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Subject: TA Request
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Attachments: [image001.png](#)

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Your Name

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I'm looking for...

Help with the ADA

City/Town

Deadwood

State

South Dakota

Area of focus

Access to State and Local Government

Your ADA Question

I oversee parking for the City of Deadwood. At our event complex, we have enough accessible parking spaces throughout the facility to satisfy our ordinance with is modeled after the typical standards. When an organization rents the facility, they get access to the entire facility which includes parking areas to organize as they need to. Does the city have an obligation to ensure these spaces remain open for accessible parking or provide an acceptable alternative? We received a complaint from an individual who, although he was able to park in an accessible space, believed it was too far away (about 100 yards). He believes he should have received transportation to the grandstands by a golf cart. The parking within the complex was controlled by the organization and private security. We are motivated to address this as a customer service issue, but would like to know where our liabilities lie.

Hi Justin,

Unless the private organization is contractually carrying out an agreement with the city to provide an event on *behalf of the city*, the city should be meeting its minimum obligations under the ADA by providing facilities that are compliant with the requirements for Title II entities under the ADA Standards. The private entity should meet its obligations under Title III of the ADA.

In order to help distinguish my “voice” from the included citations of ADA Regulations, ADA Standards, and ADA Title II Technical Assistance Manual, my annotations will be in red from now on.

The city’s obligation under the ADA is to ensure that access to its programs are provided to people with disabilities. The city generally does not have direct control over the operations of private organization conducting a private event on property leased by the city. The city can stipulate conditions relating to access in its contract with the private organization but is not necessarily compelled to do so by the ADA.

Subpart B—General Requirements

§ 35.130 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)

(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

The private entity must comply with Title III of the ADA. The entity cannot discriminate against people on the basis of disability. The scoping provisions for accessible parking are based upon the

amount of parking provided. The private entity has a right to decide what parking they provide for public use depending on their operations, so long as they do not discriminate on the basis of disability or reduce the minimum requirement for accessible parking below the scoping requirement found in the 2010 ADA Standards. An example of a permitted practice, assuming that a specific parking lot is appropriately scoped for accessible parking: A private entity decides to close an entire parking lot, both accessible and non-accessible parking spaces, so that it has space to set up a VIP experience tent. Since both accessible and non-accessible parking spaces are affected throughout that specific lot, there is likely no discrimination on the basis of disability occurring. In another scenario, the private organization only decides to close-off access to the accessible parking in this parking lot for the VIP tent. If they do not temporarily relocate the accessible parking to the nearest parking spaces which satisfy the technical requirements for accessible parking, they would be in violation of Title III of the ADA. Accessible parking is not required to be located on the shortest route to the entrance of the facility it serves, but on the shortest *accessible* route to the entrance of the facility it serves, which may not be the shortest route in every situation.

II-1.3000 Relationship to title III. Public entities are not subject to title III of the ADA, which covers only private entities. Conversely, private entities are not subject to title II. In many situations, however, public entities have a close relationship to private entities that are covered by title III, with the result that certain activities may be at least indirectly affected by both titles.

ILLUSTRATION 1: A privately owned restaurant in a State park operates for the convenience of park users under a concession agreement with a State department of parks. As a public accommodation, the restaurant is subject to title III and must meet those obligations. The State department of parks, a public entity, is subject to title II. The parks department is obligated to ensure by contract that the restaurant is operated in a manner that enables the parks department to meet its title II obligations, even though the restaurant is not directly subject to title II.

ILLUSTRATION 2: A city owns a downtown office building occupied by its department of human resources. The building's first floor, however, is leased to a restaurant, a newsstand, and a travel agency. The city, as a public entity and landlord of the office building, is subject to title II. As a public entity, it is not subject to title III, even though its tenants are public accommodations that are covered by title III.

ILLUSTRATION 3: A city engages in a joint venture with a private corporation to build a new professional sports stadium. Where public and private entities act jointly, the public entity must ensure that the relevant requirements of title II are met; and the private entity must ensure compliance with title III. Consequently, the new stadium would have to be built in compliance with the accessibility guidelines of both titles II and III. In cases where the standards differ, the stadium would have to meet the standard that provides the highest degree of access to individuals with disabilities.

ILLUSTRATION 4: A private, nonprofit corporation operates a number of group homes under contract with a State agency for the benefit of individuals with mental disabilities. These particular homes provide a significant enough level of social services to be considered places of public accommodation under title III. The State agency must ensure that its contracts are carried out in accordance with title II, and the private entity must ensure that the homes comply with title III.

208.3 Location

Parking facilities shall comply with 208.3

208.3.1 General

Parking spaces complying with [502](#) that serve a particular building or facility shall be located on the shortest accessible route from parking to an entrance complying with [206.4](#). Where parking serves more than one accessible entrance, parking spaces complying with [502](#) shall be dispersed and located on the shortest accessible route to the accessible entrances. In parking facilities that do not serve a particular building or facility, parking spaces complying with [502](#) shall be located on the shortest accessible route to an accessible pedestrian entrance of the parking facility.

Typically, alternative on-site transportation is a method chosen by the entity to satisfy its non-discrimination obligations, for example if there is no compliant accessible route between the parking lot for a venue and the venue itself. The expectation voiced by the patron is otherwise not specifically supported by the ADA based on the information provided. If he had contacted the organization ahead of time, this could have been an example of a request for reasonable modification of policy, practice, and procedure, but it is ultimately up to the private entity to decide what constitutes “reasonable” within their operating constraints. Reasonable modifications are limited by fundamental alteration, undue burden, or direct threat to the health and safety of others. To summarize, the city generally has an obligation to ensure its facilities are accessible unless the organization it is contracted with is acting on behalf of the city in the provision of city programs. I hope this information is helpful. Please let me know if you require further information.

Best,
Chris

Chris Murphy, ADAC

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(He/his)

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