



# DISABILITIES LAW PROGRAM

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## MEMO

**To:** John McNeal  
**From:** Laura J. Waterland  
**Subject:** Comments to DelDOT Proposed ADA Self-Assessment and Transition Plan  
**Date:** September 13, 2013

I am submitting, on behalf of the Disabilities Law Program, the following comments to the July 2013 Proposed DelDOT ADA Self-Assessment and Transition Plan. I understand that the document is a work in progress and that it will be revised. It is certainly a positive step that DelDOT has now appointed a coordinator, and a self-evaluation has been completed. I reviewed a draft plan last year. Our general impression remains that the Transition Plan is too vague and lacking in detail. It is awkward to attempt to comment on what the Plan doesn't have, but I will make a few general points.

Although not alone by any means, DelDOT has been very slow to bring itself into compliance with the ADA, which was passed well over 20 years ago. It is laudable that it is now bringing a more focused approach to the issue. It is important to recognize, however, that compliance is not an aspiration or goal, but a legal requirement. Consequently, it is crucial that detailed timelines for compliance with specific tasks be developed, and this is what the Transition Plan completely lacks. There isn't even a time line for creating a time line.

For example, Chapter 3 sets out to identify the work needed and provide a schedule, but does not do so. The Report indicates that 45% of sidewalks and about 77% of associated curb ramps are not ADA-compliant. (Page 24). However, Chapter 3 only talks in general terms about how these deficiencies are to be corrected, stating that it will be a “multi-year” effort, with no adjustment to the current method of correction, which is, it seems, entirely ad hoc. No concentrated, dedicated, or measurable process appears to be in place to remediate the problems, nor is there any clear funding mechanism in place to achieve compliance. <sup>1</sup>

The Plan refers frequently to studies, such as the building surveys, the FHWA report, and the ADA Working Committee briefing paper, to name a few. However, none of these documents are readily available. The information in these reports would provide a more detailed and useful template for evaluating whether the Transition Plan addresses all of the outstanding issues.

Another area where details are very much lacking is addressing inaccessibility of fixed route bus stops. There is a vague mention on page 17, but again no time line and no plan to improve access. The issues at DMV are discussed in general terms but are not identified and no timeline for correction is outlined. No methodology for identifying accessibility barriers in buildings is identified (page 23). The modifications that have been made for maintenance policy are not outlined, and no time line is established.

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<sup>1</sup> The National Academy of Sciences *ADA Transition Plans: A Guide to Best Management Practices* May 2009, strongly recommends that a budget and schedule of work be part of any successful Transition Plan.

The Plan at several points discusses the problems associated with the Project Development and Construction process (see page 21). The Report acknowledges that there is no mechanism in place at the design phase to correct any ADA deficiencies. Current procedure is for DelDOT to review compliance of finished projects, which can be too late. The Plan recognizes the need to develop a "Technical Infeasibility and Waiver Process" and to have the ADA Title II Team involved in review. However, there is no timeline or process in place to ensure that this will happen.

For the Transition Plan to be successful, it is important the DelDOT first provide much more detailed information on recognized deficiencies. More important still, DelDOT needs to create a schedule for work, with associated funding. This Transition Plan lacks any action plan, and the concern is that without one, DelDOT will continue to "talk" about compliance but not actually take the steps necessary to achieve it.



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MEMORANDUM

DATE: September 3, 2013

TO: Mr. John McNeal, ADA/Title II Coordinator  
Delaware Department of Transportation

FROM: Daniese McMullin-Powell, <sup>DM-PLP</sup> Chairperson  
State Council for Persons with Disabilities

RE: DeIDOT Proposed ADA Self-Assessment and Transition Plan

The State Council for Persons with Disabilities (SCPD) has reviewed the Delaware Department of Transportation's (DeIDOTs) proposed ADA Self-Assessment and Transition Plan. SCPD certainly appreciates the opportunity to review the Plan and the Department's collaboration with Council regarding this important issue. Council has the following observations on the proposed Plan.

First, SCPD provided comments on a previous draft in September 2011 (attached). The comments on that draft plan regarding the generic nature of the plan, the reliance on old data or lack of relevant data, and the lack of specificity and timelines regarding how DeIDOT is going to reevaluate existing conditions and meet or maintain ADA compliance standards and program accessibility remain apt. The Plan would benefit greatly from such information. In addition, other previous SCPD observations and recommendations on certain sections, which would appear to benefit DeIDOT and its Plan, were not included in the latest version (e.g. Driver & Vehicle Licensing; Public Workshops; Correspondence).

Second, SCPD appreciates that DeIDOT revised the "Relationship to Other State of Delaware ADA Activities" section consistent with previous Council recommendations.

Third, while Transition Plan Management (page 8) first references that the plan will be reviewed "periodically", it does appear to later clarify that this will occur "annually". The more specific timeline, i.e. "annually", is preferred. In addition, SCPD appreciates that any alteration to the intent of the Plan will be open for public review and comment, and that there is a link for continual public review through DeIDOTs website.

Fourth, the proposed Grievance Procedure (page 12) is not necessarily the same one "used by the rest of the State of Delaware". It appears the DelDOT proposed Grievance Procedure is based on the Grievance Procedure used by the Office of Disability Affairs. There are other procedures used in the State Merit System and/or by individual State agencies. In addition, the proposed Grievance Procedure should not be used just for "reasonable accommodation". It should be applied to any program provided by or maintained by DelDOT which is simply out of compliance with ADA standards (e.g. rest areas, pedestrian facilities). DelDOT should revisit this section and make the necessary revisions.

Sixth, SCPD appreciates the proactive inclusion of the section regarding Communications (page 12) and other accessibility provisions to enhance public involvement.

Seventh, under Funding (page 23), DelDOT reports that, due to an agreement with the U.S. Department of Justice, it would spend \$150,000/year to fund curb ramp installations. However, there is no evidence that funding has actually been spent. Indeed, DelDOT is transparent in its admission that: "(d)ue to changes in personnel we do not currently have comprehensive documentation regarding the remediation status of each location and must review project files to determine whether all identified locations have been addressed. This is unacceptable given that the USDOJ Settlement Agreement was signed in 2004. Parenthetically, the agreement requires that DelDOT issue a report annually to SCPD (and others) regarding curb retrofitting and public comments received. To date, SCPD has never received such a report.

Eighth, under Buildings (page 27), how can DelDOT conclude that no remediation work for local offices, including maintenance yards, is required if ADA compliance inspections are somewhat outdated (please see reference to 2001 at page 16)?

Ninth, SCPD appreciates that it is referenced in the Plan as a resource for technical assistance and collaboration with DelDOT (e.g. Public Information and Involvement at page 28).

Tenth, under Funding (page 29), DelDOT should be specific regarding the funding needed to rectify the deficiencies identified through the Self-Evaluation.

Eleventh, the language from the Delaware Code regarding SCPD in Appendix A is outdated. Attached please find an updated version.

In summary, SCPD appreciates the efforts by DelDOT to finally develop a more comprehensive ADA Self-Assessment and Transition Plan and the transparency in disclosing deficiencies in ADA program accessibility. However, the Plan still lacks specific action steps, timelines and dedicated funding which are fundamentally required if DelDOT is truly going to strive to achieve ADA compliance and program accessibility. SCPD welcomes the opportunity for continued collaboration and will certainly provide any technical assistance needed regarding this initiative.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the Plan.

cc: Disabilities Law Program  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council  
ADA Transition Plan – SCPD comments 8-30-13

**DelDot  
ADA Self Assessment and Transition Plan  
Questions**

How are evaluations triggered?

- a. passage of time
- b. change of personnel
- c. change of standards
- d. other

What is the relationship among DelDot; Del Transportation Authority; Del Transit Corp; Dart and Dast?

If there is a responsibility relationship between Del Dot and Dast, there is no information on Del Dot plans for Dast?

Format changes do not help the reader to understand the information, ie p17 Transit Systems- two of the three inspections reported give results. What was the status of the other inspection?

How does the public get to see the draft Maintenance Policy & get input before adoption as Policy?

How many of the agreed upon curb ramp fixes occurred?

What impact does the failure to accomplish the required curb ramps have on the DOJ agreement?

In Appendix D- under item 1 "...if the ADA Coordinator is not able to mediate a resolution..." and

Item 2 "...mediation is via the state agency designated."

This fixes the ADA Coordinator as the state agency for mediation? Can that be right?

In Appendix E -Third line of text "...against qualified individuals..."

What are the qualifications

Who determines the qualifications?

How can the public find out if they are qualified?



William P. O'Neill

