

# ADA Transition Plans: *What You Need to Know to Protect Your District*

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# History of the ADA

## *-Americans With Disability Act*

- Americans with Disabilities Act passed into law in 1991
- Required all public and private facilities to meet federally mandated accessibility requirements
- Incorporated into the Unruh Civil Rights Act in California
  - Three components to claims
    - Civil rights violation and statutory damages
    - Attorney's fees
    - Repairs to meet ADA requirements – injunctive relief
- Two types of ADA requirements
  - New Construction must be constructed to current ADA requirements
  - A disabled person can complain that they were denied access

# Why is ADA Title II Significant for You?

- Difference between Title II and Title III Facilities
  - Title II addresses “program, activities or services”
  - Title III is for private entities and inapplicable here
    - The term “public accommodations” is inapplicable to the Community Colleges
- See *Daubert v. Lindsay Unified School District* (2014) WL 3686098 addresses “program” related

# Why is ADA Title II Significant for You?

- SB 1186 passage January 2013 changed the legal landscape
- SB 1186 protects private businesses and requires threshold showing violation and notice to the State Disability office of all legal filings against private businesses
- Transferred the focus from Private entities to Public Agencies
  - In the past, community colleges were largely ignored for ADA related claims
- Public Agency ADA lawsuits are not visible because they don't require reporting of lawsuits to the public or threshold showing before filing a lawsuit

# Why is ADA Title II Significant for You?

- Public agency lawsuits are increasing in number
- AB1186 provides legal right to investigate the entire college campus for ADA violations.
  - *Chapman v Pier 1 Imports* (2011) 631 F.3<sup>rd</sup> 950 which addresses the “potential for future discrimination.”
- If K-14 buildings are built to ADA requirements – the common belief is that it is that they are ADA compliant unless modifications are made
- With new law – ADA lawsuits are not just nuisance claims
  - Civil Rights violation
- Beyond damages and attorney’s fees sought, there are significant costs for altering structures to meet ADA requirements

# Who Has Ultimate Responsibility for ADA Compliance? *DSA–Architect–Contractor–Inspector–District:*

## Title 24 Requirements

Education Code Section 17309 provides “the licensed architect or structural engineer in charge of observation of construction or registered engineer in charge of observation of other work, the inspector on the work, and the contractor shall each make to the Department of General Services **a report, duly verified by him or her**, upon a form prescribed by the Department of General Services, based upon his or her own personal knowledge, **indicating that the work during the period covered by the report has been performed and materials have been used and installed, in every material respect, in compliance with the approved plans and specifications**, setting forth such detailed statements of fact as are required by the Department of General Services....**The term "personal knowledge" as applied to the inspector means the actual personal knowledge which is obtained from his or her personal continuous inspection of the work of construction....**”

# Who Has Ultimate Responsibility for ADA Compliance?

## *DSA–Architect–Contractor–Inspector–District:*

- Safe Harbor 35.150(b)(2)(i)
  - Construction built under applicable rules between 1991 and 2010 are subject to the ADA applicable at the time.
  - Projects are not measured to the current ADA requirements
  - The evaluation that was undertaken was measured by today's ADA requirements and not the applicable code

# Who Has Ultimate Responsibility for ADA Compliance?

## *DSA–Architect–Contractor–Inspector–District*

- When Do Facilities Have to Meet New DSA Standards?
- Why Does DSA Approval Not Protect a College?
  - Effective 7/1/15 - DSA will begin enforcing 2013 California Compliance Codes that contain 2010 ADA codes
  - Community College facilities approved by DSA will always be behind current ADA codes



# Plan Approval Certification on ADA



3/26/2010 - APPROVAL OF PLAN(S)

MS. Dianne Van Hook  
SANTA CLARITA COMMUNITY COLLEGE DISTRICT  
28455 NORTH ROCKWELL CANY  
SANTA CLARITA 91355

Project: COLLEGE OF THE CANYONS- MENTRY HALL  
Total Scope of Project: Alterations to 1-MPIOR Bldg. (A 60365)

*Misty Bonadell - State*

Application #: 03-113093  
File #: 19-C13

- Bleachers or grandstands constructed in accordance with approved drawings and specifications will meet minimum required standards for structural, and fire and life safety. The owner should provide for and require periodic safety inspections throughout the period of use to ensure framing and other parts have not been damaged or removed. On bleachers or grandstands having bolts, locking or safety devices, the owner shall require that all such components be properly tightened or locked prior to each use.
- This approval is for the part shown only since the drawings and specifications for the proposed work include only the portion of the building to be partially constructed on the subject site. It is understood that a separate application will be subsequently filed, together with drawings and specifications showing a plot plan and details of work necessary for completion. A contract for completion shall not be let before the written approval of such drawings has been obtained from the Department of General Services.
- The building(s) was designed to support a snow load of \_\_\_\_\_ pounds per square foot of roof area. Snow removal must be considered if the amount of snow exceeds that for which the building(s) was designed.
- This constitutes the written approval certifying that the drawings and specifications are in compliance with State regulations for the accommodation of the disabled which are required before letting any contract for construction. (See Section 4454, Government Code.)
- Your application for the construction of a relocatable building submitted under the provisions of Section 17293 of the Education Code is hereby approved. This approval certifies that the drawings and specifications are in compliance with state regulations for accommodation of the disabled, structural safety, and fire and life safety.



This constitutes the written approval certifying that the drawings and specifications are in compliance with State regulations for the accommodation of the disabled which are required before letting any contract for construction. (See Section 4454, Government Code.)

DSA does not review drawings and specifications for compliance with Parts 3 (California Electrical Code), 4 (California Mechanical Code), and 5 (California Plumbing Code) of Title 24. It is the responsibility of the professional consultants named on the application to verify this compliance.

Please refer only to the boxes checked below which indicate applicable conditions specific to this project:

- Buildings constructed in accordance with approved drawings and specifications will meet minimum required standard given in Title 24, California Code of Regulations, for structural, and fire and life safety.
- Due to the nature of the building(s), certain precautions considered necessary to assure long service have not been required. In the condition as built, the building(s) will meet minimum required standards for structural, and fire and life safety. The owner must observe and correct deterioration in the building in order to maintain it in a safe condition.
- Your attention is drawn to the fact that this application was submitted under the provisions of Section 38140/81130 of the Education Code which permit repairs or replacement of a fire damaged building to be made in accordance with the drawings and specifications previously approved by this office. The drawings and specifications approved for the reconstruction of this building conform to the drawings and specifications approved under application # \_\_\_\_\_.
- These drawings and specifications meet the rules, regulations, and building standards in effect at the time of the original approval and do not necessarily comply with rules, regulations, or building standards currently in effect.
- Due to the nature of the poles, certain precautions considered necessary to assure long service have not been insisted upon. In their condition as built, they will meet minimum required safety standards; however, your attention is directed to the comparatively short life of wood poles. It will be the responsibility of the owner to maintain them in a safe condition.

DSA Los Angeles Basin Regional Office \* 700 N. Alameda Street, Suite 5-500 \* Los Angeles, CA 90012 \* (213) 897-3995

*David F. Thorman*  
for David F. Thorman, AIA  
State Architect

cc:  
Architect

DSA Los Angeles Basin Regional Office \* 700 N. Alameda Street, Suite 5-500 \* Los Angeles, CA 90012 \* (213) 897-3995

# DSA Approvals



The Department of General Services' records indicate that construction of the referenced project has been completed in accordance with design documents approved by the Department, and that all the Verified Reports covering the construction have been received. Therefore, the Department of General Services certifies as follows:

This project is in compliance with California State regulations as to the safety of design and construction of public schools, and for the accommodation of persons with disabilities.

Sincerely,

State Architect  
Chester "Chet" Widom  
Division of the State Architect

CW: ms

or construction for compliance with the electrical, mechanical, or plumbing regulations. It is the responsibility of the professional consultants, named on the application to verify compliance with appropriate parts of the California Building Code, and to submit Verified Reports documenting compliance.

Sincerely,

State Architect  
Chester "Chet" Widom  
Division of the State Architect

CW: ms

cc:

School District  
Architect/Engineer – Mr. Robert Klassen  
File

# ADA Lawsuit-Escalating Fiscal Impact: *It's More Than Just Damages*

- Civil Code Section 54.3 Guarantees treble damages or \$1,000 if there are no damages
- Civil Code Section 52 provides for \$4,000 damages for each violation if intentional
  - Lack of a Transition Plan is treated as intentional
- Civil Code Section 55 right for injunctive relief
  - Requires bringing non-complaint structures up to ADA code requirements
  - Right to attorney's fees
  - *Huezo v. LACCD* (2008) 672 F. Supp. 2d 1045

# ADA Lawsuit- Escalating Fiscal Impact: *It's More than Just Damages*

- Lawsuit Costs Are Typically Covered by Insurance
  - Plaintiff Settlement
  - Plaintiff Attorney Fees
  - Plaintiff Facility Expert/Facility Report
- Other Costs Are The Responsibility of the District
  - ADA Transition Plan
  - Attorney Fees
  - Facility Expert
  - Facility Renovation

# A Proactive Approach – *The ADA Transition Plan*

- ADA Transition Plans Were Required as of 1991 – Mandated by Law
- The Basis for Responding to ADA Claims
- Attorney/Client Privilege – Hire ADA Consultant Through Attorney
- 3-5 Day Facility Walkthrough
- Timeline to Prepare Report– 6 to 9 Months
- Cost – Approximately \$70,000 to \$150,000 depending on campus
- 2 Public Hearings Required
- Incorporate Into Facility Master Plan

# A Proactive Approach – *The ADA Transition Plan*

- What To Expect From an ADA Plan
  - All Proposed Facility Renovations Will Be Documented by Building/Campus
  - A Timeline Will Be Established for Each Line Item
  - A Cost Will be Estimated for Each Proposed Renovation
  - The Plan Will be Broken into Stages Over 5 to 15 Years

# A Proactive Approach – *The ADA Transition Plan*

- ADA Transition Plan Schedule- Upgrades Based on Timeline
  - Paths of travel - incline
    - Parking Lots
    - Sidewalks
    - Thresholds
  - Bathroom Accessibility
    - Door openers
    - Access bars
    - Soap dish/mirror height

# A Proactive Approach – *The ADA Transition Plan*

- ADA Upgrades Based on Timeline
  - Doors/Handles
    - Majority of the Doors listed as not ADA compliant were 20 minute rated doors required for a Building Code One Hour Fire Rating
    - The ADA violation noted is closers were not set at 7 lbs of pressure or less
    - Code for ADA compliance on a fire rated door closer is 15 lbs of pressure. CBC 1133B.2.5
    - Doors must open 90 degrees – not less



# 540 ADA Plans – Campus Liasion

- DSPS Office Establishes Policy/Procedure/Plan
- Plan Must Be Posted Publicly
- DSPS Coordinates with Facilities on Student Accommodations
- Student Requests Must Be Responded To in a Timely Manner
- ADA Furniture/Equipment – Establish in Public Locations in Advance to the Greatest Extent Possible
  - A&R and Other Student Services Counters
  - Adjustable Lab Tables
  - Reception Desks
  - Library Tables
  - Computer Access
  - Cafeteria Tables and Food Service Access

# ADA Legislation

## *Is This The Answer?*

- SB1186 (Steinberg) – proposed a solution to serial litigation against small businesses
  - Consequence – public agencies were not included and have become the target of lawsuits previously directed at private businesses
- AB1468 (Baker/Wilk) – proposed to amend provisions of Ab1186 to provide public agencies with the same protection against serial litigation afforded to private entities
- Consumer attorneys killed AB1468 in 1<sup>st</sup> Year
- Assembly Judiciary Committee deferred bill to a 2 year bill
- Need CEO/Board of Trustee Support

# The CBO

## *What Is Your Responsibility?*

- Protect Your District and Taxpayers From ADA Lawsuits
- Issue an RFP to Hire an Attorney/ADA Consultant to Update the Plan
- Begin the Process of Updating the ADA Transition Plan
- Incorporate Into Facility Master Plan
- Establish An ADA Timeline for Facility Repair/Renovation
- Identify Funds to Implement the Plan

Questions?