

## **Civil Rights Academy: February 2, 2023 Americans with Disabilities Act (ADA) Q&A**

### **General**

1. What are the specific ADA program requirements for local public agencies (LPAs) with less than 50 employees?

If an LPA has less than 50 employees, they must implement the following ADA requirements:

- Develop an ADA nondiscrimination policy
- Develop a Self-Evaluation Plan

### **Grievance**

2. What constitutes a complaint as compared to a request for an accommodation such as a request for an American Sign Language (ASL) interpreter?

The Code of Federal Regulations defines a complete complaint as a "...written statement that contains the complainant's name and address and describes the public entity's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation ([28 CFR 35.104](#))."

Accommodations such as auxiliary aids and services are requested by individuals with disabilities. For public activities and services, such as a Board or Council meeting, the LPA must add contact information for accommodations to ensure nondiscrimination against individuals with disabilities.

### **Self-Evaluation Plan**

3. Where can Local Public Agencies (LPAs) find a sample Self-Evaluation Plan?

The County of Sacramento has a Self-Evaluation Plan on their website: <https://www.saccounty.gov/Documents/ADA-Self-Eval-Rpt.pdf>

4. Is a Self-Evaluation Plan required to identify ALL barriers? i.e. all locations with greater than 1/4 inch uplift on sidewalks, or greater than a 2.08 percent cross- slope?

No, [Part 35.105 in Title 28 of the Code of Federal Regulations \(28 CFR 35.105\)](#) requires all public entities to "...evaluate its current services, policies, and practices, and the effects thereof, that do not or

may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.”

The Self-Evaluation Plan requires each LPA to examine its current services, which may identify streets and roads that do not meet the [2010 ADA Standards for Accessible Design](#).

If an LPA employees 50 or more persons, it is required to identify the specific barriers and their remediation (e.g. 1/4 inch or greater uplift or greater than a 2.08 percent cross-slope) for individuals with disabilities in the Transition Plan.

5. Does the Self-Evaluation Plan need to be performed on internal LPA facilities that do not have public access?

Yes, if the facility was not built to conform to [2010 ADA Standards for Accessible Design](#), the facility would need to be included within the self-evaluation plan. Within [28 CFR 35.151](#), there are specific examples in the application of existing facilities, new facilities, and alterations.

6. Are the updates to the Self-Evaluation Plan required? Do you have forms that can be used for tracking purposes to share?

Updates to the Self-Evaluation Plan are required **periodically** pursuant to [49 CFR 27.11\(c\)\(2\)\(v\)](#). However, [Section 9.3 of the Local Assistance Procedures Manual \(LAPM\)](#) recommends to update the self-evaluation plan every three years to document barriers mitigated to ensure compliance with the ADA.

7. Who is responsible to review and approve the Self-Evaluation Plan?

While there is no requirement for a specific individual to review and approve the plan, there are several recommendations and best practices. For example, [28 CFR 35.105\(b\)](#) states, “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.”

As best practices, the following individuals should be considered to review and provide guidance in the publication of the Self-Evaluation Plan:

- Individuals with disabilities or organizations representing individuals with disabilities.

- The ADA Coordinator should have subject matter expertise over this report.
- The head of the public organization's department, such as the Public Works Director.
- A Certified Access Specialist (CAsp) who has expertise to identify accessibility noncompliance.

### **Transition Plan**

8. Where can LPAs find a sample Transition Plan?

The Division of Local Assistance has a sample Transition Plan on the ADA website:

<https://www.cityoffranchocordova.org/home/showdocument?id=10745>

9. What if a community has little-to-no sidewalks in residential areas?

The ADA does not require nor compel LPAs to build sidewalks where none exist. The ADA enforces nondiscrimination against individuals with disabilities.

10. Are the updates to the Transition Plan required? Do you have forms that can be used for tracking purposes to share?

Updates to the Transition Plan are required **periodically** pursuant to [49 CFR 27.11\(c\)\(2\)\(v\)](#). However, [Section 9.3 of the Local Assistance Procedures Manual \(LAPM\)](#) recommends to update the transition plan every three-to-five years to document barriers mitigated to ensure compliance with the ADA.

Please refer to Attachment 1 for an example of a tracking sheet.

11. Who is responsible to review and approve the Transition Plan?

While there is no requirement for a specific individual to review and approve the plan, there are several recommendations and best practices. For example, [28 CFR 35.150\(d\)\(1\)](#) states, "A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments."

As best practices, the following individuals should be considered to review and provide guidance in the publication of the Transition Plan:

- Individuals with disabilities or organizations representing individuals with disabilities.
- The ADA Coordinator should have subject matter expertise over this report.
- The head of the public organization's department, such as the Public Works Director who will be able to verify the milestones.
- A CASp who has expertise to confirm accessibility noncompliance.

12. Is there a requirement to have a CASp review Transition Plans, or is it recommended?

The regulation from 28 CFR 35 is silent as to the use of a CASp to review the Transition Plan. Moving forward, Caltrans will encourage LPAs to utilize a CASp's subject matter expertise to review Transition Plans for facility accessibility and compliance as a best practice.

### **Communications**

13. Are automated closed captioning features for Board meetings, etc. acceptable?

If the LPA can ensure the closed captioning is sufficient to communicate with an individual with auditory disabilities in comparison to an individual without disabilities, that is acceptable. As a best practice, the LPA should ask the individual with the disability if the accommodation is adequate for their needs.

14. Is automated closed captioning feature acceptable for a meeting compared to a live captioner?

If the individual with the disability is satisfied with the option of a closed captioning accommodation, then yes, that is acceptable. If the LPA has access to a live captioner such as an available court stenographer, that may be offered as well.

### **Exhibit 9-C: Local Agency ADA Annual Certification Form**

15. Is the Caltrans District Local Assistance Engineer (DLAE) copied on the Annual ADA notices?

Yes, the LPA must send the [Exhibit 9-C](#) to the DLAE by June 30 each year.

## **ADA Design**

16. If the current standard is [2010 ADA Standards for Accessible Design](#) (2010 Standards), why does [Caltrans Design Information Bulletin 82-06](#) (Caltrans Standards) mirror requirements from the Chapter 11B for the California Building Code (CBC) for such things as curb ramps?

[28 CFR 35.151\(c\)\(2\)](#) authorizes States and local governments to utilize other standards: "Departures from particular requirements of either standard [including 2010 Standards] by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided."

The Federal Highway Administration specifically reviewed and accepted Caltrans' Standards, which includes portions from the 2010 Standards, Public Right of Way Accessibility Guidance (PROWAG), and CBC.

17. Can you please clarify - even when PROWAG is adopted, if the State requirement (Title 24 of California Code of Regulations, Chapter 11B) provides a more restrictive condition then we are obligated to meet those?

If and when PROWAG is adopted, there should be additional guidance promulgated from the US Department of Transportation with respect to how States and LPAs will implement PROWAG (e.g. moving forward utilize PROWAG). LPAs would need to follow this guidance in its entirety.