



## ACCESSIBILITY SCOPING FOR “HOUSING AT A PLACE OF EDUCATION” UNDER THE AMERICANS WITH DISABILITIES ACT

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Student housing, if newly constructed, has always had to consider accessibility issues under the federal Fair Housing Act and, if federal money is involved, Section 504 of the Rehabilitation Act of 1973. Traditionally, the accessibility provisions of the Americans with Disabilities Act applied to the residential portions of the student housing only to the extent the housing was properly classified as “transient” housing, such as dormitories or other short term rentals.

In September 2010, the Department of Justice issued new regulations governing Title III of the ADA. These new regulations define a Title III category of “public accommodation” subject to the ADA - “place of education” - as specifically including “housing at a place of education.” “Housing at a place of education” is defined as “housing operated by or on behalf of an elementary, secondary, undergraduate, or postgraduate school, or other place of education, including dormitories, suites, apartments, or other places of residence.” 42 CFR § 36.104. Under the 2010 ADA regulations, therefore, many student housing developments previously considered exempt from the ADA will be defined as “housing at a place of education,” and will be subject to the ADA. (“Housing at a place of education” will require the direct involvement of the place of education; housing that is purpose built as “student housing,” but is privately owned and operated, and not limited solely to students of a particular place of education, is not considered “housing at a place of education” subject to the ADA.)

Housing at a place of education that is new construction must comply with the newly adopted 2010 ADA Standards for Design if its last application for a building permit or extension is certified to be complete on or after March 15, 2012, or (if no permit is required) if the start of physical construction or alterations occurs on or after March 15, 2012. In addition, because the ADA contains a maintenance requirement, existing housing at a place of education will have to conform to the 2010 ADA Standards for Design as a matter of barrier removal or alteration.

### **I. Housing at a Place of Education: New Construction Scoping**

#### **A. Transient Housing**

The 2010 ADA regulations require that “housing at a place of education ... shall comply with the provisions of the 2010 Standards applicable to transient lodging, including, but not limited to, the requirements for transient lodging guest rooms.” 42 CFR § 36.406(e).<sup>1</sup>

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<sup>1</sup> This provision has an exception for “apartments or townhouse facilities that are provided by or on behalf of a place of education, which are leased on a year-round basis **exclusively to graduate students or faculty and do not contain any public use or common use areas available for educational programming.**” 42 CFR § 36.406(e)(3). If “housing at a place of education” meets this exception, it need comply only with the 2010 standards for “residential facilities” for ADA compliance.

The 2010 ADA transient lodging requirements include the following features of accessibility:

1. "Sleeping rooms" are equivalent to transient housing "guest rooms." Transient housing requires a certain number of sleeping rooms have features of mobility accessibility described in 2010 ADA Sec. 806.2.

The proper number of mobility accessible rooms is calculated based on Table 224.2 of the 2010 ADA:

**Table 224.2 Guest Rooms with Mobility Features**

<b>Total Number of Guest Rooms Provided</b>	<b>Minimum Number of Required Rooms Without Roll-in Showers</b>	<b>Minimum Number of Required Rooms With Roll-in Showers</b>	<b>Total Number of Required Rooms</b>
1 to 25	1	0	1
26 to 50	2	0	2
51 to 75	3	1	4
76 to 100	4	1	5
101 to 150	5	2	7
151 to 200	6	2	8
201 to 300	7	3	10
301 to 400	8	4	12
401 to 500	9	4	13
501 to 1000	2 percent of total	1 percent of total	3 percent of total
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000	10, plus 1 for each 100, or fraction thereof, over 1000	30, plus 2 for each 100, or fraction thereof, over 1000

2. The required features of mobility accessibility in transient housing sleeping rooms include:
  - a. Clear floor space in sleeping area (Sec. 806.2.3) - A 30" x 48" clear floor space for a parallel approach to both sides of a bed. If there are two beds in the room, a single 30" x 48" parallel clear floor space may be located between the beds.
  - b. At least one water closet, one lavatory, and one bathtub or shower complying with 2010 Sec. 603-610, which describe the specifications necessary for each fixture. Knee and toe space for a forward approach to the lavatory is required *at construction* for transient housing mobility accessibility, meaning the lavatory can have no base cabinet. If counter space at the non-accessible toilet or bathing rooms is provided, comparable vanity counter top space, in terms of size and proximity to the lavatory, shall also be provided in the transient mobility accessible toilet or bathing rooms.

**NOTE:** A number of the total transient mobility sleeping rooms must have access to a roll-in shower compliant with 2010 ADA Sec. 608.2, as indicated in Table 224.2. This number is part of the total transient mobility accessible sleeping room count.

- c. Kitchens serving transient mobility accessible sleeping rooms complying with 2010 ADA Sec. 804. As with transient mobility accessible bathrooms, these kitchens must have knee and toe space for a forward approach at the sink and a 30" wide work space must be provided *at construction*, with no base cabinets.
- d. Turning space within the sleeping room complying with 2010 ADA Sec. 304.

3. A certain number of "sleeping rooms" in transient housing must also have features of communication accessibility, as described in 2010 ADA Sec. 806.3. That number of sleeping rooms is calculated based on Table 224.4 of the 2010 ADA:

**Table 224.4 Guest Rooms with Communication Features**

Total Number of Guest Rooms Provided	Minimum Number of Required Guest Rooms With Communication Features
2 to 25	2
26 to 50	4
51 to 75	7
76 to 100	9
101 to 150	12
151 to 200	14
201 to 300	17
301 to 400	20
401 to 500	22
501 to 1000	5 percent of total
1001 and over	50, plus 3 for each 100 over 1000

4. The required features of communication accessibility in transient housing sleeping rooms include "visible notification devices" for telephone calls and door knock or bell and electrical outlets within 48" of the telephone to facilitate the use of a TTY. If emergency alarms are provided, they must comply with ADAAG 702. See 2010 ADA Sec. 806.3

5. Dispersion - Transient mobility and communication accessible sleeping rooms must be dispersed among the classes of sleeping rooms, providing choices of type of room, number of beds, and "other amenities comparable to the choices provided to other guests." 201 ADA Sec. 224.5. Note that at least one, but no more than 10%, of the transient mobility accessible sleeping rooms may also be used to satisfy the number of transient communication accessible sleeping rooms.



## **B. Accessible Residential Dwelling Units**

In addition to the transient accessibility requirements, “housing at a place of education” is likely also subject to the standards for “accessible residential dwelling units” under the 2010 ADA Standards.

1. For “housing at a place of education,” at least 5% of the residential *units* must provide mobility features complying with 2010 ADA Secs. 809.2 through 809.4 (and be on an accessible route). This requirement does not appear to add any feature features of mobility accessibility beyond what is typically required for an ANSI Type A dwelling unit under the IBC, or a UFAS-compliant dwelling unit under Section 504 of the Rehabilitation Act (“Section 504”), both of which may already apply to the project depending on the jurisdiction and type of ownership. Some of the specifications of those mobility accessible features, however, may be different from ANSI or UFAS (such as the location of the kitchen work space), so the 2010 ADA Standards should control. Note that, if required, transient mobility accessible sleeping rooms can be provided within ADA accessible residential units.

2. Similarly, 2% of the residential *units* in housing at a place of education must provide accessible communication features compliant with 2010 ADA Sec. 809.5. Unlike the transient housing communication accessibility requirements, a “hard-wired electric doorbell” with both an audible and visual signal at the unit primary entrance door is required for each of these 2% units. 2010 ADA Sec. 809.5.5.1. A peephole is also required on these units. Unlike the UFAS requirements for Section 504 compliance, the 2010 ADA Standards require these features be present at time of construction in the accessible residential dwelling units.

3. As with the transient accessibility requirements, the accessible residential dwelling units must be dispersed among the various types of units available. One story units may be substituted for multi-story units to meet the 5% mobility accessible units if equivalent spaces and amenities are provided in the one-story units.

**NOTE** that these 5% / 2% requirements are identical to the accessibility requirements for housing that is owned or operated by a recipient of federal funds, pursuant to HUD’s regulations under Section 504 of the Rehabilitation Act of 1974. The requirements for mobility and communication accessible residential dwelling units, therefore, may have already be in place for the particular project prior to the 2010 ADA regulations.

## **II. Housing at Place of Education: Existing Construction Scoping**

### **A. Barrier Removal**

If, on March 15, 2012, an existing facility that is housing at a place of education covered by the ADA complies with the old (1991) ADA Accessibility Guidelines (“ADAAG”), including the transient housing requirements, that facility does not need to engage in “barrier removal.” If the existing facility does not comply with the transient housing requirements, however, it must engage in “barrier removal,” meaning identifying and removing barriers to accessibility for compliance with the 2010 ADA Standards to the extent such compliance is “readily achievable.” (“Readily achievable” is defined as “easily accomplishable and able to be carried out without much difficulty or expense.” 42 U.S.C. § 12181(9)). This section of the ADA also provides the specific



factors to be considered in determining whether barrier removal is “readily achievable.”) Barrier removal may include compliance with transient housing accessibility requirements and the technical accessibility requirements of residential amenities at “housing at a place of education,” including swimming pools.

## **B. Alterations**

If existing housing at a place of education is altered (meaning any change that affects or could affect the usability of the modified area), those alterations must comply with the 2010 ADA Standards to the “maximum extent feasible,” including the transient accessible housing requirements, if applicable. 28 C.F.R. § 36.402.

In addition, if dwelling units or sleeping rooms are altered, but no alterations are planned to the “path of travel” to these altered areas, the path of travel may also be required to be modified to comply with the 2010 ADA Standards to the extent such additional modifications would not be “disproportionate” to the expense of the original planned alteration. 28 C.F.R. § 36.403. The 2010 ADA regulations detail the factors in determining “disproportionality” of alterations to the path of travel, and priorities for such alterations in the event of disproportionality.

***DISCLAIMER: Newly constructed multifamily housing, including student housing, continues to be subject to the Fair Housing Act accessibility requirements, which apply to all ground floor units, or all units if the building has an elevator. In addition, local and state building codes may add another layer of accessibility compliance for new multifamily housing, including student housing.***

*This memorandum is intended as a summary update to the Americans with Disabilities Act applicable to student housing. It is not intended as, and should not be construed as, either legal advice or statutory mandate. Always consult your legal counsel for interpretive and legal advice, as well as application to any specific circumstances.*

