

**PHYSICAL ACCESSIBILITY:
REQUIREMENTS UNDER
SECTION 504 AND TITLE II**



Section 504 Coordinator Workshop

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F.Y.I.

Accessibility Regulations
www.ed.gov/policy/rights/reg/ocr/



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- Section 504 of the Rehabilitation Act of 1973
34 C.F.R. §§ 104.21 - 104.23
 - Recipients of federal financial assistance

- Title II of the Americans with Disabilities Act of 1990
28 C.F.R. §§ 35.149 - 35.151
 - Public entities

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Basic Requirement
34 C.F.R. § 104.21 and 28 C.F.R. § 35.149



3.3



No qualified person with a disability shall be denied the benefits of, be excluded from participation in, or be otherwise discriminated against under a program or activity of a covered entity, because the facilities in which the programs, services, or activities are held are inaccessible to or unusable by persons with disabilities.

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Basic Requirement (cont.)
 Vocational Education Guidelines, 34 C.F.R. Part 100,
 Appendix B, IV.N



4.4



Recipients may not deny students with disabilities access to vocational education programs or courses because of architectural or equipment barriers...If necessary, recipients must...(3) house the program in facilities that are readily accessible to students with mobility impairments or alter facilities to make them readily accessible.

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New Construction, Existing Facility, and/or Alteration?

Determine whether you're looking at "new construction," "existing facilities," or "alteration" for 504/Title II purposes.



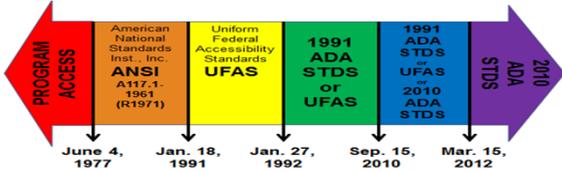
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Existing, New Construction, or Alteration?



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- 1st: Determine the facility's dates of construction, and if applicable, alteration
- 2nd: Look at the "arrow chart"



PROGRAM ACCESS	American National Standards Inst., Inc. ANSI A117-1- 1961 (R1971)	Uniform Federal Accessibility Standards UFAS	1991 ADA STDS or UFAS	1991 ADA STDS or UFAS or 2010 ADA STDS	2010 ADA STDS
	June 4, 1977	Jan. 18, 1991	Jan. 27, 1992	Sep. 15, 2010	Mar. 15, 2012

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What is a facility?

34 C.F.R. § 104.3(i) and 28 C.F.R. § 35.104



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- Section 504: "... all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property."
- Title II: "... all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located."

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What is an existing facility?

34 C.F.R. § 104.22 and 28 C.F.R. § 35.150



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- If construction commenced before June 4, 1977, the facility is an "existing" facility under Section 504.
- For a Title II-only entity (not a recipient of federal financial assistance), if construction commenced before January 27, 1992, the facility is an "existing" facility.



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What is new construction?

34 C.F.R. § 104.23(a) and 28 C.F.R. § 35.151(a)



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- If the facility or part of a facility was constructed by, on behalf of, or for the use of a recipient and construction commenced on or after June 4, 1977, it is "new construction" under Section 504.
- After January 26, 1992, for Title II-only entities



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What is an alteration?
34 C.F.R. § 104.23(b) and 28 C.F.R. § 35.151(b)



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- A change to a facility or part of a facility after the effective dates of the regulations “that affects or could affect the usability of the facility or part of the facility.”



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Now that You Know...



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- ... whether your facility is “existing,” “new construction,” or “alteration,” what is the legal significance?
- First, we will discuss “new construction.”
- Next, we will go through “existing” facilities and discuss what “program access” means.
- Last, we will discuss “alterations,” which require a more nuanced approach.

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“New Construction” – determine correct accessibility standard

For “new construction,” determine which accessibility standard applies.

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New Construction
34 C.F.R. § 104.23 & 28 C.F.R. § 35.151



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- Must meet applicable standard, depending on date of construction:
 - ANSI,
 - UFAS,
 - 1991 ADA Standards, or
 - 2010 ADA Standards.
- Or “substantially equivalent”

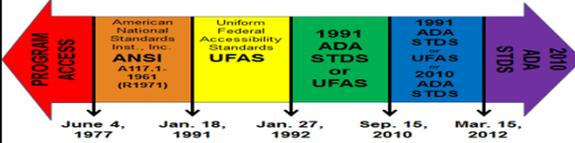
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How to use the “arrow chart”



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- Determine where your newly-constructed facility lands on the timeline, based on the date of construction.
- Look at what standard was in effect at the time.
- Where there's more than one standard listed for a block of time, you will need to learn which one was chosen as governing by the owner/builder.
- For the purposes of determining whether the facility met the “new construction” provisions when it was built, apply the standard you have identified.



The arrow chart shows a timeline from 1977 to 2012. It is divided into segments with the following standards and dates:

Standard	Effective Date
PROGRAM ACCESS	June 4, 1977
American National Standards Inst., Inc. ANSI A117.1-1991 (R1971)	June 4, 1977
Uniform Federal Accessibility Standards UFAS	Jan. 18, 1991
1991 ADA STDS or UFAS	Jan. 27, 1992
1991 ADA STDS or UFAS or 2010 ADA STDS	Sep. 15, 2010
2010 ADA STDS	Mar. 15, 2012

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If “existing facility”



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- If you're reviewing an “existing facility” – catalog the programs, services, and activities that take place in the facility.
- Think of “programs, services, and activities” very broadly.

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F.Y.I. **Program Access in a Nutshell** 

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- For existing facilities, each part of the *program or activity*, when viewed in its entirety, must be readily accessible and usable to individuals with disabilities.
- The focus here is on ensuring that persons with disabilities can fully benefit from the program or activity, regardless of the overall accessibility of the facility.
- This means, e.g., that a school must make sure that a student with a physical disability is not limited from participating in a part of the program otherwise offered in an inaccessible facility.

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F.Y.I. **Existing Facilities:
Methods of Compliance Examples** 

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- Redesign or acquisition of equipment
- Reassignment of classes or other services to accessible buildings or accessible locations within a building
- Delivery of services at alternate accessible sites
- Alteration of existing facilities and construction of new facilities
- Any other methods that result in making the part of the program or activity accessible

34 C.F.R. § 104.22(b) and 28 C.F.R. § 35.150(b)

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F.Y.I. **... But** 

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- Give priority to those methods that result in the most integrated setting appropriate.
- Structural changes are not required where other methods are effective.
- Alterations to existing buildings necessary to provide access to the program must meet the accessibility requirements for new construction.

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**Existing Facilities:
Notice Requirement**



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- 34 C.F.R. §104.22(f): The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities.

NOTICE

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Alterations



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34 C.F.R. § 104.23(b) and 28 C.F.R. § 35.151(b); Vocational Education Guidelines, IV.D

- If you are evaluating an “alteration” - the alteration must, to the maximum extent feasible, meet the requirements of the applicable design standard.
- Depending on the date and scope/nature of the alteration, additional requirements may apply.

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Additional Title II regulation requirement for alterations: Path of Travel



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- 28 C.F.R. § 35.151(b)(4)
- Only applies to alterations undertaken on or after March 15, 2011
- Alterations that affect or could affect the usability of an area that contains a primary function (a major activity for which the facility is intended) trigger a “path of travel” requirement.
- The Title II regulations require that to the maximum extent feasible the “path of travel” to the altered area and the restrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities.
- For older alterations, UFAS and the 1991 ADA Standards contained similar requirements. See 1991 ADA Standards § 4.1.6(2) and UFAS § 4.1.6(3) (UFAS’ requirement was for “substantial alterations”)

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Alterations under Title II: Path of Travel
Disproportionate Costs
28 C.F.R. § 35.151(b)(4)



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When the cost of changes necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration (more than 20%), the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

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Alterations under Title II: Path of Travel
Disproportionate Costs
28 C.F.R. § 35.151(b)(4)(iv)



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When costs are disproportionate, in choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access in the following order –

- (1) an accessible entrance;
- (2) an accessible route to the altered area;
- (3) at least one accessible restroom for each sex or a single unisex restroom;
- (4) accessible telephones;
- (5) accessible drinking fountains; and
- (6) when possible, additional accessible elements such as parking, storage, and alarms.

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How to Obtain the Standards

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Getting the Standards

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- 2010 ADA Standards
- www.ada.gov/2010ADastandards_index.htm

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More Information

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- www.ada.gov
- 800/514-0301 Voice
- 800/514-0383 TTY

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30 Corrective Action

- Craft your corrective actions using the 2010 ADA Standards and program access concepts, as appropriate.
- Establish timelines for compliance.
- Add verification requirements.

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Where 2010 ADA Standards Reduce 1991 Technical Standards - 28 C.F.R. § 35.133(c) 

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If the 2010 ADA Standards reduce the technical requirements or the number of required accessible elements below the number required by the 1991 ADA Standards, the covered entity may reduce the level of accessibility in accordance with the 2010 ADA Standards. Examples:

- Urinals
- Wheelchair seating areas in large stadiums
- Multiple single-user toilet rooms clustered together

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32 Additional Considerations 

- Compliance is Not Conditional on Demographics
- Maintenance of Accessible Features
- Leased Facilities
- Historical Properties
- Topography, Snow Removal, Emergency Evacuation

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F.Y.I. Compliance Is Not Conditional on Demographics 

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- Even if no student with a physical impairment is enrolled, a recipient or public entity must be prepared to take steps to make its programs, services, and activities in existing facilities accessible as the need arises and in a timely manner.
- Standards for new construction and alterations apply regardless of the number of persons with disabilities.

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Maintenance of Accessible Features

28 C.F.R. § 35.133



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- Accessible features and equipment must be maintained in working condition.
- Temporary obstructions or isolated instances of mechanical failure or isolated or temporary interruptions are acceptable, but should not persist beyond a reasonable period of time.



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Leased Facilities



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- At a minimum, the entity must make sure that each part of the program, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities, in accordance with the requirements for existing facilities.
- Construction or alteration initiated by or for the recipient or public entity since June 1977 must also meet standards for new construction.



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Historic Properties



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- 28 C.F.R. § 35.150(a)(2) and (b)(3)
- Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law. 28 C.F.R. § 35.104
- Historic property vs. preservation program



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Special Problems



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A few examples:

- Hilly campuses 
- Snow removal 
- Emergency evacuation procedures



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Disclaimer



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This presentation provides general information and does not represent a complete recitation of applicable law and OCR policy in this area. It does not address specific issues of compliance because determinations of compliance depend on specific facts on a case-by-case basis. The language used in these slides is approved for the purposes of this presentation only and should not be used for other purposes.

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