



VIA EMAIL TRANSMISSION

August 15, 2008

The Honorable Grace C. Becker
Acting Assistant Attorney General for Civil Rights
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Office of the Assistant Attorney General, Main
Washington, D.C. 20530
Electronic address: www.regulations.gov (CRT Docket No. 106)

Re: Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities; Notice of Proposed Rulemaking, 73 Fed. Reg. 34508 (June 17, 2008).

Dear Assistant Attorney General Becker:

The National Association of Independent Schools (NAIS) represents more than 1300 nonprofit, independent, day and boarding schools throughout the United States as well as several nonprofit associations working with these schools. As primarily nonreligious entities, the majority of NAIS member schools are required to comply with the Americans with Disabilities Act as places of public accommodations. NAIS schools welcome students of a variety of needs and physical abilities to their campuses as our schools believe strongly that these students bring many talents and a level of diversity to our schools. Due to the commitment our schools have to these students, NAIS submits these comments to the specific questions set forth in the NPRM noted above.

Many of the proposed adoptions and tailoring of the ADAAG of 2004 appear very aware of the potential cost and concerns that those who would be required to adopt them may bear. In preparing these comments, NAIS took the time to take an informal survey of its members in an attempt to gain a better grasp of the potential impact on its member schools. The results of the survey are within the comments below.

Question 1: The Department believes it would be useful to solicit input from the public to inform us on the anticipated costs or benefits for certain requirements. The Department therefore invites comment as to what the actual costs and benefits would be for these eight existing elements, in particular as applied to alterations, in compliance with the

proposed regulations (side reach, water closet clearances in single-user toilet rooms with in-swinging doors, stairs, elevators, location of accessible routes to stages, accessible attorney areas and witness stands, assistive listening systems, and accessible teeing grounds, putting greens, and weather shelters at golf courses), as well as additional practical benefits from these requirements, which are often difficult to adequately monetize.

It is extremely difficult to survey for actual cost analysis on many of the items proposed in the regulations as each school has a different structure and terrain. This is particularly the case with alterations to older buildings and schools in more rural areas. For these reasons, NAIS is strongly in favor of the safe harbor provisions the Department proposes in the NPRM.

Question 2: The Department would welcome comment on whether any of the proposed standards for these eight areas (side reach, water closet clearances in single-user toilet rooms with in-swinging doors, stairs, elevators, location of accessible routes to stages, accessible attorney areas and witness stands, assistive listening systems, and accessible teeing grounds, putting greens, and weather shelters at golf courses) should be raised with the Access Board for further consideration, in particular as applied to alterations.

NAIS requests that the Department raise with the Access Board the issue of stage accessibility. While NAIS appreciates the issue being raised, many stage spaces, particularly in small to medium sized schools considering alterations, lack the space for either ramp or lift access. As with the playgrounds and swimming pools, it may make sense to consider a limitation on scope for this particular rule based on the size of the stage or its setting.

Question 3: The Department would welcome information from operators of auditoriums on the likelihood that their auditoriums will be altered in the next fifteen years, and, if so, whether such alterations are likely to include accessible and direct access to stages. In addition, the Department would like specific information on whether, because of local law or policy, auditorium operators are already providing a direct accessible route to their stages. (The Department is also interested in whether having to provide a direct access to the stage would encourage operators of auditoriums to postpone or cancel the alteration of their facilities.) The Department also seeks information on possible means of quantifying the benefits that accrue to persons with disabilities from this proposed requirement or on its importance to them. To the extent that such information cannot be quantified, the Department welcomes examples of personal or anecdotal experience that illustrate the value of this requirement.

Of the 251 independent schools that completed the NAIS survey, 51% of the participants had access from the audience to the stage, but did not have either ramp or lift access from the audience to the stage. Of those with access from the audience to the stage, 25.9% do have either a lift or a ramp in place. Almost 5% (4.8%) are contemplating providing stage access from the audience area to the stage in a renovation over the next few years. The remaining 18.3% do not have stage access from the audience for participants and they are

not planning renovations in the near future. Obviously, this is a large percentage of schools that do not currently have such access when there are stairs leading from the audience area. In the comments area of our survey, however, many schools noted that they have alternative access either through side doors, back stage access, or other routes as space has permitted.

One issue was raised several times in the comments is what constitutes a stage. Some schools noted that they have a “black box theater” or temporary stages that are constructed for the needs of the school depending on the occasion. Further definitions in this area might be helpful.

Question 5: The Department seeks information from arena and assembly area administrators on their experiences in managing ALS. In order to evaluate the accuracy of the assumptions in the RIA relating to ALS costs, the Department welcomes particular information on the life expectancy of ALS equipment and the cost of ongoing maintenance.

This particular question raised an interesting issue of general cost for independent schools. Of the 251 schools that participated in the survey, only 7.2% had hearing aid compatible assistive listening devices, with an additional 5.6% already contemplating acquiring at least one. The remaining 87.3% did not have a hearing aid compatible ALS. Again, in the comments section the schools that provided comments noted that their smaller spaces did not justify a larger sound system. This may be another area where scoping parameters would be helpful.

Question 7: Should the Department exempt owners and operators of public accommodations from specific compliance with the supplemental requirements for play areas and recreation facilities, and instead continue to determine accessibility in these facilities on a case-by-case basis under existing law? Please provide information on the effect of such a proposal on people with disabilities and places of public accommodation.

NAIS strongly encourages the Department to adopt this approach, particularly to play areas. Independent school play areas are generally open to all students attending the school, but for liability reasons the schools usually do not provide absolute public access as is often the case in restaurants, parks, and other places that are generally open to any individual during times of operation. Play areas at independent schools also vary widely depending upon the terrain and the space available.

Question 26: The Department believes that requiring captioning of safety and emergency information made over the public address system in stadiums seating fewer than 25,000 has the potential of creating an undue burden for smaller entities. However, the Department requests public comment about the effect of requiring captioning of emergency announcements in all stadiums, regardless of size. Would such a requirement be feasible for small stadiums?

At the time of our survey, 86.5% of our survey participants had no feasible way to provide captioning to a stadium audience. Of the remaining schools, a very small percentage (.8%) have the ability to provide such captioning through a scoreboard and 2.4% could provide such captioning through PDAs or text messages if the individuals registered such devices with the school. According to the comments provided, it appears that most schools would handle emergency situations like these in a similar fashion to fire drills, with flashing lights and staff moving the crowd out of the facility. As the NPRM suggests, scoping would be helpful in the case of this regulation. Arguably, the sophistication of the facility increases with the size. At this point, requiring such captioning for all stadiums, regardless of size, would be extremely burdensome in both cost and implementation.

Question 28: If the Department adopted a requirement for captioning at sports stadiums, should there be a specific means required? That is, should it be provided through any effective means (scoreboards, line boards, handheld devices, or other means), or are there problems with some means, such as handheld devices, that should eliminate them as options?

Given the survey response above, if captioning is going to be required of all sports stadiums, any means by which this may be reasonably accomplished should be allowed.

Question 33: Should existing play areas be permitted to substitute additional ground level play components for the elevated play components it would otherwise have been required to make accessible?

The Department should consider this approach as the terrain for play areas as well as the space in which they are situated varies widely around the country and not all play areas may be suitable for the requirements of the proposed guidelines.

Question 34: The Department would welcome comment on whether it would be appropriate for the Access Board to consider implementation of guidelines for play and recreational facilities undertaking alterations that would permit reduced scoping of requirements or substitution of ground level play components in lieu of elevated play components, as the Department is proposing with respect to barrier removal obligations for certain play or recreational facilities.

NAIS firmly believes that this should be an option. This approach will encourage public accommodations to maintain and improve their playgrounds as well as provide more accessibility. More complete adoption of the guidelines may discourage places of public accommodation from taking more than minimal approaches to maintaining their playgrounds. The Department may also want to consider scoping of this requirement as well, as limited space may make the addition of further play components a challenge.

Question 37: The Department would like to hear from public accommodations and individuals with disabilities about the potential effect of this approach. Should existing

swimming pools with less than 300 linear feet of pool wall be exempt from the requirements applicable to swimming pools?

The overall cost of retrofitting pools created for one purpose, such as competitive high school swimming, with either lifts or ramps can be prohibitively expensive and extremely limited by space within the facility. For this reason, NAIS discourages imposing this requirement across all pre-existing pools of all sizes.

Question 38: What types of facilities provide more than one swimming pool on a site? In such facilities, do the pools tend to be identical or do they differ in type (e.g., in size, configuration, function, or use)?

In the NAIS survey, 6.3% of respondent schools had more than one pool. Four respondents had more than one pool with more than one pool greater than 300 feet in length. The remaining schools (11) with more than one pool had no pools greater than 300 feet in length and had different size and type pools to meet the different needs of students or outside activities on campus (e.g., summer camps, after school programs).

Question 40: Will existing facilities have to reduce the number of available exercise equipment and machines in order to comply? What types of space limitations would affect compliance?

Of the NAIS survey respondents, 56% of the respondents have a work-out facility of some kind. 4.8% of respondents have a work-out facility in which accessible routes to one kind of each machine is accessible. However, 29.8% of the respondents estimated that they would need to remove some machines in order to provide access to one of each kind of machine. In some cases, these rooms may be underground or have other logistical issues that make it difficult to create more space for the dispersion of machines in the room. In addition, removal of equipment may impinge on the ability of the school to offer physical fitness classes to students in the time allotted during the school day.

Question 42: Should the Department interpret the barrier removal requirement to require only a reasonable number but at least one of each type of playing field to be served by an accessible route? Should the Department create an exception to this requirement for existing courts (e.g., tennis courts) that have been constructed back-to-back without any space in between them?

NAIS would like to encourage the Department to consider an exception for pre-existing back-to-back courts that do not have a space in between them. Many schools have had courts like these in existence for some time. Further, NAIS survey respondents noted in comments that in some schools the terrain to each field will make it very difficult to provide true and appropriate access, which would argue for limiting accessibility requirements to a field of each type as opposed to all fields.

Question 57: Would the residential facility requirements or the transient lodging requirements in the 2004 ADAAG be more appropriate for housing at places of

education? How would the different requirements affect the cost when building new dormitories and other student housing?

Thirty-nine respondents to the NAIS survey have dorms. Of those schools, 12 have dorms that are handicapped accessible on all floors, including rooms and bathrooms, and 11 have first floors that are handicapped accessible, including rooms and bathrooms. Sixteen schools with dorms have limited accessible dormitory options, from the comments this appears to be largely due to renovation scheduling or the general nature of the school's program or campus terrain.

The NAIS schools that provided comments on this particular question noted that the cost of providing access to all floors in dorms, including adding elevators, is often prohibitive and can require the school to give up dorm room space during renovations if the school is required to install an elevator. Further, many schools appear to have common rooms on each floor for floor activities, with the main floor of the dorms have larger common rooms for whole-dorm activities. These schools feel that these steps have provided full access to the programming provided in these facilities. Finally, because our schools work primarily with students under the age of 18, there is some concern for the safety of having students in wheelchairs living on floors above ground level in the event of an emergency that may cause the elevators to fail. For these reasons, NAIS would like the Department to strongly consider not imposing the transient lodging requirements on k-12 schools. At the same time, clarification on the application of the ADA requirements to school dormitories would be helpful.

NAIS would like to thank the Department for this opportunity to offer comments on these important issues. Please do not hesitate to contact the association if it can be of any help.

Sincerely

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