

April 30 Webinar Questions and Answers

Melissa didn't have time to answer all the questions from the participants during the April 30 session. Here are some of the questions and Melissa's responses.

Q: You mentioned trip and fall claims. Sometimes even a 6" high retaining curb in the back of a curb ramp is considered a trip and fall claim, have you received these and what are your thoughts?

A: I have talked to people concerned about curbs in unexpected places. The back of the landing or curb ramp is not unusual and generally doesn't pose a huge problem. More problematic are vertical "pie shapes" between two curb ramps on a corner. If they are not aligned with the approaching pedestrian access routes, they can definitely be a problem. With everyone so distracted, it is difficult to alleviate every possible tripping hazard.

Q: Do you recommend that local agencies perform a detailed sidewalk inventory? We routinely get trip notifications from our risk management where a pedestrian has tripped on a section of the sidewalk. Our typical response is to quickly take care of the issue and state that we were not aware of it at the time of the incident. Having a comprehensive sidewalk inspection appears to open agencies up to lawsuits.

A: A detailed inventory may not be needed if you have an active Transition Plan that results in continual barrier removal and keep addressing concerns in a proactive and timely manner. The ADA does require Title II agencies to identify their barriers to access. Some states have laws that hold an owner responsible for problems they are aware of. The agency is responsible anyway. This is kind of like an ostrich with its head in the sand if a city doesn't try to identify barriers for removal so that they can budget and plan work in an efficient and cost effective manner.

Q: How do regulations or guidelines address seasonal outdoor restaurant seating that reduces the width of the sidewalk?

A: The Standards and guidance do not specifically address outdoor seating, but require a continuous 4 foot minimum clear width pedestrian access route. The route can be straight and clear and easy to identify, or it can weave along the circulation path. It is up to a local agency to set policy on how they want to structure their pedestrian routes. Many agencies require a wider path than the minimum set out in the Standards guidance. Think about walking down the sidewalk without being able to clearly see where you are going, or while walking with a service animal, or even a stroller. Minimum design Standards can't replace good design.

Q: Even though you CAN have 0% cross slope for positive draining along the running slope it is not always best practice. Typically, you don't want water to shed the direction of travel to prevent slip hazard, flooding, ponding, and freezing in winter.

A: Agreed, and it is also important not to create a situation where the sidewalk becomes a stormwater flume, but when a sidewalk has a running slope that is sufficient to drain water, there is no reason to use the maximum allowable cross slope. The greater the cross slope the more difficult it is to push a wheelchair in a straight line, resulting a lot of wasted energy and effort.

Q: Many cities have ordinances that require adjacent property owners to maintain sidewalks. Is this acceptable under the ADA & Rehab Act for areas considered PROW? Or are there things cities need to do while enacting these types of ordinances?

A: This is really a question for the courts, but in general if the City owns the right of way they are ultimately responsible for the sidewalks. There are all sorts of maintenance agreements between Cities and States, so this can be complicated. If a City uses its property owners to take care of the sidewalks, they are still responsible for ensuring the work gets done. This is a common scenario and cities manage it in a variety of ways. It might be helpful to reference FHWA's Guide for Maintaining Pedestrian Facilities, which discusses different policies that have been used. Personally, I believe pedestrian routes are an important part of the transportation system and should be managed in the same way as the streets.

Further clarification (added 5-8-19)

FHWA's "A Guide to Maintaining Pedestrian Facilities for Enhanced Safety" is a good resource for discussions and examples of pedestrian maintenance policies. Here is a link to the electronic index page where it might be easier to focus in on the topics of interest. I think the information in Chapters 4 and 7 and the examples and ordinances in the Appendix might provide some of the information.

https://safety.fhwa.dot.gov/ped_bike/tools_solve/fhwas13037/index.cfm

Q: What if your city says they do not have a transition plan?

A: Well, if they have more than 50 employees, it is a Federal requirement. It might be helpful to educate them on the requirements and risks involved. The consequences can be very disruptive if they lose control of their budget and planning decisions based on a court settlement. They might also look at the DOJ's enforcement webpage, especially the Project Civic Access section - www.ADA.gov

Q: When the guidelines for Outdoor Developed Areas were developed it was said to be applicable for Multi-use paths. Why does that standard allow steeper running slopes than PROWAG's 5% max, and which standard should control- the adopted one (Outdoor Developed Area), or the proposed one (PROWAG) for Multiuse paths?

A: Some of the questions posed by the US Access Board during the development of the Outdoor Developed Areas Guidelines and during the comment period for the Supplemental Notice to the Proposed Public Right of Way Accessibility Guidelines were meant to determine which Guideline best suited the design of multi-use, or shared use, paths. Based on public comments it was moved to the public right of way rulemaking. When shared use paths provide recreation and/or transportation and are "paved" and designed for cyclists they need to meet the requirements for pedestrian access routes. If the paths are multi-use and in an area that is mostly undeveloped and recreational, and the multiple uses include equestrian use or mountain bikes, they might be better suited to using the Outdoor Developed Area Guidelines. If in doubt contact the Access Board, who can provide more information - TA@access-board.gov

Q: Absent a pedestrian circulation path, does installing a marked crossing trigger the requirement to add curb ramps or any other pedestrian features?

A: A marked crossing would be for the use of expected pedestrians. The circulation path, if there is no sidewalk or separate path may just be along the side of the road so the marked crossing should provide a continuous pedestrian access route to where the pedestrians are traveling. If, for example, a pedestrian pushbutton were located at the corner of an intersection a pedestrian access route would need to provide access to that feature. There is no Federal requirement to provide sidewalks - or curb ramps in the absence of a necessary pedestrian route connection.