

RESEARCH REVIEW: Americans with Disabilities Act and Local Road Agencies (Creating Facilities for All Users)

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Nathan Leier grew up on his family farm near Strasburg, ND, and now resides in Bismarck, ND. Nathan was a co-instructor for the NDLTAP Accessibility Class held in Bismarck.

“As a frequent user of things that are required according to The Americans with Disabilities Act (ADA), I can only imagine how difficult some things in life would be without these standards. In the short time from getting out of bed to laying down for bedtime at night, a multitude of ADA guidelines have made an impact on my life. Indoor things like lowered countertops, accessible bathrooms, wider doorways and outdoor things like curb cutouts, push button doors, smooth and wide sidewalks are just a few examples of things that are appreciated and needed by people with disabilities to function in everyday life. My advice to any engineers, designers, or contractors is to remember that the ADA standards are a good starting point, but these are just minimum standards. If space and budget allows, wider sidewalks and doors, lesser sidewalk cross slopes, and gentler inclines are some of the things that are much appreciated! I consider my wheelchair to be my “go-cart” that just happens to be allowed in all places! Not a fun go-cart but a necessary go-cart!”

– Nathan Leier

The Americans with Disabilities Act (ADA) was signed into law by President H.W. Bush in July 1990. This civil rights act is intended to prohibit discrimination against individuals with disabilities so that every individual can participate in all areas of public life. Everyone benefits from accessible facilities—moms/dads pushing strollers, delivery people using wheeled carts and those who have temporary disabilities due to an injury or medical procedure.

Title II of ADA addresses state and local governments. All Title II entities must provide notice to the public with an ADA policy statement and must perform a self-evaluation of their programs, services and facilities. This includes access to and within public buildings (e.g., city hall, county courthouse and library), public meetings, park and rec programs, the agency website and the sidewalks, crosswalks and signals found in the public right-of-way. While all of these must be accessible, the focus of this document is on the public right-of-way. In the public right-of-way, the self-evaluation means identifying obstacles or barriers to movement along with the modifications necessary to remove such barriers. The self-evaluation must also provide an opportunity for public participation. In addition to these requirements, Title II entities with 50 or more employees must also designate an ADA Coordinator, develop and post ADA grievance and complaint procedures, maintain their self-evaluation on file and make it available for inspection, and prepare a transition plan which includes a schedule for taking the necessary steps to remove barriers. The focus of the transition plan is on agency-managed facilities in the public right-of-way, namely:

- sidewalks (width, cross slope, grade, vertical discontinuities)
- crosswalks (width, cross slope, grade, surface condition)

- curb ramps (width, cross slope, grade, turning space, bottom clear space, flares and detectable warning surfaces)
- pedestrian signals
- street furniture
- On-street parking

Title II requires that new construction and altered facilities (regardless of funding source) must be designed and constructed to be accessible to and usable by persons with disabilities. In the public right-of-way, U.S. Department of Justice (DOJ) and the courts consider roadway resurfacing to be an alteration. Roadway resurfacing triggers the requirement for curb ramp installations or retrofits to current standards as part of the resurfacing project. The graphic below, from the DOJ/DOT Joint Technical Assistance issued in July 2013, helps clarify what constitutes resurfacing, i.e., an alteration. If what is done to a road/street falls in the maintenance category, there is no requirement to upgrade the curb ramps as part of the work. Note, however, that performing more than one maintenance operation may cause the work to rise to the level of an alteration, e.g., making joint repairs, patching concrete spalls and then diamond grinding the surface, would likely be considered an alteration and the curb ramps would need to be brought up to current standards as part of the project.

MAINTENANCE		
Chip Seals	Fog Seals	Scrub Sealing
Crack Filling and Sealing	Joint Crack Seals	Slurry Seals
Diamond Grinding	Joint repairs	Spot High-Friction Treatments
Dowel Bar Retrofit	Pavement Patching	Surface Sealing
ALTERATION		
Addition of New Layer of Asphalt	Mill & Fill / Mill & Overlay	
Cape Seals	New Construction	
Hot In-Place Recycling	Open-graded Surface Course	
Microsurfacing / Thin-Lift Overlay	Rehabilitation and Reconstruction	

Compliance in an alteration is not required where it is “technically infeasible.” The term is defined as something that has little likelihood of being accomplished because existing physical or site constraints (e.g., the basement of a downtown building extends under the sidewalk) prohibit modification or addition of elements or features that are in full and strict compliance with the minimum requirements. Cost is not a trigger of infeasibility in alterations. Where exceptions to the criteria are being made, it is important to document the situation and the reason for the exception. Note that where technical infeasibility is encountered, compliance is required to the maximum extent feasible.

The current law with respect to ADA is the Americans with Disabilities Act Accessibility Guidelines (ADAAG) also referred to as the 2010 ADA Accessible Design Standards. ADAAG applies to the public agency’s buildings and on-site facilities, e.g., city hall, the county courthouse, a public library or a parking lot. ADAAG does not address all situations, especially those that are unique to the public right-of-way, e.g., crosswalks, pedestrian signals, and on-street parking. Therefore, the U.S. Access Board, the federal agency responsible for developing accessibility guidelines under ADA and other laws, developed the Public Rights-of-Way Accessibility Guidelines (PROWAG) to provide standards specific to the public right-of-way. PROWAG is still undergoing the rulemaking process (current version is the 2011 Notice of Proposed Rulemaking) so it is not yet law. However, many agencies have adopted PROWAG. The DOJ and USDOT recommend that public agencies use PROWAG. The

courts, through their rulings, are indicating they want agencies to use PROWAG. The bottom line is that public agencies should be using PROWAG as the standard for accessibility in the public right-of-way.

One of the items addressed by PROWAG is the Pedestrian Access Route (PAR). The PAR provides a minimum accessible route of passage within a sidewalk or other walkway that may not comprise the full width of the pedestrian circulation route. Components of the PAR are walkways, ramps, curb ramps (excluding flared sides) and turning spaces, blended transitions, crosswalks and pedestrian overpasses and underpasses. The pedestrian access route requirements specifically address: width, passing spaces, cross slope, grade, surface and protruding objects.

State and local governments must maintain the accessible features of facilities in operable working condition. Part of this maintenance obligation includes reasonable snow removal efforts. Poorly maintained facilities are not accessible or safe (e.g., heaved sidewalk slabs, buckled bricks and vegetation overgrowing the sidewalk).

As provided in the *Manual on Uniform Traffic Control Devices*, a basic requirement of temporary traffic control is the needs of pedestrians, including those with disabilities. PROWAG specifically states that temporary facilities covered by it include, but are not limited to, temporary routes and work zones. An alternate pedestrian access route is required when an existing pedestrian circulation path is temporarily closed by construction, alteration, maintenance or other condition.

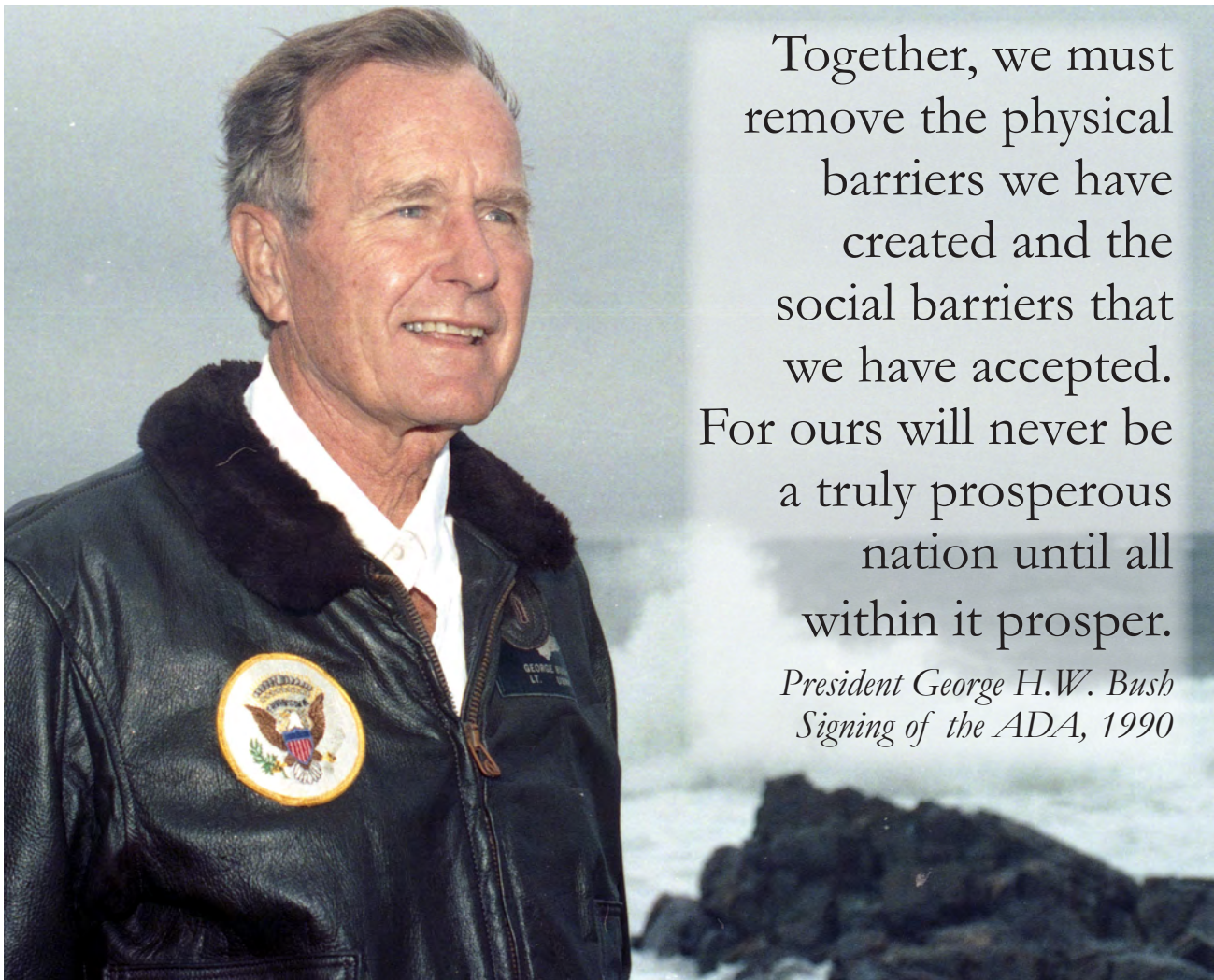


The ADA's mandates, including the accessibility standards, are enforced through investigation of complaints filed with federal agencies or through litigation brought by private individuals or the federal government. The

DOJ has rulemaking authority and enforcement responsibility for the ADA. If found in violation of ADA, an agency may face stiff fines. The Federal Highway Administration's Office of Civil Rights oversees compliance with USDOT requirements for highways and streets.

The settlement approved by the court in the California case *Barden vs. City of Sacramento* (2004) illustrates the potential consequences of not making facilities accessible. The settlement provided that 20 percent of the City's annual transportation budget for the next thirty years was to be allocated to pedestrian accessibility (i.e., external control of the agency's budget). Upgrades to ramps as part of alterations were outside of the 20 percent. In *Californians for Disability Rights (CDR) vs. CALTRANS* (2008) the court said that lack of a transition plan constituted a violation of ADA by itself. This emphasizes how important it is for agencies to complete their self-evaluations and transition plans and to maintain (revise regularly) their plans as living documents.

In light of enforcement and potential legal cases, it is vital that agencies be able to demonstrate that they are making a good faith effort to manage accessibility. Obviously, one way to do this is to allocate resources, not only to the self-evaluation/transition plan but also to removing physical barriers to accessibility. Documentation is another way to demonstrate an agency is making a good faith effort. As noted earlier, it is critical that cases of technical infeasibility be well-documented. Training is another element of making a good faith effort. All agency employees should receive training relative to the parts of ADA that pertain to their job responsibilities (e.g., customer service or design/construction/maintenance of the public right-of-way). Be sure to document the training and make it part of your agency's transition plan.



Together, we must
remove the physical
barriers we have
created and the
social barriers that
we have accepted.
For ours will never be
a truly prosperous
nation until all
within it prosper.

*President George H.W. Bush
Signing of the ADA, 1990*

image credit the George H.W. Bush Presidential Library and Museum

Resources

2013 Alterations Memorandum: "Department of Justice/Department of Transportation 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." http://www.fhwa.dot.gov/civilrights/programs/doj_fhwa_ta.cfm

"Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way," U.S. Access Board, Draft PROWAG. <https://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way>

"ADA Transition Plans: A Guide to Best Management Practices," Jacobs Engineering Group, National Cooperative Highway Research Program Project No. 20-7 (232), Transportation Research Board, Washington, DC, May 2009. [http://onlinepubs.trb.org/onlinepubs/nchrp/docs/NCHRP20-07\(232\)_FR.pdf](http://onlinepubs.trb.org/onlinepubs/nchrp/docs/NCHRP20-07(232)_FR.pdf)

Washington State LTAP, "Bellevue's ADA Sidewalk and Curb Ramp Compliance Program," [Self-evaluation and Transition Plans]. https://bellevuewa.gov/sites/default/files/media/pdf_document/2019/ADA%20Self-Evaluation%20and%20Transition%20Plan.pdf

Manual on Uniform Traffic Control Devices, Federal Highway Administration, Washington, DC. <https://mutcd.fhwa.dot.gov>

Project Civic Access (DOJ reviews, enforcement, settlement agreements). <http://www.ada.gov/civicac.htm>