

# Can an ADA covered entity request documentation from a person with a disability?

Requests for reasonable modifications, a resource for people with disabilities

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## Introduction

Under the ADA, people with disabilities have a right to ask for a reasonable modification to policies, practices, and procedures to avoid being discriminated against because of their disabilities. From this, the question has come up of “can covered entity has the right to ask for documentation” when this happens.

## Quick Guidance:

When a person who uses a service animal, a mobility device, or whose disability is otherwise plainly obvious, a covered entity should not ask for documentation to support a request for reasonable modifications.

If a person’s disability is not immediately obvious, then limited, necessary, and reasonable documentation may be ask to help determine the how appropriately modify policies, practices, or procedures for that individual. The additional information should not seek unnecessary information and should not violate an individual’s privacy.

## Background

Under the ADA, State and local governments are covered under Title II and Public Accommodations are covered under Title III. Public Accommodations are typically businesses or non-profits that are open to the public, such as restaurants, private hospitals, or commercial gyms.<sup>i</sup> Both Title II and III covered entities are prohibited from discriminating against people with disabilities because of their disabilities.

ADA covered entities are required to reasonably modify their policies, practices, and procedures, i.e. the way they do things, at the request of a person with a disability when the normal way of doing things disproportionately impacts them because of their disability.<sup>ii</sup> However, if the request would change the essential nature of the program or service, the request could be considered unreasonable and a specific request would not have to be honored.<sup>iii</sup> This is known as a fundamental alteration.

Examples:

- 1) Reasonable Modification: allowing a motorized wheelchair on a hiking trail where motorized devices are typically not allowed.<sup>iv</sup>
- 2) Unreasonable modification/Fundamental Alteration: moving a beach volleyball tournament indoors so a person with a disability could participate.<sup>v</sup>

## Documentation

Title II and III entities generally should not request extensive personal or medical documentation from a person with a disability when reasonable modifications are requested. However, there are certain occasions where limited documentation may be asked in order to understand the disability-related need for a modification. Guidance on revisions to the ADA state, “any request for required documentation [must be] reasonable and limited to the need for the requested modification.”<sup>vi</sup> The guidance does not provide a specific definition of “reasonable,” leaving it up to interpretation from DOJ and court cases.

Example:

Angela had a spinal cord injury several years ago and has been experiencing a decline of function in her left leg for a few years. She purchased an e-bike to help her keep up with her husband when they ride their bikes together.

Her city’s bike trail system has a “no motorized vehicle” policy which restricts use of e-bikes. To use the bike trail system, she would need to request a reasonable modification to that policy to use an e-bike on the trails based on her disability.

Because her condition is not immediately obvious, the city recreation department could likely ask her for limited documentation that supports her request. Such documentation could include a short email from her medical provider describing her limitations.

The rec department likely could not ask for a full medical report, the history of her condition, her treatment plan, her medications, or other personal details. These questions would likely be an “unnecessary inquiry” that is not reasonable to determine if the modification request is appropriate.

If a person with a disability requests a reasonable modification that could “fundamentally alter the nature of the service, program, or activity” of an entity, the entity can refuse to provide that modification. Using the above example, if the e-bike relies on a throttle instead of a pedal-assist, the city could likely demonstrate that using an e-bike that does not require the user to pedal would fundamentally change the nature of the recreation trail’s purpose and deny the request.

## Unnecessary Inquiries

The United States Department of Justice (DOJ) is the enforcement agency for Titles II and III of the ADA. The DOJ has stated that covered entities are not allowed to make “unnecessary inquiries” into the existence or extent of someone’s disability.<sup>i</sup> An entity may only request documentation if the disability-related need for a reasonable modification is not obvious. That request must be reasonable and tailored to the need for the reasonable modification.<sup>vii</sup> What an entity can ask depends on two factors: 1) the nature of a person’s disability and; 2) the modification the requested by the individual.

The Title II Technical Assistance Manual reinforces this idea stating that—“a public entity may not make unnecessary inquiries into the existence of a disability.”<sup>viii</sup> A covered entity may only request documentation of an individual’s disability if that person’s disability-related need is not apparent or obvious.<sup>ix</sup> DOJ guidance encourages covered entities to review past modifications, if applicable, when considering a request for a reasonable modification under the ADA.<sup>x</sup>

## Specific Limitations on Inquiries Under Title II

The DOJ stated that a public entity should not ask about the nature or extent of someone’s disability if they use service dogs or mobility devices.<sup>xi</sup> Beyond these two specific limitations, the DOJ has not provided much guidance regarding a Title II entity asking for documentation. Generally, a public entity should not engage in a lengthy process to determine if a person has an ADA-eligible disability.<sup>xii</sup>

### Service dogs

A public entity may not ask for a license or certification for service dogs. They may only ask two questions: 1) If the animal is required due to disability and; 2) What service or task the animal is trained to perform. A public entity should not ask about the nature or extent of the handler’s disabilities if that person uses a service dog.<sup>xiii</sup>

The DOJ has stated that unequal treatment of people with disabilities may be a result of requesting documentation of a disability for service animal users.

When a federal agency proposes a new rule, the public has the opportunity to comment on the rule before it is finalized. Commenters can range from an everyday citizen to a non-profit doing disability-related work, bringing comments from a variety of perspectives. After DOJ proposed a rule in 2010 about Title III of the ADA, some commenters suggested that a Title III entity should be able to require documentation from people with mental health related disabilities who use a service animal.

In response to these comments, the DOJ concluded that “a documentation requirement [of this kind] would be unnecessary, burdensome, and contrary to the spirit, intent, and mandates of the ADA.”

The DOJ went on to state that broad requests for documentation could result in treating people with psychiatric, intellectual, and other mental disabilities worse than people with physical or sensory disabilities.

The DOJ also pointed out how impractical providing such documentation would be. If the ADA required documentation for use of a service animal, a person with a disability would have to carry documentation with them anytime they participate in ordinary daily life activities.

### Mobility devices

DOJ has stated that a public entity may not ask about the nature or extent of an individual’s disability if the person uses a wheelchair or other mobility device.<sup>xiv</sup> They can ask to provide “a credible assurance” that they require the mobility device because of a disability.<sup>xv</sup>

This may include:

- State-issued disability parking placard,

- State-issued proof of disability, or
- Verbal assurance not contradicted by observable fact.<sup>xvi</sup>

The DOJ has a well-established policy that public entities should not require proof of a mobility disability to respect their privacy.<sup>xvii</sup>

## Case Studies

### Title II Illustration – A Student’s Reasonable Modifications at a University

Florek v. Creighton University

Ms. Florek was a university student who has a traumatic brain injury (TBI). She requested a reasonable modification for extra time on exams. The university requested medical documentation of her TBI to understand the best reasonable modifications.

Over time, Ms. Florek and the university disagreed about the modifications and her academic performance. The university ultimately dismissed Ms. Florek from the program.

Florek filed a lawsuit against the university for failure to accommodate her disability. One of her claims was that the university improperly required her to provide updated documentation to renew her modifications on an on-going basis.

The court referenced guidance from the EEOC regarding what documentation an employer may request under Title I. They did this because of the limited guidance available under Titles II and III. The EEOC states that it is reasonable for employers to ask for documentation about their employees’ disability and functional limitations.

The court concluded that the university was allowed to ask for reasonable documentation of the student’s disability and functional limitations. However, the court did not discuss what is “reasonable” under Title II. Due to “uncertainties” with recovering from a TBI and this student’s injury the court decided the university was justified to requests renewed documentation.

At trial, the jury sided in favor of the university. This means the university’s requests for renewed documentation were reasonable.

The Florek case was in the District of Nebraska, so it is not binding law within the Rocky Mountain region. Courts in North Dakota and South Dakota could turn to Florek and use that case to guide similar cases. It’s important to understand that courts in other federal districts and circuits may not agree with applying Title I principles to Title II and III cases, viewing it as a different standard.

### Title III Illustration – Individualized Education Plan at Summer Camp

Koester v. YMCA of Greater St. Louis

The YMCA is a public accommodation subject to Title III of the ADA. Ms. Koester wanted to enroll her child, who has autism and Down syndrome, in a YMCA summer camp. The Eighth Circuit Court of Appeals considered if the YMCA violated the ADA by requesting documentation for the child’s disabilities to participate in a summer camp.

The YMCA required families of children with Individualized Education Plans (IEPs) to submit the IEPs to the YMCA. The YMCA used IEPs to determine what reasonable modifications were necessary for children with disabilities. The YMCA did not use IEPs to screen children out from participating in camp programs.

Ms. Koester objected to the requirement to provide her child's IEP because she thought the IEP was a confidential document that contained sensitive information. Instead, Ms. Koester offered to provide information about the necessary modifications from her child's pediatrician.

The YMCA offered to accept documentation from the pediatrician. However, Ms. Koester filed suit under the ADA, alleging that the requirement of the IEP was discriminatory.

The court concluded that the YMCA did not discriminate against the family. Although the court found that the IEP was not necessary in its entirety, it recognized that the purpose of the IEP request was to determine reasonable modifications, not to screen out campers with disabilities.

This case demonstrates that a Title III entity was within its rights to request documentation. This case is an Eighth Circuit case, meaning it is binding on the Rocky Mountain states of North Dakota and South Dakota. Other circuit courts and district courts have the option of turning to this case as a precedent.

## Conclusion – What to Expect

### What documentation can an entity request?

There is no specific guidance regarding what documentation a Title II or III entity can request of a person with a disability who requests reasonable modifications, but there are a few broad principles to keep in mind.

- 1) When requesting a reasonable modification, a person with an obvious disability would likely not need to provide supporting documentation.
- 2) Individuals with less obvious disabilities can expect to provide basic, unobtrusive documentation that is directly relevant to the reasonable modification request, if asked.
- 3) People with disabilities should not need to provide documentation that reveals extensive private information or anything that is not related to the reasonable modification.
- 4) If an individual thinks that a request for additional documentation is unreasonable, they can tell that to the entity and ask why documentation is necessary to their reasonable modification request.

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<sup>i</sup> U.S. Department of Justice: Civil Rights Division, “Businesses That Are Open to the Public”, <https://www.ada.gov/topics/title-iii/> (accessed March 5, 2025).

<sup>ii</sup> 28 C.F.R. § 35.130 “General prohibitions against discrimination,” <https://www.ecfr.gov/current/title28/chapter-I/part-35/subpart-B/section-35.130> (amended April 8, 2025; accessed April 15, 2025).

<sup>iii</sup> U.S. Department of Justice: Civil Rights Division, “State and Local Governments.”

<sup>iv</sup> U.S. Department of Justice: Civil Rights Division, “State and Local Governments.”

<sup>v</sup> 28 C.F.R. § 35.130.

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<sup>vi</sup> 28 C.F.R. Appendix C to Part 35.

<sup>vii</sup> 28 C.F.R. Appendix C to Part 35: Guidance to Revisions to ADA Title II and Title III Regulations Revising the Meaning and Interpretation of the Definition of ‘Disability’ and Other Provisions in Order To Incorporate the Requirements of the ADA Amendments Act, <https://www.ecfr.gov/current/title28/chapter-I/part-35/appendix-Appendix%20C%20to%20Part%2035> (last amended April 8, 2025; accessed April 15, 2025).

<sup>viii</sup> U.S. Department of Justice: Civil Rights Division, “The Americans with Disabilities Act, Title II Technical Assistance Manual, Part II.3.5300 Unnecessary Inquiries”; New England ADA Center, “ADA Title II Requirements.”

<sup>ix</sup> *Id.*; see also Equal Employment Opportunity Commission, “EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disability Act, EEOC Notice 915.002,” (October 17, 2002), <http://www.eeoc.gov/policy/docs/accommodation.html> (accessed March 5, 2025).

<sup>x</sup> 28 C.F.R. Appendix C to Part 35.

<sup>xi</sup> U.S. Department of Justice: Civil Rights Division, “Americans with Disabilities Act Title II Regulations.”

<sup>xii</sup> U.S. Department of Justice: Civil Rights Division, “Final Rule, Amendment of ADA Title II and Title III Regulations To Implement ADA Amendments Act of 2008,” (August 11, 2016) <https://www.federalregister.gov/documents/2016/08/11/2016-17417/amendment-of-americans-with-disabilities-act-title-ii-and-title-iii-regulations-to-implement-ada> (accessed April 15, 2025).

<sup>xiii</sup> *Id.*

<sup>xiv</sup> *Id.*

<sup>xv</sup> *Id.*

<sup>xvi</sup> *Id.*

<sup>xvii</sup> *Id.*