ADA Transition Plans:
What You Need to Know to Protect Your District

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Disability Access Consultants (DAC)

ADA Transition Plan - Overview

- In light of the recent change in legislation, community colleges have found themselves to be the subject of ADA lawsuits
- Waiting until this process is imposed on a college through legal action is not the best course of action
- Take the steps to be proactive by developing and implementing an ADA transition plan for your campus
- The importance of attorney/client privilege
- Examples of an existing ADA transition plan and a proposed timeline for upgrading and renovating facilities through strategic bidding and contracts will help with the process
- The process of a public hearing includes the timing of public notice, providing the plan for review in a public location and meeting with your board to provide an overview of the plan and process
- The cost of preparing an ADA transition plan is small compared to the long-term benefit it will provide, including the ability of the college to establish a reasonable timeline for facility renovation that will make the process manageable from a resource perspective
History of the ADA – Americans With Disabilities Act

- Americans with Disabilities Act passed into law in 1991
- Required all public and private facilities to meet federally mandated accessibility requirements
- Incorporated into the Unruh Civil Rights Act in California
  - Three components to claims
    - Civil rights violation and statutory damages
    - Attorney’s fees
    - Repairs to meet ADA requirements – injunctive relief
- Two types of ADA requirements
  - New Construction must be constructed to current ADA requirements
  - A disabled person can complain that they were denied access

Why is ADA Title II Significant for You?

- SB 1186 passage in January 2013 changed the legal landscape
- SB 1186 protects private businesses and requires a threshold showing violation and notice to the State Disability office of all legal filings against private businesses
- SB 1186 transferred the focus from Private entities to Public Agencies
  - In the past, community colleges were largely ignored for ADA related claims
- Public Agency ADA lawsuits are not visible because they don’t require reporting of lawsuits to the public or threshold showing before filing a lawsuit
Why is ADA Title II Significant for You? (Continued)

• AB1186 provides the legal right to investigate the entire college campus for ADA violations
  – *Chapman v Pier 1 Imports* (2011) 631 F.3rd 950 which addresses the “potential for future discrimination”

• If K-14 buildings are built to ADA requirements – the common belief is that it is that they are ADA compliant unless modifications are made

• With new law – ADA lawsuits are not just nuisance claims
  – They are a Civil Rights violation

• Beyond damages and attorney’s fees sought, there are significant costs for altering structures to meet ADA requirements

• As a result of SB 1186, public agency lawsuits are increasing in number with significant time and costs becoming the responsibility of Community College

Who Has Ultimate Responsibility for ADA Compliance?

*DSA–Architect–Contractor–Inspector–District:*

**Title 24 Requirements**

Education Code Section 17309 provides “the licensed architect or structural engineer in charge of observation of construction or registered engineer in charge of observation of other work, the inspector on the work, and the contractor shall each make to the Department of General Services a report, duly verified by him or her, upon a form prescribed by the Department of General Services, based upon his or her own personal knowledge, indicating that the work during the period covered by the report has been performed and materials have been used and installed, in every material respect, in compliance with the approved plans and specifications, setting forth such detailed statements of fact as are required by the Department of General Services…. The term "personal knowledge" as applied to the inspector means the actual personal knowledge which is obtained from his or her personal continuous inspection of the work of construction...”
Who Has Ultimate Responsibility for ADA Compliance? (Continued)

**DSA–Architect–Contractor–Inspector–District:**

- **Some Protection Provided by Safe Harbor 35.150(b)(2)(i)**
  - Construction built under applicable rules between 1991 and 2010 are subject to the ADA applicable at the time
  - Projects are not measured to the current ADA requirements
  - The evaluation that was undertaken was measured by today’s ADA requirements and not the applicable code

- **Strengthen Contract Language**
  - Architect’s are required to develop plans that comply with ADA requirements
  - Add indemnification language that requires Contractors to meet ADA requirements and hold District harmless from non-compliance

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Who Has Ultimate Responsibility for ADA Compliance? (Continued)

**DSA–Architect–Contractor–Inspector–District:**

- **When Do Facilities Have to Meet New DSA Standards?**
  - Effective 7/1/15 - DSA will begin enforcing 2013 California Compliance Codes that contain 2010 ADA codes
  - New buildings should meet 2010 ADA codes as referenced above

- **Why Does DSA Approval Not Protect a College?**
  - California standards exceed Federal ADA requirements and change frequently
  - Once DSA plans are approved, a building takes 2 to 3 years to build and changes may occur during that time
Plan Approval Certification on ADA

This constitutes the written approval certifying that the drawings and specifications are in compliance with State regulations for the accommodation of the disabled which are required before letting any contract for construction. (See Section 4454, Government Code.)

DSO Approvals

The Department of General Services' records indicate that construction of the referenced project has been completed in accordance with design documents approved by the Department, and that all the Verified Reports covering the construction have been received. Therefore, the Department of General Services certifies as follows:

This project is in compliance with California State regulations as to the safety of design and construction of public schools, and for the accommodation of persons with disabilities.

Date of Certification: 

State Architect

Chester "Chief" Widcon
Division of the State Architect

CW mg.
ADA Lawsuit - Escalating Fiscal Impact: *It’s More Than Just Damages*

- Civil Code Section 54.3 guarantees treble damages or $1,000 if there are no damages
- Civil Code Section 52 provides for $4,000 damages for each violation if intentional
  - Lack of a Transition Plan is treated as intentional
- Civil Code Section 55 right for injunctive relief
  - Requires bringing non-compliant structures up to ADA code requirements
  - Right to attorney's fees

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ADA Lawsuit - Escalating Fiscal Impact: *It’s More Than Just Damages* (Continued)

- **Insurance: Lawsuit Costs Are Typically Covered by District Insurance**
  - Plaintiff Attorney Fees
  - Plaintiff Settlement/Damages
  - Plaintiff Facility Expert Fees/Facility Report

- **District – Local Funds: Other Costs Are The Responsibility of the District**
  - ADA Transition Plan
    - Loss Prevention Control – reduces costs during lawsuit
    - Some insurance JPAs for cities and K-12 Districts pay for ADA Transition Plans
  - Attorney Fees – To review ADA Plan in conjunction with lawsuit
    - Example: 900 pages reduced to 45 pages; 5,000 repairs reduced to 1,300 repairs
  - Facility Expert – develop District ADA Plan
  - Facility Renovation – Local funding, no state funding provided
Developing an ADA Transition Plan

Unsuccessful Attempts to Achieve Accessibility…

The Reason to Develop an ADA Transition Plan

• **NOTE:** The following examples are not from California community colleges

Accessible Parking?
We Care & We Want to Comply (?)

We even repainted the accessible parking space again!

New Accessible Parking Space: An Example of Building Barriers

Just because it is NEW does not mean it is compliant
Education is Required To Help Understand Compliance Requirements

Maintenance of Accessible Features—
“Administrative Failure Code: 35.133”
What Message Do These Photos Send?

What was the original construction of this site that required this level of vertical access?

Attempt at Vertical Access
Providing Signage or Notice of Noncompliant Parking Space

NOT Recommended
What is an ADA Transition Plan?

• Comprehensive survey of accessibility items and elements to determine if any are discriminatory
• Includes exterior and interior
• Provides a plan for barrier removal over time and in phases
• Original timelines from 1992-1995
• Reality of current timelines for most colleges post 1995
• Projected schedule for barrier removal
• Can be incorporated into the Master Plan

Why Do You Need a Transition Plan?

• A Requirement Under Title II of the ADA
• Need to know what is noncompliant in order to develop a “compliance plan” with implementation strategies
  – How you know what to fix if you don’t know what is noncompliant?
  – Develop a plan and work your plan
  – Documentation of compliance efforts
• Promotes good planning and cost effective barrier removal
• Documents good faith efforts to remove barriers
• Provides opportunities for access for all persons by removing barriers for persons with disabilities
Four Transition Plan Requirements

1. **Potential Barrier Identified**
   - Detailed description of why the item or element is not compliant
   - As-is condition (actual measurement) recorded to assist with decision making by the College (how far is the deviation from compliance with the code)

2. **Description of the Proposed Method for Barrier Removal**
   - How to remove the barrier or alternative
   - Programmatic option may be available

3. **Projected “Schedule for Barrier Removal”**
   - Estimated timelines
   - Can change as it is a working plan
   - Can remove easy, low cost barriers immediately

4. **Designated Responsible Person to Oversee the Implementation of the Plan** – known generally as the ADA Coordinator

**ADA Transition Plan: Development**

- Comprehensive survey of all exterior and interior items to determine if they are compliant with federal (ADA) and state building codes-CBC
  - Path of travel from public right-of-way
  - Parking (width, length, slope, striping, access aisle, ISA)
  - Doors (width, height, closure, level landing, threshold, door pressure)
  - Curbs ramps
  - Ramps
  - Stairs
  - Handrails
**What if I Currently Have a Transition Plan?**

- Good news – even if it is not current, shows good faith effort
- Keep your prior plan as evidence of compliance efforts
- Recommended that plans be updated if work has not been completed as codes may have changed
- Keep your plans current and updated
- Web-based accessibility management software is recommended

**ADA Transition Plan: Other Areas Surveyed**

- Restrooms
- Pools
- Stadiums and Sports Areas
- Sinks
- Lockers
- Food service
- Tables
- Counters
- Dressing Rooms
- Stages
- Lifts
- Elevators

Furniture purchased should also meet accessibility standards
Access to Programs, Services & Activities

Is this path of travel to the programs, services and activities compliant?

Path of Travel
Don’t Build New Barriers
Compliance Requires Planning

Low Cost Items to Remove and to Quickly Decrease Your Risk

Some easy to remove barriers:
- Trimming bushes
- Door stops
- Door pressures
- Trash cans
- Maintain parking striping
- Shrubs, tree roots, trash cans, displays
- Parking
- Signage

Not all barrier removal items are expensive or require construction

Use the term disability instead of the term handicapped

Use person first language – Individual with a disability or Person with a disability
## Encroachments to the Path of Travel

<table>
<thead>
<tr>
<th>Encroachments</th>
<th>Required Maintenance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wheel Stops or Bollards</td>
<td>Need to maintain the required width for the path of travel of an exterior route of at least 48 inches, sometimes 60 inches</td>
</tr>
<tr>
<td>Trimming Bushes</td>
<td></td>
</tr>
</tbody>
</table>

## Policy Regarding “No Backing In”
ADA Transition Plan: Implementation

ADA Transition Plan: Public Input Required

• Opportunities for public input is required to provide feedback for the development of the plan in accordance with Title II of the ADA
• A public hearing is not required, but is one method for public input that may be appropriate in certain situations
• Many methods for public input
  – Surveys – online and paper
  – Postings
  – Notice in newspaper
  – Postings in public locations
  – Transition Plan available for input
ADA Transition Plan:  
Public Input vs. Public Hearing

- Public Input – Required in accordance with Title II of the ADA
- Share information with key stakeholders
- Public Hearing For Input – Recommended not legally required
  - Input is informational
  - If a lawsuit is involved, court will oversee the plan
  - Plan can be adopted in stages
    - Meet court requirement
    - Long-term timeline based on funding availability
  - Provides transparency with board and community
  - Board action is defensible
  - If plan is adopted by the board, may need to bring future revisions back for approval

ADA Transition Plan:  
Public Hearing/Board Meeting

- Post the plan 2 to 4 weeks prior to the public board meeting
- Place a notice on the District’s website of the location of the plan and the time, date and location of the public hearing at the board meeting
- Provide the ADA Transition Plan in a Public Location
  - Library
  - Facilities office
  - Administrative offices
- Provide contact information for questions
- Have the attorney meet in closed session with the board of trustees on the plan and the process
- Have the attorney provide an overview at the open session board meeting and remain to address questions from the public
ADA Transition Plans:
What You Need to Know to Protect Your District

ADA Transition Plan: Public Hearing Notice

- ____________ (Insert Name) COMMUNITY COLLEGE DISTRICT
- NOTICE OF PUBLIC HEARING
- NOTICE INVITING PUBLIC COMMENTS TO THE DEVELOPMENT OF DISTRICT’S ADA TRANSITION PLAN
- NOTICE IS HEREBY GIVEN that the Board of Trustees of the ____________ (Insert) Community College District (“District”), at its regular board meeting to be held at 5:00 p.m. on (Insert Date), at (Insert College Name and Address) (Insert Location of Board Meeting) will consider the development of the District’s Transition Plan. The District’s Board of Trustees invites public input and testimony from students, members of the community, and interested organizations regarding this matter. A copy of the District’s Transition Plan may be viewed at the (Insert Location – College Library, Facilities Office, etc.).
- Questions or comments regarding the development of the Transition Plan should be directed to ________________ the District’s ADA Coordinator, (Insert District Address) (Insert email address) (Insert Contact Number) and provided no later than (Date).

ADA Plan Implementation:
Collaborative Approach

- Recommended to form or get input from a small ADA working committee (ADA Implementation Committee) or work group with oversight knowledge of:
  - Planned construction
  - Remodeling
  - Current complaints or concerns
  - Proposed changes in policies and procedures
- Initial priorities from ADA Implementation Committee and public input included in the ADA Transition Plan
- Accessibility: Provide information regarding accessible features of the campus:
  - Website
  - Pamphlets and materials
  - New student organization
  - Student services
  - Accessible features for meetings and special events
ADA Transition Plan Implementation: Programmatic and Policy Change

- Establish a Workgroup to Discuss Programmatic and Policy Implementation
  - DSPS office establishes policy/procedure/plan
  - Plan must be posted publicly
  - DSPS coordinates with facilities on student accommodations
    - Include in orientation packages and post signage/maps regarding paths of travel
  - Student requests must be responded to in a timely manner
  - ADA furniture/equipment
    - A&R and other student services counters
    - Adjustable lab tables
    - Reception desks
    - Library tables
    - Computer access
    - Cafeteria tables and food service access

ADA Plan Implementation: Going Forward...

- New buildings and modernization plans have been designed and built to meet ADA Requirements
- An ADA Transition Plan establishes a timeline to bring older building into compliance with 2010 ADA Requirements
- Proceed with the self-understanding that you WANT a 100% accessible campus, not that you MUST HAVE a 100% accessible campus
- We really do want to do the right thing, because those folks already have enough challenges before adding college to the list
- Since it’s already at the implementation stage, now is the time to read the list with priorities in mind
  - Priorities can be any number of things:
    - Poor conditions that could lead to injury
    - Length of time the condition has existed
    - Feasibility of actually remedying the condition
    - Visibility of condition
    - Effort needed to remedy the condition
    - Cost to address
ADA Transition Plans: Going Forward

• Once you have prioritized the items, it is time to “package” them into portions that can be efficiently managed
• Packages can be a little like priorities
  – Areas of campus
  – Remedying the conditions together
  – Time frame required to address the conditions (DSA, for instance)
  – Full public bid vs. Cost Accounting, etc.
  – Cost
• Now that the packages are grouped so as not to cause total campus operational dysfunction, how will they be paid for?
  – ADA is a top state-match priority for Capital Outlay
  – Scheduled Maintenance grants can be used
  – Local Bond measures can be used
  – Local general funds can be used
• The hard work is now behind you and you are left with a group of projects with a known cost and timeline

Priorities

<table>
<thead>
<tr>
<th>Priority Level</th>
<th>Noncompliant area or finding</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Possible safety or hazard</td>
<td>✓ Current accessibility complaint</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Injury due to item or element</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Tripping hazard</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Sharp corner</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Object in the path of travel</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Protruding object</td>
</tr>
<tr>
<td>2</td>
<td>Easy or inexpensive to correct</td>
<td>✓ Door pressures</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Trash cans or shrubbery encroaching into the path of travel</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Faded ISA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Missing or vandalized sign</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Removing door stops</td>
</tr>
<tr>
<td>3</td>
<td>Some items may be completed by staff; minimal expense</td>
<td>✓ Signage</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Stripping in parking lots to correct width and length</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Stripping crosswalks</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Stripping on stairs</td>
</tr>
<tr>
<td>4</td>
<td>More expense and some design may be required</td>
<td>✓ Replace door handles</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Relocate dispensers to correct height</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Relocate or add grab bars</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Relocate or add mirrors</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Handrail extensions to ramps</td>
</tr>
</tbody>
</table>

- High use public areas
- Complaints and claims
- Prevalence of persons with disabilities
- Close to Code Requirement – small deviation from requirement
- Safety
  - Tripping hazard
  - Protruding objects
## Priorities (continued)

<table>
<thead>
<tr>
<th>Priority Level</th>
<th>Noncompliant area or finding</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Expensive and may need to be incorporated into other projects; May impact use of building during remodeling or construction</td>
<td>Curb ramps, Sidewalks, Drinking fountains, Level landings at ramps</td>
</tr>
<tr>
<td>6</td>
<td>Requires design and expensive; plan checks and approvals; permits; May impact use of building</td>
<td>Items needing design, Restroom remodels, Ramps with switch-backs, Audible visual alarm system</td>
</tr>
<tr>
<td>7</td>
<td>Noncompliant item or element to be removed or will no longer be a barrier</td>
<td>To be demolished, removed or relocated, Will no longer be used, Leased site; not owned, Site maintained by another agency, Code is expected to change and the item that is now noncompliant may become compliant with the new codes</td>
</tr>
<tr>
<td>8</td>
<td>No further action to be taken</td>
<td></td>
</tr>
</tbody>
</table>

- High use public areas
- Complaints and claims
- Prevalence of persons with disabilities
- Close to Code Requirement – small deviation from requirement
- Safety
  - Tripping hazard
  - Protruding objects

## Manage Survey Information

**Drinking Fountain - Exterior**

**Drinking Fountain Near The Skate Park**

- **Finding**: Clear Floor Space
- **Finding Description**: Clear floor space is not compliant. 6.00 percent
- **Recommendation**: Clear floor space at the drinking fountain. Recommended. Up to 2.39 percent
- **Citations**: ADA 4.13.5

- **Drinking fountain not operational at time of inspection.**

### Workable & Manageable Software

<table>
<thead>
<tr>
<th>Priority</th>
<th>Progress</th>
<th>Resolution</th>
<th>New Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Completed</td>
<td>Completed</td>
<td>&quot;Update corrected and verified to be compliant by inspector X. Please review. Update&quot;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6/6/2011</td>
<td></td>
</tr>
</tbody>
</table>
Plan Barrier Removal & Document Progress

ADA Transition Plan is ongoing
“living-breathing” plan
### ADA Transition Plans:
What You Need to Know to Protect Your District

<table>
<thead>
<tr>
<th>ADA Transition Plans:</th>
<th>What You Need to Know to Protect Your District</th>
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<td>Page dimensions:</td>
<td>612.0x792.0</td>
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<tr>
<td>[Image 429x727 to 580x765]</td>
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<td>[Image 126x463 to 486x686]</td>
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<td>[Image 126x126 to 486x357]</td>
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<td></td>
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<tr>
<td>[Image 126x126 to 486x357]</td>
<td></td>
</tr>
</tbody>
</table>

**La Chica Library**

**Doors - Chamber Of Commerce: Door, Hardware**

<table>
<thead>
<tr>
<th>Door Between Library &amp; Chamber Of Commerce</th>
</tr>
</thead>
<tbody>
<tr>
<td>Door Number:</td>
</tr>
<tr>
<td>Name:</td>
</tr>
<tr>
<td>Description:</td>
</tr>
<tr>
<td>Notes:</td>
</tr>
</tbody>
</table>

**Finding:**
The door opening force for this door is greater than allowed.

**Ceiling:**
Door opening force is excessive. Needs to be reduced.

**Recommendation:**
Adjust the closer or the door to meet the door opening force requirements.

**Adjustment:**
Up to 5.0 lbs.

**Costing Info (Estimated):**

| Adjust door closer pressure. | $15 |

**Code Reference:**

- CA 1172.1.5, ADA 404.1.9

### Adams Street

**Sidewalks - Exterior: Sidewalk, Hazards & Gratings**

East Side of Adams Street from Miles Avenue to Fred Waring Drive

<table>
<thead>
<tr>
<th>Change in Level: 15 feet North Corridor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change in Level: 15 feet South Corridor</td>
</tr>
</tbody>
</table>

**Finding:**
Sidewalk has a tripping hazard that is higher than recommended value.

**Ceiling:**
5.0 inches

**Recommendation:**
Make sure that the sidewalk has no tripping hazards.

**Adjustment:**
Up to 5.15 inches

**Costing Info (Estimated):**

| Remove tripping hazards. | $138 |

**Code Reference:**

- ADA 241, 302

**Progress:**

<table>
<thead>
<tr>
<th>Record Number</th>
<th>45394</th>
</tr>
</thead>
<tbody>
<tr>
<td>Progress</td>
<td>Not Started</td>
</tr>
<tr>
<td>Notes:</td>
<td>None</td>
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<tr>
<td>Planned Date</td>
<td>09/20/2013</td>
</tr>
<tr>
<td>Actual Date</td>
<td></td>
</tr>
<tr>
<td>Actual Cost</td>
<td>$150</td>
</tr>
<tr>
<td>Priority</td>
<td>Two</td>
</tr>
</tbody>
</table>

**Comments:**

| No Comments |

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ADA Transition Plans: What You Need to Know to Protect Your District

Document Barrier Removal

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10 Strategies for Compliance

1. Understand the ADA and what is required
2. Designate an ADA coordinator
3. Post the required notices
4. Find out if you have completed an ADA Self-evaluation and Transition Plan
5. Make sure that your Self-Evaluation and Transition Plan includes all areas (including public rights-of-way) and has received public input
6. Make sure you have a way to easily manage and update your plan
7. Provide training to the ADA Coordinator, administrative staff, facilities, maintenance and operations regarding the requirements of the ADA and the California Building Code
8. Incorporate ongoing compliance with day-to-day activities and planning
9. Increase your “accessibility awareness”
10. Document, monitor and track your compliance

Self-Assessment

The ADA Risk Management Self-assessment worksheets are for your use after the session to “self assess "your potential compliance risk.

Rate your risk! A score of 32 or higher indicates you are an ADA Expert.
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