DEFINITION OF UNDUE FINANCIAL AND ADMINISTRATIVE BURDENS – TITLE II OF THE AMERICANS WITH DISABILITIES ACT

Title II - State and Local Governments

Title II of the ADA requires that the services and programs of local and State governments, as well as other non-Federal government agencies, shall operate their programs so that when viewed in their entirety are readily accessible to and usable by individuals with disabilities.

Title II entities:

Do not need to remove physical barriers, such as stairs, in all existing buildings, as long as they make their programs accessible to individuals who are unable to use an inaccessible existing facility;

Must provide appropriate auxiliary aids to ensure that communications with individuals with hearing, vision, or speech impairments are as effective as communications with others, unless an undue burden or fundamental alteration would result;

May impose safety requirements that are necessary for the safe operation of a Title II program if they are based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

Section 35.150 requires that each service, program, or activity conducted by a public entity, when viewed in its entirety, be readily accessible to and usable by individuals with disabilities. The regulation makes clear, however, that a public entity is not required to make each of its existing facilities accessible (§35.150(a)(1)). Unlike title III of the Act, which requires public accommodations to remove architectural barriers where such removal is "readily achievable," or to provide goods and services through alternative methods, where those methods are "readily achievable," Title II requires a public entity to make its programs accessible in all cases, except where to do so would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens. Congress intended the "undue burden" standard in title II to be significantly higher than the "readily achievable" standard in title III. Thus, although title II may not require removal of barriers in some cases where removal would be required under title III, the program access requirement of title II should enable individuals with disabilities to participate in and benefit from the services, programs, or activities of public entities in all but the most unusual cases.
DEFINITION OF "TITLE II: FUNDAMENTAL ALTERATION / UNDUE FINANCIAL AND ADMINISTRATIVE BURDENS (29 C.F.R. § 35.164):

In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens.

The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion.

If an action required to comply with this subpart would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.

DEFINITION OF "UNDUE BURDEN" IN SECTION 36.104 OF "ADA TITLE III REGULATION 28 CFR PART 36" WWW.ADA.GOV/REG3A.HTML

Title III: Undue burden

Significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include –

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation.
In Title II, the fundamental alteration, undue financial and administrative burdens is slightly different than the way that undue burden is looked at for Title III. If someone in a public entity thinks that the proposed auxiliary aid or service would fundamentally alter the service or program or would result in an undue burden, then the public entity really has the burden of proving that it would result in an alteration or burden.

That decision must be made by the head of the public entity or his or her designee after considering all the resources available for use in the funding and operation of the service program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. And then if they reach that conclusion, the public entity still needs to take any other action that would not result in an undue burden but would nevertheless ensure that to the maximum extent possible, individuals with disabilities receive the benefits or services provided by that public entity.

So if a college says: well this is too expensive, that is not good enough. They would need to conduct a comprehensive analysis of the situation and provide that justification in writing and then still go ahead and provide whatever they can provide to make sure that the individual with a disability has access to the greatest extent possible.

*Adapted for use by the California Community Colleges by The Galvin Group, LLC*