Transition Plans
“A Closer Look”

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Overview of The Americans with Disabilities Act (ADA)

- ADA refers to The American with Disabilities Act.
- What is the ADA?
- Who does the ADA cover?
Section 504 of the Rehabilitation Act of 1973

No otherwise qualified individual with a disability shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.
ADA Title II

Title II prohibits discrimination against individuals with a disability in state and local government programs, activities, services, and employment.
ADA Title III Application

Public Accommodations
- Restaurants
- Hotels
- Theaters
- Convention Centers
- Retail Stores
- Shopping Centers
- Dry Cleaners/Laundromats
- Pharmacies, Doctors Offices, Hospitals, Health Spas
- Museums, Libraries
- Parks (Incl. Amusement), Zoos
- Private Schools, Day Care Centers
- Bowling Alleys

Commercial Facilities
- Office Buildings
- Factories
- Warehouses

Non-Residential Facilities whose operations affect commerce

Private Entities that offer certain examinations & courses related to educational & occupational certification
“Grand–Father” Clause or Small Entity Exemption

- There is NO "grandfather" clause in the ADA. However, the law is flexible. State and local governments must comply with Title II of the ADA, and must provide program access for people with disabilities to include the whole range of the entity’s services and programs.
Designating An ADA Coordinator

- If a public entity having 50 or more employees is required to designate at least one responsible employee to coordinate ADA compliance.
  - A government entity may elect to have more than one ADA Coordinator.
  - If a local government or other public entity has fewer than 50 employees, it is not required to appoint an ADA Coordinator or establish grievance procedures.

The ADA Coordinator is responsible for coordinating the efforts of the government entity to comply with Title II and investigating any complaints that the entity has violated Title II. The name, office address, and telephone number of the ADA Coordinator must be provided to interested persons.
Providing Notice About The ADA Requirements

- The ADA notice requirements applies to ALL state and local governments covered by title II, even localities with fewer than 50 employees.

- A public entity must provide public notice about the rights of the public under the ADA and the responsibility of the State or local government entity under the ADA.

- Providing notice is not a one time requirement, but a continuing responsibility.

- When providing the notice, the entity must consider their audience. Persons who may have an interest regarding accessibility of programs, services and activities and the facilities they are provided in include: applicants, beneficiaries, and other people interested in the state or local government’s programs, activities, or services.
  - (i.e., applicant for public library card, public transit user, citizen who wants to participate in a town council meeting)
Establishing A Grievance Procedure

- Grievance Procedures are established to meet the requirements of the Americans with Disabilities Act of 1990 ("ADA").

- A Department is required to adopt and publish procedures for resolving grievances arising under Title II of the ADA.

- It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the entity.

- It is generally thought that filing a complaint with a Department is an appropriate first step, in that it provides an opportunity to resolve a local issue at the local level. However, the exhaustion of a Department’s grievance procedure is not a prerequisite to filing a complaint with either a federal agency or a court.
The Self Evaluation & Program Access

**Program Access** – Under ADA Title II Requirements, No qualified individual with a disability shall 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 a public entity.

- Identify all of the public entity’s programs; activities, and services.
- Review all the policies and practices that govern the administration of the public entity’s programs, activities, and services.
The Self Evaluation & Program Access

- A public entity needs to carefully evaluate the identified policies and practices to determine if these policies and practices adversely affect the full participation of individuals with disabilities in its programs, services, and activities.
- Though the policies and practices may appear harmless, they may deny individuals with disabilities the full participation of its programs, activities, or services.
13 Areas Requiring Careful Examination for Evaluating Program Access

1. A public entity must examine each program to determine whether any physical barriers to access exist. It should identify steps that need to be taken to enable these programs to be made accessible when viewed in their entirety. If structural changes are necessary, they should be included in the transition plan.

13 Areas Requiring Careful Examination for Evaluating Program Access

- A public entity must conduct a physical evaluation of facilities that house programs, services, and activities to identify structural barriers to those programs services and activities.

- These findings and the actions to correct them are what make up the Transition Plan.

- This is the first place where the Transition Plan is mentioned. We will go into detail a little more, later in the presentation.
13 Areas Requiring Careful Examination for Evaluating Program Access

2. A public entity must review its policies and practices to determine whether any exclude or limit the participation of individuals with disabilities in its programs, activities, or services. Such policies must be modified, unless they are necessary for the operation or provision of the program, service, or activity. The self-evaluation should identify policy modifications to be implemented and include complete justifications for any exclusionary or limiting policies or practices that will not be modified.
13 Areas Requiring Careful Examination for Evaluating Program Access

3. A public entity should review its policies to ensure that it communicates with applicants, participants, and members of the public with disabilities in a manner that is as effective as its communications with others. If a public entity communicates with applicants and beneficiaries by telephone, it should ensure that TDD’s or equally effective telecommunication systems are used to communicate with individuals with impaired hearing or speech. Finally, if a public entity provides telephone emergency services, it should review its policies to ensure direct access to individuals who use TDD’s and computer modems.
13 Areas Requiring Careful Examination for Evaluating Program Access

4. A public entity should review its policies to ensure that they include provisions for readers for individuals with visual impairments; interpreters or other alternative communication measures, as appropriate, for individuals with hearing impairments; and amanuenses for individuals with manual impairments. A method for securing these services should be developed, including guidance on when and where services will be provided. Where equipment is used as part of a public entity’s program, activity, or service, an assessment should be made to ensure that the equipment is usable by individuals with hearing, visual, and manual impairments. In addition, a public entity should have policies that ensure that its equipment is maintained in operable working order.
13 Areas Requiring Careful Examination for Evaluating Program Access

5. A review should be made of the procedures to evacuate individuals with disabilities during an emergency. This may require the installation of visual and audible warning signals and special procedures for assisting individuals with disabilities from a facility during an emergency.
13 Areas Requiring Careful Examination for Evaluating Program Access

6. A review should be conducted of a public entity’s written and audio-visual materials to ensure that individuals with disabilities are not portrayed in an offensive or a demeaning manner.
13 Areas Requiring Careful Examination for Evaluating Program Access

7. If a public entity operates historic preservation programs, it should review its policies to ensure that it gives priority to methods that provide physical access to individuals with disabilities.
13 Areas Requiring Careful Examination for Evaluating Program Access

8. A Public entity should review its policies to ensure that its decision concerning a fundamental alteration in the nature of a program, activity, or service, or a decision that an undue financial and administrative burden will be imposed by title II, are made properly and expeditiously.
13 Areas Requiring Careful Examination for Evaluating Program Access

9. A public entity should review its policies and procedures to ensure that individuals with mobility impairments are provided access to public meetings.
13 Areas Requiring Careful Examination for Evaluating Program Access

10. A public entity should review its employment practices to ensure that they comply with other applicable nondiscrimination requirements, including section 504 of the Rehabilitation Act and the ADA regulation issued by the Equal Employment Opportunity Commission.
13 Areas Requiring Careful Examination for Evaluating Program Access

11. A public entity should review its building and construction policies to ensure that the construction of each new facility or part of a facility, or the alteration of existing facilities after January 26, 1992, conforms to the standards designated under title II regulation.
13 Areas Requiring Careful Examination for Evaluating Program Access

12. A review should be made to ascertain whether measures have been taken to ensure that employees of a public entity are familiar with the policies and practices for the full participation of individuals with disabilities. If appropriate, training should be provided to employees.
13. If a public entity limits or denies participation in its programs, activities, or services based on drug usage, it should make sure that such policies do not discriminate against former drug users, as opposed to individuals who are currently engaged in illegal use of drugs.
Basics of a Transition Plan

- It is an entity’s plan to remove all physical and communication barriers to programs, services, goods and activities. It is a key element of the self-evaluation process required by the ADA and Section 504. It provides a description of structural modifications that are necessary, with a timeline for completing the work.

- The major purpose of a Transition Plan is to document any structural barriers to persons with disabilities that are present in the facilities and to propose the structural modifications that will be undertaken to provide program accessibility.

- It is a comprehensive plan containing many elements in a document format that is available to the public for three years.
Who's legal obligation is it to Complete a Transition Plan?

- 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 a transition plan setting forth the steps necessary to complete such changes. 28 CFR §35.150(d)

- Less than 50 employees, public entities still need to evaluate programs for discrimination ...but a Transition Plan is not required.

*The number of employees is based on a government-wide total, including employees of each department, division, other sub-unit. Both “part-time” and “full-time” employees count.
Elements of Transition Planning

The Transition Plan should consist of the following elements:

- A List of Physical Barriers in the Entity’s Facilities that Limit Accessibility of Individuals with Disabilities,

- A Detailed Description of the Methods to Remove these Barriers and Make the Facilities Accessible,

- A Schedule for Taking the Necessary Steps to Achieve Compliance with Title II

- The Name of the Official Responsible for Implementation

- A Record of the Opportunity Given to the Disability Community and Other Interested Parties to Participate in the Development of the Plan.
Perform Physical Barrier Assessments within all Public Entity facilities

- **Architectural Barrier Removal** – a public entity shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature, where such removal is readily achievable, easily accomplishable and able to carried out without much difficulty or expense.

- **City Code Requirements and Engineering Plan Review Procedures**
  - ADAAG (Americans with Disabilities Act Accessibility Guidelines)
  - PROWAG (Pedestrian Rights Of Way Accessibility Guidelines)
Sidewalk Inventory

- Inventory the entire public sidewalk network owned by the entity.
- Assess the condition of the entire public sidewalk network owned by the entity.
- Build a foundation that, in the future, would allow the use of the entity’s maintenance management system, to track the public sidewalk network maintenance.
- Develop a set of sidewalk program recommendations that the entity can use to leverage available resources
- Develop a set of recommendations that the entity can use to set policy related to the long term funding of the sidewalk program.
Public Input

28 CFR 35105 (b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.
Questions?
Resources & References
This document is not intended to be comprehensive or exhaustive.

ada.gov
Americans with Disabilities Act
Title II Regulations
Title II Technical Assistance Manual
The Civil Rights Act of 1964
The Rehabilitation Act of 1973
United States Department of Justice
United States Access Board
Great Lakes ada Center
Thank You!

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