REVIEW OF LOS ANGELES UNIFIED SCHOOL DISTRICT CURRENT AND HISTORICAL EFFORTS TO MEET THE REGULATIONS AND INTENT OF THE AMERICANS WITH DISABILITIES ACT AND REHABILITATION ACT

By James de Jong, All Access Consulting October 22, 2015

I reviewed the Los Angeles School District (LAUSD) compliance effort with the federal laws covering the rights of citizens with disabilities as mandated by the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The specific statutes of compliance are listed in the Reference Section at the end of this report. This is not the entirety of the ADA but the relative statutes for this analysis with reference to the Rehabilitation Act. I reviewed the following documents shared with me regarding the effort presented by the LAUSD and included research of my own looking particularly at the LAUSD website and numerous settlement agreements between the US Department of Justice and the Department of Education-Office of Civil Rights:

1- District Plan for the Employment and Education Rights of the Handicapped- May 1978
2- ADA Transition Plan Update 8-14-15
3- 150323 1st El Programmatic Barrier Removal Plan-xl spreadsheet
4- Schedule of Architectural Barrier Removal in Compliance with ADA Title II 2015-2030

But, before we explore the specific documents and their implications let us familiarize or review the major Titles of the Americans with Disabilities Act and briefly summarize certain factors pertaining to the ADA as it relates to the LAUSD. The cited definitions are taken directly from the US Department of Justice ADA Regulations.

ADA Title 1 –Employment (not to be discussed in this report specifically)

ADA Title 2 -This provision specifies that the regulation applies to all services, programs, and activities provided or made available by public entities, as that term is defined in §35.104. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in federally assisted programs and activities, already covers those programs and activities of public entities that receive Federal financial assistance.

Title II of the ADA extends this prohibition of discrimination to include all services, programs, and activities provided or made available by State and local governments or any of their instrumentalities or agencies, regardless of the receipt of Federal financial assistance. It clearly states in 28CFR Part 35.130(7) “A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability…” and goes on in 8(d)” A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of the qualified individuals with disabilities.”

Title 2 entities are required to develop Transition and Self Evaluation plans noting barriers to accessibility and the plan to remove and/or eliminate said barriers within a reasonable timeframe in the Transition Plan and noting intentional or unintentional policies and practices which discriminate against people with disabilities, their acquaintances, and others assumed to have a disability. This was first mandated under the Rehabilitation Act and reiterated under the ADA in 1990 and again in the ADA Amendments Act of 2008.

These Plans constitute 2 of the 5 mandates a Title entity shall undertake. The others are to appoint an ADA Coordinator, Establish a grievance procedure and post notices at all facilities and mediums to inform the public of the prior 4 items.

ADA Title 3 -Place of public accommodation means a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories --
(1) An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor;
(2) A restaurant, bar, or other establishment serving food or drink;
(3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
(4) An auditorium, convention center, lecture hall, or other place of public gathering;
(5) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
(6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;
(7) A terminal, depot, or other station used for specified public transportation;
(8) A museum, library, gallery, or other place of public display or collection;
(9) A park, zoo, amusement park, or other place of recreation;
(10) A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;
(11) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and
(12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.
Title 3 entities are not required to develop Transition or Self Evaluation Plans by the ADA but best practices has seen many undertake such activities under a variety of business culture names.

Interplay or lack of interplay with ADA Titles 2 and 3 – Both titles require the covered entities to design and construct accessible new facilities since 1991 under the ADA and 1978 for Title 2 entities under the Rehabilitation Act. Both titles or the public and private sectors use the same design and building standard. In 1991 it was the Americans with Disabilities Accessible Guidelines and was replaced in 2010 by the Standards for Accessible Design. The scope or guiding usage principles vary but not the content unless specifically stated such as dimensions for young school age children. Relative to this report and the subject matter of LAUSD compliance efforts the scoping varies in the following areas:

-Title 3 entities have an exemption for installing elevators in buildings of less than 3,000 sq. ft. per floor in a two story building. **Title 2 entities, including schools, have no such exemption.**

- Title 3 entities existing structures, facilities or buildings have a "readily achievable" standard for making such accessible. Meaning if they can afford it and it is structurally feasible and does not fundamentally alter the nature of the business, they must do it basing the improvement priorities on entry to entity, access to the goods and services and then other items such as bathroom and drinking fountains.

-Title 2 entities existing structures are under an on-going obligation to become accessible to meet "program access "requirement which was mandated under the Rehabilitation Act as well. "Program access may be achieved by a number of methods. In many situations, providing access to facilities through structural methods, such as alteration of existing facilities and acquisition or construction of additional facilities, may be the most cost efficient method of providing program accessibility. The public entity may, however pursue alternatives to structural changes in order to achieve program accessibility."-- DOJ Technical Assistance Manual.

An example---In a two story building a class may be moved to the first floor to meet the program access requirement but that would be more difficult and costly for a chemistry lab or such to be moved. That is why the US DOJ states above those structural changes are "most cost efficient".

Safe Harbor- Although the program accessibility standard offers public entities a level of discretion in determining how to achieve program access, in the NPRM, the Department proposed an addition to § 35.150 at § 35.150(b)(2), denominated ''Safe Harbor," to clarify that ''[i]f a public entity has constructed or altered elements * * * in accordance with the specifications in either the 1991 Standards or the Uniform Federal Accessibility Standard, such public entity is not, solely because of the Department's adoption of the [2010] Standards, required to retrofit such elements to reflect incremental changes in the proposed standards." 73 FR 34466, 34505 (June 17, 2008). In these circumstances, the public entity would be entitled to a safe harbor for the already compliant elements until those elements are altered. The safe harbor does not negate a public entity's new construction or alteration obligations. A public entity must comply with the new construction or alteration requirements in effect at the time of the construction or alteration. With respect to existing facilities designed and constructed after January 26, 1992, but before the public entities are required to comply with the 2010 Standards, the rule is that any elements in these facilities that were not constructed in conformance with UFAS or the 1991 Standards are in violation of the ADA and must be brought into compliance. If elements in existing facilities were altered after January 26, 1992, and those alterations were not made in conformance with the alteration requirements in effect at the time, then those alteration violations must be corrected. Section 35.150(b)(2) of the final rule specifies that until the compliance date for the Standards (18 months from the date of publication of the rule), facilities or elements covered by § 35.151(a) or (b) that are noncompliant with either the 1991 Standards or UFAS shall be made accessible in accordance with the 1991 Standards, UFAS, or

the 2010 Standards. Once the compliance date is reached, such noncompliant facilities or elements must be made accessible in accordance with the 2010 Standards.

The safe harbor adopted with this final rule is a narrow one, as the Department recognizes that this approach may delay, in some cases, the increased accessibility that the revised requirements would provide, and that for some individuals with disabilities the impact may be significant. This safe harbor operates only with respect to elements that are in compliance with the scoping and technical specifications in either the 1991 Standards or UFAS; it does not apply to supplemental requirements, those elements for which scoping and technical specifications are first provided in the 2010 Standards

(C) *Safe harbor.* If a public entity has constructed or altered required elements of a path of travel in accordance with the specifications in either the 1991 Standards or the Uniform Federal Accessibility Standards before March 15, 2012, the public entity is not required to retrofit such elements to reflect incremental changes in the 2010 Standards solely because of an alteration to a primary function area served by that path of travel.

Consultants Note- Essentially, this states that if an entity made a compliant modification to a structure or element within a building according to the Americans with Disability Act Accessible Guidelines (ADAAG), the standard used from 1991-2010, then that element or structure is in compliance until such time as an element or structure is modified, replaced or altered and then it must meet the 2010 Standards for Accessible Design.

The UFAS, Uniformed Federal Accessible Standards, was an option for Title 2 entities to use rather than the ADAAG during the 1991 – 2010 period but was rarely incorporated by any Title 2 entities and had very little variance from the ADAAG. It predominantly was used for housing as ADAAG did not address that building type as detailed as UFAS.

Why are the California Building Standards Code (Title 24) requirements more stringent than the federal Americans with Disabilities Act (ADA) requirements?

The regulations in California were developed by the Division of the State Architect, Access Compliance, eight years before the United States Congress passed the ADA. The current California Building Standards Code was written to provide a single code which would meet all of the most stringent requirements of the original California Building Standards Code, as well as the 1991 Federal Fair Housing Amendments Act and the Americans with Disabilities Act Accessibility Guidelines.

Consultant Note- the federal accessibility standards are a minimum level of compliance in the built environment. An entity may choose to make a building or facility more accessible and it is not a violation. In California the entity must choose the design standard which provides the greatest access and opportunity for a person with a disability. If the federal government reviews such a structure for compliance it will use the Federal standard in place at the time of the construction. The main difference with the California code and the Federal code is in enforcement and penalties not in design and element dimensions.

1- District Plan for the Employment and Education Rights of the Handicapped- May 1978 –The plan lays out all school personnel functions and estimated human resource cost guesstimates, yet it fails to demonstrate any action taken. This is clearly demonstrated on page 21 of the report entitled "Reporting Period #3- July, 1979 through June, 1980"

The report states "A detailed estimate of total division needs during Reporting Period #3 cannot be made at this time since the nature and scope of authorized modifications of District facilities have not been determined."

The report identified above is two years and two months after the original plan has been created yet it appears that no modification of inaccessible features has occurred. This is not a good faith effort and demonstrates a failure to comply with the law in place at that time, the Rehabilitation Act, and the District's own plan developed for compliance. The LAUSD claims to have taken actions to fix, modify or remodel inaccessible physical features yet no documents have been offered or supplied to prove that claim. Therefore, the LAUSD failed to comply with the Rehabilitation Act requirements from 1978 until 1990 while accepting federal funds which required a signature at the contract stage indicating compliance with the Rehabilitation Act. This continues in the years of 1990 until the present but now under the two Civil Rights law requiring accessibility and administrative actions which are The Rehabilitation Act and The Americans with Disabilities Act. Please see the Reference Glossary at the end of this report for copies of these laws and regulations covering these actions or inactions.

2- ADA Transition Plan Update 8-14-15 - This plan addresses the methodology to be used by the LAUSD to remove barriers, the responsible personnel, states a designated person will oversee this operation, establishes the fact that notices shall be posted at all facilities owned by the LAUSD listing the ADA Compliance Manager and contact information, , states a grievance procedure will be in place, discusses potential methodologies, accessible reviews of facilities, the need for compliance in new construction and alterations, and coordination with appropriate outside agencies such as public works. The document goes on to discuss the need for an accessible website with updated information on program access compliance and accessible paths of travel along with contact information for the ADA Compliance Manager. It covers all the areas required by ADA Title 2 for public entities in a broad manner. But, it does not describe a methodology for prioritizing modifications, except in the broadest sense utilizing school level (ES, MS, HS and Pre K) or priorities within a particular facility (path to doorway etc.). A current inventory of students and a needs assessment of the public in particular areas of the District

would certainly assist in pinpointing priority areas. Additionally, when examining the few sites and elements reviewed on the spreadsheet it is very hard to determine how the mentioned priorities interface and their designation system lacks coordination or input to a masterplan. Again, one must ask if the public and students had any input to the priorities/designations or if they could even be understood by the affected class of citizens.

Essentially it lists the requirements for the Transition Plan required by the ADA but fails to address the Self Evaluation requirements of the ADA which mandates that all policies and procedures be examined to ensure that none discriminate intentionally or unintentionally against citizens with disabilities.

It mentions input to the required plans from interested parties, but fails to indicate if those parties include the general public, disability organizations and citizens with disabilities including the parents of students with disabilities. This is mandated by the Rehabilitation Act and the Americans with Disabilities Act. Please see the Reference Glossary at the end of this report for exact legal language. Further, no record of that input is available nor is any of the comments, recommendations or a list of the interested parties provided by LAUSD. This required input must be included to develop a comprehensive and logical plan of action to be delineated in the Transition and Self Evaluation report. The obligation does not end with a single point of input but shall be included in any and all revisions or annual updates to effectively establish priorities and a logical plan or adaptation to said plan. It appears the prioritizing of actions to be taken by LAUSD is being determined solely by the school personnel and its consultants. This is a major omission as the public shall have input at this stage for comprehensive plans required by the ADA and its regulations. An example of the interplay of the two required plans may be seen in the following example. Chemistry lab is offered but is located on the second floor of a building without vertical access. A student who uses a wheelchair for mobility needs to take the chemistry lab class so policy (Self Evaluation Plan) must state that the class will be moved to the accessible first floor allowing participation by this student. But, to do so will require rewiring, movement of gas flow devices and connections, apparatus etc.. If this were noted as a potential issue in the original design of the building the chemistry lab could have been located on the first floor avoiding this situation. Or, if it were so located in an older building an elevator or conveyance to gain vertical access should have been noted in the Transition Plan. Either way forward planning by examining the big picture and interplay between the two plans would have allowed appropriate budgeting to rectify the inaccessibility or remodeling to place this unique classroom on an accessible floor. Remember this requirement began in 1978 under the Rehabilitation Act and was reinforced under the 1990 ADA. By now in 2015 this situation should have rectified.

In searching the LAUSD website I could not easily find the grievance procedure or the contact information for the ADA Compliance Manager. It was stated in the Transition Plan that this would be available and in today’s world of the internet it is mandatory for any good faith effort. This is unacceptable and under Section 508 of the Rehabilitation Act must be accessible so visually impaired individuals may access it!

Yet, I was able to find the Board minutes indicating the ADA Manager position had been approved in November of 2014 at a salary of around $100,000.00.

The website itself failed my initial review for accessibility but that being beyond my charge for this report would recommend a professional, experienced individual do so.

I must comment that considering the fact that the ADA passed in 1990 and the ADA Amendments Act passed in 2008 coupled with the Chanda Smith Modified Consent Decree (MCD) of 2003, the LAUSD has demonstrated a lack of urgency or even a failure to comply timely with the ADA and the MCD.

3-150323 1st El Programmatic Barrier Removal Plan-xl spreadsheets – these spreadsheets are utilized in facility reviews to denote ADA Accessible and California Code Accessibility deficiencies or failures to comply with the two prevailing accessibility standards and code. Using a coding system developed by the ADA facility consultants the documents signify the building, room, the facility type and the accessibility deficiency, the standard or code citation, the severity of deficiency, location within site, possible solution, use type, US DOJ priority, pictures (if available) and possible solutions as well as surveyor notes. It adds a section for what entity is responsible for fixing/paying and the estimated date of removing or fixing the barrier. The program itself and the spreadsheets are a good tool for this purpose. But, in reviewing the spreadsheets shared with me, I was only able to view 427 items listed. This is a beginning but only represents 1 building of the nearly 1,000 or more buildings and facilities owned and operated by LAUSD. Additionally, all the estimated dates for fixing the inaccessible features were March 31, 2017. The only conclusion I can arrive at is that after 15 years of the ADA and 12 years after the Chanda Smith Modified Consent Decree, the LAUSD plans to wait an additional 18 months or more until they will even begin to remove any barriers. This is not demonstrating an attitude of desired compliance or good faith effort. Plus it seems that the facility review of all the sites will take several more years to complete. The facility review program being utilized is a good tool but it requires experienced, trained individuals to perform the task to appropriately and adequately view the sites/facilities/elements and to accurately record it. But, it is not the fault of the consultants and/or tools but the management of this operation by the LAUSD. There are items noted which would be considered “low hanging fruit” which could be immediately changed, altered or replaced. An example would be a floor mat at an entryway. This item could be eliminated or replaced by a mat which would meet the 2010 ADA Standards of firm and slip resistant and be anchored down to prevent slippage of a person or movement of the mat. It is low cost in materials and human resources. Instead the report indicates that every item violating the 2010 ADA Standards be done in 2017. This is an illogical approach and impossible to defend when easily fixed items such as the one noted above could be fixed and compliant today or soon in the future.

Another very important aspect of accessibility which was contained in the 1991 ADAAG and regulations and reinforced exactly the same in the 2010 ADA Standards is regarding signage. The US DOJ Title 2 regulations state in 35.163(b) “A public entity shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance to a facility.” This clearly becomes a top priority and should be accomplished by now. Yet, if we follow the priority coding system this may not occur for certain school buildings until 2030. A person with a mobility impairment or other disability does not need to waste limited energy by wheeling or walking all over the grounds of a school to find the accessible entrance when a simple sign cannot prevent this from occurring and is another example of low hanging fruit which LAUSD can and should do immediately!

Arrival points to a facility must have an accessible path of travel to the facility. People may arrive at school by walking the sidewalks, being dropped off by a school bus, or disembarking from a public transit vehicle or by a private vehicle. Each of these methods of arrival may have a different location on the property site but each entry point must have an accessible path of travel to the facility. This is omitted from the survey. Also, there are specific standards for vehicular drop off points requiring accessibility in the form of no curbs or at the least curb ramps.

Parking lots are required to have a percent of all spaces offered to be accessible. Accessible parking spaces are split into two types allowing auto and van accessible spaces. The parking space size may be the same but the access aisle next to the space required by the standards varies from 60” to 96”. This requirement is for each parking lot on the site serving the facility including employee lots. I do not see this included in the survey I reviewed.

The listed severity code references a DOJ recommendation for Title 3 entities but I have never seen it used for a Title 2 entity. Title 2 entities are stated to be held to a higher standard than private entities most likely due to the prior years of obligation under the Rehabilitation Act and the fact they are operated by citizen funds and are meant to represent and serve all citizens regardless of race, religion, sexual orientation, gender, age and disability. So, when one applies that criterion to a Title 2 multi-facility transition plan it may cause confusion, divert activity away from an immediate citizen need, and cannot be looked at in isolation of the overall LAUSD responsibility to provide program access while meeting individual students needs under IDEA (Individuals with Disabilities Education Act). In the aggregate of all buildings being surveyed what will determine which entryway or element is fixed first. What and how was it decided which facilities would be surveyed first. If I live in the area of school Y and it is not slated to be examined or made accessible until I graduate or my child does, what do I do as a person with a disability? So, this severity code only relates to a single structure rather than the overall LAUSD Transition Plan. Its use to determine the urgency of certain fixes is lacking data or the big picture to be of any meaning. Again, here is where citizen involvement would assist this process a great deal by identifying citizen need and experiences. The process screams for subjective and

objective information to marry in creating a truly responsive and responsible plan. Referencing state statute is not germane to a federal review.

Finally, I see no attempt to review playgrounds, play equipment, and paths of travel to such areas which are clearly covered by the 2010 ADA Standards.

4-Schedule of Architectural Barrier Removal in Compliance with ADA Title II 2015-2030

It is a plan or schedule for inspecting buildings and facilities but not a plan which includes the multitude of facilities and buildings under the control or ownership of the LAUSD. Maintenance facilities, administration, sport facilities and other building types are not listed anywhere on the plan yet are required to be accessible under the ADA and Rehabilitation Act.

The individual building assessments must be melded into a complete District-wide Transition Plan including all buildings, facilities, playgrounds, sporting facilities, and public rights of ways. This allows for cost effective purchases in bulk if many facilities require the same element or in purchasing services. Let us assume each school needs 5 new lever handles for door access. Buying one at a time is expensive. Buying 5 times 1000 facilities means your purchase price will decrease dramatically for individual item. Concrete material purchase and personnel involved or asphalt is best utilized when a comprehensive plan is in place with the entire picture not just 30 buildings. The approach is wasteful and demonstrates a complete lack of concern or showing a good faith effort in compliance.

Considering the many years since the enactment of the Rehabilitation Act and the passage of the ADA 25 years ago it is very weak and unambitious plan. Generations of students, parents, and the general public are being subjugated to discrimination while this slowly evolves over the next 15 years. It is inexcusable for a governmental entity to first ignore the mandates of the Rehabilitation Act, ignoring the ADA followed by ignoring the Consent Decree of the Courts while failing to acknowledge the immediacy of addressing the Civil Rights of millions of citizens. An education institution or district should be leading the efforts to ensure the equality of civil rights implementation as an example and teaching entity of a community. Unfortunately, this timetable with missing data as stated above and a timeframe of review which extends to the average length of a student in a public school system, is woefully inadequate an egregious denial of Civil Rights to persons with disabilities and their families and friends.

Conclusion – The Los Angeles Unified School District has demonstrated an historical avoidance or non-compliance approach to complying with the Rehabilitation Act, Section 504 as demonstrated by their poor and incomplete document of May, 1978. I cannot even label it a compliance plan as it is a management outline and as one can see in their own document the LAUSD admits there were no definitive actions of removing barriers ever taken, as stated within this document (page 21) and as previously delineated.

The LAUSD appeared to do nothing, or at best, documented no action for almost 35 years. During that period the Americans with Disabilities Act was signed into law in 1990, requiring Transition and Self Evaluation plans to be developed by entities such as the LAUSD within a year (1991). In 2003 the Chanda Smith Modified Consent Decree was signed and agreed to by the LAUSD Board of Education committing to specific facility accessibility improvement obligations. In 2008, the ADA Amendments Act (ADAAA) was enacted by Congress and the President of the United States resulting in the 2010 Standards for Accessible Design and requirements for Title 2 entities to upgrade or redo their Transition and Self Evaluation plans. Again, LAUSD ignored this mandate until August of 2015 when we finally see an updated Transition Plan or in this reviewer eyes the first Transition Plan. I state that because I can only be aware of the documents presented to me.

Fifteen years after the ADA was enacted, 12 years after the MCD, and 7 years after the ADAAA the LAUSD finally employs an ADA Manager (which I only know through secondary sources as I did not see the name listed anywhere), develops a Transition Plan, and obviously hires an ADA Consulting firm to do facility reviews but fails to do a Self-Evaluation Plan, announce its Grievance Procedure prominently on its website and the contact information and name of the ADA Manager. Couple this with failing to meet website accessibility standards and again we see a less than good faith effort. Complicating any compliance activity is unclear funding streams for implementing the accessibility improvements. It is as unknown as the priority system masterplan of implementation which LAUSD plans to utilize. Finally, the few facility sites surveyed to date, which appear to be less than 2% of their total buildings and facilities, are not to be fixed or implemented until March of 2017 according to their document.

While I will state that the present facility review tool being utilized shows progress there are potential pitfalls as listed above and the delayed actions, or lack of legal appropriate actions in the past casts a serious shadow of doubt upon LAUSD's potential for success. Failure to provide a comprehensive, timely plan complying with federal law which guarantees access to programs, services and activities to citizens with disabilities by LAUSD is egregious. This is compounded by their failure to address and/or implement the Self-Evaluation plan, accessible communication access and ignoring citizen input and involvement in a pro-active manner.

Summary Scorecard-

1-Designate an ADA Coordinator/ Manager- possibly done now but very late in process and cannot locate this person through electronic means

2- Provide notice of ADA requirements (Manager and Complaint Process)- stated to be placed at all facilities but I cannot personally verify but it was not available electronically.

3-Establish a grievance Procedure- nowhere to be found in the documents or electronically

4-Conduct a Self-Evaluation- not mentioned in documents nor found anywhere searching electronically

5-Develop a Transition Plan- being started very late in the evolution of the ADA and moving slowly with incomplete approach and numerous questions stated above

6-Electronic Access (Rehab Act Sec 508)—no mention and failed through a quick scan

7- Good Faith Effort- slow to begin anything and incomplete- therefore based on number of years passed since ADA enactment and MCD- **FAILING!!!**

Relative Laws and/or sections Reference for LAUSD Compliance Report- October 22, 2015

Rehabilitation Act of 1973 and Amendments

The Rehabilitation Act is a civil rights law. It was the first civil rights legislation in the United States designed to protect individuals with disabilities from discrimination based on their disability status. The nondiscrimination requirements of the law apply to employers and organizations that receive federal financial assistance. This statute was intended to prevent intentional or unintentional discrimination based on a person's disability. Included as an amendment to the Rehabilitation Act of 1973, the message of this section is concise; Section 504, 29 U.S.C.§794, states:

> No otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Therefore, programs receiving federal funds may not discriminate against those with disabilities based on their disability status. All government agencies, federally-funded projects, K-12 schools, postsecondary entities (state colleges, universities, and vocational training schools) fall into this category.

104.6 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program or activity when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program or activity had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request:

(i) A list of the interested persons consulted,

(ii) A description of areas examined and any problems identified, and

(iii) A description of any modifications made and of any remedial steps taken.

104.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

104.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the responsible employee designated pursuant to 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods

of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

Title II Regulations
Revised Final Title II Regulation with Integrated Text

This revised title II regulation integrates the Department's new regulatory provisions with the text of the existing title II regulation that was unchanged by the 2010 revisions.

Part 35 Nondiscrimination on the Basis of Disability in State and Local Government Services
(as amended by the final rule published on September 15, 2010)

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12134.

Subpart A—General

§ 35.101 Purpose.

The purpose of this part is to effectuate subtitle A of title II of the Americans with Disabilities Act of 1990 (42 U.S. C. 12131), which prohibits discrimination on the basis of disability by public entities.

§ 35.102 Application.

- (a) Except as provided in paragraph (b) of this section, this part applies to all services, programs, and activities provided or made available by public entities.
- (b) To the extent that public transportation services, programs, and activities of public entities are covered by subtitle B of title II of the ADA, they are not subject to the requirements of this part.

§ 35.103 Relationship to other laws.

- (a) *Rule of interpretation.* Except as otherwise provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 or the regulations issued by Federal agencies pursuant to that title.
- (b) *Other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

- **35.104 Definitions.**
- For purposes of this part, the term—
- *1991 Standards* means the requirements set forth in the ADA Standards for Accessible Design, originally published on July 26, 1991, and republished as Appendix D to 28 CFR part 36.
- *2004 ADAAG* means the requirements set forth in appendices B and D to 36 CFR part 1191 (2009).
- *2010 Standards* means the 2010 ADA Standards for Accessible Design, which consist of the 2004 ADAAG and the requirements contained in § 35.151.
- *Act* means the Americans with Disabilities Act (Pub. L. 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611).

Public entity means—

- (1) Any State or local government;
- (2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government;

§ 35.105 Self-evaluation.

- (a) A public entity shall, within one year of the effective date of this part, 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.
- (b) 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.
- (c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:
    - (1) A list of the interested persons consulted;
    - (2) A description of areas examined and any problems identified; and
    - (3) A description of any modifications made.

- (d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self- evaluation.

§ 35.106 Notice

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 35.107 Designation of responsible employee and adoption of grievance procedures

- (a) *Designation of responsible employee.* A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.
- (b) *Complaint procedure*. A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

§ 35.150 Existing facilities

- (a) *General.* A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—
    - (1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;
    - (2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or
    - (3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with §35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding

and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

- (b) *Methods.*
    - (1) *General.* A public entity may comply with the requirements of this section through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall meet the accessibility requirements of § 35.151. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.
    - (2)
        - (i) *Safe harbor*. Elements that have not been altered in existing facilities on or after March 15, 2012, and that comply with the corresponding technical and scoping specifications for those elements in either the 1991 Standards or in the Uniform Federal Accessibility Standards (UFAS), Appendix A to 41 CFR part 101–19.6 (July 1, 2002 ed.), 49 FR 31528, app. A (Aug. 7, 1984) are not required to be modified in order to comply with the requirements set forth in the 2010 Standards.
        - (ii) The safe harbor provided in § 35.150(b)(2)(i) does not apply to those elements in existing facilities that are subject to supplemental requirements (*i.e.*, elements for which there are neither technical nor scoping specifications in the 1991 Standards). Elements in the 2010 Standards not eligible for the element-by-element safe harbor are identified as follows—
- (c) *Time period for compliance*. Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made within three years of January 26, 1992, but in any event as expeditiously as possible.
- (d) *Transition plan*.

- (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. 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. A copy of the transition plan shall be made available for public inspection.
- (2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.
- (3) The plan shall, at a minimum—
    - (i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
    - (ii) Describe in detail the methods that will be used to make the facilities accessible;
    - (iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
    - (iv) Indicate the official responsible for implementation of the plan.
- (4) If a public entity has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this paragraph (d) shall apply only to those policies and practices that were not included in the previous transition plan.

§ 35.151 New construction and alterations

- (a) *Design and construction.*
    - (1) Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and

usable by individuals with disabilities, if the construction was commenced after January 26, 1992.

- (2) *Exception for structural impracticability.*
  - (i) Full compliance with the requirements of this section is not required where a public entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.
  - (ii) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.
  - (iii) If providing accessibility in conformance with this section to individuals with certain disabilities (*e.g.*, those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities, (*e.g.*, those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

- (b) *Alterations.*
  - (1) Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.
  - (2) The path of travel requirements of § 35.151(b)(4) shall apply only to alterations undertaken solely for purposes other than to meet the program accessibility requirements of § 35.150.
  - (3)
    - (i) Alterations to historic properties shall comply, to the maximum extent feasible, with the provisions applicable to historic properties in the design standards specified in § 35.151(c).
    - (ii) If it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the building or facility,

alternative methods of access shall be provided pursuant to the requirements of § 35.150.

- (4) *Path of travel.* An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.
    - (i) *Primary function.* A "primary function" is a major activity for which the facility is intended. Areas that contain a primary function include, but are not limited to, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public entity using the facility are carried out.
        - (A) Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, and corridors are not areas containing a primary function. Restrooms are not areas containing a primary function unless the provision of restrooms is a primary purpose of the area, *e.g.*, in highway rest stops.
        - (B) For the purposes of this section, alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of or access to an area containing a primary function.
    - (ii) A "path of travel" includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.
        - (A) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.

- (B) For the purposes of this section, the term "path of travel" also includes the restrooms, telephones, and drinking fountains serving the altered area.
- (C) *Safe harbor.* If a public entity has constructed or altered required elements of a path of travel in accordance with the specifications in either the 1991 Standards or the Uniform Federal Accessibility Standards before March 15, 2012, the public entity is not required to retrofit such elements to reflect incremental changes in the 2010 Standards solely because of an alteration to a primary function area served by that path of travel.

- (iii) *Disproportionality.*
  - (A) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20 % of the cost of the alteration to the primary function area.
  - (B) Costs that may be counted as expenditures required to provide an accessible path of travel may include:
    - *(1)* Costs associated with providing an accessible entrance and an accessible route to the altered area, for example, the cost of widening doorways or installing ramps;
    - *(2)* Costs associated with making restrooms accessible, such as installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls;
    - *(3)* Costs associated with providing accessible telephones, such as relocating the telephone to an accessible height, installing amplification devices, or installing a text telephone (TTY); and

- *(4)* Costs associated with relocating an inaccessible drinking fountain.

- (iv) *Duty to provide accessible features in the event of disproportionality.*
  - (A) When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.
  - (B) In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access, in the following order—
    - (*1*) An accessible entrance;
    - (*2*) An accessible route to the altered area;
    - (*3*) At least one accessible restroom for each sex or a single unisex restroom;
    - (*4*) Accessible telephones;
    - (*5*) Accessible drinking fountains; and
    - (*6*) When possible, additional accessible elements such as parking, storage, and alarms.
- (v) *Series of smaller alterations.*
  - (A) The obligation to provide an accessible path of travel may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.
  - (B)
    - *(1)* If an area containing a primary function has been altered without providing an accessible path of

travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alterations to the primary function areas on that path of travel during the preceding three-year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.

- *(2)* Only alterations undertaken on or after March 15, 2011, shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alterations

- §35.105 Self-evaluation.
- Section 35.105 establishes a requirement, based on the section 504 regulations for federally assisted and federally conducted programs, that a public entity evaluate its current policies and practices to identify and correct any that are not consistent with the requirements of this part. As noted in the discussion of §35.102, activities covered by the Department of Transportation's regulation implementing subtitle B of title II are not required to be included in the self-evaluation required by this section.
- Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with disabilities, which has promoted both effective and efficient implementation of section 504. The Department expects that it will likewise be useful to public entities newly covered by the ADA.
- All public entities are required to do a self-evaluation. However, only those that employ 50 or more persons are required to maintain the self- evaluation on file and make it available for public inspection for three years. The number 50 was derived from the Department of Justice's section 504 regulations for federally assisted programs, 28 CFR 42.505(c). The Department received comments critical of this limitation, some suggesting the requirement apply to all public entities and others suggesting that the number be changed from 50 to 15. The final rule has not been changed. Although many regulations implementing section 504 for federally assisted programs do use 15 employees as the cut-off for this record-keeping requirement, the Department believes that it would be inappropriate to extend it to those smaller public entities covered by this regulation that do not receive Federal financial assistance. This approach has the benefit of minimizing paperwork burdens on small entities.
- Paragraph (d) provides that the self-evaluation required by this section shall apply only to programs not subject to section 504 or those policies and practices, such as those involving communications access, that have not already been included in a self-

evaluation required under an existing regulation implementing section 504. Because most self-evaluations were done from five to twelve years ago, however, the Department expects that a great many public entities will be reexamining all of their policies and programs. Programs and functions may have changed, and actions that were supposed to have been taken to comply with section 504 may not have been fully implemented or may no longer be effective. In addition, there have been statutory amendments to section 504 which have changed the coverage of section 504, particularly the Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (1988), which broadened the definition of a covered "program or activity."

- Several commenters suggested that the Department clarify public entities' liability during the one-year period for compliance with the self-evaluation requirement. The self-evaluation requirement does not stay the effective date of the statute nor of this part. Public entities are, therefore, not shielded from discrimination claims during that time.
- Other commenters suggested that the rule require that every self-evaluation include an examination of training efforts to assure that individuals with disabilities are not subjected to discrimination because of insensitivity, particularly in the law enforcement area. Although the Department has not added such a specific requirement to the rule, it would be appropriate for public entities to evaluate training efforts because, in many cases, lack of training leads to discriminatory practices, even when the policies in place are nondiscriminatory.
- §35.106 Notice.
- Section 35.106 requires a public entity to disseminate sufficient information to applicants, participants, beneficiaries, and other interested persons to inform them of the rights and protections afforded by the ADA and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe a public entity's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio. In providing the notice, a public entity must comply with the requirements for effective communication in §35.160. The preamble to that section gives guidance on how to effectively communicate with individuals with disabilities.
- §35.107 Designation of responsible employee and adoption of grievance procedures.
- Consistent with §35.105, Self-evaluation, the final rule requires that public entities with 50 or more employees designate a responsible employee and adopt grievance procedures. Most of the commenters who suggested that the requirement that self-evaluation be maintained on file for three years not be limited to those employing 50 or more persons made a similar suggestion concerning §35.107. Commenters recommended either that all public entities be subject to section 35.107, or that "50 or more persons" be changed to "15 or more persons." As explained in the discussion of §35.105, the Department has not adopted this suggestion.
- The requirement for designation of an employee responsible for coordination of efforts to carry out responsibilities under this part is derived from the HEW regulation implementing section 504 in federally assisted programs. The requirement for designation of a particular employee and dissemination of information about how to locate that employee helps to ensure that individuals dealing with large agencies are able to easily find a responsible person who is familiar with the requirements of the Act and

this part and can communicate those requirements to other individuals in the agency who may be unaware of their responsibilities. This paragraph in no way limits a public entity's obligation to ensure that all of its employees comply with the requirements of this part, but it ensures that any failure by individual employees can be promptly corrected by the designated employee.

- Section 35.107(b) requires public entities with 50 or more employees to establish grievance procedures for resolving complaints of violations of this part. Similar requirements are found in the section 504 regulations for federally assisted programs (*see*, *e.g.*, 45 CFR 84.7(b)). The rule, like the regulations for federally assisted programs, provides for investigation and resolution of complaints by a Federal enforcement agency. It is the view of the Department that public entities subject to this part should be required to establish a mechanism for resolution of complaints at the local level without requiring the complainant to resort to the Federal complaint procedures established under subpart F. Complainants would not, however, be required to exhaust the public entity's grievance procedures before filing a complaint under subpart F. Delay in filing the complaint at the Federal level caused by pursuit of the remedies available under the grievance procedure would generally be considered good cause for extending the time allowed for filing under §35.170(b).

- **Title II Regulations**
  2010 Guidance and Section-by-Section Analysis
- **Appendix A to Part 35—Guidance to Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services**

Although the language of the ADA does not explicitly mention the Internet, the Department has taken the position that title II covers Internet Web site access. Public entities that choose to provide services through web-based applications (*e.g.*, renewing library books or driver's licenses) or that communicate with their constituents or provide information through the Internet must ensure that individuals with disabilities have equal access to such services or information, unless doing so would result in an undue financial and administrative burden or a fundamental alteration in the nature of the programs, services, or activities being offered. The Department has issued guidance on the ADA as applied to the Web sites of public entities in a 2003 publication entitled, *Accessibility of State and Local Government Web sites to People with Disabilities*, (June 2003) available at *http://www.ada.gov/websites2.htm*. As the Department stated in that publication, an agency with an inaccessible Web site may also meet its legal obligations by providing an alternative accessible way for citizens to use the programs or services, such as a staffed telephone information line. However, such an alternative must provide an equal degree of access in terms of hours of operation and the range of options and programs available. For example, if job announcements and application forms are posted on an inaccessible Web site that is available 24 hours a day, seven days a week to individuals without disabilities, then the alternative accessible method must also be available 24 hours a day,

7 days a week. Additional guidance is available in the Web Content Accessibility Guidelines (WCAG), (May 5, 1999) available at *http://www.w3.org/ TR/WAI–WEBCONTENT* (last visited June 24, 2010) which are developed and maintained by the Web Accessibility Initiative, a subgroup of the World Wide Web Consortium (W3C®).