

ADA LEGAL CONCERNS

Lisa Neie

FHWA Civil Rights Specialist – AZ & NM

Disclosure

- I am not an attorney.
- I cannot provide legal advice.
- The one thing I have learned from all of my research is: **CHALLENGING ADA REQUIREMENTS IS NOT A GOOD USE OF PUBLIC MONEY.**

PROWAG

- The current regulatory standard is the 2010 ADA Standards.
- The Public Rights-of-Way Accessibility Guidelines (PROWAG) is considered a best practice.
- The MAG Standards and the ADOT standards meet many of the PROWAG guidelines.

PROWAG

- Diagonal curb ramps are not currently prohibited. But they are not good for users.
- PROWAG states: **R207.2 Alterations.** In alterations where existing physical constraints prevent compliance with R207.1, a single diagonal curb ramp shall be permitted to serve both pedestrian street crossings.

PROWAG

- Placement of pedestrian push buttons are addressed in the MUTCD, not the 2010 ADA Standards or PROWAG..
- Accessible pedestrian signals are not required but should be given fair consideration when a request is made.
- Both the PROWAG and MUTCD require accessible routes through/around construction/maintenance work.

PROWAG

- **R205 Alternate Pedestrian Access Routes.** When a pedestrian circulation path is temporarily closed by construction, alterations, maintenance operations, or other conditions, an alternate pedestrian access route complying with sections 6D.01, 6D.02, and 6G.05 of the MUTCD (incorporated by reference, see R104.2) shall be provided. Where provided, pedestrian barricades and channelizing devices shall comply with sections 6F.63, 6F.68, and 6F.71 of the MUTCD (incorporated by reference, see R104.2).

ADA Transition Plans

- The regulations (49 CFR 27.11) promulgated to implement Section 504 of the Rehab Act of 1973 required “compliance planning.”
- The requirement to perform the self-assessment and develop the transition plan is in the 1991 ADA regulation (28 CFR 35.150(d)).

ADA Transition Plan

- 35.150 (d) Transition plan. (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.
- (2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

ADA Transition Plans

- Curb ramps must absolutely be included. Consider that curbs are absolute barriers to people who use mobility devices.
- Sidewalks have been deemed by the courts to be a program. And, therefore, must be included at some point.

Barden v Sacramento

- Title II's prohibition of discrimination in the provision of public services applies to the maintenance of public sidewalks, which is a normal function of a municipal entity. The legislative history of Title II indicates that all activities of local governments are subject to this prohibition of discrimination. This conclusion is also supported by the language of § 35.150, which requires the provision of curb ramps in order for sidewalks to be accessible to individuals with disabilities. The order of the district court accordingly is reversed and the case remanded for further proceedings.

Alterations v Maintenance

- Kinney v Yerusalim – 1993

It is further ORDERED that the defendant shall install curb ramps or slopes on every City street, at any intersection having curbs or other barriers to access where bids for resurfacing were let after January 26, 1992.

DOJ/DOT Joint Technical Guidance



U.S. Department of Justice
Civil Rights Division
Disability Rights Section



U.S. Department of Transportation
Federal Highway Administration

Department of Justice/Department of Transportation Joint Technical Assistance¹ on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing

Title II of the Americans with Disabilities Act (ADA) requires that state and local governments ensure that persons with disabilities have access to the pedestrian routes in the public right of way. An important part of this requirement is the obligation whenever streets, roadways, or highways are *altered* to provide curb ramps where street level pedestrian walkways cross curbs.² This requirement is intended to ensure the accessibility and usability of the pedestrian walkway for persons with disabilities.

DOJ/DOT Questions and Answers



U.S. Department of Justice
Civil Rights Division
Disability Rights Section



U.S. Department of
Transportation
**Federal Highway
Administration**

QUESTIONS & ANSWERS

**Supplement to the 2013 DOJ/DOT Joint Technical Assistance
on the Title II of the Americans with Disabilities Act
Requirements To Provide Curb Ramps when Streets, Roads, or
Highways are Altered through Resurfacing**

Alterations v Maintenance

- Both of these documents can be found at the following links:
- www.fhwa.dot.gov/civilrights/programs/doj_fhwa_ta.cfm
- www.fhwa.dot.gov/civilrights/programs/ada_resurfacing_qa.cfm

Current Legal Challenges

- City of Los Angeles settled a lawsuit and agreed to pay out \$1.3 billion over the next 3 years to fix sidewalks.
- City of New York served a class action lawsuit over curb cut and sidewalk inaccessibility. The City's request to dismiss was rejected.
- Oregon Department of Transportation recently served a lawsuit over failures to provide/improve curb ramps when doing alterations.