

Accessibility - Beyond the Basics

What to do when Cited for Possible Violations



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Introductions

Terry Fielden, Moderator

- *Vice President, Director K-12 Education, International Contractors, Inc., Retired Board Member Naperville 203 (12 years)*



Daniel Mortensen, Speaker

- *Director of Facilities, Lake Forest School Districts 67 & 115*



Rick Young, Speaker

- *Senior Project Manager, Associate Principal, Perkins&Will*

Perkins&Will

Kate Dailey, Speaker

- *Architect, Universal Design Specialist, Perkins&Will*

Perkins&Will



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Today's Presentation

- Accessibility Complaint – What? Who? Why?
- First Steps
- Investigation
- Response
- Lessons Learned



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What is a Complaint?



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

230 SOUTH DEARBORN ST., 37TH FLOOR
CHICAGO, IL 60604

REGION V
ILLINOIS
INDIANA
IOWA
MINNESOTA
NORTH DAKOTA
WISCONSIN

September 29, 2023

Dr. [REDACTED]
Superintendent

Sent via email only: [REDACTED]

Re: OCR Docket #05-[REDACTED]

Dear Superintendent [REDACTED]:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has evaluated the above-referenced complaint filed on June 26, 2023, against [REDACTED] (District), alleging discrimination on the basis of disability.

Specifically, the complaint alleges that the District discriminates against students with mobility impairments at:



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What is a Complaint?

1. [REDACTED] (Middle School) by failing to provide:
 - a. accessible restrooms;
 - b. accessible water fountains;
 - c. accessible classroom tables in the science labs;
 - d. an adequate number of handicap parking spaces (including van-accessible spaces);
 - e. an accessible entrance/exit at the rear of the building; and
 - f. an accessible path of travel to the audio/visual area of the auditorium.
2. [REDACTED] and [REDACTED] (Elementary Schools), by failing to provide accessible restrooms.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in a program or activity operated by a recipient of federal financial assistance from the Department and by public entities, respectively.

OCR is opening an investigation into the complaint allegations. Please understand that opening an investigation does not mean that OCR has made a decision about the complaint. During the investigation, OCR is neutral; OCR will collect and analyze the evidence it needs in order to make a decision about the complaint.



What is a Complaint?

OCR intends to conduct a prompt investigation of this complaint. The regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.6(b) and (c), requires that a recipient of federal financial assistance make available to OCR information that may be pertinent to a compliance determination. This requirement is incorporated by reference in the Section 504 regulation at 34 C.F.R. § 104.61. Pursuant to 34 C.F.R. § 100.6(c) and 34 C.F.R. § 99.31(a)(3)(iii), of the regulation implementing the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, OCR may review personally identifiable records without regard to considerations of privacy or confidentiality.

Accordingly, please provide the following information to us within fifteen (15) calendar days. OCR will provide such flexibility as is reasonable in response to a request for an extension of time within which to provide the requested data. Wherever possible, please provide the requested information in electronic format. If responsive data are available through the Internet, please provide the link to the data. Please do not provide OCR documentation or electronic information containing social security numbers (SSN); if SSN appear on a document or file that is otherwise responsive to OCR's request, please redact the SSN before producing to OCR. Further, it would be helpful if the pages in your response are numbered.

1. A narrative response to the allegations with supporting documentation.
2. A copy of the District's policies prohibiting discrimination based on disability, and its grievance procedures for resolving complaints of discrimination on the basis of disability, a description of how the District informs parents and students of these policies, and the names and titles of the District staff responsible for implementing these policies and procedures.
3. The name, title, and contact information for the District's Section 504 coordinator, and/or the person responsible for ensuring that the School's programs and facilities are accessible to persons with mobility impairments.



What is a Complaint?

4. If not included in the above requests, a copy of the District's policies and procedures for ensuring access to programs, services, and activities by individuals with mobility impairments.
5. Detailed floor plans of the Middle School and Elementary Schools named in the allegation reflecting the area(s) relevant to each allegation. Please ensure that any restroom plans note accessible stalls.
6. If not included in request #1, for the area(s) relevant to the allegations, provide the original date of construction, dates of all improvements, alterations, renovations and/or reconstruction, and a description of all improvements, alterations, renovations and/or reconstruction, and the approximate cost of each improvement, alteration, renovation and reconstruction.
7. Any other information the District deems relevant to this complaint.

Thank you for your cooperation in this matter. In addition to the information requested above, OCR may need to request additional information and interview relevant personnel. Since an on-site visit is necessary, we will work to schedule a mutually convenient time for the visit.

Please notify OCR of the name, address, and telephone number of the person who will serve as the District's contact person during the processing of this complaint. We would like to talk with this person as soon as possible to discuss this complaint.

The Complainant may file a lawsuit in federal court regardless of whether OCR finds a violation.



Who can make a complaint against you?

Literally Anyone.



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First Steps upon Receipt of a Complaint

- Breathe
- Contact internal legal team
- Identify requested response date
- Contact district architect
- Be responsive to the lawyers and other officials



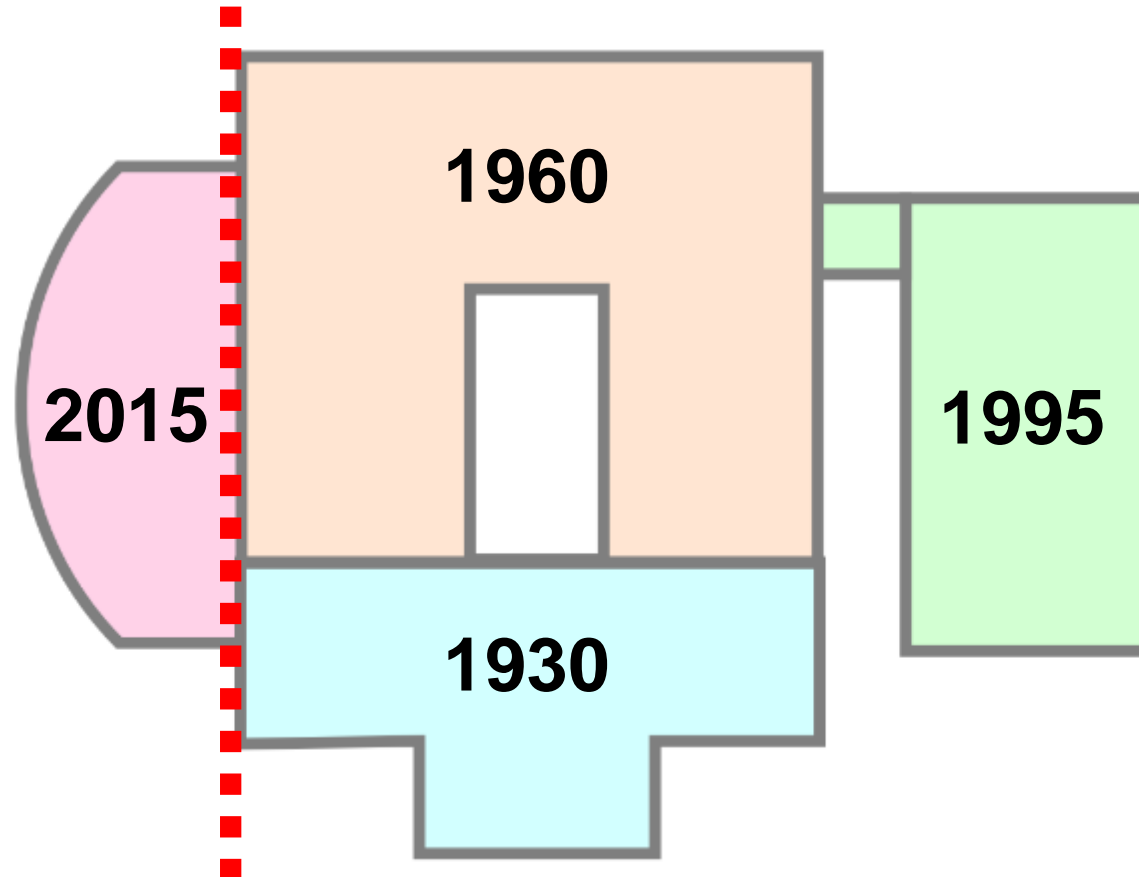
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Understanding your Building's History... and it's perception by users

**2010 ADA
Standards**



**1991 ADA
Standards**

Safe harbor. If a public entity has constructed or altered required elements of a path of travel in accordance with the specifications in either the 1991 Standards or the Uniform Federal Accessibility Standards before March 15, 2012, the public entity is not required to retrofit such elements to reflect incremental changes in the 2010 Standards solely because of an alteration to a primary function area. (28 CFR 35.151 New Construction and Alterations, part c)



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Understanding your Building's History... and it's perception by users



1995



2015



Understanding your Building's History... and it's perception by users



1995



2015

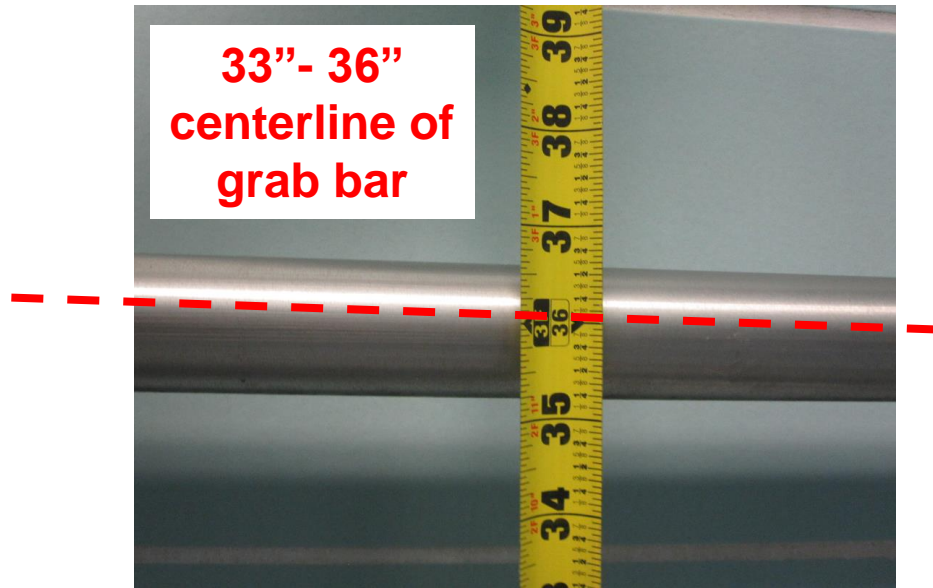


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1995



2015



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Understanding your Building's History... and it's perception by users



*Example sign:
ADA Sign Depot*



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New Construction



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Some basics to confirm with your Architect...

- Accessible parking
 - especially dispersion & signage
- Exterior sidewalks
 - especially curb cuts & route to accessible entrance
- 60% of public entrances to be accessible
 - especially at or near typical student entries



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Investigating the Alleged Violations

- Accurate building plans
- Dates of renovations/additions
- Photos and measurements by district architect
- Exhibits of the alleged violations

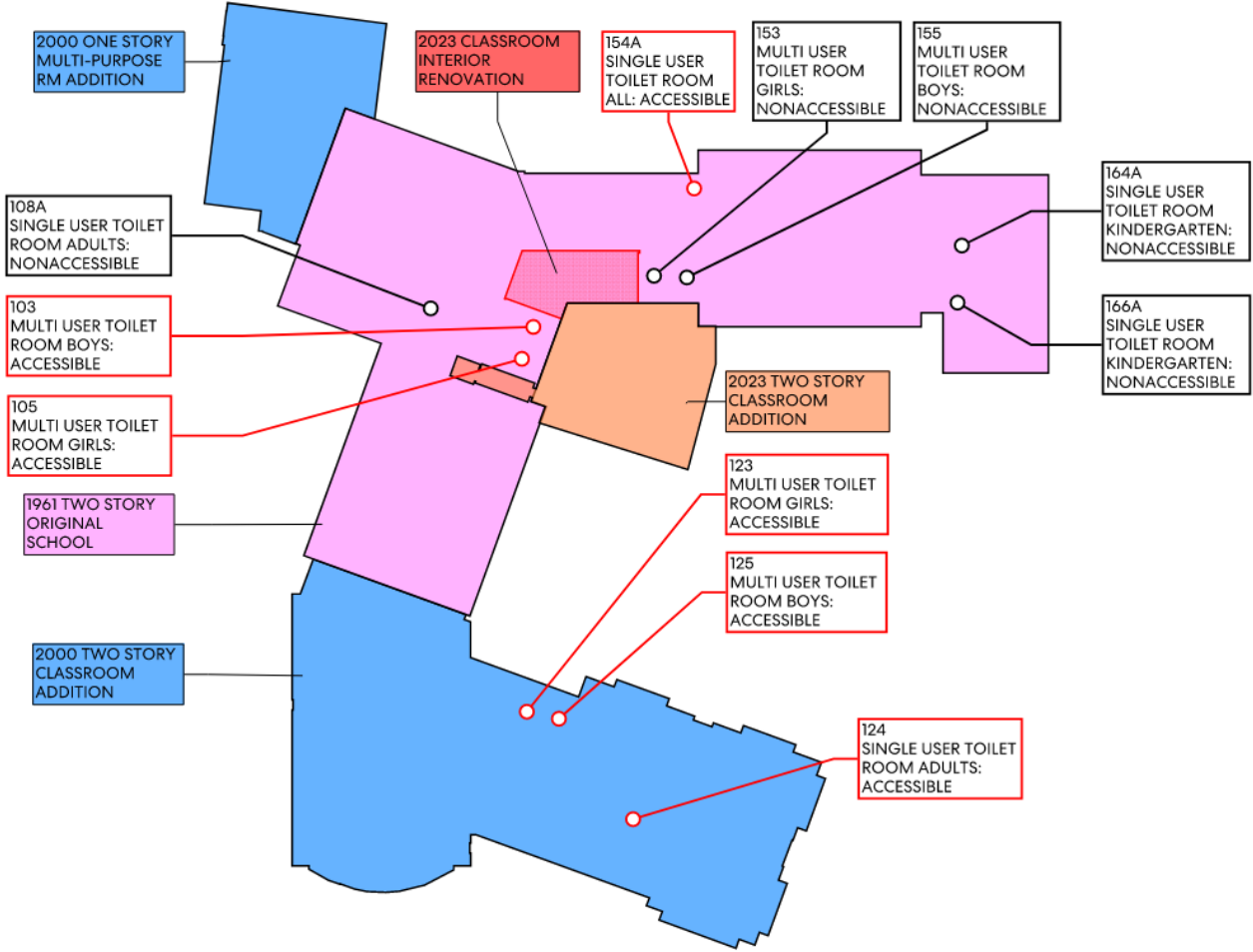


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Example Exhibit

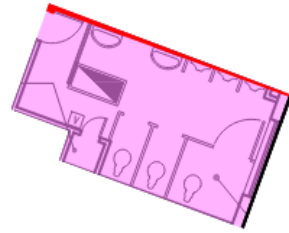


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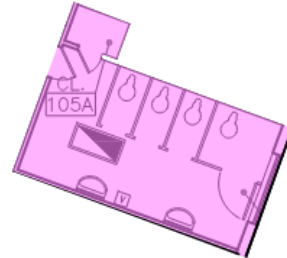
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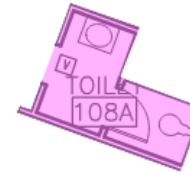
Example Exhibit



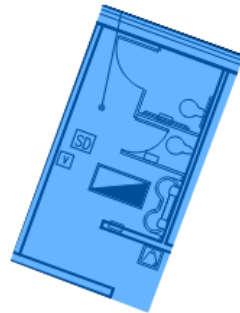
103
MULTI USER TOILET ROOM
BOYS: ACCESSIBLE



105
MULTI USER TOILET ROOM
GIRLS: ACCESSIBLE



108A
SINGLE USER TOILET ROOM
ADULTS: NONACCESSIBLE

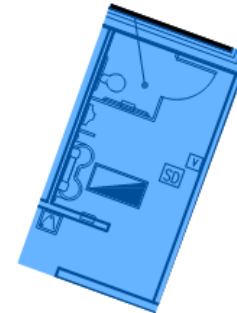


123
MULTI USER TOILET ROOM
GIRLS: ACCESSIBLE



CONSTRUCTED IN
2000, WATER CLOSET
CLEAR FLOOR SPACE
COMPLIES WITH 1991
ADA STANDARDS

124
SINGLE USER TOILET ROOM
ADULTS: ACCESSIBLE



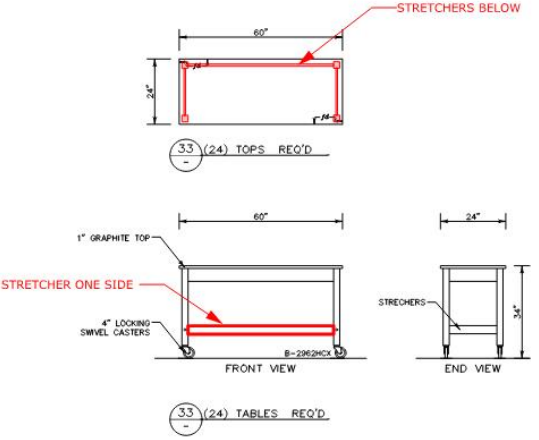


125
MULTI USER TOILET ROOM
BOYS: ACCESSIBLE



Example Exhibit

GENERAL NOTES:

1. TABLES MADE OF WHITE MAPLE.
2. ALL TOPS 1" GRAPHITE EPOXY RESIN.
3. CABINET FINISH: #350 WHITE MAPLE.

PROJECT MANAGER: CAM	REVISIONS 04/20/20 CM 04/30/20 CM	SCALE: 3/8"=1'-0"	ORDER NO. N-680A	DETAIL NO. 7892-32
CHECKED BY:	DATE: 01/31/20			



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Craft the Response

- Ask your district architect to prepare the first narrative draft
- Use precise language
- Be forthright, there are always deficiencies
- Verify the final narrative response with your district architect



Craft the Response

Human Speak

- c. Accessible classroom tables in the science labs – the Middle School provides science lab tables that comply with 2010 ADA 902.1 Dining Surfaces and Work Surfaces. The work surface of the typical lab table is at 33 ½” AFF, knee clearance is at 27 ¾” AFF, and there is compliant 30” x 48” clear floor space. Measurements and photographs of the science lab tables are provided in the exhibits with this narrative.



Lawyer Speak

(c) Accessible Classroom Tables in Science Labs

The 2010 ADA Standards set out the requirements for accessible work surfaces to be used by individuals other than employees. Specifically, Section 226 specifies that work surfaces fitting this description must comply with the requirement of a clear floor space as described in Section 902.2 and table height of 28 inches – 34 inches above floor as described in Section 902.3.

The work surface of the classroom tables in the Middle School science labs are 33.5 inches tall and there are compliant 30” x 48” clear floor space under those tables. See pages 2-3 in [Exhibit I](#). Furthermore, all tables are movable but can lock into place and all table chairs are removable/movable in order to allow adjustment of tables and seating as needed to meet students’ needs.

As such, the Middle School classroom tables in the science labs clearly meet all accessibility requirements.



Craft the Response

Human Speak



Lawyer Speak

There are deficiencies in each of the accessible restrooms, but the accessible restrooms could reasonably be considered substantially accessible by a visitor.

As of the District's most recent inspection by firm XXX, these bathrooms were confirmed to comply with the accessibility standards in 2010 ADA Chapter 6: Plumbing Elements and Facilities.



Next Steps

- Submit the response with detailed exhibits
- Wait
- Investigation by the complainant
- Wait
- Rebuttal, mediation, etc.



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Lessons Learned

- Professional development for facilities staff on accessibility and typical dimensions
- Confer with your district architect on where and how to mount toilet or other accessories
- Retain drawings for all renovation work, no matter how seemingly small



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Questions and Answers

We thank you for your time!



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Presenters:

MODERATOR INFO:

Terry Fielden, Director K-12 Education, International Contractors, Inc;
Retired Board Member Naperville 203 (12 years)
(630) 327-6431; tfielden@icibuilds.com

PANELISTS INFO:

Daniel Mortensen, CPMM, Director of Facilities; Lake Forest School District 67 & 115
(847) 604-7441; dmortensen@lfschools.net

Rick Young, Senior Project Manager, Associate Principal; Perkins&Will
(312) 755-4757; rick.young@perkinswill.com

Kate Dailey, Architect, Universal Design Specialist; Perkins&Will
(312) 755-4772; kate.dailey@perkinswill.com



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