



Powering Independent Living

Accessibility Regulations that Impact Libraries

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INTRODUCTION

Since my employ with Alpha One in January of 1992, which coincides with the effective date of most provisions of the Americans with Disabilities Act, I have become more and more aware of the sporadic acknowledgment and understanding of ADA regulations and guidelines as they apply to municipal and educational facilities, including libraries. It is my observation that most government officials and library administrators do not appreciate the far reaching implications of the Title II regulations on existing library facilities nor the flexibility allowed in meeting "program accessibility" and patron "accommodations" required by the ADA provisions. Obligations under Section 504 of the Rehabilitation Act to improve accessibility, in place since 1973 and precursor to the ADA, have been [for the most part] ignored until faced with an impending complaint, lawsuit, or an even more serious consequence of loss of funding. I do acknowledge, however, that in most cases, this "lesser-faire" approach common among administrators is due to ignorance or mis-information about the Section 504, ADA and State of Maine accessibility regulations embodied in the Maine Human Rights Act.

Having worked extensively with accessibility related regulations since 1980, [there are many] it is my contention that disability awareness training and a good basic knowledge of the regulatory requirements go a long way in preventing complaints and in some cases, expensive lawsuits. As long as good communication and the willingness to "reasonably accommodate" are sincerely implemented, problems are few and the ultimate goal of "integrating" persons with disabilities into available programs to the highest level achievable is usually accomplished, although compromises are usually part of the equation and solution.

The purpose of this brief is to review, identify and document regulatory requirements that are typical to public and private library facilities in local municipalities and in school systems throughout the State of Maine that are required to meet obligations under the Americans with Disabilities Act (ADA), and other current access regulations, if applicable. It is also my intent to identify other applicable non-structural requirements mandated by the various regulations. In researching library facilities, the following regulations were reviewed and determined to be applicable: 1) the Maine Human Rights Act and, 2) Section 504 of the Rehabilitation Act of 1973, and 3) the Americans with Disabilities Act.



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SUMMARY of APPLICABLE REGULATIONS

In researching current accessibility guidelines, the following regulations were found to be applicable to public and private libraries, depending on the source of funding:

- Section 504 of the Rehabilitation Act of 1973 for federally funded libraries; referenced standards are the Uniform Federal Accessibility Standards (UFAS)
- The Maine Human Rights Act [MHRA], Title 5, Sub-Chapter V, Public Accommodations, Paragraph 4591. Equal Access to Public Accommodations, and 4592. Unlawful Public Accommodations, pp. 27 thru 29; paragraph 4593. Existing Facilities, p. 30; referenced standards are ANSI and the ADA Accessibility Guidelines (ADAAG).....for both publicly and privately funded libraries
- The Maine Human Rights Act [MHRA], Title 5, Sub-Chapter V-B, Educational Opportunity, pp. 45 and 46; for school libraries
- The Americans with Disabilities Act (ADA), Title II State and Local Governments for publicly funded libraries; referenced standards are the ADA Accessibility Guidelines (ADAAG)
- The Americans with Disabilities Act (ADA), Title III Public Accommodations for privately funded libraries; referenced standards are the ADA Accessibility Guidelines (ADAAG)
- Section 106 requirements of the National Historic Preservation Act

REGULATORY IMPACTS on LIBRARY ACCESSIBILITY

Section 504 of the Rehabilitation Act [for libraries receiving federal funding assistance only]

In the event of the receipt of federal funds through any federal or State agency charged with the distribution of federal funding dollars, all libraries have had obligations to improve accessibility under Section 504 of the Rehabilitation Act since 1977. The 504 regulations mandate access to federally assisted programs and services. They do not, however, require affirmative action employment or barrier-free access to every floor or every part of existing buildings. Instead, they require that libraries assure "program accessibility" to people with disabilities. This means that a library's program, when viewed in its entirety, must be equally accessible. This does not mean that every part of a program be accessible, i.e. not every room or area need be fully architecturally accessible if full accessibility is made available nearby or "program accessibility" to persons with disabilities is provided in form of "accommodations". Methods of accommodation include re-scheduling programs, moving programs or events to accessible spaces, specific barrier removal [alterations, if necessary] to meet certain individuals' needs, assignment of aides, or any other methods that result in making its program accessible to individuals with disabilities.

Complying with Section 504

Recipients of federal assistance must comply with requirements of Section 504 of the Rehabilitation Act of 1973 and, for the purposes of this report, any additional requirements imposed by the ADA. While the ADA and Section 504 are very similar statutes that share many terms, concepts and requirements, there are notable differences between them that apply. Variations between these two regulations are outlined in the Title II Technical Assistance Manual that is available from the Dept. of Justice or the N.E. ADA and Accessible IT Center in Boston, MA; 1-800-949-4232.



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The Maine Human Rights Act [for all public, private, and school libraries]

Equal Access to Public Accommodations

Sub-Chapter V of the MHRA guarantees the opportunity to have equal access to places of public accommodation without discrimination because of race, color, sex, physical or mental handicap, religion, age, ancestry or national origin. This opportunity is recognized as and declared to be a civil right.

Unlawful Public Accommodation

The MHRA identifies a library as a place of public accommodation and prohibits discrimination or denial of public accommodations to a person with a physical or mental disability.

For purposes of this subsection, unlawful discrimination includes but is not limited to:

- eligibility criteria that screen out or tend to screen out persons with disabilities
- failure to make reasonable modifications in policies, practices, or procedures
- failure to take steps to ensure no exclusion, denial of services, or segregation of persons with disabilities
- failure to remove architectural and communication barriers that are structural in nature or if not readily achievable, failure to provide alternative methods
- excluding a qualified individual with a disability from participation or being denied the benefits of services, programs or activities
- failure to provide services or programs in an integrated setting
- excluding or discrimination against an individual because of relationship or association
- to use discriminating administrative methods or that perpetuate discrimination

Existing Public Accommodations

MHRA provisions for existing public accommodations and places of employment are subject to MHRA, Title 5, Sub-Chapter V provisions at the time of construction. Projects constructed between September 1, 1974 and January 1, 1982 are subject to Section 4593 of the Act which requires:

- A. At least one accessible public walk that leads directly to a primary entrance
- B. At least one accessible door and/or vestibule at the primary entrance
- C. Accessible rest room facilities with at least one accessible toilet stall 48" wide and 60" deep with grab bars on each side and an accessible toilet
- D. Tactile warnings on doors to hazardous areas
- E. At least one accessible parking space for every 25 spaces available

Projects constructed or altered between January 1, 1982 and January 1, 1996 are subject to Sections 4594 thru 4594D of the Act which require varying compliance provisions, depending on the date of construction. These Sections all reference ANSI design standards for compliance with the MHRA.



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Projects constructed or altered after January 1, 1996 are subject to Section 4594F which references Title III of the ADA and ADAAG [ADA Accessibility Guidelines] for compliance with the MHRA. Per MHRA requirements, libraries would be covered under Municipal Facilities. The following is a synopsis of requirements that apply to all new or altered library facilities including those located in Educational Facilities under Maine Law:

MHRA Requirements for Public Accommodations

- Effective Date: January 1, 1996 [Section 4594-F]
- Referenced Design Standards: ADA Accessibility Guidelines
- Building Types Covered:
 - Places of Public Accommodation
 - Places of Employment
- New Construction: Requires FULL COMPLIANCE*
 - *Includes Additions
- Remodeled/Enlarged/Renovated: Five (5) ADAAG Parts [minimum requirements] before 20% path of travel \$100,000 threshold requires:
 - 1) Accessible Routes (4.3)
 - 2) Doors (4.13)
 - 3) Tactile Warnings (4.29.3)
 - 4) HC Parking
 - 5) Toilet Stall(s) as per ADAAG 30[a]

Less than \$100,000 requires: Max. Extent Feasible; 20% path of travel requirement
- Certification/Inspection: Builder/Owner-A/E certification for projects over \$50,000 to State Fire Marshal and local municipality; not enforced for alterations not needing Fire Marshall review & permit.
- Plan review & permit required for Health Care Facilities, Public Assembly, Business Occupancies, and Mercantile Establishments; in addition to plan review & permit, Municipal inspection & occupancy permit also applies to Restaurants, Motels, Hotels, Inns, State & **Municipal & County Buildings, Elementary & Secondary Schools**
- Voluntary Plan Review available

Educational Opportunity

As part of an educational institution, school libraries cannot discriminate against students with disabilities and must offer the same opportunity in an integrated fashion by using reasonable accommodations, if required.

Subchapter V-B of the Maine Human Rights Act preserves the right to freedom from discrimination in education and guarantees the opportunity for an individual at an educational institution to participate in all educational, counseling, vocational guidance programs and all apprenticeship and on-the-job training programs without discrimination because of sex, a physical or mental disability, national origin, or race. This educational opportunity is recognized and declared to be a civil right.



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On the basis of physical or mental disability, it is unlawful to:

- exclude from participation in, deny the benefits of or subject to discrimination under any educational program or activity;
- deny any person equal opportunity in athletic programs, provided that no educational institution may be required to provide separate athletic programs to serve persons with physical or mental disability;
- deny admission to any institution or program or fail to provide equal access to and information about an institution or program through recruitment; or
- deny financial assistance availability and opportunity.

Title II of The Americans with Disabilities Act [for publicly funded libraries only]

Section 504 is not replaced by the ADA. Despite similarities in both laws, recipients of federal assistance should remember that the ADA compliments "but does not replace" Section 504. Title II of the ADA covers "public entities" such as municipalities and school systems and is intended to apply to all programs, and services provided or operated by state and local governments. Currently, Section 504 of the Rehabilitation Act only applies to programs or activities receiving federal financial assistance. The extension of requirements by the ADA to include *all* state and local programs and activities (Title II) went into effect on January 26, 1992.

Section 201 of the ADA classifies "any department, agency, special purpose district, or other instrumentality of a State or States or local government" as a "public entity" for the purposes of Title II. A public library falls under this classification as part of a "public entity" such as a municipality or school district.

Title II of the **Americans with Disabilities Act** requires that all activities of public entities are subject to the nondiscrimination mandate. "Activities" include all programs, benefits, and functions of public entities. Public entities are also covered in their capacity as employers. Under the ADA, entities must provide "program access" so that all of their programs are readily accessible when viewed in their entirety, unless it would be an undue burden, or result in a fundamental alteration of the program. Entities must make reasonable modifications to policies, remove architectural and communication barriers, and provide auxiliary aids and services to ensure nondiscrimination and program access. **Public entities, however, need not remove physical barriers, as long as they make their programs (or services) accessible to individuals who are unable to use an inaccessible existing facility or space.** Altered or newly constructed public buildings, however, *must* meet the "readily" accessible design standards for new construction.

It should be noted that in a recent regulatory interpretation, the DOJ has ruled that "program accessibility" does not apply to restrooms; these facilities along with other "amenities" are not program related and require more emphasis on physical accessibility in making a facility more accessible to persons with disabilities. It should also be noted that even more emphasis on "full" physical accessibility is expected when an entity has designated specific changes to building elements in the transition plan for that facility(s).

'Since January 26, 1992, all public entities may not discriminate against qualified individuals with disabilities. All facilities, services and communications must be accessible and consistent with the requirements of Section 504 of the Rehabilitation Act of 1973 (if Federal dollars are involved) and/or Title II of the Americans with Disabilities Act. For more specific information on the requirements under Title II, see "Title II Highlights" and the "Title II Technical Assistance Manual", both published by the Department of Justice and available through the regional ADA Technical Assistance Center.'



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The following information on miscellaneous provisions and requirements of Title II are being provided for the purpose of highlighting important provisions and in no way implies that all provisions for compliance under Title II have been addressed in this report. For further and more detailed information on complying with Title II regulations, refer to technical assistance manuals and publications available from Department of Justice.

1. General: All activities, services, and programs of public entities are covered. Unlike section 504 of the Rehabilitation Act of 1973, which covers programs receiving Federal financial assistance, title II of the ADA extends to all the activities of State and local governments whether or not they receive Federal funds.
2. Inclusion: A public entity may not refuse to allow a person with a disability to participate in a service, program, or activity simply because the person has a disability.
3. Integrated Setting: Programs and services must be provided in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.
4. Eligibility Standards: Must be eliminated if they deny individuals with disabilities an equal opportunity to enjoy services, programs, or activities unless "necessary" for the provision of the service, program, or activity. Requiring a driver's license, for example, as the only acceptable means of identification is prohibited.
5. Modifications in Policies, Practices, and Procedures: Reasonable changes in policies, practices, and procedures must be made to avoid discrimination as long as changes do not "fundamentally alter" the program of the public entity.
6. Auxiliary Aids: Auxiliary aids and services must be provided to individuals with vision or hearing impairments or other individuals with disabilities, unless an undue burden would result.
7. Special Benefits: Special benefits beyond those required by the regulation may be provided to individuals with disabilities.
8. Special Charges: Special charges may not be placed on individuals with disabilities to cover the costs of measures necessary to ensure nondiscriminatory treatment, such as making modifications required to provide program accessibility or providing qualified interpreters.
9. Program Accessibility: Programs shall be operated so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities. Persons with disabilities cannot be excluded from services, programs, and activities, however, because buildings are inaccessible. **It is not necessary to remove all physical barriers as long as programs are made accessible to individuals who are unable to use an inaccessible existing facility.** Program accessibility can also be provided by relocating a service to an accessible facility or level, providing an aide or personal assistant or providing services at alternative accessible sites.
10. Physical Barriers: Physical barriers in existing facilities must be removed, if removal is the only alternative to providing program access. If not, alternative methods of providing the services must be offered, if they are readily achievable.



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11. Integrated Programs: Integration of individuals with disabilities into the mainstream of society is fundamental to the purposes of the ADA. Public entities may not provide services or benefits to individuals with disabilities through programs that are separate or different, unless the separate programs are necessary to ensure that the benefits and services are equally effective. Individuals with disabilities, however, have the right to choose to participate in the "regular" program.
12. New Construction and Alterations: All new construction and alterations to public buildings or facilities must be readily accessible.
13. Specific Requirements for Libraries: Additional and specific ADAAG requirements must be considered when removing architectural and communication barriers from libraries. In addition to those general ADA Accessibility Guidelines and Design Standards for barrier removal, Libraries must also comply with Section 8 of the Guidelines.

In libraries, all public areas including reading and study areas, stacks, reference rooms, reserve areas, and special facilities or collections must be accessible. In addition, five percent (5%) of fixed tables or study carrels (or at least one) must be accessible; clearances between tables and other furniture or equipment should be 36" wherever possible. At least one lane [or area] at the check-out area and aisles between catalogs, magazine displays, and stacks must be accessible. The minimum clear aisle width between stacks is 36"; 42" is preferred [see ADAAG Section 8 Libraries, pp. 62 & 63].

Title II Compliance:

General: Compliance requirements for Title II are much more far reaching and specific than will be addressed in this brief. Title II regulations require internal and external reviews and evaluations of policies, practices, programs and activities as they affect disabled and non-disabled employees and the general public. Program accessibility and non-discriminatory employment procedures must also be addressed by all public entities. Title II regulatory and compliance requirements for meeting "program accessibility" are summarized below. The Department of Justice has developed fact sheets and compliance guides that can aid Title II entities in implementing a compliance plan and include self-evaluation guidelines and detailed guidance on planning and making structural modifications. The "ADA Title II Action Guide for State and Local Governments" and "A Self-Evaluation Guide for Public, Elementary, and Secondary Schools" and the "Title II Technical Assistance Manual" can be ordered through the New England ADA and Accessible IT Center, 374 Congress Street, Boston, MA 02210; tel. 1-800-949-4232.

Other Title II Requirements

The following information on miscellaneous provisions and requirements of Title II is being provided and discussed for the purpose of clarification and in no way implies that all provisions for compliance under Title II have been addressed in this brief. Public libraries should consult with the technical assistance manual for further information on complying with all Title II regulations.

Maintenance of Accessible Features:

Public entities must maintain in working order equipment and features of facilities that are required to provide ready access to individuals with disabilities. Isolated or temporary interruptions in access due to maintenance and repair of accessible features are not prohibited.



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Where a public entity must provide an accessible route from parking, for example, the route must remain accessible and not blocked by snow or compromised by ice or water. Similarly, accessible doors must be unlocked when the public entity is open for business.

Employment:

The regulations for Title II, which apply to all state and local government entities, clarify that such entities are prohibited from discriminating in their capacity as employers regardless of the number of persons they employ. Although Title I of the ADA addresses specifically employment practices of private employers of 15 or more employees, the Department of Justice has stated that the Title II nondiscrimination mandate applies to the employment practices of *all* governmental entities, even if they employ fewer than 15 people. Moreover, the employment protections for state and local government employees went into effect on January 26, 1992, along with the rest of the Title II protections.

Telecommunication:

Public entities that substantially communicate by telephone with the public must provide equally effective communication to individuals with disabilities, including hearing and speech impairments. If telephone relay services, such as those required by Title IV of the ADA, are available, these services generally may be used to meet this requirement but TDD's are preferred.

Communications:

A public entity must ensure that its communications with individuals with disabilities are as effective as communications with others. In order to provide equal access, communication support can be provided through two primary means:

- 1) communications that are structural in nature
- 2) auxiliary aids and services

Structural communications include: audible & visual alarms, tactile signage, sound amplification systems, FM broadcast systems. Auxiliary aids and services include: qualified interpreters, written notes, large print brochures, Braille, tactile materials, audio tapes, real-time transcriptions, video text displays, amplified and hearing-aid compatible telephones, assistive listening systems, open or closed captioning and caption decoders, flashing alarms, and text telephones or Telecommunication Devices for the Deaf (TDD's).

Auxiliary aids and services for people with cognitive disabilities are also required and include: readers, communications assistants, use of clear, concise language, repetition, pictograms, and graphic presentation of information.

Title II Administrative Requirements:

General:

Title II requires that public entities take several steps designed to achieve compliance. These include the preparation of a self-evaluation. In addition, public entities with 50 or more employees are required to...



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- 1) Develop a grievance procedure;
- 2) Designate an individual to oversee Title II compliance;
- 3) Develop a transition plan if structural changes are necessary for achieving program accessibility;
- 4) Retain the self-evaluation for three years.

The Self-Evaluation:

All public entities---regardless of size---must conduct a self-evaluation. The self-evaluation is a comprehensive review of the public entity's policies and practices, including communications and employment as well as the policies and practices for all services, programs, and activities. Through the self-evaluation, the public entity must:

- 1) Identify any services, policies or practices that discriminate against or exclude people with disabilities; and
- 2) Modify all services, policies and practices that are discriminatory or exclusionary.

The self-evaluation should have been completed by January 26, 1993. However, public entities have been liable for any discriminatory policies or practices since January 26, 1992. Therefore, if discriminatory policies or practices are identified during the review process, these should be modified immediately.

The regulations require that the public entity provide an opportunity for people with disabilities and other interested individuals or organizations to review and comment on the self-evaluation. However, the Department of Justice strongly encourages governmental entities to involve people with disabilities earlier on in the planning process.

Public entities with fifty or more employees must keep the following self-evaluation information on file and available to the public for at least three years:

- a list of interested persons consulted about the self-evaluation
- a description of the areas examined and any problems identified
- a description of any modifications made

Developing a Transition Plan:

Public entities with fifty or more employees must develop a transition plan when structural changes to existing facilities are necessary in order to make a program, service, or activity accessible to people with disabilities. However, all public entities---regardless of size---may find a transition plan useful whenever structural changes are required to bring the organization into compliance.

The transition plan is a written plan describing the structural changes necessary to bring the existing facilities into compliance with Title II. The regulations require that, at a minimum, the transition plan:

- identify physical obstacles that limit the accessibility of the public entity's programs, services, or activities to people with disabilities
- describe the methods to be used to make the facilities accessible
- provide a schedule for making the access modifications; provide a yearly schedule for making the modifications if the transition plan is more than one year long
- indicate the public official responsible for implementation of the transition plan



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The regulations require that the public entity provide an opportunity for people with disabilities and other interested individuals or organizations to review and comment on the transition plan as well as the self-evaluation. As discussed previously, public entities may find it more useful to involve people with disabilities and/or disability expertise earlier on in the planning process. When the transition plan is completed, it must be made available for public inspection on an on-going basis.

The transition plan should have been developed by July 26, 1992. Any structural changes outlined in the transition plan should have been completed by January 26, 1995; however, the regulations encourage public entities to make the structural changes as expeditiously as possible.

SUMMARY: TITLE II REQUIREMENTS AND EFFECTIVE DATES

<u>Action Step</u>	<u>Size of Entity Required to Comply</u>
1. Designate a Responsible Employee	50 or more employees
2. Provide Notice	All entities
3. Establish a Grievance Procedure	50 or more employees
4. Conduct a Self-Evaluation	All entities
5. Develop a Transition Plan	50 or more employees

<u>Title II Requirement</u>	<u>Effective Date</u>
1. Designate a Responsible Employee	Required as of Jan. 26, 1992
2. Provide Notice	Required as of Jan. 26, 1992
3. Establish a Grievance Procedure	Required as of Jan. 26, 1992
4. Conduct a Self-Evaluation	Completed by Jan. 26, 1993
5. Develop a Transition Plan	Completed by July 26, 1992
6. Complete Structural Changes	Completed by Jan. 26, 1995

Title III of the Americans with Disabilities Act [for privately funded libraries only]

Section 301 of the ADA classifies a **private library** or other service related establishments as a private entity considered as a "public accommodation" for the purposes of Title III.

Title III of the ADA requires public accommodations to provide goods and services to people with disabilities on an equal basis with the rest of the general public. The goal is to afford every individual the opportunity to benefit from our country's businesses and services, and to afford our businesses and services the opportunity to benefit from the patronage of all Americans.

Since **January 26, 1992**, Title III has required that architectural and communication barriers must be removed in public areas of **existing facilities** when their removal is **readily achievable...** in other words, easily accomplished and able to be carried out without much difficulty or expense. The removal of barriers can often be achieved by making simple changes to the physical environment. However, the regulations do not define exactly how much effort and expense are required for a facility to meet its obligation.



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This judgment must be made on a case-by-case basis, taking into consideration such factors as the size, type and overall financial resources of the facility, and the nature and cost of the accessibility improvements needed. These factors are described in more detail in the ADA regulations issued by the Department of Justice [see the Title III Technical Assistance Manual for more information].

New Construction

All **new construction** must be "readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impractical to meet the requirements".

- This requirement of the ADA becomes effective in a new construction, if the new construction has its first occupancy on or after January 26, 1993. In other words, all newly constructed or altered areas or facilities, either commercial facilities or public accommodations, must be accessible.
- Full compliance will be considered "structurally impracticable" only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features (e.g., marshland that requires construction on stilts).
- The architectural standards for accessibility in new construction are contained in the ADA Accessibility Guidelines issued by the Architectural and Transportation Barriers Compliance Board, an independent Federal agency. These standards are incorporated in the final Department of Justice Title III regulation.
- Elevators are not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center, shopping mall, professional office of a health care provider, or station used for public transportation.

Alterations

Alterations after January 26, 1992, to existing places of public accommodation and commercial facilities must be accessible to the maximum extent feasible.

The architectural standards for accessibility in alterations are contained in the ADA Accessibility Guidelines issued by the Architectural and Transportation Barriers Compliance Board. These standards are incorporated in the final Department of Justice Title III regulation.

An alteration is a change that affects usability of a facility. For example, if during remodeling, renovation, or restoration, a doorway is being relocated, the new doorway must be made wide enough to meet the requirements of the ADAAG. When alterations are made to a "primary function area" such as the lobby or work areas, an accessible path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving that area must be made accessible to the extent that the added accessibility costs are not disproportionate to the overall cost of the original alteration [no more than 20%].



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- barrier removal in existing facilities does not trigger the accessible path of travel requirement
- alterations to windows, hardware, controls, electrical outlets, and signage in primary function areas do not trigger the path of travel requirement
- the added accessibility costs are disproportionate if they exceed 20% of the original alteration
- elevators are not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center, shopping mall, professional office of a health care provider, or station used for public transportation.

General Requirements

Because a private library offers its goods and services to the general public, it is considered a "public accommodation" and subject to Title III provisions of the Americans with Disabilities Act. Generally, existing public accommodations must meet the following minimum barrier removal ADA Accessibility Guidelines (ADAAG) to be in compliance with ADA Title III regulations:

1. General: Public accommodations such as restaurants, hotels, doctors' offices, pharmacies, retail stores, museums, **libraries**, parks, private schools, and day care centers, may not discriminate on the basis of disability.
2. Modifications in Policies, Practices, and Procedures: Reasonable changes in policies, practices, and procedures must be made to avoid discrimination as long as changes do not "fundamentally alter" the goods, services, or operations of the public accommodation.
3. Auxiliary Aids: Auxiliary aids and services must be provided to individuals with vision or hearing impairments or other individuals with disabilities, unless an undue burden would result.
4. Physical Barriers: Physical barriers in existing facilities must be removed, if removal is readily achievable. If not, alternative methods of providing the services must be offered, if they are readily achievable.
5. Priorities in Barrier Removal: Title III regulations specify that "readily achievable" barrier removal should be undertaken in a way that reflects the priorities of the disability community:
 - First priority is making entrances accessible;
 - Second priority is access to areas where services or goods are provided;
 - Third priority is access to bathrooms;
 - Fourth priority is access to other areas.
6. New Construction and Alterations: All new construction (additions) in existing public accommodations, as well as in "commercial facilities" such as office buildings must be accessible. Alterations must also be accessible.
7. Specific Requirements for Libraries: In libraries, there are also additional Title III requirements that must be considered when building new, renovating, or removing architectural and communication barriers. In addition to those ADAAG general requirements for barrier removal, Libraries must also comply with Section 8 of the Guidelines [see ADAAG 8.0 et seq. LIBRARIES, p. 62]. These are the same requirements previously outlined under Title II.



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Eligibility for Goods and Services

In providing goods and services, a public accommodation may not use eligibility requirements that exclude or segregate individuals with disabilities, unless the requirements are "necessary" for the operation of the public accommodation.

Requirements that tend to screen out individuals with disabilities, such as requiring a blind person to produce a driver's license as the sole means of identification for cashing a check, are also prohibited.

Safety requirements may be imposed only if they are necessary for the safe operation of a place of public accommodation. They must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

Extra charges may not be imposed on individuals with disabilities to cover the costs of measures necessary to ensure non-discriminatory treatment such as removing barriers or providing qualified interpreters.

Modifications in Policies, Practices, and Procedures.

A public accommodation must make reasonable modifications in its policies, practices, and procedures in order to accommodate individuals with disabilities.

A modification is not required if it would "fundamentally alter" the goods, services, or operations of the public accommodation.

Modifications in existing practices generally must be made to permit the use of guide dogs and other service animals.

Specialists are not required to provide services outside of their legitimate areas of specialization.

Auxiliary Aids/Effective Communication with the Public:

A public accommodation must provide auxiliary aids and services when they are necessary to ensure effective communication with individuals with hearing, vision, or speech impairments.

"Auxiliary aids" include such services or devices as qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for deaf persons (TDD's), video text displays, readers, taped texts, Braille materials, and large print materials.

The auxiliary aid requirement is flexible. For example, Braille brochures are not required, if tellers are instructed to read the information to blind customers.



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Auxiliary aids that would result in an undue burden, (i.e., "significant difficulty or expense") or in a fundamental alteration in the nature of the goods or services are not required by the regulation. However, a public accommodation must still furnish another auxiliary aid, if available, that does not result in a fundamental alteration or an undue burden.

Telecommunication Devices for the Deaf (TDD)

A bank is not required to use a TDD in receiving or making telephone calls in connection with its operations because of the availability of TDD relay services that are set up under another title of the ADA [title IV]. However, banks must make TDD's available, upon request, to a customer with impaired hearing or speech if it customarily offers phone service to its customers on more than an incidental basis. DOJ has indicated that a "courtesy phone" would not require a TDD if the phone is for the occasional convenience of the customers.

If entry to the bank requires the use of a security entrance telephone, then a TDD or other effective means of communication must be provided.

Barrier Removal:

Public accommodations must remove architectural barriers and communication barriers that are structural in nature in existing facilities, when it is readily achievable to do so. "Readily achievable" means easily accomplished and able to be carried out without much difficulty or expense.

Determining what barrier removal is readily achievable is done on a case-by-case basis and is directly related to the resources available. Factors to consider include:

- 1) the nature and cost of the action;
- 2) the overall financial resources of the site or sites involved; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements necessary for safe operation, including crime prevention measures;
- 3) the geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
- 4) the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and
- 5) the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation.

If the public accommodation is a facility that is owned or operated by a parent entity that conducts operations at many different sites, the public accommodation must consider the resources of both the local facility and the parent entity as well as the administrative and fiscal relationship between the local facility and the parent entity.



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Measures taken to remove barriers should comply with the ADA Accessibility Guidelines (ADAAG). Deviations from ADAAG are acceptable only when full compliance with those requirements is not readily achievable. In such cases, barrier removal measures may be taken that do not fully comply with the standards, so long as the measures do not pose a significant risk to the health or safety of individuals with disabilities or others.

On-Going Obligation

The obligation to engage in readily achievable barrier removal is a continuing one. Over time, barrier removal that initially was not readily achievable may later be required because of changed circumstances..i.e. a change in resources available.

The Americans with Disabilities Act lists four levels of priorities for a business to follow in the process of becoming barrier-free for its customers:

- Priority **One** is that the location have an accessible **entrance**
- Priority **Two** is that the location have easy accessibility to **goods and services**
- Priority **Three** is accessible **rest rooms**
- Priority **Four** is any **additional areas** of the business that need to be made accessible

The standards required by the Americans with Disabilities Act apply to all new construction after January 26, 1992, and also to existing facilities, to the extent to which they are able to comply without undue financial burden. In existing facilities, there are probably structural modifications to implement to become reasonably accessible for the general public without excessive reconstruction or financial commitment.

Landlord / Tenant Responsibilities:

Both the landlord and the tenant are public accommodations and have full responsibility for complying with all ADA Title III requirements applicable to that place of public accommodation. The Title III regulations permit the landlord and the tenant to allocate responsibility, in the lease, for complying with particular provisions of the regulation. However, any allocation made in a lease or other contract is only effective as between the parties, and both landlord and tenant remain fully liable for compliance with all provisions of the ADA relating to that place of public accommodation.

Maintenance of Accessible Features:

Public accommodations must maintain in working order equipment and features of facilities that are required to provide ready access to individuals with disabilities. Isolated or temporary interruptions in access due to maintenance and repair of accessible features are not prohibited.

Where a public accommodation must provide an accessible route from parking, for example, the route must remain accessible and not blocked by snow or compromised by ice or water. Similarly, accessible doors must be unlocked when the public entity is open for business.



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Alterations:

An alteration is a change that affects usability of a facility. For example, if during remodeling, renovation, or restoration, a doorway is being relocated, the new doorway must be made wide enough to meet the requirements of the ADAAG. When alterations are made to a "primary function area" such as the lobby or work areas, an accessible path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving that area must be made accessible to the extent that the added accessibility costs are not disproportionate to the overall cost of the original alteration [no more than 20%].

- barrier removal in existing facilities does not trigger the accessible path of travel requirement
- alterations to windows, hardware, controls, electrical outlets, and signage in primary function areas do not trigger the path of travel requirement
- the added accessibility costs are disproportionate if they exceed 20% of the original alteration

Elevators are not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center, shopping mall, professional office of a health care provider, or station used for public transportation.

Historic Preservation Requirements / Exceptions

Section 106: Alterations and/or barrier removal to qualified historic buildings and facilities are subject to Section 106 of the National Historic Preservation Act.

ADAAG: Alterations to historic properties must also comply with the historic provisions of ADAAG 4.1.7 Accessible Buildings: Historic Preservation, pp. 13 and 14, to the maximum extent feasible. Under those provisions, alterations should be done in full compliance with the alterations standards for other types of buildings. However, if following the usual standards would threaten or destroy the historic significance of a feature of the building, **alternative standards may be used**. The decision to use alternative standards for that feature must be made in consultation with the appropriate advisory board designated in ADAAG, and interested persons should be invited to participate in the decision making process. If and when barrier removal efforts and resulting alterations are contemplated, it is recommended that a design professional familiar with Historic Preservation guidelines and standards be consulted for the purpose of developing acceptable and historically sensitive design solutions in resolving accessibility issues.

SUMMARY OF REGULATORY REQUIREMENTS

The following summary is our [Alpha One's] understanding of the program access and/or barrier removal requirements for the various access regulations referenced above that apply to libraries to improve accessibility at those facilities. Based on the requirements of the applicable accessibility regulations outlined above, all libraries are required to:

- comply with Section 504, MHRA and ADA non-discrimination mandates that prohibit discrimination or denial of "program access" or "access to goods and services" to persons with physical or mental disabilities
- offer the same services / programs in an integrated fashion by using reasonable accommodations, if required
- deliver services / programs in a way that maximizes integration of disabled and non-disabled patrons
- honor specific requests to receive available services by providing "accommodations" to make the program or services accessible to those individuals



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- physically renovate existing facilities [remove barriers] to meet program accessibility or delivery of services requirements when alternatives (e.g. rescheduling and/or relocating programs, assistive technology, assistance) are unsuccessful
- any new construction and alterations made to the existing structure or site must be readily accessible and useable to persons with disabilities and comply with ADAAG guidelines for new construction.

Available Technical Assistance and Funding

Alpha One can offer assistance to libraries in developing their "self-evaluation and transition" plans and providing disability awareness seminars/workshops for staff. We can also provide technical assistance in detailing and specifying equipment and construction that may be required to accomplish the removal of barriers to accessibility, as well as aid in the review of practices, policies and procedures for ADA compliance. Alpha One is also available to assist in reviewing employment compliance provisions of the ADA and the Maine Human Rights Act.

Low interest loans for access modifications through the Alpha One / F.A.M.E Adaptive Equipment Loan Program are available to municipalities and school districts to implement their transition plans.

For more information about Alpha One and/or Denis Pratt's expertise in Access Design, visit Alpha One's website at: www.alphaonenow.com/accessdesign