

ADA Code Compliance and Disproportionality Overview for the University of North Carolina

Executive Summary

- Federal law required full accessibility be achieved by January 26, 1995.
- To the extent that institutions have not met this requirement and want to perform other project work within their facilities, accessible paths must be provided if the area being renovated is an area of primary function.
- If the cost of providing this path is disproportionate to the total cost of the project (i.e. >20% of the project's cost), the path is to be made as accessible as possible, based on a prioritized list of items shown in the code.
- If multiple projects are performed in a building over time, the cost to be used to calculate the basis for disproportionality is the sum of the costs of ALL of the projects on the path of travel for three years prior to the current project, not just the current project's cost.
- Documentation of either compliance with the path of travel requirements or the application of disproportionality will be required for DOI plan approval.
- Identifying and reserving funding to address path of travel requirements, if any, will be important to successfully executing projects at each institution.
- Institutions who are not yet fully accessible are at risk for legal actions ranging from individual complaints to Department of Justice action and should simultaneously advance accessibility with all deliberate speed and be preparing for any intervening actions.

The Law - The “Americans with Disabilities Act of 1990” was originally enacted as public law and subsequently rearranged and subdivided into “Titles” published in the United States Code (Title 42 – The Public Health and Welfare, Chapter 126 – Equal Opportunity for Individuals with Disabilities). “Title II” applies “to all programs, activities, and services provided or operated by State and local governments.” “Title III” applies to private entities involving “1) Places of public accommodation; 2) Commercial facilities; and 3) Examinations and courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes.” To the extent that an institution may be jointly involved in a private facility, such as a sports arena, some activities may be affected by both titles and require both parties’ involvement to ensure that the relevant requirements are met. Reference <http://www.ada.gov/taman2.html> and <http://www.ada.gov/taman3.html> for related technical assistance manuals.

Required date for achieving accessibility – Under this federal law “program” accessibility was required to be achieved by January 26, 1992 and if structural changes were required for program accessibility, they were required to be accomplished as expeditiously as possible, but no later than January 26, 1995. Further, all construction begun after January 26, 1992 was required to be readily accessible and usable by individuals with disabilities. “Program” accessibility was permitted under law up until 1995, but facilities are now deemed accessible

only when they meet the accessibility code, period. Reference the North Carolina Accessibility Code (NCAC) 33.4.1.

Accessible path of travel - As facilities are altered, both federal law and the North Carolina Accessibility Code require that the travel path to areas of primary function also be made accessible. Areas of primary function include the main reason a person would be visiting a location, such as to register, pay a bill, meet with a professor, attend a class, etc. Mechanical or electrical rooms, etc. would not be areas of primary function as they aren't the main reason someone would come to the facility. The travel path to the area of primary function includes a "continuous, unobstructed way of pedestrian passage" to approach, enter, and exit the area, as well as toilets, public telephones (if any) and drinking fountains/water coolers (if any) serving the area.

Disproportionality - Both federal law and the North Carolina Accessibility Code indicate that the accessible path is to be provided as part of the alteration project unless its cost is "disproportionate." The cost is disproportionate if it exceeds 20% of the cost (design and construction) of the alteration to the primary area.

If the cost of a fully accessible path is disproportionate and it cannot be provided, accessibility will be provided to the extent possible based on the prioritization listed in 34.2.6.2 of the North Carolina Accessibility Code. However, the requirement to provide an accessible path may not be avoided by splitting projects.

Further, the code requires that alterations that would be on the same travel path that occur within 3 years are to be tracked with the total cost of all of these alterations to become the basis for calculating disproportionality. When the cost is no longer disproportionate, that is the cost of providing the accessible path is less than 20% of ALL of the project budgets summed, the accessible path (or remaining elements) must be provided.

Funding for Barrier Removal Requirements – Each institution had its own plan (Administrative Memorandum 315 dated January 16, 1992) for prioritizing barrier removal projects in the early 1990's and has continued to progress as new buildings have been constructed, major renovations have been completed, and annual R&R funding for ADA projects has been applied. Each institution will need to continue to develop its own plans for ensuring that any remaining barriers are removed, according to the code. Earmarking some of the annual ADA R&R funding for these purposes is one alternative to ensure that some funding will be available to address required upgrades without bringing small, interior projects to a halt.

Documenting Path of Travel Code Compliance – In order for DOI to approve project plans, compliance with the code must be clearly demonstrated on the documents. For small interior building projects, this will mean that a code-compliant path of travel to the area of primary function being altered must be shown on the plans. A sheet that shows relevant parking, curb cut, route, entrance door, etc. as it relates to the altered area would serve to provide such documentation. Once such a plan has been done for one building, one strategy may be to reuse that plan with updates suited to the specific project area involved in order to

preclude the extensive costs of re-documenting the path for every small project over time. This assumes that the original plan covered the entire path of travel.

If a proposed alteration is not on a code-compliant travel path, the documentation must then include information on disproportionality, including a list of projects in the building on the same path of travel within the last three years, the identification of the deficiencies on the path, and the identification of the items to be completed to provide the most accessibility possible (per 34.2.6.2).

Documenting Projects on the Same Path of Travel (within 3 years) – Just as procurement regulations or construction bidding regulations may not be avoided by splitting jobs, implementing accessibility and disproportionality may not be avoided by splitting projects. To ensure that this does not occur, the code requires that projects in an area of primary function, on the same path of travel, be accounted for with all of the projects within the preceding three years to be summed for the purposes of calculating disproportionality (34.2.6.4). This requirement implies that each institution must have or develop mechanisms for monitoring and reporting these accumulated projects. Whether the institution has an in-house tracking system or uses a database, spreadsheet, or simple lists, this documentation must be provided as part of the plan submission when a proposed alteration is not on a code-compliant travel path.

If the sum of the project totals means that the remaining accessibility requirements are no longer disproportionate to the total, the accessibility requirements must be completed and the job will be disapproved without them. Of course, the challenge in this instance becomes one of funding the requirement.

Documenting Projects on the Same Path of Travel (more than 3 years old) – While the code requires documentation of projects within the previous 3 years, the law is clear that accessibility was to have been achieved no later than January 26, 1995. The Department of Justice has clearly signaled their concern with delays which mean that accessibility has yet to be achieved by indicating that they would require that all projects performed since 1992 on a given path of travel be summed for the purposes of calculating disproportionality and that amount required to be spent on upgrading the path of travel for the building. While the code does not currently require this level of project tracking, each institution must recognize the risk of legal action it may face and develop its own plans for promptly addressing remaining accessibility issues or being prepared to respond to the Department of Justice over the much longer time period they've outlined.