State ADA Coordinator’s Office: 2023 Virtual ADA Conference for State & Local Governments Session 2C

 Georgia Finance and Investment Commission

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JOHAN: I am going to go ahead and go live. Just to give everybody a heads up. Including the ASL interpreters and we will get started in 1 minute. Thank you. Good afternoon everyone this is Johan Rempel at CIDI at Georgia Tech. We are on day two of the third session. We are close to the end of day 2. Thank you all for participating. For those who are new for the first time accessing this, welcome. I am going to be covering some housekeeping items including some accessibility options available.

Today we have CART services also known as live captioning. There are two ways you can access it. One is through the Streamtext link that is now in the chat. That opens up a third-party application where you can make additional choices and preferences related to how the captions appear. The second way to access captions is to be CC control on the losing toolbar. Were the bright red arrow is pointing to the CC button. It is keyboard accessible you can tap to it or access with any peripheral device.

Spotlighting and pinning. We have ASL interpreters today. We have 2 ASL interpreters in the room. We have spotlighted them so they should appear for everyone. They will be tag teaming today. The host and cohost are able to spotlight so everybody has the same view of streaming videos. Whomever is spotlighted will appear in the Speaker View as well.

Depending on which version and platform you are using, pinning any participant any participant can pin another participant's video and it only impacts the participants display. This seems to be more effective in a meeting than a webinar. But that is an option that Zoom provides as well in some instances. How to spotlight or pin is pretty straightforward.

Hover over the participant you want to spotlight or pan, select the…, Spotlight for everyone or pin. If you are hosting these kinds of webinars in the future, and you are interested in accessible platform that is one of the reasons we use in.

Sign language interpretation view. This works extremely well especially if there is one ASL interpreter in the room. We have 2 ASL interpreters. We find spotlighting is a bit more effective when there is more than one ASL interpreter. In the advanced section, the host must select the sign language interpretation view toggle to enable it. Zoom desktop version must be used by host to manage and initiate interpretation.

For participants, sign language interpreters are shown in the dedicated video channel. Participants can resize or relocate the video window as needed. The interpretation option is appointed on the toolbar. In the future, if you are hosting events such as this and using Zoom, especially with one ASL interpreter, it seems to work very well.

A few other housekeeping items to cover. The Zoom chat feature is disabled for participants. We ask that you submit questions using the Q&A feature found on the Zoom toolbar at the bottom. There will also be a brief Q&A session following the presentation. All questions submitted by registrants during the registration process have also been provided to the respective presenters ahead of time.

The Virtual ADA Conference team will be monitoring the Q&A throughout the presentation. As time allows, the team will also address as many questions as possible. If the team is unable to get to your questions during the session, they will make every effort to follow up after the conference. As a reminder, please do not place any private or confidential information in the Q&A.

This is being recorded and will be held on the State ADA Coordinator office website in the weeks following the conference. For any technical issues or experience or experienced related to Zoom, you will have access to the Zoom support link if it is not in the chat will be quickly visited there momentarily. Then we invite the presenters today to turn on your camera during the introduction and turn it back off during your presentation. We ask that you turn it back on during Q&A session.

I will now pass it over to Barbara Tucker the ADA administrative services coordinator. She will serve as a moderator and will be introducing the next presenter. Just give me one moment to press record and I will pass it on to Barbara.

MODERATOR: Thank you Johan. Welcome to the ADA Accessibility Rules for Alterations to Existing Buildings. Your presenter for today is James Terry. Mr. Terry is the CEO of Evan Terry Associates. He also serves on the Board of Directors for the national association of ADA Coordinators Office and the national expansion committee of the Accessibility Professionals Association. You can find his complete bio in the registration email. Welcome James.

JAMES: Thank you. Are we ready to go? Let us move to the first slide. The program description is one of the requirements if you go for AIA credits. Just basically outlines what you probably already know we are discussing. A lot of information for existing buildings. We will have a limited approach to looking at that and will talk about what those limitations are in a moment.

We want to give you a broad exposure to the main requirements with significant accessibility requirements and rules applying to public entity facilities. The additional obligations that apply more broadly in your facilities rather than just everything. Understand the difference between program access alterations maintenance and operations requirements. How to apply the major parallel obligations under various regulations and standards in your existing facilities.

We have met the AIA requirements now so let us go to the content. Under the 1991 ADA Standards and UFAS existing facilities and existing elements were those that predated the effective date of the applicable standards. They were subject to the alterations and additional requirements. The existing facilities then they told you almost like a building code, here were the things that apply.

What happened though was in the time between 1991 and 2010, there was a lot of confusion about whether alterations and additions how they were supposed to be treated in terms of readily achievable barrier removal and program access, etc. They added kind of different twist and they said:

An existing facility means a facility in existence on any given date regardless of when it was built or altered. You got to call it that. Essentially it says you have to do barrier removal in existing facilities. Just because you build it new if it is out of compliance you still must fix it. That was the intent of the change.

You can have a building that is both new construction and existing but clearly the older facilities also exist. They are all going to be evaluated for program access. You just cannot get around that. Also the elements that are altered after January 26, 1992, must comply with alterations standards. There is that kind of twist in there. You must look at some older buildings. On a case-by-case basis to figure out if it is going to have an impact but it is something to look out for.

What we are discussing is there are a lot of parallel obligations for public entities. I am going to give you the basics of those four facilities. Then we will talk about which we will cover. There are a lot of laws and ordinances and regulations and standards and building codes that apply to your facilities. This obviously includes the ADA Title II both the standards and the regulations, and also the Rehabilitation Act that is 50 years old this year. The adopting regulations for those.

Originally under the Rehabilitation Act, Uniform Federal Accessibility Standards was the primary standard. Now some of the agencies that shifted over to allow the ADA Standards perhaps with modifications particularly for housing, HUD will give you that which they call the deeming notice. Which standards and which regulations under the act apply depending upon where your program funding comes from.

If you get funding from 100+ agencies that provide federal funding, you need to ask them what their accessibility obligations are under the Rehabilitation Act in which standards and regulations are adopted to go with that. There are a number of federal agencies looking at adopting new standards under the Rehabilitation Act obligations. I think we will see some activity this year coming out as they make progress toward that.

Of course there are state and local laws, ordinances whether it is owned or otherwise in building codes. It could be to state stricter accessibility standards. About a third of the states have those where they have their own standards and about a third have adopted the ADA Standards as their basis with maybe modifications. And maybe the other third has adopted some variation of the A117.1 standard that goes with the International Building Code.

Look at your versions and the years that have been adopted when looking at state and local requirements. That is really important. You can also have the International Existing Building Code's, the International Fire Protection Association code that can go with that and a host of others. Dozens of others that can apply. We are going to look at those because they are the primary ones that have obligations for accessibility that we typically will look at.

The ones we are going to be looking at are the ADA and Rehabilitation Act. Those pieces are in various versions actually, adopted by the building codes. Many of those pieces, not all, but building codes also typically add things to that. Because there are so many building codes and we have a national audience on this webinar, we are not going to try to spend a lot of time looking at any of those stricter state or local requirements.

Some of the common requirements between the applicable regulations and standards for public entities in their facilities. Alterations is obviously one of the most demanding of those. You must comply with the new construction requirements. There are some exception to that. But not a whole lot of them. You have got to always look at the new construction requirements and then if something looks like an issue, see if there is an exception. We will talk about some exceptions.

Also path to travel obligations. When you do an alteration or addition, you must provide a path of travel to get to the area you are altering. If it affects usability and it is a primary function area you are altering. That is a really big requirement we see missing an awful lot of times with public entity facilities and private ones and it is something that you really want to pay attention to.

Also in alteration projects, you are not allowed to reduce accessibility below what is covered in the affective standards. We have seen a number of cases where people have actually done in alteration that reduced access. They got taken to court over it. There are some limited exceptions. For example technical fees and feasibility. We will talk about what that means. Safe harbor. Element by element analysis. We will talk about that.

We will talk a bit about exceptions for exit in the existing facilities where you are doing alterations and we will talk a bit about historic property exceptions. There is a difference between historic property and historic preservation program that might include a facility in it. We will talk a bit about how the differences are there. Also you have got an obligation to maintain those alterations according to the standards. We will talk about that a bit. I will give examples.

The maintenance of accessibility features. We have a photograph on the left of a curb ramp covered up by snow that has been plowed in front of it. A toilet in the center where the hinges are broken on the seat. You can see it has slid over toward the wall. If that hinge comes off it can actually dump somebody making a lateral transfer into the gap between the water closet and the wall and create an injury.

I know of people who have had that injury. You need to maintain the toilet seat cover. On the right side we have a photograph of a series of 5 garbage cans stored on the ramp leading into the entrance to a building. They obviously block the required minimum rib width of the ramp. You must maintain features and not have short-term and frequent interruptions. But they have to be short-term and infrequent.

You cannot have some operational requirements like maintain required clearances free of obstructions which we will talk about some of those kinds of things we find often. In terms of maintenance of facilities, you may need to change the policies and practices and procedures. Such as, how do you handle procurement. You must look at all the things that you purchase.

This is very often slipped by public entities when they are maintaining their facilities or when they procure furniture or something like that they forget actually those movable elements are also covered by the regulations. Particularly related to required clearances.

So if your staff is emptying trash cans and putting the trash cans back in the exit for somebody who is trying to exit the toilet room that can create a problem for people trying to get out. There are a lot of things like that where you might have policies and practices and procedures to modify as well so you can maintain the accessibility that is needed.

Program access. Another common requirement between the ADA and the rehab act in particular but also in some state requirements. The things you must look at here are that program access really relates to programs, activities, services aids, benefits. All the things that you do for the participants in the programs you offer. We will talk in more detail about what a program is.

We will define what those are as much as they can be defined in the time that we have. You look at program access when it is viewed in its entirety. We will talk a bit about how that applies when we have programs that are distributed across multiple facilities or multiple timeslots, etc. We will look at the fundamental alteration limitations. You do not have to create or fundamentally alter a program in order to make it accessible. We will look at examples.

You do not have to do anything that creates an undue financial and administrative burden that would make it very difficult for a public entity to maintain accessibility just because of the cost and difficulty of it. Then there are procedures we will talk about. Then, you must provide equivalent facilitation if you are not able to do something or you have a better idea for a better way to do it, you can follow equivalent facilitation procedures and we will talk about what it means and examples of how to do that.

If you need to, you can use alternative methods to provide program access. There is a lot of flexibility in that. For program access, the key thing to understand here is when the rehab bill was passed 50 years ago, and that is when the program access obligation went into effect for every program that receives federal funding. It’s a program on a very large scale. Not just a particular function within the program you are doing.

It is a very broad obligation. They have reiterated it under Title II of the ADA Standards. But that has been there for a long time but yet we see a lot of public entities and program recipients that are not following that. We will spend a fair amount of time talking about that today.

There is also an obligation under the ADA to create a transition plan for public entity facilities where there are barriers that limit access to your programs. We did this in a fair amount of detail at the webinar for Georgia last year. We will not spend time going over the transition planning obligations.

If you have the handout, I think there is a link over the blue words transition plan that will take you to a 3-part program transition planning webinar that is on Corada that you can watch the ghost of the details for that but we do not have time to cover it now. We are about to come out with one on self-evaluations that are not really facility related. But that will also be posted on Corada.

We will not be discussing the general power prohibitions against discrimination that are in both the law and the regulations. 35.133 has the quote that says no qualified individual with a disability shall on the basis of disability be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity or be subjected to discrimination by any public entity.

If you get a lawsuit or complaint, you will probably have something like this quoted by the attorneys. Attorneys like to start with the language of the law and move to the regulations and then get to the standards. They want to look at the broader perspective that might make it an easier argument when something is not clearly covered in the standards in a way that they can say, this is the required dimension and you missed that. So you will very often see them go back to those.

Also an obligation we cannot discuss today will be the site selection. You are not allowed as a public entity to select sites that have the impact of reducing accessibility. You are required to modify policies practices and procedures including procurement practices and procedures. That affect accessibility and we just do not have time. I mentioned self-evaluations and transition plans that we will not be addressing in any detail.

Then you need to do reasonable accommodations for employees and potential employees. Why is this in the list of facility obligations? It is in the list because under the Title I requirements, you are not allowed to do things about the way you hire or advertise for jobs or interview, etc. That actually triggers an obligation to make sure your facilities or functions are carried out or accessible facilities so you do not have the effect of discriminating against people with disabilities.

Because they cannot get to the location where they can pick up an application for employment or they can get to the interview or they can actually go to the bathroom if they get a job or their analog interview process. You need to look at some of these kinds of things but we will not be able to discuss that very much. However do not just a with entitled to obligations as you are analyzing your facility obligations. There are more.

In alterations 106.5 says a change to building a facility that affects or could affect the usability of a building or facility or portion thereof. There is a lot of parsing out of the same language to say what is covered. It is basically a lot of things. If in doubt, expect it is covered.

Not limited to, they include remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangements of structural parts or elements or elements and changes are plan configuration of walls and height partitions. Notice they did not put in short partitions. They listed some things that are typically not going to be considered alterations.

As you look at that is a fairly broad set of functions or activities that would be called alterations. Each of these has a defamation. Some are called out in the standards but you must look at those when you are trying to figure out whether something is an alteration or not and Chase to the definitions.

From 2010 standards, each facility this is from the regulations, each facility are part of facility altered by our own behalf or use of a public entity in a manner that it has to be altered in a manner that is readily accessible to and usable by individuals with the spirit what that means is following the standards. That is true if the alteration commenced after January 26 of 1992. This is an old requirement. We will talk about limitations on that in just a little bit.

By the way, the slides are set up so hopefully if you want a reference document you can take it back with you, you can have this as a checklist to go through when you are looking at an existing building and trying to determine what your obligations are. You can have this to refer to and hopefully make it a bit easier to remember. Particularly for new ADA Coordinators this is a lot to remember. They should serve as a good outline for you.

Most common alterations error. If I had a poll here I would ask you what the answer is. But I do not think we need to do that. I think probably if you had any experience with alteration projects as an ADA Coordinators Office, you know it is not including path of travel work in every single alteration project. You need to budget for the path of travel work in every project.

Every time you alter a building, which needs to be in your budget. If it is not something your facility people are doing to begin with, it is something that you need to somehow convince them to go ahead and put in there. To figure out who is going to do the analysis and figure out where you have barriers that need to be removed. Make sure you can pick that up.

We have a common saying around our office which is if you are in a compliance hole, the first thing you have to do to get out is to stop digging. Not doing your alterations in compliance and not doing the path of travel work while you have construction budget money like the law requires is something that is a way to stop digging the hole deeper.

You really want to put some strong effort into the negotiations with your facilities people and capital planning people to make sure the path of travel work is included in the budget. We talked about this one before. If the alteration affects or could affect the usability of access to an area that contains a primary function, you must the maximum extent feasible make that accessible.

What is the path of travel? It includes the path itself to the altered area plus the restrooms and telephones and drinking fountains serving the altered area. You need to make that compliant with the standards are readily accessible and usable by individuals with the spirit including people who use wheelchairs and for others as well unless the cost of the alteration is disproportionate to the cost of the path of travel is disproportionate to the alteration cost. Under

Title II regulations, which is 20%. That 20% is the cost of the expected or planned alteration work. There are exceptions in there about if you are just doing alterations to lighting or something that really does not affect accessibility. Those elements may not be covered in that base price for the disproportionate calculation and also the path of travel obligation.

If all you are doing is working on achieving program access and doing physical barrier removal access then you will not have to do the path of travel to get there. Because program access requires you to have a way to get to those areas where you are doing the work. There is an overlap their kind of. They tell you do not have to do extra path of travel work if you have another way to provide program access.

Let us look at a diagram on path of travel. It is a continuous unobstructed way of pedestrian passage connecting the altered primary function area with the site arrival point like the sidewalk streets and parking areas if you have public transportation on the site it would cover that. Also to an accessible entrance, the toilet rooms serving that altered area and to the telephones and drinking fountains serving that altered primary function area.

The primary function is a major activity for which the facility is intended. That would be things like dining areas if it is a cafeteria or meeting rooms and a conference center or if it is a bank it is the teller areas, etc. It’s bigger than just public areas do not think of it is only public areas. Those places where you are doing the primary function that the building was built for.

Then mechanical rooms boiler rooms, closets, etc. generally they are not going to be considered primary function areas. An exception might be if you have a highway rest stop the toilet rooms would be the primary function for a lot of people. That would be covered there. Here is the written analysis that we just went through in the figure from the regulations. The elements are there if you want to see that language when you refer back to this.

A few things that may not be obvious is the path of travel does not mention the transportation stops as arrival points but that does not mean they are not covered. They might be covered in the program access obligations as well. It could be dual coverage. The path of travel generally will include wheelchair accessible. But there are certain types of facilities where certain levels of the facility do not have to be wheelchair accessible.

In those cases, the path of travel does not add an obligation to provide wheelchair accessible routes to get to those areas that would otherwise not be covered. So if you have a high school stadium, football stadium. You do not have to add if you are doing an alteration at the top of the stadium, you do not have to add an accessible route to get there but you just need a way to get there for people at the same level of what would be required in a new construction for the process.

It is generally where there is no elevator or excuse me where there is no specific elevator requirement to get there. Remember as well if you come from the private world of Title III, into title, title to obligations of public entity, remember as a public entity you do not get the same elevator exemptions you get for Title III facilities, private entity facilities.

 Public entity facilities if they are 2 stories must have an elevator unless there is a specific exemption for that where you might have that and most of the private entity facilities. Also if you are using an exemption for the path of travel remember, you may still have an obligation under the program access. That is kind of the theme of today's session.

When you do alteration projects, doing additions to existing buildings, you have really got these 2 sets of obligations. You must comply with both. You have to test under both sets of obligations. We talked about no reduction in excess below what is required for the construction at the time of the alteration. Just be careful with that one. I do not have time needed to talk about that. But limiting exemptions.

We talked about technical and feasibility, safe harbor, etc. Technically infeasible means basically it is something that has little likelihood of being accomplished because of existing structural conditions that require removing or altering a loadbearing member that is an essential part of the construction structural frame or other types of things that would prove prohibited.

As an architect I can tell you, usually that is just a question of cost. But in defining technical and feasibility, they chose not to make it a cost issue. They chose to look at it in terms of the difficulty rather than the cost. You can look at things like relocating the primary electrical service to the building. That is something that is very costly and difficult to do. Particularly if that requires you to move a panel that is providing individual feeds to use circuits throughout the building. That is extremely difficult.

Relocating a vertical air supply or a plumbing chase in a tall building, if you have to buy more land to provide sufficient accessible parking, and still meet the zoning ordinance or setbacks or the minimum number of parking spaces, or to expand the toilet room to provide enough space, that is the kind of thing that might be technically infeasible to do that. Violating the safety code would be another one of those kinds of conditions. If it is technically infeasible in your operation you will not have to do it. However you must provide program access. We will talk about that a bit later.

To the maximum extent feasible, it is kind of the flipside of technically infeasible but it has another obligation. That is, where compliance is technically infeasible the alteration shall comply with the requirements to the maximum extent feasible. What does that mean? Let us take a section for plan in the center of a high-rise building. You can see we have a service elevator and it looks like it is large enough to put a gurney in there. Or maybe it is just a large elevator and you have another elevator facing a different direction and a staircase.

All of these are enclosed in concrete. Shear wall shelves. You have a tiny toilet room in the court order. You have some kind of vertical chase that limits the ability to have pool space next to the chase. You have minimum egress with so with the really tight quarter. Is it technically infeasible to fix that toilet room and make it inaccessible? Probably so.

No obvious way from what we can see in the drawing to get around it. But if you have the availability to come in and on the top right-hand corner of the drawing, there is a space that looks like you could get a fully compliant accessible toilet room. That might be what you would have to do in order to provide access in that space if you can get to it.

There may be circumstances with whatever going on in that area you could not have that done but if you have an option, you need to look at that. You need to look at accessibility for example if you cannot make it accessible to someone who uses a wheelchair, you still need to do things that will make it accessible for others.

People who have limited vision or hearing or use crutches or people that have limited dexterity. You need to do all the things that you can in that alteration project to get it to the maximum extent feasible. That may exceed just because you cannot get wheelchair user access you still must do the other things to make it as accessible as you can.

Safe harbor. This is a term that is due under the 2010 ADA Standards. It went into effect for elements that had not been altered on or after March 15, 2012. Anything altered after that has to meet 2010 standards. But if it complied with the older standards either the 1991 ADA Standards for the uniform federal standards apply to the building, if it met those, element by element determinations, you may not have to modify that in order to comply with the 2010 standards and regulations.

Understand that this only applies to elements that have not been altered. It is not a grandfather clause it has simulators but it is not grandfathered. Be careful if you do any housing work. The fair housing amendments act uses the term safe harbor as well. But it has a totally different meaning. There are no similarities between the use of safe harbor under the ADA and 12 may be almost not maybe 2% similarity. Be careful with that.

Also if you work in California, they have a different meaning and maybe other states as well have a different meaning for safe harbor than the ADA uses. Be careful about that. If you construct in an alteration or alter the required elements, you are given a safe harbor option when it comes to the primary function area that is served by the path of travel.

The safe harbor says, if you must do a path of travel to get to a newly altered area and those elements that were there beforehand complied with the standard fully, then you do not have to go back and modify those elements. The ones that fully complied under the path of travel obligation. You need to understand that there is a difference between compliance with an old standard that included an obligation and one that did not include it.

That is the difference between incremental versus supplemental. Things that were incrementally stricter under the ADA Standards such as the additional space that allows side transfers to toilet, which was added in 2010, you can have smaller toilet rooms under the 1991 standard but that keeps his safe harbor but was incrementally stricter than what was there before.

Supplemental is where there is a new obligation and we will talk about that in more detail. Element by element, important analysis. In this case if you look at the figure of the toilet room on the bottom right, you can see the grab bars in the toilet in the mirror are yellow. Those are the items that are being altered in your project.

Those have to be in full compliance because they are being altered but the toilet paper dispenser and the seat cover dispenser in the soap dispensers in the laboratory are not being altered. So as long as they comply with the earlier standards, you are fine to allow those to remain as they are. Compliant with the old standards. This does not apply to supplemental requirements. Talked about that a bit.

What are some of these? There is a list of supplemental requirements that they say are not safe harbor. Residential facility dwelling units. Those were not covered in the 1991 standard. They are now. But now you do not have that exception. Amusement rides. They were not covered in the standards and they are not safe harbor. Here is a photograph of a lady transferring into an amusement ride from her wheelchair. Just because there was no coverage in the 1991 standards does not allow you to say we complied with 1991 but that element was not covered there.

Also not covered was recreational boating facilities. We have a figure of a harbor with Marina slips and ways to get to it. This is from the access ports guidance document on recreational boating facilities. Several of these figures are exercise and equipment were covered fishing piers and platforms for recreational fishing. These are not covered by safe harbor., Facilities. Whether it is a regular 9 hole or 18-hole full-size golf course, that is not covered.

Neither is miniature golf facilities. You have obligations there. It covers not just the grass itself, the greens in the fairways but also the elements that serve that such as midcourse toilet rooms and weather shelters, etc. Play areas. A lot of new requirements there to make those accessible for children with disabilities. There is a figure on the right that shows accessible playground that has ground level and raised accessible play elements.

Saunas and steam rooms were not covered originally in their not safe harbor. Swimming pools wading pools and spas were not in there and they were not covered. Again there is a lot of very specific requirements in the photo on the right shows some of those that are clearly covered in the 2010 standards to give everybody access to the swimming programs.

You have got an obligation and during the alteration projects or if you do in addition to a recreational facility that has swimming facilities. Shooting facilities for firing positions were not reasonable were not covered. Also miscellaneous things like team and player seating, bowling lanes, court sport facilities, etc.

Exit exemptions. I have figures here of a section cut or a 3D ghost view of a high-rise building. The exiting exceptions are therefore and have been there under the 1991 standards although they are given in more detail under 2010 standards. They revert back to the requirements in International Building Code. One of the questions that comes up a lot with the building codes is that the standards written in 2004 were released by the Access Board referring to the latest versions of the International Building Code.

Now that it is 2023 and we look back 23 years ago to an old standard developed before that time, it is like do you really have to go back and look at the old standard? The way the standards are written, yes you do. That is what the official obligation is. There are a lot of people who said, what about equivalent facilitation? Do the new standards provide equivalent facilitation?

We have done a detailed analysis to compare the later versions to the newer ones. What you find is, there are some minor tweaks that were in the older 2010 ADA Standards that are not covered at the same level in the later building codes. But when you view the standards in their entirety, there are a lot of people who say they look like they provide equivalent or greater usability and accessibility for people with disabilities.

There is a fairly strong argument in some highly placed people in the regulatory entities that say they will not argue that you have to use the older versions if you fully comply with the newer versions because the newer versions bring in additional accessibility obligations that were not there in the old ones. When you look at it altogether, it looks like equivalent facilitation.

The International Existing Building Code has exceptions. Most accept these references. As we just discussed. In particular, 306.7.2 of the IEBC says accessible means of egress required by chapter 10 of the IBC code are not required to be added in existing facilities. This is an exemption that has been in the building codes and it was in the 1991 ADA Standards explicitly in the scoping section.

I cannot remember the scoping section number but it was under alterations and it gave you section numbers you did not have to comply with and if you chase those down you would find out they relate to exits. That is because existing exits can be extremely difficult to deal with. They recognize that in writing the standards.

Historic preservation. There are exceptions for historic preservation. But you must chase through the process to understand those. The first thing is a historic property is one that is listed or eligible for listing in the National Register of Historic Places or is designated as historic under the state or local law.

They also have national landmarks status that is kind of higher level the national register. If it is a national landmark, it is also covered. It is covered under historic exceptions. But that is not a blanket exception. We will talk about that a bit more in a moment. Alterations under the alteration requirements do not require any work that would threaten or destroy the historic significance of a property or facility as determined by the state historic preservation official or

Advisory Council on historic preservation. This could be what they call the state historic preservation officer if they delegate their authority to somebody local that has sufficient training to be able to make these kinds of decisions, then that is out there, that is essentially the same as them making that determination. But the programs still have to be accessible.

Now that Advisory Council or historic preservation official is limited in the way they apply this alteration. This is something that requires a detailed analysis. We do not have time to go through that today but be careful if you are trying to do that. Again, you still have the obligation for the programs to be accessible. That is different from the historic preservation program.

Historic preservation programs are ones whereas a public entity, your primary purpose is to preserve the historic properties. If you are trying to restore historic properties you have additional exceptions. We will come back to that. Hold it. That would apply by the way to something like the birthplace of a famous person from your past. Or a famous battleground or some other important event where that is where you are trying to preserve.

Again, program access may take precedent over some of these things but there are limited limitations to it. Not enough time to cover it and that is a multi-hour topic. Maintenance of accessible features which we discussed a bit earlier. Public entity shall maintain inoperable working condition those features of facilities and equipment that are required to make them accessible for people with disabilities.

From the Title II action guide, there is a quote that says what you see below but it is not sufficient to provide the accessible features if you do not keep them operable. Locking the doors when that is a route that you need to use to have access to the accessible route or using furniture that is blocking and accessible route or a space or a door maneuvering clearance.

You cannot have that. You must periodically watch this. This is one of those things were as a public entity you have to set up a process and some training so you constantly are watching those kinds of things that violate the maintenance obligations. If you have assistive living systems in the batteries that are dead, that is not providing maintenance of the accessible feature.

It does not prevent isolated or temporary interruptions. Those are a part of life. So the standards and regulations primarily the regulations understand that. I was teaching a seminar some time ago with people from the state of Alaska. They said we have a lift that is broken in Barrow. We cannot the harbor will not thaw for us to get a shipping with a new lift until spring. That is 3 months from now.

Is that temporary? So we talked about what are your other options? Do you have a National Guard unit that flies into Barrow, Alaska with C130 that take the lift out and they scratch their head and said we probably do so the next week they had lifted them. Again you have to look at what kind of things really limit you or can you absolutely not do and when can you work around a temporary.

Typically temporary interruptions will be less than 2 days. If you hit 48 hours, it is probably not going to be temporary. If it is a matter of putting something out there does not have to be there for 24 hours, it might be limited to 1 hour. Isolated if you have lives that continue to break down that means they are not isolated exceptions. Watch that.

You need to remedy it as soon as possible. It needs to be a reasonable period of time, not just something that is not a hard line in the number of hours or days. Let us talk about a program. We are now shifting from alterations and existing facility maintenance to the program access obligation. To understand, you need to figure out what her program is. It is a service or activity with a single purpose.

How do you define single-purpose? We will get into it. It is undertaken by public entity to provide services benefits agent information or opportunities to one or more members of the public. It is not just the people who lived there. It can be visitors as well. If you are a school and you have a playground and you make that available to the public, it is basically whoever comes into use it.

Some examples. Here is a long list of things that you might have any Parks and Recreation department. Daycare, free swim, swimming competitions, swimming teams, swimming lessons. Dances for seniors. Senior center exercise classes. Concession stands. The things they offer. Summer camp, fishing, hiking, Little League teams, lectures, etc. All kinds of things that you can think of where you’re providing services and activities and benefits or programs. This is a very broad list.

How big is a program? How many do you have? One kind of analogy that you can make is you can think of big programs. Let us call these boulders. For example, the boulder of Parks and Recreations. That is a big, big program. But rocks, smaller than boulders if you break the boulder up and look at more pieces, swimming could be run could be one of the programs that Parks and Recreation does.

If you break down swimming even further, you might get what I call gravel. Swimming lessons. If you break down the gravel a bit more the analogy is a bit of a stretch but sand. You are breaking down these giant programs to the smaller programs and in the case of sand it might be something like infants swimming or swim lessons for people with disabilities or other subgroups under that.

Where do you start if you are doing your analysis? I would say to start looking at the bigger programs first and work down. Or if you have a new program that is coming up, let us say a temporary event, you might want to analyze that one even if it is not the same size as the things you are working on normally. It is coming up so you have an opportunity to make it accessible early. Be flexible in terms of how you go through the process of analyzing your programs if you have not finished doing that already. There are very few entities that have done that.

He cannot look at all of them immediately so start on the boulders. Another way you might look at it is for example program for people that have requested access improvements. Special event programs, high use or high needs programs that disproportionately affect people with disabilities. For example, consider programs for seniors.

If you do not pick up all of the kinds of barriers by doing the high-level boulder level review of the programs, look at those first. Then go to the rocks and the gravel then the sand where you have significant differences. For example you may not have any difference in the obligations for signing some sort of waiver or release to be on the swim team. However you may have to produce accessible versions of those releases. So everybody has access to it.

So as you go through and look at it the same form a work for lots of different programs within this. But where there are significant differences you need to look at that. For example in Parks and Recreation you have a standard servers animal policy, that service animal policy might need to be modified when you get to swimming.

Do you allow service animals in the swimming pool? That might be a different service animal policy than you would have in the exercise classes. In fact, it should be different policy. The program access requirement is that you have to operate all of the services so that it is really accessible and usable by people with disabilities when viewed in its entirety. What does that mean?

One of the cases the most famous cases I know of when viewed in its entirety is the San Francisco KIOLA case. In that case the judge said they did not have to make every one of their libraries accessible. As long as they were accessible libraries and they could move holdings from one library to another and somebody could find things in their card catalogs, you did not have to make every one of the libraries accessible.

There are all kinds of factors to consider. Probably a dozen different ones to consider when looking at something in its entirety. If the entity takes an hour to drive from one side of the public entity to the other, having one accessible playground is probably not going to be when viewed in entirety and is highly unlikely to be infected the same thing with the library so be careful when going through that.

As you are setting your priorities your compliance methods should give priority to methods that offer the most integrated setting appropriate. Alterations must meet the requirements for alterations. These are things from section 35 These are things from section 35.151 he do not have to make structural changes when other methods are effective in achieving compliance.

You do not have a requirement for every existing facility to be accessible. If the program when viewed in its entirety is accessible. And you do not have to do anything that will result in fundamental alterations to the nature of a service program or activity. Nothing that would threaten or destroy historic significance. You will see some of this repeating over and over. These exceptions are throughout the document.

One of the things about fundamental alterations is if the person in the public entity believes the action would fundamentally alter the service program or activity, then you have the burden of proving that it would result in that alteration. That decision has to be made by the head of the public entity or the designee, after considering all the resources available for use in funding the operation of the service program or activity in a broad sense.

It is not a narrow this is all the money we have budgeted for the program. It is the larger program to do that analysis. Then you must document that in a statement the reasons and put that in your files and nevertheless do as much as you can to be sure people with disabilities have access to the benefits and services. This is a limited exception that requires you to go through procedures you have to be careful about. You can take that. Let us look at some fundamental operations.

Let us say if you have not heard of these groups you probably recognize the photograph. There is a photograph on the left of a giant stack of hay bales with people climbing the hay bales. I hope they been tied together carefully! They climb up and over that and there is an obstacle over that covered in mud.

There are people climbing up a slippery slope service surface with other people at the top helping to pull them up. There is a lady climbing an angled pole where she is going to turn around and jump onto a net to get across a water body. Then there is a lot of people racing through trench after trenching full of mud. Let us say you are going to co-sponsor one of these racist. Would it be a fundamental alteration to require this activity to be accessible?

It might be fundamental alteration to make this accessible to wheelchair users. Probably would. You would have to remove a lot of things that make this what it is. But what about two other people with disabilities? Let us say you have someone who is blind. Would you have to make it accessible to a blind person? You notice and in 3 of the photograph you have people helping each other through the process. It would not be fundamental alteration for a blind person to have a buddy help them stay on course to help them know what is coming up next and explain what is going on.

That would not be fundamental alteration so be careful when doing fundamental alteration analysis to think through it. What about football? I must do this humility. This is from the Georgia and Alabama game. I am from Alabama. Football has some really specific kinds of obligations and demands on the players. You have some high-level athletes that clearly college and high school football our programs very physically demanding. Sometimes amazing athletic performance.

For example, there is a picture of somebody with the ball being tackled and he is upside down standing on his head with another player diving over the top. Not something you are likely to see somebody using a power wheelchair do. But you have probably also seen wheelchair football and there are some very good athletes playing wheelchair football. You have a guy doing a lateral pass to the receiver.

You have another guy up on one wheel on his wheelchair passing a hot catching a hot pass. On the bottom right we have a football player pushing a wheelchair user onto the field and it is obviously during the game. Is mixing athletes who are with ambulatory players would that be alterations? You normally think it would but is it? Well probably not always.

For example, this is a high school football player that has spina bifida. He is the placement kick holder on his high school football team. That does not seem to be fundamental alteration in the people around him said yes he can do that. He can play. He does not get involved in tackling and people do not usually tackle him. That is not a fundamental alteration.

Undue financial and administrative burdens. In circumstances where you believe the proposed action would result in an undue administrative or financial burden, you must go through an entire process of doing the analysis. Without reading that, let us take an example. Let us say you are looking at American Sign Language interpreters.

Small-town Georgia, let us call it $125 per hour for a sign language interpreter in small town, Georgia. You need 2 to handle a three-hour city Council meeting because you really do get very tired mentally and physically if you are doing sign language interpreting. 2 interpreters would be very normal for something that long.

For small-town Georgia they almost never have anyone who needs an interpreter attending a meeting. Would it be an undue financial burden to have to have an interpreter on duty for every meeting just in case someone showed up that needed them? The answer is probably so.

However you would have to have a policy that says the agenda is going to be published on this date with an X number of days after the agenda is published. If you want to attend please notify us in time to get sign language interpreters to come to the meeting. We will have sign language interpreters available. That is not undue financial or administrative burden.

All right. Historic preservation programs. The Title II ADA manual says, does the special limitation apply to programs that are not historic preservation programs but just happened to be in a historic property? The answer is clearly, no. In those cases, you can do nonstructural methods of providing program accessibility such as relocating things or making home visits if it is a library doing a bookmobile or transfers. If it is a courtroom, it is probably going to be a lot harder.

The program still has to be accessible. How do you decide how to do that? First you give methods priority that provide physical access for people with disabilities. That is the first thing to look for. If that would threaten to destroy the historic significance the primary purpose is to preserve history, you can use alternative methods. If you do that analysis you can look at what is the threat to destroy the historic significance.

You must do the analysis to say what is historic that we are trying to preserve? That is not everything within the boundaries of this. It will typically be certain parts of it. It may be historic because it is worth something historic happening. Maybe it is historic because it is in a historic area of town.

It could be that there is a particular type of material that was used in building the building that made historic or there are certain features that are iconic for the facility that would make it historic. You want to protect those but it does not mean you cannot have another route to provide a physical route into the building. It depends. You must look at that on case-by-case basis and that is why you have the state history preservation officer involved in that analysis.

Using audiovisual materials and devices that depict inaccessible portions of the property is one way short of making the physical modifications that might work. You can add videos. Now you have cameras that do great 360° images and virtual reality tours where you can actually put someone into a room or what feels like it is using a VR headset. Or you can have 360° view that you can view on a computer screen.

So if somebody cannot get to the area because it is inaccessible and you are trying to preserve that, you can still give people opportunities to see what the rest of their example family or tour group might be seeing so they can discuss it when they meet back up. You can assign people with disabilities or excuse me you can assign a docent to guide someone through an otherwise inaccessible area.

You can adopt other innovative methods. We have seen people, for example, do 3D printing of elements that allow them or allow somebody with a disability to feel something they cannot see. Such as a capital on a column or some kind of something that is visually viewed. You can have 3D printed versions and we will look at a few examples.

Equivalent facilitation. Understanding equivalent facilitation is an exception. You can use it because it provides equal or greater accessibility and usability. Through the use of designs, products, or technologies. Notice this does not mean alternative methods.

Equivalent facilitation is a physical solution. It is not changing the way that you do things that is considered equivalent facilitation. It designs products or technologies that give you equal or substantial or graders accessibility. It is for everybody who would gain the benefit of full accessibility.

Be careful that you are looking at everyone. There is no process to go through this unless it is a facility covered by the Department of Transportation where they have people who will make that decision and give you an interpretation.

Some methods of compliance in existing facilities. Redesign equipment. Reassign services. This is how to get program access. Assign guides and beneficiaries. Deliver services at an alternate or accessible site. Alter existing facilities. Construct new and accessible facilities. Use accessible rolling stocks or other ways of moving things around. Any other methods that achieve readily accessible and usable by obligation.

Accessible equipment examples. You have for a wheelchair user that wants to get on a swing, you have a platform wheelchair that allows you to get on the platform in your wheelchair and swing back and forth on a playground. In this case it is actually an adult play area. You have things like beach access wheelchairs.

In this case the photographs Joseph you guys pushing a friend up the hill coming out of the water. He is in a beach chair that allows him with big fat wheels to get across the sand and also to float when he is in the water. That is a great way to provide access to beaches. Medical equipment, diagnostic and treatment equipment that allows someone to transfer onto the surfaces and other types of equipment in a play area.

For example, a sandbox that is raised so a child that uses a wheelchair can roll under it and still have access to it without having to get down on the ground to play. Touch exhibits. We have a blind man feeling an example, 3D printed example of a helmet. It allows him to feel what other people see in its original form in an exhibit case. This allows him to feel what other people can feel.

A bird. If you have a display you are trying to show particular examples, you can 3D print them. A bird. A kid feeling a 3D printed version of a large coliseum to feel the history of ancient Rome or Greece. He can actually feel what it feels like while other people can see it. On the bottom right, you have a picture of one of the cliff sides around Yosemite Falls and Yosemite Park at the bronze casting of the cliff face so somebody can feel what everyone else can see.

MODERATOR: Hello this is your time check it is 4:16 PM.

JAMES: This is my last slide. Audio tours is another way to provide equipment that provides program access. If people cannot read because of low vision or they cannot really see what is happening they can go through an audio tour. There are all kinds of headsets in different ways to do it.

It is in museums and historic facilities and anywhere you give tours there are many different types of equipment that allow this. Some are just apps that allow you to put it on a website and allow other people at a distance to take the same tour. You can use the same website to provide an audible tour of the facility. Questions?

MODERATOR: Thank you so much. As always we appreciate your presentations and what you bring to us. The first question is from Kristi. How are doorway entries looked at under path of travel for example some doorway have raised floor strip. Maybe someone in a wheelchair had difficulty entering.

JAMES: That seems like a simple question but it may or may not be. If I understand what you are talking about those are called threshold. It crosses the joint between where the door covers up and it kind of sealed the bottom of the door against the floor and typically bridges the gap or a crack you use when you go either from outside to inside or maybe between different floors. That gap or crack is allowed to be half an inch tall under the new construction standards.

If it is beveled at 1 to 2. Most wheelchair users can manage it and Walker users and people with prosthetic angles for example can usually manage it. If it is an existing facility, built prior to the 1991 ADA Standards, it can be up to three quarters of an inch if it is beveled and should be beveled at no more than one or 2. It can be program access problem, however.

If it is a senior facility you will probably have somebody tripping over a high one. If you can avoid it where you know you have people at a lot of people, it is best to have smooth transitions. Going from inside to outside you have weather protection issue very often. You will need some way to manage that. With a threshold. They are allowed if they are compliant with the standards and if they are not, you want to go ahead and take care of those.

MODERATOR: Thank you for that answer. The next question is from Tony. The toilet area serving the new primary function area are not accessible or are located on the path of travel to it, do they need to be made accessible and included in the cost?

JAMES: Okay that question, you are probably imagining a particular building. Let us answer it for a simple building. Let us say you have got an existing building where your primary function area is going through what is actually considered an alteration. Not just repainting the walls are changing the light fixtures or something like that.

You are doing an alteration and replacing carpet is considered an alteration. You must look at the whole path of travel to get there. You only have to provide one path of travel to get there. The path of travel is all of the elements we discussed earlier in the session.

It does include toilets and telephones and drinking fountain serving the altered area as well as what you would think of as a path which gets you from the site arrival points to the altered area. You do have to modify those if they are noncompliant with the standards and element by element they do not meet the safe harbor requirements, then you must alter those but you may have to alter them under the program access obligations. You have that alteration for at least 30 years, maybe 50 years.

Be very careful if you are not making the toilet rooms that serve the altered areas if you are not making them accessible because the exceptions are very hard to get across. It is very difficult to or it has a high hurdle to say you do not have to make those accessible during an alteration. Now there may be in certain unusual circumstances exceptions. Exceptions. But the default is probably not.

MODERATOR: Thank you. Our next question is from Heidi. If I am a new ADA Coordinators Office, can you offer general information about previous plans and efforts, current and new plans and training components and cost, timeline, people involved who to involve in money? I also seen a 2022 presentation that you have.

JAMES: That is a very long topic. If I remember correctly, we have a group that is going to be discussing that from NAADAC tomorrow. I think they and Georgia are working together to cover the entire topic you do not want to miss it. I have been through various versions of that in the past and it is extremely helpful for new ADA coordinators.

The main things to look at is to wrap your head around the fact that there are a lot of parallel obligations. At the ADA Coordinators Office, it is easy to feel like you are in a tornado with a lot of things flying around you. You first get to know or get to the place where you identify with those obligations and what they are. Then you get to the place where you say okay I understand this one and you tackle the ones that you have the highest priority on.

Generally, you can get advice from 1 your lawyer which things they have been sued on and 2, what about people with disabilities who have requested things. Do you have a panel of local people you are working with that can give feedback on what their priorities are quick these are people with disabilities, who have a good relationship with a lot of people with disabilities in a variety of disabilities.

Where do they say your priority should be? Then learn about those priorities as you go through the process. Over the years of doing this, you will continue to develop your understanding of those requirements and when you have to do them and when you do not. Then look at ways you can build bridges to all the people within your organization who actually have to do the work.

As an ADA Coordinators Office, you are coordinator so you probably will not be physically doing much of the work. You will need to build bridges and allies within your organization to the people who can help you to achieve the goals you are required to do. Other than that I would say if we had any other questions let us do them. Attend the session tomorrow.

MODERATOR: We have a few more and then we will wrap up. Is a portion of an existing required to be accessible when it is a change of use or occupancy classification?

JAMES: The questions get harder every year. Occupancy is not an ADA term. That is a building code term. Change of use sounds like his ability. Then you need to think about it Steve Jones and I talked about this earlier today. A lot of the occupancy change is going to be interpreted differently depending upon building officials. That is their domain so they get to determine that.

In terms of change of use and change of usability, which is not a simple answer. You must go through and look at exactly what changed. There are times when that could trigger an obligation to make something accessible. It can change under different regulations and laws that are out there. Again, that is one that takes a while to analyze.

MODERATOR: The final question can you speak on prioritization of barrier removal?

JAMES: If you are doing barrier removal for program access, I had a slide earlier in their presentation that had those priorities where I thought you would put the priorities. You can go back through the slides and look at that.

Generally, physical access is going to be your first priority if you can if it does not violate one of the exceptions. Or if it does and you choose to do it anyway because you can go ahead and do something that is technically infeasible, for example. But otherwise the programs, there is technical assistance materials from the Access Board and from justice on how to set that up.

But the side eye slide I sent earlier which might have been in my notes and you might need to download the PowerPoint rather than the PDF in order to see it. If the PowerPoint is not online you can send it to my email address here and I will send you a copy of the PowerPoint.

Also at the bottom of this last slide is ADA self-evaluation.com and ADA transition plans.com. These are additional PowerPoint and online training we are making available for people that want really deep dives into those topics. Self-evaluations we hope to have out in the next month or so, the transition plan is already archived.

MODERATOR: Thank you so much James. For the questions we were unable to get to this afternoon, those questions will be sent to our presenter to answer and we will disseminate those out to our attendees. Again we would like to thank everyone for attending the second day of the 2023 virtual ADA Conference for State and Local Governments. We will resume conference sessions tomorrow with session 3A at 10 AM Eastern Time. Thank you everybody and have a great afternoon.

Session ended.

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