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Welcome to the 2021
FRPA Conference!
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Playground Surface ADA Issues: Are
You At Risk?

Many Florida playground surfaces are made of engineered wood fiber. Safe and cheaper than unitary surfaces, it is ADA compliant only when properly maintained. A 2020 USDOJ settlement agreement shows all playground owners what is required for compliant playground access.



Learning objectives


1. Identify key access deficits at Settlement Agreement playgrounds.
2. Define and discuss the four recommended maintenance steps so EWF surfaces remain accessible.
3. Discuss how the Settlement applies to home agency operations and EWF surfaces.



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TODAY

- **What is the ADA, and how is the ADA enforced?**
- **What are the design standards for accessible playgrounds?**
- **How did this dispute start and end? Is it avoidable for your agency?**
- **Conclusion and Resources**

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What is the ADA?

- **Federal civil rights law, effective January 26, 1992**
- **Prohibits parks and recreation agencies from disability discrimination**
- **Defined as making new facilities inaccessible, leaving existing sites inaccessible**
- **Overrides state laws unless they are more stringent (Massachusetts)**

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How is the ADA enforced?

- Title II 35.107(b) process, the Access and Inclusion Solutions Process
- Administrative complaint with designated federal agency, for parks and recreation, the US Department of Interior
- Lawsuit in Federal District Court, where legal fees alone will top \$500,000
- DOJ Project Civic Access (Coral Gables, Citrus County, Jacksonville)



What are the ADA [title II](#) requirements for playgrounds?

- Access audits for all existing playgrounds (35.105)
- Follow the [2010 Standards for Accessible Design](#) sections 240 and 1008
- Community engagement identifies access priorities (35.105, 35.150(d))
- Create a transition plan per 35.150(d) to address playground retrofits





What are the design standards for playgrounds?

- One of each type of ground level play component (GLPC) must be accessible (types include rockers, swings, climbers, slides, spinners, manipulables, and interactives)
- 50% of elevated play components (EPC) must be accessible, if 20 or more, must have a ramp to at least 25%
- “Accessible” means on an accessible surface, within reach ranges, and able to be reached by transfer or ramp


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Don't forget Incentive Scoping!

- As many as 95% of kids who use wheelchairs cannot or will not transfer
- That makes playgrounds with fewer than 20 EPC unusable and inaccessible
- Incentive Scoping assures that the playground has some usable GLPC
- “Additional Number and Types. Where elevated play components are provided, ground level play components shall be provided in accordance with Table 240.2.1.2 and shall comply with 1008.4.”

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Playground surface maintenance is required for compliance...


- Replenish the surface and rake to level
- Wet the surface
- Compact the surface
- Massachusetts believes agencies won't (or don't have the staff to) do the last two steps, and prohibits EWF in new playgrounds

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SURFACE TYPE AND LIKELY ACCESS AND SAFETY VALUES



MATERIAL	LIKELY ACCESS VALUE (MAINTAINED)	LIKELY ACCESS VALUE (NOT MAINTAINED)	LIKELY SAFETY PERFORMANCE
Sand	0	0	2
Wood chip	0	0	3
Pea Gravel or Pea Stone	0	0	3
Engineered wood fiber (EWF)	4	0	5
Shredded rubber	3	0	5
Interlocking rubber tiles	5	2.5	4
Poured in place rubber	5	4	4
Turf surface	4	4	4
Hybrids (SMARTE)	4	4	5


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How did this dispute start and end?

- [Iowa City Schools](#) were to replace two elementary school playgrounds and planned to use EWF
- Moms of wheelchair-using kids came to the principals and asked for different surfaces, noting that their children would not be able to use EWF
- Principals organized PTO to outvote the Moms, and EWF was installed
- Likely violates ADA non-coercion and retaliation clauses


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What happened next?

- Moms did not give up, reached out to US DOJ and the Iowa US Attorney began an investigation
- Investigators audited ten existing playgrounds and two new playgrounds, and every playground failed
- Cause of failure ranged from poorly maintained surfaces to GLPC out of reach range to lack of accessible route to playground (dirt and grass are never an accessible surface)


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The terms of the settlement require...

- All design plans must be reviewed by US DOJ for up to 90 days before the District can begin work...could you add a 90 day review to every single one of your projects? See clause 14...
- When work does occur after approval, the District must document the compliant retrofit with digital photos and send to US DOJ. See clause 15A...
- District must submit annual report to US DOJ reviewing all work completed, with digital images. See clause 15B


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Is this avoidable for your agency?

- Remember a settlement agreement does not set precedent, and applies only to the agency that settled...but it sends a message to all playground owners
- Listen to your residents who have kids with disabilities or have disabilities
- Do not retaliate or scheme against families of kids with disabilities
- Does your agency have access audits and transition plans for playgrounds?


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More about avoidance strategies...

- **Does your agency replenish, rake, wet, and compact EWF?**
- **Do your maintenance staffs have the tools (hose, water supply, compactor) to do all four of these steps?**
- **Does your agency have enough staff to properly maintain playgrounds?**
- **Does your agency follow settlement agreements and court decisions, and change your practices based on the decisions?**

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CONCLUSION

- **Access Board wanted agencies to have choices for playground surfaces, so long as every chosen surface would be level, firm, and stable**
- **Pick one: purchase a surface that is more accessible and more expensive, but needs less maintenance...or purchase a surface that is less expensive and when maintained is accessible, but requires more maintenance staff at your agency**
- **Listen to your residents with disabilities! Accessible surfaces are usable by others, inaccessible surfaces exclude kids with disabilities from playgrounds!**

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RESOURCES

www.ada.gov for US Department of Justice, technical assistance at 202-514-0301

www.access-board.gov for the US Access Board, technical assistance at 202-272-0080

www.cdc.gov/vitalsigns/disabilities/ CDC Adults with Disabilities – know your demographics



RESOURCES

John N. McGovern, JD, Accessibility Practice Principal-in-Charge at The WT Group, LLC at 224-293-6451 or 847-363-9384 or jmcgovern@wtgroup.com

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A graphic for the FRPA 2021 campaign. It features a central teal circle with the text "REIGNITE YOUR POTENTIAL" in white, bold, sans-serif font. Below this, "FRPA | 2021" is written in a smaller white font. The background is a blue-to-teal gradient. The entire graphic is enclosed in a green border.

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