

Locals Responsibilities under the Americans with Disabilities Act and Section 504

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Title II of the Americans with Disabilities Act (ADA)

- Access to civic life by people with disabilities is a fundamental goal of the Americans with Disabilities Act (ADA).
 - To ensure that this goal is met, Title II of the ADA requires State and local governments to make their programs and services accessible to persons with disabilities.
 - This requirement extends not only to physical access at government facilities, programs, and events -- but also to policy changes that governmental entities must make to ensure that all people with disabilities can take part in, and benefit from, the programs and services of State and local governments.
 - In addition, governmental entities must ensure effective communication -- including the provision of necessary auxiliary aids and services -- so that individuals with disabilities can participate in civic life.



Common Problems

"Grandfather" Clause or Small Entity Exemption

- City governments may believe that their existing programs and facilities are protected by a "grandfather" clause from having to comply with the requirements of Title II of the ADA.
- Small municipalities may also believe that are exempt from complying with Title II because of their size.

50 or more employees= must have published plan



Grandfather Clause or Small Entity Exemption

Result:

Because city governments wrongly believe that a "grandfather" clause or a small entity exemption shields them from complying with Title II of the ADA, they fail to take steps to provide program access or to make modifications to policies, practices, and procedures that are required by law.

People with disabilities are unable to gain access to city facilities, programs, services, or activities because of a public entity's reliance on these common misconceptions.



"Grandfather" Clause or Small Entity Exemption, Requirement

- ⦿ There is no "grandfather" clause in the ADA. However, the law is flexible. City governments must comply with Title II of the ADA, and must provide program access for people with disabilities to the whole range of city services and programs.
- ⦿ In providing program access city governments are not required to take any action that would result in a fundamental alteration to the nature of the service, program, or activity in question or that would result in undue financial and administrative burdens.

Common Problems

Curb Ramps

- City governments often do not provide necessary curb ramps to ensure that people with disabilities can travel throughout the city in a safe and convenient manner.



Curb Ramps

Result:

Without the required curb ramps, sidewalk travel in urban areas is dangerous, difficult, and in some cases impossible for people who use wheelchairs, scooters, and other mobility aids.

Curb ramps allow people with mobility impairments to gain access to the sidewalks and to pass through center islands in streets.

Otherwise, these individuals are forced to travel in streets and roadways and are put in danger or are prevented from reaching their destination.

Curb Ramps Requirement

- When streets and roads are newly built or altered, they must have ramps wherever there are curbs or other barriers to entry from a pedestrian walkway.
- Likewise, when new sidewalks or walkways are built or altered, they must contain curb ramps or sloped areas wherever they intersect with streets or roads.
- While resurfacing a street or sidewalk is considered an alteration for these purposes, filling in potholes alone will not trigger the alterations requirements.
- At existing roads and sidewalks that have not been altered, city governments may choose to construct curb ramps at every point where a pedestrian walkway intersects a curb, but they are not necessarily required to do so.

Curb Ramps Requirement

- One way to ensure the proper integration of curb ramps throughout a city is to set a series of milestones for curb ramp compliance in the city's transition plan.
- Milestones should occur on a regular basis throughout the course of the transition plan and must reflect a priority to walkways serving government buildings and facilities, bus stops and other transportation services, places of public accommodation, and business districts, followed by walkways serving residential areas.
- It also may be appropriate for a city government to establish an ongoing procedure for installing curb ramps upon request in both residential and nonresidential areas frequented by individuals with disabilities. 28 C.F.R. §§ 35.150(d)(2); 35.151(e).

Common Problems

- City governments often fail to provide qualified interpreters or assistive listening devices for individuals who are deaf or hard of hearing at public events or meetings.
 - In addition, city governments often fail to provide materials in alternate formats (Braille, large print, or audio cassettes) to individuals who are blind or have low vision.
- City governments often have failed to ensure that the whole range of the city's services, municipal buildings, and programs meet Title II's program access requirements.



Common Problems

- City governments may believe that they have no duty to make changes to historically significant buildings and facilities to improve accessibility for people with disabilities.
- City governments may fail to consider reasonable modifications in local laws, ordinances, and regulations that would avoid discrimination against individuals with disabilities.

Common Problems

Self-Evaluation and Transition Plans

City governments often have not conducted thorough self-evaluations of their current facilities, programs, policies, and practices to determine what changes are necessary to meet the ADA's requirements, and have not developed transition plans to implement these changes.

Self-Evaluation and Transition Plans

Result:

When self-evaluations are not conducted and transition plans not developed, city governments are ill-equipped to implement accessibility changes required by the ADA.

Without a complete assessment of a city's various facilities, services, and programs, it is difficult to plan or budget for necessary changes, and the city can only react to problems rather than anticipate and correct them in advance.

As a result, people with disabilities cannot participate in or benefit from the city's services, programs, and activities.



Self-Evaluation

- 🕒 Self-Evaluation
 - 🕒 Required by the ADA regulations
 - 🕒 Important way to ensure that Title II's requirements are being met in cities of all sizes
 - 🕒 Enables local governments to pinpoint the facilities, programs and services that must be modified or relocated to ensure compliance with the ADA.
- 🕒 So, what's next?

Self-Evaluation and Transition Plans Requirement

- ④ All city governments were required to complete a self-evaluation of their facilities, programs, policies, and practices by January 26, 1993.
- ④ The self-evaluation identifies and corrects those policies and practices that are inconsistent with Title II's requirements.
 - ④ Self-evaluations should consider all of a city's programs, activities, and services, as well as the policies and practices that a city has put in place to implement its various programs and services.

Self-Evaluation and Transition Plans Requirement

Remedial measures necessary to bring the programs, policies, and services into compliance with Title II should be specified -- including, but not limited to:

- (1) relocation of programs to accessible facilities;
- (2) offering programs in an alternative accessible manner;
- (3) structural changes to provide program access;
- (4) policy modifications to ensure nondiscrimination; and
- (5) auxiliary aids needed to provide effective communication.

Self-Evaluation and Transition Plans Elements

Americans with Disabilities Act Title II Regulations

Part 35-Nondiscrimination on the Basis of Disability in State and Local Government Services

28 CFR 35.150(d)(3) 35.150 Existing facilities.

(3) The plan shall, at a minimum –

1. Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
2. Describe in detail the methods that will be used to make the facilities accessible;
3. Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
4. Indicate the official responsible for implementation of the plan. .



Commonly Asked Questions

- ❏ Do all projects, even those that are 100% locally funded, have to include ADA/504 compliance upgrades?
 - ❏ Yes!
- ❏ Who is responsible for snow removal on sidewalks and curb ramps?
 - ❏ Most cities have an ordinance requiring property owners to clear their sidewalks, etc. However, widespread, there is little enforcement. Ultimately, if there are complaints, best practices have been reported that the city contacts property owner to address. If property owner does not comply timely, then city takes care of the issue, then bills the property owner (similar to a nuisance yard complaint).

Transition Plans

- 🕒 Create a Goals and Accomplishments Report *(Best Practice)*
 - 🕒 Good for Public/Constituents as well as reporting purposes
- 🕒 Update your Self-Evaluation and Transition Plan
 - 🕒 Create a workable template
 - 🕒 Simple is not a bad thing
 - 🕒 Living Document
- 🕒 Incorporate ADA mission into everyone's job/work plan
 - 🕒 Make it a part of everyday business-it will become second nature
- 🕒 Focus on Readily Achievable Barrier Removal

References and Technical Assistance

The ADA and City Governments: Common Problems

<https://www.ada.gov/comprob.htm>

ADA Checklist for Existing Facilities Based on the 2010 ADA Standards for Accessible Design

<http://www.adachecklist.org/doc/fullchecklist/ada-checklist.pdf>

Department of Justice

www.ada.gov

Access Board

www.access-board.gov

Federal Highway Administration

www.fhwa.dot.gov/civilrights/programs/ada.htm

Federal Transit Administration

fta.dot.gov/civil_rights.html

Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way

<https://www.access-board.gov/attachments/article/743/nprm.pdf>

LOCALS RESPONSIBILITIES UNDER THE ADA/504



Use Us!

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614-466-2120 (Fax)

<http://www.dot.state.oh.us/Divisions/Planning/LocalPrograms/LTAP/Pages/ContactUs.aspx>

<http://www.dot.state.oh.us/Divisions/Planning/LocalPrograms/Pages/default.aspx>



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