

APPENDIX 6

ACCESSIBILITY STANDARDS

(This section was developed by staff of the National Center for Education Statistics as an appendix to the 1992 national facilities manual. It provides an update (1992) of accessibility standards as mandated by the Americans with Disabilities Act of 1990).

Section 504 Program Accessibility Standards

The Department of Education's Section 504 regulation applies to preschool, elementary, secondary, postsecondary, vocational, and adult education programs and activities, as well as other programs and activities that receive or benefit from Federal financial assistance. In accordance with Subpart C of the Section 504 regulation, no qualified individual with handicaps shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity because a recipient's facilities are inaccessible to, or unusable by them.

The Section 504 regulation contains two standards to be used in determining whether a recipient's programs and activities are accessible to individuals with disabilities. One standard deals with "existing" facilities; the other deals with "new" construction.

The term "existing facility" refers to any facility in existence or in the process of construction before June 3, 1977, the effective date of the regulation. The term "new construction" means groundbreaking which took place on or after the effective date of the regulation. "Facility" as defined in the Section 504 regulation includes all or any portion of buildings, structures, equipment, roads, walks, parking lots, laboratories, and other real or personal property or interest in such property.

The requirements for accessibility are distinctly different for facilities built or begun before June 3, 1977, the effective date of the regulation, and facilities whose construction commenced on or after June 3, 1977.

For facilities constructed before June 3, 1977, the regulation requires that the recipient's program or activity, when viewed in its entirety, be readily accessible to persons with handicaps. This standard does not require that every facility or part be accessible, as long as individuals with handicaps have access to the programs and services contained in those facilities. Thus, recipients need not make structural changes to facilities which existed before June 3, 1977, where other alternatives are effective in making programs and activities accessible.

Examples of alternative methods include redesign or relocation of equipment; reassignment of classes and services; provision or assignment of aids (e.g., use of "reach extenders" to access controls on elevators or light switches, assistance in retrieving library materials).

Priority consideration, however, must be given to offering the programs or activities in the most integrated setting appropriate. In meeting the objective of program accessibility, an institution must take precaution not to isolate or concentrate individuals in settings away from nonhandicapped participants. For example, it would be a violation to make only one facility or part of a facility accessible if this resulted in segregating students with disabilities.

It should be noted that if no effective alternatives can be provided to achieve program accessibility, a recipient is required to make necessary structural changes. These changes are to be made consistent with the requirements for "new construction."

When the Section 504 regulation became effective on June 3, 1977, all new construction begun on that date, as well as alterations which could effect access to use of existing facilities, were required to be designed in conformance with the American National Standards Institute (ANSI) Standards A117.1-1961 (R 1971). However, on December 19, 1990, the Department of Education, along with many other Federal agencies, amended the Section 504 regulation to reference the Uniform Federal Accessibility Standards (commonly referred to as UFAS) in place of the accessibility guidelines issued by the ANSI 1971 document. The effective date for this change was January 18, 1991.

The major purpose of this change was to ensure greater uniformity among Federal enforcement standards. For example, some Federal funding agencies referenced ANSI 1971 while others referenced ANSI 1980. Also, some facilities subject to new construction under Section 504 are also subject to the Architectural Barriers Act, which references UFAS.

Consequently, government-wide reference to UFAS should diminish the possibility that recipients of Federal financial assistance will face conflicting standards. Also, reference to UFAS by all Federal funding agencies is designed to reduce potential conflicts when a building is subject to the Section 504 regulation of more than one Federal agency.

Accessibility Standards Under the Americans with Disabilities Act

The Americans with Disabilities Act (ADA), which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications, was enacted on July 26, 1990. On July 26, 1991, the Department of Justice issued separate final regulations implementing subtitle A of Title II of the ADA, which prohibits discrimination on the basis of disability by private entities in place of public accommodation. Although the Office of Civil Rights (OCR) does not have any enforcement authority under Title III of the ADA, OCR does have responsibility for enforcing the Title II regulation in elementary and secondary education systems and institutions, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing and other health-related schools), and libraries. The regulations implementing Title II and Title III became effective on January 26, 1992.

The Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) is the applicable accessibility standard under the Title III regulation for new construction and

alterations. The Department of Justice anticipates that the rule implementing subtitle A of Title II will be amended to adopt new accessibility standards. Until that time, public entities have a choice of following UFAS or ADAAG. However, public entities must follow the same standard throughout an entire building. They cannot follow ADAAG on one floor of a new building and then follow UFAS on the next floor. Public entities that choose to follow ADAAG are not entitled to the elevator exemption contained in Title III of the ADA for small buildings.

It is important to note that although the ADAAG is modeled on UFAS, the ADAAG established different requirements in some areas. For example, requirements differ concerning elevators, signage, telecommunication display devices or telecommunication devices for the deaf for individuals who cannot use voice telephones, and checkout aisles in areas used for business transactions with the public.

Also, it is possible that there will be some differences between UFAS and the future accessibility standards that will be adopted under the rule implementing subtitle A of Title II of the ADA.

It is anticipated that OCR will provide guidance shortly concerning the major differences between ADAAG and UFAS. It is also anticipated that OCR will provide guidance regarding the differences between UFAS and the future accessibility standards that will be adopted under Title II.