

January 13, 2010

AMERICAN COUNCIL OF THE BLIND OF MINNESOTA
P.O. BOX 7341
MINNEAPOLIS, MN 55407

Introduction, Summary of Comments and Recommendations.

The American Council of the Blind of Minnesota (ACBM) appreciates the opportunity to submit comments regarding the Minnesota Department of Transportation (“MN/DOT”) draft transition plan dated November 23, 2009. ACBM is a non-profit membership organization of persons who are blind, deaf blind, or visually-impaired, which promotes equal access, equal opportunity, full participation, independent living and economic self-sufficiency for its members. ACBM is an affiliate of its parent organization, the American Council of the Blind, a national non-profit, consumer organization having the same goals.

Because our members cannot drive, it is very important to adopt multi-modal forms of safe transportation including walking. Many members of the senior community, which is the fastest growing demographic group in our state, also are or will become visually-impaired over time because vision loss is positively correlated with age. For this reason, Minnesota will have an increasing number of persons who cannot drive and must walk or take other modes of transportation, including fixed route buses and paratransit. Moreover, many of our members are unemployed and rely on cost-efficient, safe means of travel to participate in social and economic activities. Safe and reasonably priced alternatives to operating one’s own motor vehicle also is fundamental for those of our members who are employed or are seeking employment in order to be able to travel to and from work on a timely, reliable basis. Should we fail to provide safe and cost-efficient means of travel for our members, they will most likely lead less independent lives remain at home and become isolated from their community. They will become dependent on the assistance of others. Higher demand for costly government benefits and services will be the result.

ACBM also is a member organization of the Minnesota Consortium for Citizens with Disabilities (“MN/CCD”). MN/CCD did not have an opportunity to review these comments. However, ACBM is authorized to state that MN/CCD is supportive of ACBM’s advocacy efforts to improve the accessibility of public-rights-of-way for Minnesotans with disabilities and sees these comments as another step toward that goal.

ACBM would like to be able to commend MN/DOT for its recent efforts at compliance with Title II, Subtitle A of the Americans with Disabilities act of 1990, as amended, 42 USC 12131 to 12134 (“ADA” or “Title II of the ADA”) and Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794 (“Section 504”). At first blush, it appeared MN/DOT was making good

faith efforts to correct decades of neglect in complying with these two fundamental disability rights laws. For reasons which will become evident later, MN/DOT's good faith effort to achieve compliance is in question because of the poor quality of its draft plan as well as other recent decisions regarding necessary preconditions for sustained compliance with these laws.

MN/DOT management repeatedly has acknowledged that the agency is long overdue in obeying these disability rights laws. The Federal Aid-to-Highway Act required funding recipients such as MN/DOT to construct curb ramps beginning in 1973. See: section 228 of the Federal-Aid Highway Act of 1973 (23 U.S.C. 402(b)(1)(F)). A self evaluation and transition plan under Section 504 were due in 1980. An ADA self-evaluation and transition plan was required to be completed by 1993 and the removal of structural barriers was to be achieved by 1995.

None of us can turn back the clock to redress MN/DOT's significant delays in compliance back when they occurred. MN/DOT can only move forward to identify on an on-going basis barriers to equal access and remove them as speedily as possible.

ACBM concludes, however, that MN/DOT's draft transition plan falls far short of the mark. It is as if MN/DOT is rushing to publish a transition plan just so it can say it finally has one, regardless of the document's many shortcomings.

In its draft, MN/DOT tries to combine a self-evaluation with a transition plan. MN/DOT admits that its self-evaluation is not yet complete and attempts to make its completion an element of its transition plan.

The components of its self evaluation which MN/DOT claims to have completed lack required detail such as identifying what policy and procedures are to be modified, within what time frame and by whom. There also is no evidence of any involvement of the disability community in this process, as required by law. Because MN/DOT has failed to complete its self-evaluation, its transition plan regarding removal of structural barriers likewise is incomplete.

MN/DOT acknowledges in its draft transition plan that many necessary components of such a plan cannot be developed until further review of its facilities, including curb ramps, have been concluded. ACBM notes that the US Department of Justice ("DOJ") ADA title II regulations at 28 CFR 35.151(d)(2) requires that "[I]f a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrians walk across curbs..."

As MN/DOT still has intersections in seven of its eight Districts yet to survey, it cannot comply with this specific regulatory mandate.

ACBM notes MN/DOT's stated intention to adopt the November 2005 draft of the U.S. Access-Board's draft Public Rights-of-Way Guidance (PROWAG) as its standard for accessible design. The FHWA has adopted PROWAG as a "best practice" for ADA Title II compliance. MN/DOT's Deputy Commissioner was expected to issue a technical memorandum formally adopting PROWAG as its accessibility standard prior to the end of 2009. This technical

memorandum has yet to be issued. Additionally, ACBM understands from its discussion with agency officials that MN/DOT is not adopting PROWAG's standards for roundabouts. This limitation on MN/DOT's intended adoption of PROWAG, if it occurs, should be stated in its Draft.

ACBM urges MN/DOT to step back and refocus its efforts to complete a comprehensive self-evaluation encompassing all physical and non-physical barriers to equal access. MN/DOT must devote sufficient resources and time to ensure its self-evaluation complies with all regulatory requirements including involvement of people with disabilities and their advocates. Only then should MN/DOT return to drafting a comprehensive transition plan for removal of structural barriers and do so in compliance with regulatory requirements.

II. MN/DOT was and continues to be obligated to comply with both Title II of the ADA and Section 504's requirements for developing a self-evaluation and transition plan.

Because MN/DOT is a public entity and continues to be a recipient of federal financial assistance, it must satisfy the requirements of both Section 504 and Title II of the ADA regarding development of a self-evaluation and a transition plan. See: the US Department of Transportation (DOT) Section 504 regulations prohibiting discrimination on the basis of disability by recipients of federal financial assistance . 49 CFR Part 27, at section 27.19. The ADA title II requirements essentially extended section 504's coverage to all public entities regardless of whether or not they received federal funding. Section 501(a) of the ADA expressly provides that its standards are not to be lower than the standards under title V of the rehabilitation Act or its implementing regulations. 42 USC 12201(a); 28 CFR 35.103(a). For these reasons, ACBM strongly recommends that MN/DOT state that its transition plan is also required by Section 504 of the Rehabilitation Act and its implementing regulations.

III. MN/DOT's attempt to include a self-evaluation within its transition plan violates the ADA and Section 504.

MN/DOT falsely believes it can make completion of a self-evaluation an element of a transition plan. It cannot. The draft states on p. 1

“As required by Title II of the ADA, MN/DOT is conducting a self-evaluation of its facilities and developed this Transition Plan detailing how the organization will ensure that all of its facilities, services, programs and activities are accessible to all individuals.”

see also Draft, pp7-9).

A self-evaluation is intended to cover all aspects of a public entity's activities, programs, services and benefits to identify barriers to equal access by persons with disabilities. 28 CFR 105. The DOJ provided sub-regulatory guidance to its Title II rule. The guidance clearly states, “[a]ll public entities are required to do a self-evaluation.” 28 CFR Part 35, appendix A, p. 45.

A transition plan is only required when structural changes must be made to existing facilities. 28 CFR 150(d).

A Memorandum dated September 1, 2006, entitled “Clarification of FHWA's Oversight Role in Accessibility” makes clear FHWA’s position that a self-evaluation is a distinct and separate compliance step. See also FHWA’s civil rights technical assistance document issued by its Resource Center, (retrieved Dec. 28, 2009)www.fhwa.dot.gov/resourcecenter/teams/civilrights/4a.doc. Likewise, a technical assistance document regarding planning and implementation of alterations issued by the Access-Board notes:

In assessing and addressing their responsibilities for existing facilities, many jurisdictions have relied heavily on two helpful tools—the self-evaluation and the transition plan. These tools were initially required under both 504 and ADA Title II regulations. Many jurisdictions have continued to use these tools to plan for addressing accessibility issues, assessing progress, and managing changing circumstances. In addition, DOT's 504 regulation requires that jurisdictions establish a system for periodically reviewing and updating the self-evaluation that forms the basis for the Federal-aid transition plan.

Special Report: Accessible Public Rights-of-Way Planning and Design for Alterations <http://www.access-board.gov/prowac/alterations/guide.htm>

Common sense dictates that a public entity such as MN/DOT cannot complete either non-structural barrier removal or structural barrier removal in existing facilities until and unless it has completed a comprehensive self-evaluation. MN/DOT has not done so. For this reason, its so-called draft transition plan is premature. MN/DOT should complete its self-evaluation plan before it attempts to complete a transition plan.

MN/DOT’s efforts at self-evaluation and transition planning do not comply with Section 504 or Title II of the ADA

MN/DOT’s self-evaluation efforts fall far short of Section 504 and ADA requirements.

The DOT Section 504 regulations are very explicit as to the steps for developing a self-evaluation. The regulations provide at 49 CFR 27.11:

(c) Compliance planning. (1) A recipient shall, within 90 days from the effective date of this part, designate and forward to the head of any operating administration providing financial assistance, with a copy to the responsible Departmental official the names, addresses, and telephone numbers of the persons responsible for evaluating the recipient's compliance with this part.

(2) A recipient shall, within 180 days from the effective date of this part, after consultation at each step in paragraphs (c)(2) (i)-(iii) of this section with interested persons, including handicapped persons and organizations representing the handicapped:

(i) Evaluate its current policies and practices for implementing these regulations, and notify the head of the operating administration of the completion of this evaluation;

(ii) Identify shortcomings in compliance and describe the methods used to remedy them;

(iii) Begin to modify, with official approval of recipient's management, any policies or practices that do not meet the requirements of this part according to a schedule or sequence that includes milestones or measures of achievement. These modifications shall be completed within one year from the effective date of this part;

(iv) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted from previous policies and practices; and

(v) Establish a system for periodically reviewing and updating the evaluation.

49 CFR 27.11(c). (retrieved Dec. 21, 2009)

http://www.fta.dot.gov/civilrights/ada/civil_rights_3907.html.

The draft indicates at page 3 that MN/DOT retained a consultant in 2008 to evaluate its “current policies, procedures and practices regarding ADA and Title II.” The consultant’s “report identified which policies, procedures and practices do not comply with Title II requirements and suggested potential modifications to bring them into compliance.” Apparently dissatisfied with this report, MN/DOT funded a second report regarding a review of its policies and procedures in 2009.

However, MN/DOT’s brief summary of both of these reports leave out critical information and steps required by 49 CFR 27.11©, quoted above. We are not told what barriers and shortcomings were identified in either report. We are not provided with either report’s recommendations or MN/DOT’s responses thereto. Nor are there any schedules identified by MN/DOT within which all of the specified problems would be resolved. The self-evaluation must identify the name, address and phone number of the officials responsible for accomplishing barrier removal by the chosen timelines. Failing to identify the responsible personnel, their responsibilities and the timeframes within which their work must be finished undermines the agency’s accountability and transparency.

Similarly, with regard to timelines for removing structural barriers in existing facilities, The Draft states that “[t]he funding and schedule of roadway improvements is laid out in MN/DOT’s Statewide Transportation Improvement Plan (STIP).”

A vague referral to some other MN/DOT document is not acceptable. Identification of the physical barriers to be removed, the means to be used for their removal and annual timelines are a required part of a transition plan and must be included therein. 28 CFR 35.151(d)(3).

ACBM recognizes that the level of detail necessary to create a legitimate self-evaluation and transition plan will require the agency to devote even more time and resources to this effort than it has provided to date. However, the end result will be an excellent management tool the agency can use to monitor its progress towards compliance and take corrective action when necessary. It also will enhance the agency’s credibility within the disability community.

However, in its current version, there is no indication that persons with disabilities and their advocates were ever involved in every step of MN/DOT’s self-evaluation efforts.

At p. 3 of the Draft, MN/DOT refers to the ADA External Advisory Committee which was established in 2008 and includes representatives from the disability community and its advocates. The draft asserts this group was involved in the development of the proposed transition plan but it does not say the group was involved in reviewing or commenting upon any aspect of the agency's self-evaluation process. ACBM believes that the composition of the current committee is not sufficiently representative of the disability community as a whole. For example, the committee lacks any representative of or advocate for people with developmental disabilities and persons with mental illness. MN/DOT should take steps to expand the Committee's membership to better reflect the diversity of disabilities within our community. In addition, as required by both DOJ and DOT regulations, the agency should involve this Committee in the agency's self-evaluation efforts including the right to a meaningful review of draft work product.

VI. Specific Issues which should be addressed in MN/DOT's Self-Evaluation and transition plan.

ACBM wishes to comment upon MN/DOT policies, practices and procedures which should be addressed in its self-evaluation and transition plan.

A. Streets, sidewalks and Curb Ramps

Because our members cannot drive, ACBM has a strong interest in ensuring that our sidewalks, curb ramps and intersections are fully accessible and safe for everyone. Fortunately, all of these elements of accessibility are subject to the mandates and protection of Title II of the ADA. See: 28 CFR 35.104 (Defining "facility"). The FHWA has published "questions and answers" regarding the application of Section 504 and Title II of the ADA to public-rights-of-way and pedestrian facilities. The answer to question two explains that a transportation agency "must provide pedestrian access for persons with disabilities to the agency's streets and sidewalks, whenever a pedestrian facility exists. Regulations implement this requirement by imposing standards for accessible features such as curb cuts, ramps, continuous sidewalks, and detectable warnings." (retrieved 1-11-10) http://www.fhwa.dot.gov/civilrights/ada_qa.htm#q2

As to what constitutes an "alteration" in the context of a public-right-of-way, the FHWA's Q&A explains in answer to Question 17 that [a]n alteration is a change to a facility in the public right-of-way that affects or could affect access, circulation, or use. Projects altering the use of the public right-of-way must incorporate pedestrian access improvements within the scope of the project to meet the requirements of the ADA and Section 504. These projects have the potential to affect the structure, grade, or use of the roadway. Alterations include items such as reconstruction, major rehabilitation, widening, resurfacing (e.g. structural overlays and mill and fill), signal installation and upgrades, and projects of similar scale and effect". Id. Any decision not to fully comply with the applicable standard for alterations or new construction would have to be shown by MN/DOT to be "technically infeasible" under ADAAG 4.1.1 (5) and 4.1.6(J). No undue financial and administrative burdens "or "fundamental alteration" defense is available when a facility has been newly constructed or altered since January 26, 1992.

According to its Draft, MN/DOT has only surveyed intersections in one out of eight districts. However, when completing its intersection surveys, MN/DOT must determine which of its curb ramps were upgraded or installed since January 26, 1992 in addition to whether or not the curb ramps are compliant with applicable legally-enforceable ADAAG standards or PROWAG.

MN/DOT must give higher priority to ensure it is installing or updating curb ramps that are in compliance with applicable accessibility standards. MN/DOT's Draft states that "[f]rom 1992 to 1995, all of MN/DOT Districts, worked independently to install curb ramps that were needed within the state's right-of-way." The draft language just quoted indicates effort-the districts "worked"-but it does not say all the intersections within MN/DOT's right-of-way had curb ramps installed. Presumably, additional curb ramps have been installed since that time.

Unfortunately, it may be that past installation of curb ramps violated Section 504 and the ADA. A representative of the US Access-Board reviewed MN/DOT's design plates for curb ramps and a problem with the design of diagonal curb ramps was identified. In particular, Both ADAAG and PROWAG include a provision requiring a protected space at the toe of a diagonal, out of moving traffic lanes (within a triangle formed by the extension of the curblines). See: ADAAG 4.7.10. This is a critical safety issue for persons who use wheelchairs as well as blind and deaf blind persons. Faulty diagonal curb ramps can send such individuals directly into the path of oncoming traffic, creating a high risk of accidents, injuries and even fatalities. Failing to conform all design plates to accessibility requirements creates new liability for MN/DOT with every diagonal curb ramp it directly or indirectly installs. Moreover, failure to correct its designs wastes increasingly scarce state resources, perhaps tens of millions of dollars. The agency will not be able to hold external contractors and vendors responsible for ADA non-compliance if the agency's own design is faulty and the contractor or vendor simply followed the agency's unlawful design. This will result in Minnesota tax payers having to pay for the cost of re-working what was done in violation of the ADA rather than having the contractor or vendor bearing the cost.

ACBM takes the position that MN/DOT must give high priority to bringing into compliance any curb ramps installed since January 26, 1992 which violated applicable legally enforceable ADAAG standards. Bringing such curb ramps into compliance cannot be delayed through a transition plan because a transition plan is only available for "existing facilities." **Kinney v. Yerusalim**, 9 F.3d 1067 (3d Cir. 1993), cert. denied, 511 U.S. 1033 (1994).

As noted previously, timelines for some structural improvements are apparently incorporated into MN/DOT's STIP and others await prioritization within a yet to be completed transition plan. ACBM strongly believes that work on ADA structural compliance should not be simply folded into larger projects scheduled for completion several years hence. Providing additional funding for and speeding up sidewalk repairs, curb ramp updates and APS installation would be examples of appropriate remedial measures to compensate for the effects of MN/DOT's eighteen-plus years of past discriminatory policies, programs and activities, as required by 49 CFR 27.11©(2)(iv).

MN/DOT also should remember that A federal district court can order an agency to re-do structural work which does not meet accessibility standards. For example, the Sixth Circuit issued an injunction against a city who altered streets, sidewalks and curbs without installing curb ramps in violation of 28 CFR § 35.151(e). The city had to bear the cost of re-working the streets, sidewalks and curbs in accordance with exacting accessibility standards. Ability Center of Greater Toledo v. City of Sandusky, 385 F.3d 901 (6th Cir. 2004).

Another top priority should be to ensure that work zones provide for adequate, accessible and safe detours for persons with disabilities including persons who are deaf-blind, blind or visually-impaired as both Section 504 and the ADA require. Last summer's multiple areas of construction in the downtowns of both Minneapolis and St. Paul were notable for the absence of such detours.

C. Manuals, Plates and other agency policy documents

We are provided a list of 41 documents and manuals MN/DOT says it must review as part of its self-evaluation. See appendix G of the Draft. For the most part, the problematic sections or chapters in these documents are not identified. There are no timeframes for completion of required revisions and the contact information for the individuals responsible for completing the work are not provided. Even more important, there is no attempt to prioritize the reviews and necessary revisions. ACBM does not believe that each document and manual are of equal importance to providing access for persons with disabilities. Section V.A, above, notes ACBM's concerns regarding the legality of MN/DOT's current curb ramp design.

In addition, ACBM is aware that there exist state regulations establishing mandatory standards for Local jurisdictions receiving state and federal monies through MN/DOT's State Aid to Local Transportation (SALT). Whether or not these regulations impact accessibility for persons with disabilities, directly or indirectly, is beyond ACBM's knowledge. However, we believe these regulations also should be reviewed as part of MN/DOT's self-evaluation.

Appendix G also references Section 4e of the state Manual on Uniform Traffic control Devices (MN/MUTCD). Section 4e establishes criteria for the installation of accessible pedestrian signals. ACBM believes MN/DOT should conduct this review in light of the FHWA revised MUTCD issued December 13, 2009.

D. Accessible Pedestrian signals

ACBM has been and continues to be a strong proponent for the installation of APS ,even going so far as to file a complaint with FHWA against MN/DOT and other public entities in 2007. In addition to its complaint, the availability of federal funding for APS installation has resulted in an increased use of accessible pedestrian signals in the Twin Cities metropolitan area. However, more needs to be done. If and when MN/DOT adopts PROWAG, it will be required to install APS when pedestrian signalization is substantially upgraded as part of the planned alteration project.

Moreover, data suggests that persons with disabilities and seniors have a higher involvement in automobile-pedestrian accidents. As noted previously, MN/DOT's continued regular use of diagonal curb ramps creates an unnecessary risk for wheelchair users and persons with vision impairments because they tend to direct travelers into oncoming traffic. Likewise, higher traffic volume, right-turn-on red signalization and the increasing number of noiseless hybrid vehicles make the safe crossing of complex and/or busy intersections with diagonal curb ramps difficult and risky for blind and deaf-blind persons. MN/DOT should utilize accident and crash data to prioritize compliance activities such as changing traffic flow patterns at intersections, updating or installing compliant curb ramps and accessible pedestrian signals.

In particular, ACBM believes it should be a MN/Dot priority to install APS at such problematic intersections even if not warranted by its APS prioritization tool.

E. Grievance Policy

ACBM acknowledges MN/DOT has established a grievance policy. A grievance policy is required by Section 504 and the ADA. 28 CFR 107(b); 49 CFR 27.13(b). The most detailed guidance appears at 49 CFR 2713(b) which requires recipients to establish "procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by" Section 504.

Although not required by its ADA regulations, the DOJ has created model standards for grievance procedures as part of its "Best Practices" tool Kit for state and local governments. (retrieved Dec. 8) <http://www.ada.gov/pccatoolkit/toolkitmain> . The model grievance procedures, discussed in Chapter 2 of the tool Kit, require an ADA Coordinator to meet with the person filing a complaint within 15 days and that the ADA Coordinator has 15 days to respond in writing or in an appropriate alternative format a proposed resolution for the problem. There is also a right to appeal to an appropriate high level official with similar deadlines, meeting and a written response.

MN/DOT does not appear to be applying these requirements in response to specific grievances. The Appendices to ACBM's comments contains a table setting forth complaints regarding curb ramps which were filed in 2009 and how MN/DOT has responded to them. The "status" column states that resolution awaits completion of MN/DOT's transition plan ("TP") in 64.5% of all of the identified grievances. See: Appendix A, Col. 6, rows 2,6,8-19,22-27.

Similarly, appendix B regarding grievances about APS indicates that resolution of 20.8% of the grievances must await the completion of the transition plan.

See Appendix B, col. 6, rows 5,6,10,20,23

Similarly, appendix C regarding grievances concerning Rest areas and other miscellaneous issues indicates that resolution of 50% of the grievances must await the completion of the transition plan.

See Appendix C, Col. 6, rows 1,2,3,5

Fully 46% of all 2009 ADA grievances await completion of MN/DOT's transition plan for their resolution. this is unacceptable.

Other status remarks indicate that MN/DOT proposes to cure a violation identified in a grievance only in several years, as part of a larger planned project. See: Appendix A, Col. 6, Row 1.

Resolutions of APS grievances in MN/DOT district 8 are said to have to await funding that the district intends to apply for in 2010. See Appendix B, Col. 6, rows 13,16,18

Taken together, these grievance status reports hardly demonstrate either due process or timely and equitable relief as the regulations demand. We do not even know what, if anything the complaining parties have been told about the status of their complaints. Because of the seriousness and lack of equity evidenced by these reports, ACBM has forwarded its concerns regarding the operation of MN/DOT's grievance policy and the appendices to this document to FHWA's Minnesota Division office as evidence supporting its pending ADA/Section 504 complaint against MN/DOT and other public entities.

F. Maintenance

Strange it is that MN/DOT's Draft never uses the words "snow" or "ice" when discussing its plan for review of its maintenance policies, practices and procedures. Snow, ice and sub-zero temperatures are a frequent occurrence in our state and certainly have been so this winter. Curb ramps and sidewalks are blocked by mounds of snow, which has often turned to ice, creating a complete bar to passage for many pedestrians including people with disabilities and senior citizens. MN/DOT has a legal obligation under the ADA to "maintain in operable working condition those features of facilities... that are required to be readily accessible to and usable by persons with disabilities..." 28 CFR 35.133(a). FHWA's August 27, 2008 memorandum on snow removal further provides

"Snow removal and treatment for ice on sidewalks is also a pedestrian accessibility issue, for which FHWA has oversight responsibility. In accordance with [28 CFR § 35.133](#), a public agency must maintain its walkways in an accessible condition for all pedestrians, including persons with disabilities, with only isolated or temporary interruptions in accessibility. Part of this maintenance obligation includes reasonable snow removal efforts. See FHWA, Questions and Answers About ADA/Section 504, question 31 under Maintenance, www.fhwa.dot.gov/civilrights/ada_qa.htm#q31."

ACBM does not believe MN/DOT's efforts at ice and snow removal on pedestrian routes on public-rights-of-way are adequate under the ADA or Section 504.

G. Training

MN/DOT's Draft acknowledges the importance of training on PROWAG which the agency says it will adopt. ACBM contacted the US Access Board and spoke to one of its experts regarding

the possibility of using its personnel to train approximately 150 MN/DOT staff and members of the disability community on PROWAG's requirements. The cost of doing so was quite minimal. ACBM has just learned indirectly that MN/DOT has decided it has the expertise in-house to conduct the PROWAG training. MN/DOT's response to the Access Board's offer is ironic. ACBM does not doubt that MN/DOT may have a small number of people who are familiar with PROWAG. MN/DOT, however, cannot seriously believe its few inside "experts can match the depth of knowledge possessed by the Access Board personnel who created PROWAG. Moreover, PROWAG is a draft guideline. It will be revised prior to being issued as a notice of proposed rulemaking. The Access Board already is making revisions in response to the recently issued 2009 Manual on Uniform Traffic Control Devices particularly regarding its new provisions in Section 4e.09 regarding APS. Whether MN/DOT's decision was motivated by hubris, its culture of secrecy and long-standing manifest disinterest in disability access or some other rationale, we probably will never know. Choosing merely passable PROWAG training over the obviously best such training available is not justifiable in ACBM's view. Doing so is a slap in the face of the disability community. It calls into question the agency's commitment to ADA and Section 504 compliance.

H. MN/DOT's responsibility to oversee the actions of its recipients of state and federal aid for transportation facilities.

MN/DOT receives hundreds of millions of dollars a year in federal aid for surface transportation projects. General revenue state funds are also provided to sustain and enhance the states trunk highway system. It is clear that a significant amount of federal and state money is funneled through the SALT program to counties, cities and other local jurisdictions to be used on roads and highways. MN/DOT is legally obligated to monitor its sub-recipients of federal and state monies including local jurisdictions, contractors and vendors to ensure their funded activities and projects comply with Section 504 and ADA, pursuant to 28 CFR 35.130 (b)(1)(v) & 49 CFR 27.7 (V)).

This compliance issue is not addressed in MN/DOT's identified areas for self-evaluation nor in its draft transition plan. If the agency were to exercise such authority, the disability community certainly would have more faith in MN/DOT's commitment to barrier removal.

VII. Conclusion

MN/DOT's Transition Plan is wholly inadequate and legally indefensible. It cannot be finalized unless and until MN/DOT completes A comprehensive and compliant self-evaluation. Rather than devoting more time to its draft transition plan which cannot comply with disability rights regulatory requirements at this time, MN/DOT should devote sufficient resources to completing a thorough and lawful self-evaluation, with input from the disability community, as soon as possible.

We had hoped the agency had turned a corner on providing accessible facilities with Commissioner Sorel's promise of a new "partnership" With the disability community to bring the agency into compliance with federal disability rights law. Unfortunately, the agency's lackluster and legally inadequate draft of its proposed transition plan; its failure to complete a self-

evaluation with sufficient detail and with the involvement of the disability community; and its rejection of the “gold standard” of training available from the Access-Board strongly suggests that it is business as usual at MN/DOT when it comes to ADA and Section 504 compliance.

FOR THE AMERICAN COUNCIL OF
THE BLIND OF MINNESOTA

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Christopher G. Bell, Esq., Chair
Board Committee on
Advocacy & Legislation

Appendix A-Curb Ramps Grievances

PEDESTRIAN FACILITY	DISTRICT	LOCATION	DATE SUBMITTED	REFERRED TO	STATUS
Curb Ramp Repairs	D3	Intersection of TH 371 & TH 84	2/23/2009	Forwarded to District 3	Repairs made 6/09; will replace during M&O of TH 371 in 2012
Need Additional Curb Ramp in Rest Area	D4	I-94 Near Moorhead	2/26/2009	Forward to District 4 & Facilities Management	This will be prioritized in TP
Diagonal curb ramps	D3	TH 23 in St. Cloud	6/05/09	Forwarded to District 3	Ped Unit & District staff did field evaluation Aug 09; changes made where possible
Curb Ramp concerns	D8	TH 212 & Main St, Bird Island	8/3/2009	Referred to D8 Traffic Engineer	Reviewed; ramps were found to be compliant
Curb Ramp concerns (with request for APS)	Metro	TH 65 & Moore Lake Rd, Fridley	8/3/2009	Referred to Metro District Operations	Review by PM & Ped Section; met with concerned citizen
Curb Ramp & truncated dome issues	Metro	Central (TH 65) & University (TH 51)	8/3/2009	Referred to Metro District Operations	This will be prioritized in TP
Curb Ramp Alignment Issues	Metro	Lyndale & Franklin	8/3/2009	Referred to Hennepin County	No status update has been provided
Diagonal Curb Ramp Issue	Metro	University Avenue (TH 47) and 69 th ,	8/3/2009	Referred to Metro District Operations	This will be prioritized in TP
Diagonal Curb	Metro	University Avenue (TH 47)	8/3/2009	Referred to Metro District	This will be

Ramp Issue		and Osborne		Operations	prioritized in TP
Diagonal Curb Ramp Issue	Metro	University Avenue (TH 47) and 73 rd	8/3/2009	Referred to Metro District Operations	This will be prioritized in TP
Diagonal Curb Ramps	Metro	University Avenue (TH 47) & 57 th	8/4/2009	Referred to Metro Program Delivery	This will be prioritized in TP
Diagonal Curb Ramps	Metro	University Avenue (TH 47) & 61 st	8/4/2009	Referred to Metro Program Delivery	This will be prioritized in TP
Diagonal Curb Ramps	Metro	University Avenue (TH 47 & 61 st)	8/4/2009	Referred to Metro Program Delivery	This will be prioritized in TP
Diagonal Curb Ramps	Metro	University Avenue (TH 47) and Mississippi	8/4/2009	Referred to Metro Program Delivery	This will be prioritized in TP

Diagonal Curb Ramps	Metro	University Avenue (TH 47) and 73 rd	8/4/2009	Referred to Metro Program Delivery	This will be prioritized in TP
Diagonal Curb Ramps	Metro	TH 36 and McKnight	8/4/2009	Referred to Metro Program Delivery	This will be prioritized in TP
Diagonal Curb Ramps	Metro	McKnight and 11 th	8/4/2009	Referred to Metro Program Delivery	This will be prioritized in TP
Diagonal Curb Ramps	Metro	TH 10 and Harrison Blvd	8/4/2009	Referred to Metro Program Delivery	This will be prioritized in TP
Diagonal Curb Ramps	Metro	TH 61 & County Rd D	8/4/2009	Referred to Metro Program Delivery	This will be prioritized in TP
Curb ramp updates needed (w/APS Installation)	Metro	Central Avenue (TH 65) and 5 th St, SE	8/5/2009	Referred to Metro Traffic Eng and then to Minneapolis	No status update provided
Curb ramp updates needed (w/APS Installation)	Metro	Central TH 65 and University TH 47	8/5/2009	Referred to Metro Traffic Eng and Minneapolis	Mn/DOT work will be prioritized in TP
Diagonal Curb Ramps	Metro	University Avenue (TH 47) & 57 th	8/5/2009	Referred to Metro Program Delivery	This will be prioritized in TP
Diagonal Curb Ramps	Metro	University Avenue (TH 47) and Mississippi	8/5/2009	Referred to Metro Program Delivery	This will be prioritized in TP
Diagonal Curb Ramps	Metro	University Avenue (TH 47) and 73 rd	8/5/2009	Referred to Metro Program Delivery	This will be prioritized in TP
Diagonal Curb Ramps	Metro	TH 36 and McKnight	8/5/2009	Referred to Metro Program Delivery	This will be prioritized in TP
Diagonal Curb Ramps	Metro	TH 10 & Harrison Blvd	8/5/2009	Referred to Metro Program	This will be prioritized in TP

				Delivery	
Diagonal Curb Ramps	Metro	TH 61 & County Rd D	8/5/2009	Referred to Metro Program Delivery then to City of Mpls	This will be prioritized in TP
Diagonal Curb Ramps	Metro	Minnesota St & 5th Street, St. Paul	8/5/2009	Referred to St. Paul Public Works	No status update provided
Diagonal Curb Ramps	Metro	Robert Street (TH 952) & 6th	8/28/2009	Referred to St. Paul Public Works	No status update provided
No Curb Ramp	Metro	Intersection of Lexington & Larpenter Avenues	9/6/2009	Referred to St. Paul Public Works	No status update provided
Diagonal Curb Ramps	Metro	Park Place Blvd, St. Louis Park	9/16/2009	Referred to City of St. Louis Park	No status update provided

Appendix B-APS Grievances

PEDESTRIAN FACILITY	DISTRICT	LOCATION	DATE SUBMITTED	REFERRED TO	STATUS
Request for APS	METRO	Cty Rd, B & Snelling (TH 51) Roseville	7/13/2008	Forwarded to Metro District Traffic Eng	Completed by Mn/DOT, Oct 08
Request for APS	METRO	Cty Rd B & Hamline Avenue	7/13/2008	Referred to Ramsey County Engineer	Completed by Ramsey County, Nov 09
Request for APS	METRO	78 th Between Sofitel & Sheraton Hotels in Bloomington	12/2/2008	Referred to City of Bloomington	No status update has been provided
Request for APS	METRO	Six major signalized Intersections on South Robert (TH 952)	12/2/2008	Forwarded to Metro District	Work started by Mn/DOT in 2009; will be complete in 2010
Request for APS	METRO	Major signalized Intersection on Snelling Ave (TH 51)	2/18/2009	Forwarded to Metro Traffic and the City of St. Paul	Signals Mn/DOT are responsible for will be prioritized in Transition Plan
Request for APS	METRO	Major Intersection on Central Ave (TH 65)	2/18/2009	Forwarded to Metro Traffic and the City of Minneapolis	Signals Mn/DOT are responsible for will be prioritized in Transition Plan
Request for APS	METRO	I35W Bridge & University Avenue/Washington Avenue	2/18/2009	Forwarded to Metro Traffic and the City of Minneapolis	Signals are responsibility of the City of Minneapolis; was wired for APS
Request for APS	METRO	Shingle Creek Parkway & Summit Drive	4/13/2009	Referred to City of Brooklyn Center	No status update has been provided
Request for APS	METRO	Intersection at Kellogg and Wabasha	4/16/2009	Referred to City of St. Paul	No status update has been provided
Request for APS	Metro	Hwy 100 & Brooklyn Blvd, Brooklyn Park	5/16/2009	Referred to Metro Traffic Engineer	Pending APS prioritization in Transition Plan for Mn/DOT

					signals
APS Pushbutton volume too Low	Metro	Snelling and County Rd B	5/25/2009	Forwarded to Metro Traffic and fixed on 5/26/2009	Volume setting corrected 5/28/09
APS Pushbutton volume too Low	Metro	Snelling and County Rd B	7/27/2009	Forwarded to Metro Traffic	Volume setting readjusted 7/31/09
Request for APS	D8	TH 212 & 9 th Street, Olivia, MN	8/1/2009	Referred to D8 Traffic Engineer	D8 will apply for funding for APS upgrades in 2010
Request for signal timing adjustment	D8	TH 212 & 9 th Street, Olivia, MN	8/1/2009	Referred to D8 Traffic Engineer	Timing for crossing increased Aug 09 & again in Dec 09
Request for signal (APS) for non-signalized intersection	D8	TH 212 & 7 th Street, Olivia, MN	8/1/2009	Referred to D8 Traffic Engineer	Evaluated; determined to not meet warrant for signals here.
Request for APS	D8	TH 212 & Main Street, Bird Island, MN	8/01/2009	Referred to D8 Traffic Engineer	D8 will apply for funding for APS upgrade in 2010
Request for APS and timing for TH 61 crosswalk	Metro	TH 61 & 4 th Street, White Bear Lake	8/3/2009	APS previously installed for crossing TH 61 in Oct 08	Crosswalk timing increased June 08; rechecked Aug 09
Request for APS	D8	TH 212 & Main St, Bird Island	8/3/2009	Referred to D8 Traffic Engineer	D8 will apply for funding for APS upgrade in 2010
Request for APS (and related curb ramp concerns)	Metro	TH 65 & Moore Lake Rd, Fridley	8/3/2009	Referred to Metro District Operations	Reviewed by Project Mgr & Ped Unit Staff; met w/ complainant
Request for APS	Metro	Central (TH 65) & University (TH 51) corridors	8/3/2009	Referred to Metro District Operations	Pending APS prioritization in Transition Plan
APS (and Curb Ramp Align concern)	Metro	Lyndale & Franklin	8/3/2009	Referred to Hennepin County	No status update provided
Request for	Metro	Central Avenue (TH	8/5/2009	Referred to	No status

APS Installation		65) and 5 th St, SE		Metro; City of Mpls Traffic	update has been provided
Request for APS Installation	Metro	Central (TH 65) and University (TH 47) Avenue Corridors; this is duplicate request	8/5/2009	Referred to Metro Traffic and City of Minneapolis	Pending APS prioritization in Transition Plan
APS Push Button and Intersection issues	Metro	Snelling Ave (TH 51) and County Road B	11/8/2009	Referred to Metro Traffic Engineer	Traffic Engineer to meet with complainant

Appendix C Rest Areas and other Miscellaneous issues
Grievances

PEDESTRIAN FACILITY	DISTRICT	LOCATION	DATE SUBMITTED	REFERRED TO	STATUS
Disabled Parking in Rest Area	D4	I-94 near Moorhead	2/26/2009	Forward to District 4 & Facilities Management	Needed improvements will be prioritized in TP
Restrooms at Rest Area	D4	I-94 Near Moorhead	2/26/2009	Forward to District 4 and Facilities Management	Needed improvements will be prioritized in TP
Power Door Opener to Rest Area Facilities	D4	I-94 Near Moorhead	2/26/2009	Forward to District 4 and Facilities Management	Needed improvements will be prioritized in TP
No Detour Identified	Metro	Marquette & 2 nd Avenue Construction	4/6/ 2009	Informed of Complaint to Minneapolis	Forward to Communications Office as example of project info needed
Need Additional Curb Ramp in Rest Area	D4	I-94 Near Moorhead	2/26/2009	Forward to District 4 & Facilities Management	This will be prioritized in TP
Increased timing for crossing intersection	D3	TH 10 & Procter Ave, Elk River	7/20/2009	Forwarded to D3 Traffic Engineer	Met with user and adjusted intersection crossing timing
Request for APS at Non-Signalized	Metro	73 rd & Nicollet	9/17/2009	Referred to Hennepin County & City of Richfield	No update response provided
MVTA and Cedar Avenue Transit Stop safety concerns	Metro	Cedar Avenue Transit Station	9/23/2009	Referred to Metro Transit	No update response provided