

## PEDESTRIAN ACCESSIBILITY: WHERE DOES YOUR COMMUNITY STAND?

By Ron Eck, WV LTAP and Patrick Gomez, Federal Highway Administration (FHWA)



<http://wvltap.wvu.edu>

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### INTRODUCTION

As we conduct “Designing for Accessibility” training around the country, a common question we hear is, “Why do I need to install curb ramps? There are no disabled individuals in my community/neighborhood.” Our response is that we encourage the questioner to think again. Most likely the reason they do not see individuals with disabilities on their streets is that it is simply too difficult to get around. The reality is that persons with disabilities are also part of the population for which we should be designing, constructing and maintaining our built environment.

According to 2000 Census data, 20 percent of the U.S. population over age 15 has a disability. According to the National Council on Disabilities, there are three times as many people with severe visual disabilities as there are wheelchair users. The Council also estimates that 70 percent of the country’s population will eventually have a temporary or permanent disability that makes climbing stairs impossible.

### BACKGROUND

Requirements for providing accessible facilities date back to 1968 when the Architectural Barriers Act (ABA) required that buildings and on-site facilities designed and constructed with Federal funds comply with Accessible Design Standards. Section 504 of the Rehabilitation Act of 1973 prohibited discrimination in programs and activities funded with Federal funds (including curb ramps on Federal-aid projects).

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## AMERICANS WITH DISABILITIES ACT (ADA) BACKGROUND

In 1990, the Americans with Disabilities Act (ADA) became law. The ADA is a civil rights law that prohibits discrimination against persons with disabilities in all aspects of life. The ADA applies to all entities (public and private) regardless of funding source. Similar to the ABA, the ADA primarily pertains to buildings.

Title II of the ADA applies to all programs, services and activities provided or made available by public entities (state and local governments) or any of their agencies. Like Title VI of the Civil Rights Act of 1964 that prohibits discrimination on the basis of race, color and national origin, the Federal-Aid Highway Act of 1973, among its many provisions, prohibits discrimination on the basis of sex (gender). The ADA seeks to ensure nondiscrimination, but on the basis of disability. All governmental activities of public entities are covered, even if they are carried out by contractors. Similar to other nondiscrimination laws, the scope of Title II coverage extends to the entire operations of a public entity, including its programs, services and activities. As clarified in *Barden vs. City of Sacramento*, sidewalks/pedestrian facilities are considered a “program” of a public entity.

## ADA TITLE II

ADA Title II regulations contain implementation requirements. The requirements of ADA apply to all public entities or agencies, regardless of size.

**Local governments with 50 or more employees are required to:**

- Designate an ADA coordinator;
- Develop and post an ADA policy statement;
- Develop and post grievance and complaint procedures;
- Complete a self-evaluation of policies, services, communications, programs and activities relative to the accessibility requirements of the ADA; and
- Develop a transition plan (when structural changes to existing facilities are necessary in order to make a program, service or activity accessible).

This includes pedestrian facilities in the public rights-of-way managed by a local government entity, namely, sidewalks, pedestrian paths, curb ramps, street crossings, driveway crossings, crosswalks, median crossings, public transit stops and pedestrian activated signal systems. If these requirements are not met, in addition to the risk of complaints and lawsuits, there is the risk of losing federal financial assistance.

Please remember that **entities with less than 50 employees are still required to ensure that their programs, services and activities are accessible to persons with disabilities**. They are just not subject to some of the same formal administrative requirements (designating an ADA coordinator and developing a transition plan)—although it would be in their best interest to do something similar. The obligation to have some planning method to make facilities ADA-accessible is required for all public entities.

## TRANSITION PLANS

Self-evaluations and transition plans have been required of Federal-aid recipients since enactment of Section 504 in 1973.

This was reiterated when the ADA was enacted in 1990. Transition plans are required to cover all facilities under an agency’s control, that is, those listed in the previous paragraph.

## PROGRAM ACCESS PLAN

The Transition Plan is derived from the results of an entity’s **self-evaluation, i.e., an inventory** of its public rights-of-way facilities. Agencies are then required to **develop** a Program Access Plan, which can be called a Transition Plan, to address any deficiencies.

**The Plan is intended to:**

- 1) Identify physical obstacles that limit the accessibility of facilities to individuals with disabilities,
- 2) Describe the methods to be used to make the facilities accessible, and
- 3) Provide a schedule for making these access modifications.

As a tool for the local government to use, the Transition Plan should be a **living document, monitored and updated as necessary**, until all modifications have been completed.

Development of a Transition Plan requires **public involvement**—it is particularly important to reach out to persons with disabilities and/or with organizations representing persons with disabilities.





Getting input from people who use the system is important in setting priorities. A copy of the Plan must be made available for public inspection.

***The Transition Plan should consist of the following elements:***

- Identify and list physical barriers (that limit accessibility) and their location (e.g., lack of a curb ramp at NE corner of 3rd and Maple)
- Describe in detail the methods the entity will use to remove these barriers and make the facilities accessible (e.g., construct two parallel curb ramps)
- Provide a schedule for making the access modifications (e.g., by June 30, 2012)
- Provide a yearly schedule if the Transition Plan is more than one year long
- Name/position of the official who is responsible for implementing the Transition Plan (e.g., the Public Works Director or Street Supervisor)
- A record of the opportunity given to the disabled community and other interested parties to participate in the development of the plan

***Note that a primary emphasis is that the jurisdiction must have curb ramps in good condition. Curb ramps are the minimum level of accessibility.***

In addition to these items, it is important to include an **estimated cost of the modification**. This is important for budgeting purposes. Modifications/projects associated with the Transition Plan are to be incorporated into transportation improvement plans/comprehensive plans for purposes of prioritizing projects and funding decisions. Therefore, it is critical that local agencies ensure that those individuals with approval/programming authority (e.g., city council) are kept abreast of the entity’s Section 504/ADA legal requirements and those projects identified/committed to in the Transition Plan. Having and using a Transition Plan is also defensible in the event a complaint is filed.

**NEW PROJECTS**

All new projects, regardless of funding sources, must include pedestrian elements that are consistent with ADA guidelines. The most immediate source of funds is to incorporate the improvements into existing programmed construction/reconstruction projects and into programmed maintenance work. Potential sources of funding for accessibility improvements also include: Safe Routes to School Program, Recreational Trail Program, State and Community Traffic Safety Program and Transportation Enhancement Activities Program.

*Country Roads & City Streets* is typically published quarterly. The purpose of this newsletter is to provide information that is beneficial to decision makers, elected officials, and roadway construction, maintenance and management personnel.

The material and opinions included in this newsletter are those of the West Virginia LTAP and do not necessarily reflect the views of the Federal Highway Administration or the West Virginia Department of Transportation. Every effort has been made to ensure the integrity and accuracy of both original and borrowed material; however, the West Virginia LTAP does not assume responsibility for any information that is found to be incorrect.



The West Virginia LTAP is part of the National Local Technical Assistance Program, which is funded by the Federal Highway Administration. West Virginia LTAP also receives funding from the West Virginia Department of Transportation.

**MISSION:**

The mission of the WV LTAP is to foster a safe, efficient, and environmentally sound surface transportation system by improving skills and increasing knowledge of the transportation workforce and decision makers.

To help achieve this mission, training, demonstrations, personalized technical assistance, and resource materials are provided.



## NEW CONSTRUCTION COMPLIANCE

The Federal Highway Administration (FHWA) is responsible for monitoring state and local agency compliance with Section 504/ADA requirements. The increased number of ADA complaints and lawsuits around the country has necessitated FHWA's renewed emphasis in this area.

Under Title II, new construction is expected to provide the highest level of accessibility, free from barriers. Altered portions of facilities must meet new construction guidelines to the maximum extent feasible. When one requirement is technically infeasible, other design specifications must still be met. Technical infeasibility applies only to structural conditions, such as an adjacent building, not to economic constraints.

## ALTERATIONS

Similar to new construction, each facility altered by or on behalf of a public entity must be readily accessible and usable by persons with disabilities (if the alteration commenced after January 26, 1992). Two notable precedent-setting court cases have directly impacted how state and local governments address ADA and alterations which may affect the public right-of-way. In *Kinney v. Yerusalem* (Pennsylvania DOT), the court's conclusion was that roadway resurfacing is an alteration, which triggers the requirement for curb ramp installations/retrofits. In *Barden v. the City of Sacramento*, the court's conclusion was that sidewalks are a "program" under ADA and resulted in a requirement for the City of Sacramento to annually dedicate 20 percent of its overall transportation budget to provide compliant curb ramps and to remove access barriers in the pedestrian rights-of-way for which the City has responsibility or authority (includes sidewalks, curb ramps, crosswalks and pathways). A key point to remember is that curb ramps are usable only if the sidewalk is also accessible.

In small jurisdictions, staffing and funding for inventory efforts are always a challenge. Some communities have reported using summer interns for self-evaluation activities on public rights-of-way. Others prioritize the process by looking at high-pedestrian areas first. This way, even if a complete inventory cannot be undertaken, those areas that will be most utilized (e.g., a busy intersection) are addressed.

### PRIORITIZING IMPROVEMENTS

Prioritization of improvements can be based on a number of factors. **Generally, priority should be given to transportation facilities and public places such as:**

- Government offices (e.g., bill payment offices, permitting/licensing offices and public meeting rooms)
- Downtown business districts
- Medical facilities
- School zones
- Residential areas

Other places that you may want to place at the top of your list for evaluation include: rest areas, parks and shared use trails.

**Be sure to consider the following in your prioritization process:**

- Citizen requests or complaints regarding inaccessible locations
- Population density
- Presence of a disabled population
- Cost

Early Transition Plans tended to focus on buildings and on-site parking lots and walkways and often did not include an entity's public right-of-way facilities. It is important that local agencies ensure that their self-evaluations/Transition Plans are up-to-date and incorporate public right-of-way facilities within their jurisdiction.

### TRANSITION PLAN ELEMENTS

Transition Plan elements should include:

- Curb Ramps (required)
- Sidewalks
- Parking Lots
- Pedestrian Signals
- Bus Stops (including the path of travel to the bus stop)
- Paved Shared Use Trails (unpaved trails are considered recreational trails)
- Parks/Recreational Facilities

#### **Examples of community Transition Plans can be found at:**

<http://www.bellevuewa.gov/accessibility-reports.htm>

<http://www.scribd.com/doc/21193230/City-of-Rancho-Cordova-ADA-Transition-Plan-Final>



## MAINTENANCE

For existing facilities, entities are required to provide a basic level of usability. There is often a misunderstanding of what this means. For a facility that is not otherwise being altered, the minimum requirement for achieving program accessibility is the installation of curb ramps. However, an entity is also responsible under the ADA for maintenance of its facilities. Therefore, a sidewalk or paved shared use trail that is not adequately maintained (such as heaving slabs due to tree roots) becomes unusable to persons with disabilities in spite of good curb ramps. Structural modifications needed to make existing facilities accessible for persons with disabilities must be identified in an entity's Transition Plan.

The requirement that facilities are readily accessible to and usable by persons with disabilities extends to pedestrian facilities that are in disrepair, as well as blocked/restricted access due to obstructions (such as overgrown landscaping, street furniture, utilities, construction activities and snow accumulation). In the case of construction activities that block or restrict the use of pedestrian facilities, a temporary alternate route must be provided. The temporary route must be detectable and include accessibility features (such as curb ramps). The affected route must provide a warning alerting pedestrians to the

construction and alternate route. Cones and construction tape are not adequate to warn persons with visual disabilities of the route closure and path guidance to temporary routes. Rather, a continuous detectable edging should be provided throughout the length of the project. One example would be chain link fencing with a continuous bottom rail, which would be detectable by individuals using a white cane or accompanied by a guide dog. Chapter 6 of the *Manual on Uniform Traffic Control Devices* provides useful information on temporary traffic control (including maintaining accessibility) and includes various examples of detectable edging.



## ROLES OF ADAAG AND PROWAG

The ADA Accessibility Guidelines (ADAAG) were developed primarily for buildings and on-site facilities. While they address certain features common to public sidewalks, further guidance is necessary to add conditions that are unique to the public right-of-way.

The Public Right-of-Way Accessibility Guidelines (PROWAG), applicable to new construction and alterations, were originally intended to supplement the ADAAG, providing standards specific to the public rights-of-way. More recently, it was decided that the PROWAG will be a stand-alone document.

The PROWAG are currently in the rulemaking process. These guidelines become enforceable when they are adopted by the standard setting agency, in this case the United States Department of Justice (USDOJ). In the interim, the ADAAG represent current accessibility standards for buildings and on-site facilities. However, FHWA policy is that sidewalk and street crossings should generally use the PROWAG as a best practice as it is a reasonable source for public right-of-way issues not governed by ADAAG standards.

## ADVISORY BOARD

### FHWA-WV Division

**Bert Buchanan**  
Charleston, WV

**Kevin Burgess**  
Charleston, WV

### WVDOT

**Steve Cole**  
Charleston, WV

**Kathy Holtsclaw**  
Charleston, WV

**Marvin Murphy**  
Charleston, WV

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Weston, WV

**Donald Williams**  
Morgantown, WV

**Gary Winter**  
West Virginia Governor's  
Highway Safety Program  
Charleston, WV

### Municipal

**Michael DeMary**  
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Hagerstown/Eastern  
Panhandle MPO  
Martinsburg, WV

**Terry Hough**  
City Engineer &  
Public Works Director  
Morgantown, WV

**Bill Lanham**  
Town Superintendent  
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### Private

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Rummel, Klepper & Kahl  
Burlington, WV

**Pat Parsons**  
Asphalt Pavement Assoc. of  
West Virginia  
Charleston, WV

Issues in draft PROWAG not adequately addressed in ADAAG are:

- Pedestrian Access Route
- Curb Ramps (more design options)
- Detectable Warnings
- Crosswalks
- Accessible Pedestrian Signals (APS)
- On-Street Parking
- Roundabouts

While the draft Public Right-of-Way Accessibility Guidelines are not standards until adopted by the US Department of Justice and the US Department of Transportation, they are currently recommended best practices that should be followed for areas not fully addressed by the present ADAAG standards. Further, the Draft Guidelines are consistent with the ADA's requirement that all new facilities (and altered facilities to the maximum extent feasible) be designed and constructed to be accessible to and usable by people with disabilities.

## STATUS OF YOUR JURISDICTION'S PLAN

Does your jurisdiction have a Transition Plan? Is it up-to-date? Even if a Plan is not required, does your jurisdiction have a planning method for making facilities ADA-accessible?

We recognize that each responsible agency will have to tailor an approach for developing, updating and implementing a Transition Plan based on its own needs and available resources and that the level of detail and content of the plan will vary and be presented in a format that will be the most beneficial for the agency. Technical resources to assist in this process are identified below.

The WV LTAP also offers a one-day training workshop, "Designing Pedestrian Facilities for Accessibility," which discusses the technical details of the issues identified in the bullet list in the previous section. Please contact the Center for more details.

## RESOURCES

**Federal Highway Administration Office of Civil Rights, *Questions and Answers About ADA and Section 504.***

[http://www.fhwa.dot.gov/civilrights/programs/ada\\_sect504qa.htm](http://www.fhwa.dot.gov/civilrights/programs/ada_sect504qa.htm)

**Federal Highway Administration, *Designing Sidewalks and Trails for Access Part 2, 2001.*** <http://www.fhwa.dot.gov/environment/sidewalk2>

**Jacobs Engineering Group, *ADA Transition Plans: A Guide to Best Management Practices, National Cooperative Highway Research Program Project Number 20-7 (232).*** Transportation Research Board, Washington, DC, May 2009.

**Public Rights-of-Way Access Advisory Committee, *Accessible Public Rights-of-Way, Planning and Designing for Alterations.***

<http://access-board.gov/prowac/alterations/guide.htm>

**U.S. Access Board, *ADA and ABA Accessibility Guidelines for Buildings and Facilities.*** Published in the Federal Register July 23, 2004 and amended August 5, 2005.

<http://www.access-board.gov/ada-aba/final.cfm>

**U.S. Access Board, *Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way.*** Published in the Federal Register on July 26, 2011.

<http://www.access-board.gov/PROWAC/nprm.htm>

**U.S. Department of Justice, *ADA Best Practices Toolkit for State and Local Governments.*** <http://www.ada.gov/pcatookit/toolkitmain.htm>

**U.S. Department Of Justice, *The Americans With Disabilities Act, Title II Technical Assistance Manual, Covering State and Local Government Programs and Services.*** November 1993. <http://www.ada.gov/taman2.html>

# ROAD SLEUTH INFORMATION SHEET

## WV LTAP

*There are many myths about transportation related issues. Road Sleuth has been designed to help dispel these myths and reveal the truth. Road Sleuth came from conversations WV LTAP staff had with public works directors, street supervisors, and others. From these conversations, one common theme emerged: public works personnel getting the same questions and requests time and again from their elected officials and residents and not having educational information readily available.*

*The Road Sleuth series can be downloaded from the WV LTAP website (<http://wvltap.wvu.edu>) as a PDF or Microsoft Publisher file. The Publisher files are formatted so agencies can add their individual contact information if desired. The WV LTAP does ask that the main text not be changed or altered without permission. Agencies are encouraged to post these information sheets on their webpage, distribute printed copies to city council members, send out in mailings, etc. The WV LTAP staff welcomes your suggestions for new topics and will continue adding new sheets as they become available.*

## MYTH: ALL-WAY STOP SIGNS SLOW TRAFFIC



Citizens often complain, “traffic is using my road as a cut-through street.” One common response is to put all-way stop signs at each intersection along the street to slow traffic and make the road less desirable. This approach, however, is flawed for a few reasons.

When a series of all-way stop signs are installed on a road, drivers tend to perceive them as a nuisance, and while they may stop or slow at each of them, they will try to make up time between them. This leads to vehicles traveling faster between intersections than they did before.

Installing an excessive number of stop signs may cause drivers to ignore them, especially at intersections with little

traffic on the cross-street. This can lead to tragic consequences if a driver, or pedestrian, from the cross street enters the intersection assuming the approaching driver will stop. Furthermore, excessive use of stop signs generally reduces driver respect for stop signs.

Stop signs should only be installed per the requirements listed in the *Manual on Uniform Traffic Control Devices (MUTCD)*. The *MUTCD*, which presents traffic control device standards and guidelines, has been adopted as state law and applies to state and municipal agencies, as well as private entities who maintain roadways open to public travel. Failing to follow the criteria listed in this manual can increase your agency’s liability risk.

## Center Staff & Contact Information

WV LTAP  
West Virginia University  
PO Box 6103  
Engineering Sciences Building  
Room 553  
Morgantown, WV 26506  
Phone: (304) 293-9924  
Fax: (304) 293-7109  
E-mail: [wvltap@mail.wvu.edu](mailto:wvltap@mail.wvu.edu)  
Website: <http://wvltap.wvu.edu>

## Staff

**Dr. John Zaniewski**  
Director  
(304) 293-9955  
[John.Zaniewski@mail.wvu.edu](mailto:John.Zaniewski@mail.wvu.edu)

**Kim Carr**  
Program Coordinator  
(304) 293-9924  
[Kim.Carr@mail.wvu.edu](mailto:Kim.Carr@mail.wvu.edu)

**Andrew Morgan, P.E.**  
Program Coordinator  
(304) 293-9939  
[Andrew.Morgan@mail.wvu.edu](mailto:Andrew.Morgan@mail.wvu.edu)

**Sabrina DeVall**  
Editor & Technical Writer  
(304) 293-9930  
[Sabrina.DeVall@mail.wvu.edu](mailto:Sabrina.DeVall@mail.wvu.edu)

**Stephanie Spangler**  
Technical Assistant  
(304) 293-9922  
[Stephanie.Spangler@mail.wvu.edu](mailto:Stephanie.Spangler@mail.wvu.edu)

**Ashley Collins**  
Office Assistant  
(304) 293-9924

**Dr. Ron Eck, P.E.**  
Senior Advisor  
(304) 293-9931  
[Ronald.Eck@mail.wvu.edu](mailto:Ronald.Eck@mail.wvu.edu)

**Bill Wyant**  
Senior Volunteer  
[WWyant@hsc.wvu.edu](mailto:WWyant@hsc.wvu.edu)

## WV LTAP Now on Facebook!



The WV Local Technical Assistance Program (WV LTAP) is excited to announce that we are now on Facebook! We encourage you to visit our page and give us your feedback. You can find us by typing in [www.Facebook.com/WVLTAP](http://www.Facebook.com/WVLTAP) or within the search feature in Facebook, typing WV Local Technical Assistance Program (WVLTAP). The page is set up so everyone can post comments; you don't need to become a "friend" or be accepted to post items. Just make sure to "like" us so anytime we add announcements, they will show up in your newsfeed.

Our immediate plan is to post announcements of: upcoming training events, available give-a-ways, current transportation related items, photos, and much more. We also hope that in addition to checking out our announcements, that this will be an interactive tool for you, our clients, to pose questions, share solutions, successes, challenges, etc. We also encourage you to post potential training session topics that would be beneficial to you and your agency.

So, when you get a minute, go to our Facebook page, give us a shout-out, and don't forget to give us a "like."

West Virginia Local Technical Assistance Program  
West Virginia University  
Benjamin M. Statler College of Engineering and Mineral Resources  
Department of Civil and Environmental Engineering  
PO Box 6103  
Morgantown, WV 26506-6103

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- Others