Installing a raised toilet seat
- (16) Installing a full-length bathroom mirror
- (17) Repositioning the paper towel dispenser in a bathroom
- (18) Creating designated accessible parking spaces
- (19) Installing an accessible paper cup dispenser at an existing inaccessible water fountain
- (20) Removing high pile, low density carpeting
- (21) Installing vehicle hand controls”

# REMEDIES

- Equitable Relief: injunction
- Compensatory Damages
- Punitive Damages (upto \$10,000)
- Civil Penalty (upto\$50,000)
- Reasonable Attorney's Fees and Costs

# Illustration: e-Book Readers:

Settlement between U.S. Justice Dept., National Federation of the Blind,  
and Sacramento Public Library Authority

Sacramento Library's use of NOOK e-Book Readers in violation  
of ADA, Title II.

USDOJ, Civil Rights Division: NOOK reading devices inaccessible to individuals  
who are blind and with vision disabilities

e-Reader circulation program where library patrons, with and without vision  
disabilities, are able to access and use the same technology to maximum extent  
possible

Library agrees to acquire devices with accessible features, such as text-to-speech  
functions or the ability to access menus through audio or tactile options

# Illustration: Service Animals

## **III-4.2300 Service animals.**

A public accommodation must modify its policies to permit the use of a service animal by an individual with a disability, unless doing so would result in a fundamental alteration or jeopardize the safe operation of the public accommodation.

# Illustration: Service Animals

- Service animals include any animal individually trained to do work or perform tasks for the benefit of an individual with a disability. Tasks typically performed by service animals include guiding people with impaired vision, alerting individuals with impaired hearing to the presence of intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or retrieving dropped items.
- The care or supervision of a service animal is the responsibility of his or her owner, not the public accommodation. A public accommodation **may not** require an individual with a disability to post a deposit as a condition to permitting a service animal to accompany its owner in a place of public accommodation, even if such deposits are required for pets.



# Illustration: Service Animals

## ILLUSTRATION:

An individual who is blind wishes to be accompanied in a restaurant by her guide dog. The restaurant must permit the guide dog to accompany its owner in all areas of the restaurant open to other patrons and may not insist that the dog be separated from her.

A number of States have programs to certify service animals. A private entity, however, may not insist on proof of State certification before permitting the entry of a service animal to a place of public accommodation.

# INTEGRATED SETTING: THE *OLMSTEAD* MANDATE

“Ultimately, in the ADA, enacted in 1990, Congress not only required public entities to refrain from discrimination [citation omitted]; additionally, in findings applicable to the entire statute, Congress explicitly identified unjustified ‘segregation’ of persons with disabilities as a ‘for[m] of discrimination.’”

*Olmstead v. L.C.*, 527 U.S. 581 (1999) (Ginsberg, J.)

# INTEGRATED SETTING: THE *OLMSTEAD* MANDATE

**II-3.4000 Separate benefit/integrated setting.** A primary goal of the ADA is the equal participation of individuals with disabilities in the "mainstream" of American society. The major principles of mainstreaming are --

- 1) Individuals with disabilities must be integrated to the maximum extent appropriate.
- 2) Separate programs are permitted where necessary to ensure equal opportunity. A separate program must be appropriate to the particular individual.
- 3) Individuals with disabilities cannot be excluded from the regular program, or required to accept special services or benefits.

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- **II-3.4100 Separate programs.** A public entity may offer separate or special programs when necessary to provide individuals with disabilities an equal opportunity to benefit from the programs. Such programs must, however, be specifically designed to meet the needs of the individuals with disabilities for whom they are provided.
- **ILLUSTRATION 1:** Museums generally do not allow visitors to touch exhibits because handling can cause damage to the objects. A municipal museum may offer a special tour for individuals with vision impairments on which they are permitted to touch and handle specific objects on a limited basis. (It cannot, however, exclude a blind person from the standard museum tour.)
- **ILLUSTRATION 2:** A city recreation department may sponsor a separate basketball league for individuals who use wheelchairs.