AMERICANS WITH DISABILITIES ACT (ADA)

SELF EVALUATIONS AND TRANSITION PLANS

FOR PUBLIC RIGHTS OF WAY
DELAWARE T²/LTAP CENTER

- T² Centers or LTAPs located in all 50 states
- Funded by FHWA and state DOTs
- Mission – provide training, technical transfer, technical assistance at local level
- Delaware T² hosted by University of Delaware, part of Delaware Center for Transportation
- Delaware T² funded by FHWA and DelDOT
OUTLINE

• ADA background/origins
• Enforcement
• Why ADA matters
• Civil case summary
• The standards, the specs, the guidelines, the policies
• Self-Evaluations
• Transition Plans
• Action – post Transition Plan
• Case study
CREDITS

- Lots of photos and illustration in here
- Unless noted otherwise, photos are by Matt Carter, Delaware T² Center, or the public domain
- Thanks to those who granted permission for use of their photos and illustrations
- We’re not picking on anyone
  - Every jurisdiction has sidewalks that are brilliant and probably some that…fall short
- We learn by looking at examples
  - So lighten up
ADA ORIGINS

• The Equal Opportunity for Individuals with Disabilities Act
  • Better known as the Americans with Disabilities Act, ADA
  • Signed into law July 26, 1990
  • It is a civil rights act

• Predecessors, Foundations
  • Rehabilitation Act of 1973 – applies to fed funded facilities
    • Frequent reference to Section 504
  • Architectural Barriers Act of 1968 – applies to fed funded facilities
  • Civil Rights Act of 1964
ADA – WHAT IS IT?

• ADA – the Act/Law
  • Five Parts
    • Title I: Employment
    • Title II: Public entities and public transportation
    • Title III: Public accommodation and commercial facilities
    • Title IV: Telecommunications
    • Title V: Miscellaneous provisions

• Regulations
  • Scattered – particularly relevant examples
    • Title II, Subtitle A – 28 CFR Part 35 (DOJ’s territory)
    • Title II, Subtitle B – 49 CFR Part 37 (DOT’s territory)

• Standards
  • Uniform Federal Accessibility Standards (UFAS) – from ABA (1968)
  • ADA Accessibility Guidelines (ADAAG)
  • (Draft) Public Right of Way Accessibility Guideline (PROWAG) – coming soon?
SOME “NO-NOS”

No Ramps – the most basic of ADA requirements
SOME “NO-NOS”

No detectable warnings (raised truncated domes)

Required wherever the PAR crosses a hazardous vehicular way
SOME “NO-NOS”

Accessible routes?

Photo: Kelly Mannering
SOME “NO-NOS”

Ponded water or debris at a ramp
SOME “NO-NOS”

Poor pedestrian management during construction
ENFORCEMENT – WHO’S IN CHARGE?

• U.S. Department of Justice
  • Settlement negotiations first
  • Federal lawsuits second - $55,000 civil penalty first offense
• U.S. Department of Transportation and other federal agencies
ENFORCEMENT – WHO’S IN CHARGE?

- U.S. Access Board
  - 1968 Architectural Barriers Act
  - Section 502 of Rehabilitation Act of 1973 creates Access Board
  - Min Guidelines and Requirements for Accessible Design (1982)
  - 1990 Americans with Disabilities Act
  - ADAAG published 1991
  - Public Rights of Way Accessibility Guidelines
    - Drafted 2002...revised 2005...revised 2011...but not adopted
    - Coming soon?
- Citizens and citizen groups
  - Citizen suits similar to those under the Clean Water Act
WHY ADA SHOULD MATTER TO YOU

- It’s the right thing to do
- It helps everyone, benefits all pedestrians
- Some 12.4% of Delawareans disabled
- Nearly half of those 75+ disabled
- 13% of Delawareans are 65+
- Some disabilities are temporary and can affect anyone briefly – ever broken your leg?
- Desire to encourage visitors to the State, to your Town
- It’s the law
- The great equalizer – the civil courts
Disability Types – Delaware (2012)

- 2.0% reported a Visual Disability
- 3.2% reported a Hearing Disability
- 7.2% reported an Ambulatory Disability
- 4.4% reported a Cognitive Disability
- 2.4% reported a Self-Care Disability
- 5.4% reported an Independent Living Disability
LANDMARK CIVIL ACTION

• Kinney v. Yerusalim (1993)
  • Established “alteration”
  • City was resurfacing streets but not installing ramps
  • Court established broad definition of “alteration”
  • Court narrowly limited ADA’s “undue burden” language – applies only to existing facilities and the cost of providing accessible ramps is of no issue once an alteration is undertaken
LANDMARK CIVIL ACTION

- **Barden v. Sacramento (2004)**
  - Went beyond just curb ramps – removal of barriers, narrow pathways, abrupt level changes, excessive slopes, overhanging obstructions and improvement of crosswalk access
  - 20% of annual Transportation Fund for 30 years allocated to make pedestrian ways accessible
  - Upgrades to ramps as part of alterations would be outside of the 20%
LANDMARK CIVIL ACTION

  - Californians for Disability Rights, Inc.
  - Ninth Circuit Court addressed Sovereign Immunity, finding that ADA’s language suitably trumps the 11th Amendment to the Constitution
  - CDR also asserted that Caltrans had failed to survey its 2500 miles of sidewalk and therefore could not know what access barriers exist
  - Lack of a Transition Plan constituted a violation of ADA by itself
LANDMARK CIVIL ACTION

• CDR v. Caltrans – Round 2 (2009)
  • $1.1 Billion over 30 years
  • Install 10,000 curb ramps, retrofit 50,000 existing ramps
  • Reconstruct hundreds of miles sidewalk
  • Modify 15,000 intersection pedestrian crossings
  • Audible signals for the blind
  • Temporary pedestrian routes
LOCAL CIVIL ACTION

- Community Legal Aid Society, Inc. (CLASI) v. DelDOT (2004)
  - DelDOT agreed to retrofit 100 curb ramps per year – in addition to any ramps installed/upgraded as part of roadway alterations (mill/pave, improvements, etc.)
  - 1,500 non-conforming sites identified

  - Buildings and building sites
    - Dover
    - Wilmington
    - Georgetown
DOJ PROJECT CIVIC ACCESS

- U.S. DOJ
- Reviews in 50 states, Puerto Rico, Washington, DC
  - 207 settlement agreements with 192 localities
  - Buildings, building sites
  - Public rights of way/sidewalks/ramps
  - Parking
  - Communications, websites, and signage
  - Processes
  - Programs
- Goal is ADA compliance by counties, cities, towns, villages
Other states

- DOJ v. City of Frederick, Maryland (2004) – Pop. 66,382
  - 30 months – fix all curb ramps for roadways altered since January 1992
- DOJ v. Prince George’s County, Maryland (2005)
  - 3 years – fix curb ramps for roadways altered since January 1992
- DOJ v. Worcester County, Maryland (2003) – Pop. 51,454
  - 3 years – fix curb ramps for roadways altered since January 1992
  - Specific parking issues
  - Specific pedestrian access route issues
DOJ PROJECT CIVIC ACCESS

- **Other states**
  - DOJ v. District of Columbia (2001)
    - Building and building site issues
    - 3 years - fix curb ramps for roadways altered since January 1992
  - DOJ v. Cape May County, New Jersey (2004)
    - 3 years - fix curb ramps for roadways altered since January 1992
  - DOJ v. Town of Warrenton, Virginia (2011) – Pop. 9,611
    - 3 years - fix the curbs, training, etc.
  - DOJ v. Suffolk, Virginia (2004) – Pop. 84,585
    - 2 years - fix curb ramps at many buildings
  - DOJ v. Craig County, Virginia (2002) – Pop. 5,190
    - 1-3 years - install curb ramps at a host of buildings

- Penalties, fees, external control of priorities
There are lots

Too many

- ADAAG
- UFAS

Generally, we look to PROWAG (draft)
- Public Right of Way Accessibility Guidelines

Which ones apply to your assets require careful look
- Details are beyond the scope of today’s session
- Look to two-day Designing Pedestrian Facilities for Accessibility (DPFA) workshop for more
SELF-EVALUATIONS

- Required – all public agencies - 28 CFR Part 35.105
- Due date: January 26, 1993
- Public agencies shall:
  - Evaluate:
    - Current services, policies, practices
    - Effects thereof that do not or may not meet ADA requirements
  - Proceed to make necessary modifications
    - As determined to be required by self-evaluation
  - Provide opportunity for participation in self-evaluation process
    - Including individuals with disabilities and organizations representing them
SELF-EVALUATIONS

Public agencies employing ≥ 50 employees shall:

- Maintain SE on file and make available for inspection:
  - List of interested persons consulted
  - Description of areas examined and problems identified
  - Description of modifications made

- And, as we shall see, prepare a Transition Plan
SELF-EVALUATIONS

Public agencies ≤50 employees?
• Still have to do the self-evaluation
• Should be documented
  • List of interested persons consulted
  • Description of areas examined and problems identified
  • Description of modifications made
• Doesn’t have to be a big deal
  • Nothing fancy
  • A couple pages in the file
  • Something that substantiates that you know your barriers and you are working on them
You work in the Streets Department
  • There are six of you in the department
  • So, <50 right?
  • No transition plan, right?

Nice try
Ask yourself – who signs your paycheck?
Your public agency is more than likely the town, city, county, etc.
You have to be pretty small to stay under 50
  • Don’t overthink this – a transition plan is good for you
TRANSITION PLANS

- 50 or more employees?
- Transition plan required - 28 CFR § 35.150(d)
- Deadline to complete - July 26, 1992
- Oops is the wrong response to that
  - If not done, you really, really, really should do one now
- Remember CDR v. Caltrans?

- Update periodically

- Less than 50 employees – exempt from ADA? NO
Transition plan contents:

- Physical obstacles that limit accessibility
- Description of methods that will be used to remedy
- Schedule of upgrades in each following year
- Identify the official responsible for implementation
  - i.e., responsible employee (28 CFR PART 35.107)
OVER 50 EMPLOYEES?

Other things you must do

• Designate an “ADA Coordinator”
  • Responsible Employee – 28 C FR Part § 35.107

• Development & postings of an ADA Policy Statement
  • 49 C FR § 27.15 & 28 C FR § 35.106

• Development & postings of Grievance Procedures/Complaint Procedures
  • 28 C FR Parts § 35.107 & § 35.170
§ 35.107 Designation of responsible employee...

- Public entity ≥50 persons shall
  - Designate responsible employee
    - Coordinate efforts to comply with ADA
    - Carry out responsibilities under ADA, including investigation of any complaint
- Public entity shall make available to all interested individuals
  - Responsible employee name
  - Office address
  - Telephone number
COMPLAINT PROCEDURE

§ 35.107 ...Complaint procedure
• Public entity ≥50 persons shall
  • Adopt and publish grievance procedures
  • Provide for prompt and equitable resolution of complaints alleging any action that would be prohibited by ADA

§ 35.170 (et seq.) Compliance procedures
• Specifies who may file, time for filing, where to file
• Receipt/acceptance of complaints
• Investigations and compliance reviews
• Voluntary compliance agreements
• Referral (you do not want this)
AND IF I DON’T DO THIS?

What happens, who enforces?

- DOJ can visit you
- Transportation complaints are investigated by FHWA or DelDOT
- Lawyers visit you
AND IF I DON’T DO THIS?

Frederick County, Maryland
- Complaint from resident
- MDSHA & FHWA investigates (Frederick is a subrecipient)
- SHA warns
  - Fix the accessibility problems
  - Or risk losing federal and/or state funding
- Self-evaluation - noncompliant with ADA
  - 97% of 2,296 curb ramps
  - 13% of 154 miles sidewalk
- $10 million estimated price tag
AND IF I DON’T DO THIS?

Merced County, California businesses

• **Complaint from citizen - at least 170 ADA cases filed**
  • Marie’s Mexican Kitchen - $60K settlement sought
    • Parking, steeply sloped entrance, cracked/uneven pavement, no accessible route to restroom
    • $50,000 in repairs, attorney fees

• **Complaint from citizen - at least 375 cases filed**
  • Two Shell stations

• **Complaint from citizen**
  • Bar B-Q Pit - $75K sought
    • $31,500 in repairs, attorney fees
CURB RAMP PRIORITIES

• Generally, curb ramps first
• DOJ curb ramp priorities, descending order
  • Ramps constructed/ altered post-ADA (July 26, 1990) but not ADA-compliant
  • Ramps serving state/local government facilities
  • Ramps serving bus stops/other transportation services
  • Ramps serving public accommodations
  • Ramps serving business districts
  • Ramps in residential areas

Source: ADA Best Practices Tool Kit for State and Local Governments
AFTER SELF-EVAL/TRANSITION PLAN

- Follow the plan
  - Fund it
  - Issue work orders or contracts to make remedies
  - Document your work/progress
- Must show continuous, reasonable, good faith effort
  - Never use the term “can’t afford it”
- If conditions change, change your plan
  - Funding changes
  - Priority changes
  - Community input
- Maintain the facilities
CASE STUDY

Village of Lyons, New York

Source: Google Maps
CASE STUDY

Village of Lyons, New York aka “Anytown, USA”

Erie Canal

Population 3695
Miles of road 24.2
County seat

Source: Google Maps
CASE STUDY

Source: Google Earth

Severe Vertical Discontinuity

No Detectable Warnings

Source: Google Earth
CASE STUDY

Source: Google Earth

No Detectable Warnings
No Ramp

Slope, Drainage?
No Detectable Warnings
CASE STUDY

“Whistleblower” files complaint with FHWA and/or NYS DOT

FHWA requests copy of Village transition plan

None can be found – exhaustive, protracted search

Dec 2008 – Mayor submits intersection inventory to FHWA – map coded red, green, yellow

March 2009 – FHWA advises need for transition plan
The transition plan should have been completed by January 26, 1992, and should be based on updates of the self-evaluation conducted to comply with the requirements of Section 504. Changes to the plan shall be made available to the public for comment. The ADA deadline for completing the improvements listed in the transition plans was January 26, 1995. For those State and localities that have not completed their self-evaluation and transition plans, it is critical that they complete this process.

Pleasant enough...but this is not a friendly inquiry
CASE STUDY

- Inventory/map
  - Green — have curb cut
  - Red — do not have curb cut
  - Yellow — no sidewalks and therefore no intersections requiring curb cuts

- Good start, says FHWA, but not a transition plan

- Transition Plan effective date September 10, 2013
Let’s explore this example and see what we can learn from it…
CASE STUDY

...will be performing a project in the Village of Lyons that will retrofit existing sidewalk ramps constructed under a previous Department project with detectable warning fields. Construction will begin in July, 2010 and is expected to be completed December 2010. The Department of Transportation is funding this project. Your municipality will not incur any installation cost.

NYS DOT does their part
A WORD ABOUT PROGRAM ACCESS

- Referenced in Lyons TP
- Agencies must ensure accessibility to services, programs, activities
- Public buildings, sidewalks, shared used paths, etc.
  - Available to one, available to all
- Need not remove all barriers everywhere – provided facilities are accessible
  - So – if there is a fully accessible pedestrian access route on one side of the street, is it okay if the other side has some barriers, at least for now?
  - As always, that depends…but possibly yes
  - Highest standard of accessibility reserved for new facilities
A WORD ABOUT PROGRAM ACCESS

- Can provide services, programs activities through alternative methods if physical barriers not removed
  - Relocate to accessible facility
  - Move meeting/information place from 3rd floor to 1st
  - Provide an aide to assist the individual
  - Provide service at individual’s home or alternate location
  - May not physically carry an individual
    - Except “manifestly exceptional” circumstances
  - Not required to take actions that fundamentally alter nature of the service, program, activity or result in undue financial or administrative burdens (decision by agency head only)
    - Be careful with this undue burden defense...and document
WHAT SHOULD YOU DO?

- Self-evaluation done?
  - No?
  - Start that…tomorrow
- Transition plan required/desirable?
  - Done?
  - No?
  - Tomorrow
- Self-evaluation/transition plan outdated?
  - Update it
  - Assess progress
  - Public involvement
WHAT SHOULD YOU DO?

• Grievance/complaint procedure
• Designate ADA coordinator
  • Think about who he/she reports to
  • Independence?
  • Authority?
• Public involvement
  • Including/particularly those with disabilities and those representing them
• Educate all staff
  • Policies (internally and externally)
  • Resources and who to call for assistance
WHAT SHOULD YOU DO?

• Fund improvements
  • Get started on that backlog (back to January 1992)
• When you alter a street, upgrade the curb ramps
• Follow up on complaints
• Fulfill requests for facilities (curb ramps, sidewalks, ped signals, detectable warnings, etc.)
WHAT SHOULD YOU DO?

Once you’ve built it, maintain it!

- Ocean City, Maryland
  - Elderly woman fell from wheelchair
    - Open fracture to left arm
    - Caught chair on “rubber warning mat” (detectable warnings)
    - DW worn at center and edge - not flat/uniform as per ADA
  - $750,000 lawsuit
    - Negligence, strict liability, violation of ADA
    - Originally filed with MD Treasurer’s Office
    - State said no thanks - designated OC as appropriate party
    - Suit alleges City failed to properly maintain
STUCK GETTING STARTED?

• Delaware T²/LTAP Center
  • We’re from the government
  • And we really are here to help you

• Let’s sit down and come up with a plan
  • Like many, you’re probably far behind
  • So, let’s get started

“The best time to plant an oak tree was 25 years ago. The second best time is today.”
- widely quoted, origin unknown