

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-cv-00865-LTB-BNB

COLORADO CROSS-DISABILITY COALITION, a Colorado non-profit Corporation,
LAURA HERSHEY,
CARRIE ANN LUCAS,
HEATHER REBEKAH RENEE LUCAS, by and through her parent and next friend, CARRIE
ANN LUCAS
ADRIANNE EMILY MONIQUE LUCAS, by and through her parent and next friend, CARRIE
ANN LUCAS,
ASIZA CAROLYN KOLENE LUCAS, by and through her parent and next friend, CARRIE
ANN LUCAS, and
DANIEL WILSON,

Plaintiffs,

v.

THE CITY AND COUNTY OF DENVER, COLORADO,

Defendant and Third Party Plaintiff,

v.

SEMPLE BROWN DESIGN, P.C.,

Third Party Defendant.

**PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST
DEFENDANT/THIRD PARTY PLAINTIFF CITY AND COUNTY OF DENVER**

Plaintiffs Laura Hershey, Carrie Ann Lucas, Heather Rebekah Renee Lucas, Adrienne Emily Monique Lucas, and Daniel Wilson (the "Moving Plaintiffs"), by and through their counsel, hereby move for partial summary judgment as to the number and location of wheelchair accessible seats in the Orchestra section of the Ellie Caulkins Opera House.

INTRODUCTION

The Moving Plaintiffs -- all individuals with disabilities who use wheelchairs -- have brought suit against Defendant City and County of Denver (the "City") under Title II of the Americans with Disabilities Act ("Title II"), 42 U.S.C. § 12131 *et seq.*, and Section 504 of the Rehabilitation Act ("Section 504"), 29 U.S.C. § 794, challenging wheelchair access at the newly remodeled Ellie Caulkins Opera House ("Opera House"). The Moving Plaintiffs bring the present motion based on the undisputed fact that (1) there are an insufficient number of wheelchair accessible seating spaces on the Orchestra level of the Opera House, and that (2) all of the existing accessible spaces on that level are improperly clustered to the sides and back. While other issues remain in the case, Moving Plaintiffs respectfully request partial summary judgment as to liability on these two issues.

UNDISPUTED FACTS

1. The Ellie Caulkins Opera House is the "premier venue"¹ for theatrical, musical, and other types of performances in Denver. Defendant City and County of Denver (the "City") owns and operates the Opera House. (Answer of Def. City and County of Denver to Pls.' Third Am. and Supplemental Compl. ("Third Answer") ¶ 10 (Docket No. 103).)

2. The Opera House was built from a "complete renovation" of the inside of an existing auditorium, starting in 2004. (Third Party Pl. the City and County of Denver's Mot. for Partial Summ. J. ("Third Party Mot. for Summ. J.") (Docket No. 131) ¶ 2; *see also* Def.'s Resps. to Pls.' First Set of Reqs. for Admis. to Def. City and County of Denver ("Resp. to RFAs"))

¹ Ellie Caulkins Opera House Welcome Message. http://www.denvergov.com/Default.aspx?alias=www.denvergov.com/Ellie_Caulkins_Opera_House (last visited Aug. 4, 2008).

(Robertson Decl. Ex. 2) ¶ 4 (admitting that the renovation was an alteration within the meaning of the ADA and Section 504.)) It opened its doors to the public in October of 2005. (Third Answer ¶ 11.)

3. The Opera House provides seating on five levels: the Orchestra; the Parterre; the Mezzanine; the Loge; and the Balcony. Diagrams of these seating areas -- as produced by the City -- are set forth in Exhibit 1 to the Robertson Declaration. The Orchestra is on the lowest level and is closest to the stage. The Parterre is situated entirely behind the Orchestra level. The Mezzanine, Loge and Balcony levels are each progressively one floor higher. (See Answer of Def. City and County of Denver to Pls.' Second Am. Compl., ¶ 30 (Docket No. 34).)

4. When fully installed, the Orchestra level contains 607 seats. (Resp. to RFAs ¶ 13.) There are four wheelchair accessible seating locations in the Orchestra level. (*Id.* ¶ 14.) There are no wheelchair accessible seating locations closer to the stage than Row P. (*Id.* ¶ 17.)

5. The Moving Plaintiffs are all individuals with disabilities within the meaning of the ADA and section 403 of the Rehabilitation Act of 1973, 29 U.S.C. § 705(9)(B). (Resp. to RFAs ¶¶ 1-2.) They all require the use of wheelchairs for mobility. (Decl. of Carrie Ann Lucas ¶¶ 2-6 (relating to Ms. Lucas and her daughters, Heather and Adrienne); Decl. of Laura Hershey ¶ 2; Decl. of Daniel Wilson ¶ 2.)

6. The City has admitted generally, in filing its third party complaint against the architects who designed the Opera House, that the “design of the [Opera House] . . . failed to meet applicable state, federal and local requirements and standards.” (Third Party Compl. and Jury Demand ¶ 26(b) (Docket No. 106).)

ARGUMENT

I. Elements of a Claim Under Title II and Section 504.

Title II prohibits discrimination on the basis of disability by public entities. 42 U.S.C. § 12132. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance. 29 U.S.C. § 794. The requirements of Title II are the same as those of Section 504. *Chaffin v. Kan. State Fair Bd.*, 348 F.3d 850, 859 (10th Cir. 2003).

To establish a claim under Title II or Section 504, Moving Plaintiffs must establish that (1) they have disabilities; (2) they are otherwise qualified for the program at issue; (3) the program is a public entity (Title II) or receives federal financial assistance (Section 504); and (4) Defendant discriminated against Plaintiffs. *See Powers v. MJB Acquisition Corp.*, 184 F.3d 1147, 1151 (10th Cir. 1999). In this case, it is undisputed that the Moving Plaintiffs have disabilities. (Resp. to RFAs ¶ 1.) Since the Opera House is open to the public, they are qualified simply by dint of being members of the public eligible to purchase tickets and attend performances. The City is a public entity as defined in Title II, *see* 28 C.F.R. § 35.104 (defining “public entity” to include local governments), and admits to receiving federal financial assistance (Third Answer ¶ 91). Thus the only question at issue in this motion for partial summary judgment is whether the City discriminated against Plaintiffs, specifically on the grounds that (1) it failed to include sufficient accessible seating in the Orchestra level of the Opera House, and (2) it failed to provide accessible seating toward the front of that level.

Department of Justice (“DOJ”) regulations interpreting Title II, which have the force of law,² require that when a facility or any part thereof is altered after January 26, 1992, it must, to the maximum extent feasible, be altered so that the altered portion is readily accessible to and usable by individuals with disabilities. 28 C.F.R. § 35.151(b); *see also* 28 C.F.R. § 41.58(a) (Section 504 regulations; same requirement). Because the Opera House involved a “complete renovation” of the original auditorium in 2004-2005, the entire interior of the facility must comply with this provision. In this case, the provision requires compliance with the Americans with Disabilities Act Accessibility Guidelines (“ADAAG”), 28 C.F.R. pt. 36, app. A, *available at* <http://www.ada.gov/adastd94.pdf>. *See* 28 C.F.R. § 35.151(c).³

II. The Opera House Lacks Sufficient Accessible Seating in the Orchestra Section.

Because the Orchestra has 607 seats (*see* Resp. to RFAs ¶ 13), it is required to have seven wheelchair accessible seating spaces. At the very least, the four seats it currently has (*see id.* ¶ 14) do not satisfy the requirements of the ADAAG.

Section 4.1.3(19)(a) of the ADAAG requires that facilities with over 500 seats have six accessible spaces plus one additional space for each one hundred additional seats. Because the

² *See Helen L. v. DiDario*, 46 F.3d 325, 332 (3d Cir. 1995) (holding that Congress has expressed approval of these regulations and they thus have the force of law).

³ Relevant provisions of the ADAAG are included as an Appendix to this motion. The regulation requires compliance with either the ADAAG or the Uniform Federal Accessibility Standards (“UFAS”), 41 C.F.R. pt. 101-19.6, app. A, *available at* <http://www.access-board.gov/ufas/ufas-html/ufas.htm>. *See* 28 C.F.R. § 35.151(c). A given alteration must comply with one standard or the other in its entirety. “The Americans with Disabilities Act Title II Technical Assistance Manual,” § II-6.2100 (“All alterations in the same building must be done in accordance with the same standard”), *available at* <http://www.ada.gov/taman2.html>. Because only approximately one percent of the total seats in the Opera House are accessible, *see* Robertson Decl. Ex. 1, rather than the two percent required by the UFAS, *see id.* § 4.1.2(18)(a), the City has elected to attempt to comply with the ADAAG.

first 500 seats require six accessible positions and the remainder require one out of every 100, this standard requires one percent of the total plus one seat to be accessible.

This one-percent requirement applies to both the overall facility and to each discrete area within the facility. Section 4.33.3 of the ADAAG states that “[w]hen the seating capacity exceeds 300, wheelchair spaces shall be provided in more than one location . . .” This provision requires that wheelchair-accessible seating be “dispersed more or less evenly throughout the categories of ticket prices and classes of seating.” *Indep. Living Res. v. Or. Arena Corp.*, 982 F. Supp. 698, 709 & n.9 (D. Or. 1997).⁴ To achieve the required dispersal, such seating must be “provided in a number equal to approximately one percent of the seats in each price range, level of amenities, and viewing angle.” *Id.* (quoting letter dated Nov. 21, 1994 from the DOJ regarding Yakima Stadium); *quoted in Colo. Cross-Disability Coal. v. Colo. Rockies Baseball Club, Ltd.*, 336 F. Supp. 2d 1141, 1148 (D. Colo. 2004) (Johnson, J.)

Because the Orchestra section has 607 seats, the requirement of one percent accessible seating in each area mandates at least seven wheelchair accessible spaces in that section. At the very least, having only four accessible seats does not comply.

III. The Opera House Lacks Required Accessible Seating Toward the Front of the Orchestra Section.

It is also inappropriate to cluster the Orchestra level accessible seating positions to the side and most of the way to the back of that section. As demonstrated by the Opera House seating charts, there is no front-row accessible seating on any level anywhere in the Opera House.

⁴ See also *Accessible Stadiums*, U. S. Dep’t of Justice, <http://www.ada.gov/stadium.pdf>, at 1 (Section 4.33.3 requires dispersal of wheelchair seating “throughout all seating areas”).

(Robertson Decl. Ex. 1.) Indeed, on most levels, accessible seating is located behind all other seats. (*Id.* at 2-4.) On the Orchestra level, all of the accessible seating is located in Row P. (*Id.* at 1.) Because the rows go from A to X on that level, the closest accessible seating is thus two-thirds of the way back. In addition, the accessible seating is located to the far right and far left of that section; there is no accessible seating anywhere in the center section of the Orchestra level.

Section 4.33.3 of the ADAAG requires not only that accessible seating be dispersed; it also requires that “[w]heelchair areas . . . shall be provided so as to provide people with physical disabilities a choice of admission prices and lines of sight comparable to those for members of the general public. . .” Congress, in discussing the ADA’s “fundamental principle” of integration for people with disabilities, stated that: “[h]istorically, persons with disabilities have been relegated to separate and often inferior services. For example, seating for persons using wheelchairs is often located in the back of auditoriums.” H.R. Rep. No. 101-485, pt. 2, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 385 (emphasis added), *quoted in Colo. Rockies*, 336 F. Supp. 2d at 1145. Congress specifically concluded that, “it is critical that seating be available in the front of the audience for persons with hearing and vision impairments, including those who use wheelchairs.” *Id.* at 103, *reprinted in* 1990 U.S.C.C.A.N. at 386. Though dispersal is required even in the absence of such impairments, Plaintiff Carrie Ann Lucas and her daughter Heather both have both hearing and vision impairments. (Lucas Decl. ¶¶ 2, 4.)

A number of cases have held that clustering of wheelchair seating to the side and rear is not permitted. In the *Oregon Arena* case, for example, the defendant had placed all wheelchair seating in the corners of the end of a basketball arena. The court held that this violated the

dispersal requirement. *Id.*, 982 F. Supp. at 716-17. The Third Circuit has held that the requirement of comparable lines of sight, ADAAG § 4.33.3, means that

if a facility's seating plan provides members of the general public with different lines of sight to the field or stage (*e.g.*, lines of sight at a baseball game from behind the plate, on either side of the diamond, and from the outfield bleachers), it must also provide wheelchair users with a comparable opportunity to view the field or stage from a variety of angles.

Caruso v. Blockbuster-Sony Music Entm't Ctr. at the Waterfront, 193 F.3d 730, 732 (3d Cir. 1999). Here, the inaccessible seating in the Opera House permits nondisabled people to view the stage from the front and from the center. Those viewing angles are not available to individuals with disabilities: there are no front row accessible seats anywhere in the Opera House; and any seats in the center are much farther back in the Parterre, Mezzanine and Loge levels.

CONCLUSION

Plaintiffs respectfully request that this Court grant partial summary judgment in their favor and against the City, and hold that the Opera House is in violation of Title II and Section 504 because: (1) it has too few accessible seating positions on the Orchestra level; and (2) wheelchair seating in the Orchestra level is clustered toward the back and on the sides. This motion is one for partial summary judgment as to liability only. Plaintiffs respectfully request that the remedy for these violations be addressed in a later proceeding.

Respectfully submitted,

s/ Amy F. Robertson

Amy F. Robertson
Timothy P. Fox
Fox & Robertson, P.C.
910 16th Street, Suite 610
Denver, CO 80202
Tel: 303.595.9700
Fax: 303.595.9705
Email: arob@foxrob.com

Kevin W. Williams
Legal Program Director
Colorado Cross-Disability Coalition
655 Broadway, Suite 775
Denver, CO 80203
Tel: 303.839.1775
Fax: 303.839.1782
Email: kwilliams@ccdconline.org

Attorneys for Plaintiffs

Dated: August 4, 2008

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2008, I electronically filed the foregoing document and the attached Declarations of Amy F. Robertson, Carrie Ann Lucas, Laura Hershey and Daniel Wilson with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following email addresses:

Elizabeth A. Starrs
Elizabeth L. Smith
Elizabeth J. Hyatt
Starrs Mihm & Pulkrabek LLP
707 17th Street, Suite 2600
Denver, Colorado 80202
estarrs@starrslaw.com
ehyatt@starrslaw.com
booka.smith@starrslaw.com

Debra R. Knapp
Mary E. Toornman
Robert Griffin Wheeler
Assistant City Attorneys
City and County of Denver
Department of Law
201 West Colfax Ave., Dept. 1207
Denver, CO 80202
debra.knapp@denvergov.org
mary.toornman@ci.denver.co.us
robert.wheeler@denvergov.org

Timothy M. Schulte
Andrew Scott Ford
Jackson Kelly PLLC
Suite 2150, 1099 18th Street
Denver, Colorado 80202
tmschulte@jacksonkelly.com
asford@jacksonkelly.com

Kevin W. Williams
Legal Program Director
Colorado Cross-Disability Coalition
655 Broadway, Suite 775
Denver, CO 80203
kwilliams@ccdconline.org

s/ Amy F. Robertson
Amy F. Robertson
Timothy P. Fox
Fox & Robertson, P.C.
910 16th Street, Suite 610
Denver, CO 80202
Tel: 303.595.9700
Fax: 303.595.9705
Email: arob@foxrob.com

Appendix

**code of
federal regulations** reprint

Department of Justice

28 CFR Part 36

Revised as of July 1, 1994

Nondiscrimination on the Basis of
Disability by Public Accommodations
and in Commercial Facilities

Excerpt from 28 CFR Part 36:

**ADA Standards for
Accessible Design**



4.1.3 Accessible Buildings: New Construction

(b) Accessible passenger loading zones;

(c) Accessible entrances when not all are accessible (inaccessible entrances shall have directional signage to indicate the route to the nearest accessible entrance);

(d) Accessible toilet and bathing facilities when not all are accessible.

4.1.3 Accessible Buildings: New Construction. Accessible buildings and facilities shall meet the following minimum requirements:

(1) At least one accessible route complying with 4.3 shall connect accessible building or facility entrances with all accessible spaces and elements within the building or facility.

(2) All objects that overhang or protrude into circulation paths shall comply with 4.4.

(3) Ground and floor surfaces along accessible routes and in accessible rooms and spaces shall comply with 4.5.

(4) Interior and exterior stairs connecting levels that are not connected by an elevator, ramp, or other accessible means of vertical access shall comply with 4.9.

(5)* One passenger elevator complying with 4.10 shall serve each level, including mezzanines, in all multi-story buildings and facilities unless exempted below. If more than one elevator is provided, each full passenger elevator shall comply with 4.10.

EXCEPTION 1: Elevators are not required in facilities that are less than three stories or that have less than 3000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider, or another type of facility as determined by the Attorney General. The elevator exemption set forth in this paragraph does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in section 4.1.3. For example, floors above or below the accessible ground floor must meet the requirements of this section except for elevator service. If toilet or bathing facilities are provided on a level not served by an elevator, then toilet or bathing facilities must be provided on the accessible

ground floor. In new construction if a building or facility is eligible for this exemption but a full passenger elevator is nonetheless planned, that elevator shall meet the requirements of 4.10 and shall serve each level in the building. A full passenger elevator that provides service from a garage to only one level of a building or facility is not required to serve other levels.

EXCEPTION 2: Elevator pits, elevator pent-houses, mechanical rooms, piping or equipment catwalks are exempted from this requirement.

EXCEPTION 3: Accessible ramps complying with 4.8 may be used in lieu of an elevator.

EXCEPTION 4: Platform lifts (wheelchair lifts) complying with 4.11 of this guideline and applicable state or local codes may be used in lieu of an elevator only under the following conditions:

(a) To provide an accessible route to a performing area in an assembly occupancy.
(b) To comply with the wheelchair viewing position line-of-sight and dispersion requirements of 4.33.3.

(c) To provide access to incidental occupiable spaces and rooms which are not open to the general public and which house no more than five persons, including but not limited to equipment control rooms and projection booths.

(d) To provide access where existing site constraints or other constraints make use of a ramp or an elevator infeasible.

(6) Windows: (Reserved).

(7) Doors:

(a) At each accessible entrance to a building or facility, at least one door shall comply with 4.13.

(b) Within a building or facility, at least one door at each accessible space shall comply with 4.13.

(c) Each door that is an element of an accessible route shall comply with 4.13.

Department of Justice

Pt. 36, App. A

4.1.3 Accessible Buildings: New Construction

<p>(d) Each door required by 4.3.10, Egress, shall comply with 4.13.</p> <p>(8) In new construction, at a minimum, the requirements in (a) and (b) below shall be satisfied independently:</p> <p>(a)(i) At least 50% of all public entrances (excluding those in (b) below) must be accessible. At least one must be a ground floor entrance. Public entrances are any entrances that are not loading or service entrances.</p> <p>(ii) Accessible entrances must be provided in a number at least equivalent to the number of exits required by the applicable building/fire codes. (This paragraph does not require an increase in the total number of entrances planned for a facility.)</p> <p>(iii) An accessible entrance must be provided to each tenancy in a facility (for example, individual stores in a strip shopping center).</p> <p>One entrance may be considered as meeting more than one of the requirements in (a). Where feasible, accessible entrances shall be the entrances used by the majority of people visiting or working in the building.</p> <p>(b)(i) In addition, if direct access is provided for pedestrians from an enclosed parking garage to the building, at least one direct entrance from the garage to the building must be accessible.</p> <p>(ii) If access is provided for pedestrians from a pedestrian tunnel or elevated walkway, one entrance to the building from each tunnel or walkway must be accessible.</p> <p>One entrance may be considered as meeting more than one of the requirements in (b).</p> <p>Because entrances also serve as emergency exits whose proximity to all parts of buildings and facilities is essential, it is preferable that all entrances be accessible.</p> <p>(c) If the only entrance to a building, or tenancy in a facility, is a service entrance, that entrance shall be accessible.</p> <p>(d) Entrances which are not accessible shall have directional signage complying with 4.30.1,</p>	<p>4.30.2, 4.30.3, and 4.30.5, which indicates the location of the nearest accessible entrance.</p> <p>(9)* In buildings or facilities, or portions of buildings or facilities, required to be accessible, accessible means of egress shall be provided in the same number as required for exits by local building/life safety regulations. Where a required exit from an occupiable level above or below a level of accessible exit discharge is not accessible, an area of rescue assistance shall be provided on each such level (in a number equal to that of inaccessible required exits). Areas of rescue assistance shall comply with 4.3.11. A horizontal exit, meeting the requirements of local building/life safety regulations, shall satisfy the requirement for an area of rescue assistance.</p> <p>EXCEPTION: Areas of rescue assistance are not required in buildings or facilities having a supervised automatic sprinkler system.</p> <p>(10)* Drinking Fountains:</p> <p>(a) Where only one drinking fountain is provided on a floor there shall be a drinking fountain which is accessible to individuals who use wheelchairs in accordance with 4.15 and one accessible to those who have difficulty bending or stooping. (This can be accommodated by the use of a "hi-lo" fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible under 4.15 and a water cooler; or by such other means as would achieve the required accessibility for each group on each floor.)</p> <p>(b) Where more than one drinking fountain or water cooler is provided on a floor, 50% of those provided shall comply with 4.15 and shall be on an accessible route.</p> <p>(11) Toilet Facilities: If toilet rooms are provided, then each public and common use toilet room shall comply with 4.22. Other toilet rooms provided for the use of occupants of specific spaces (i.e., a private toilet room for the occupant of a private office) shall be adaptable. If bathing rooms are provided, then each public and common use bathroom shall comply with 4.23. Accessible toilet rooms and bathing facilities shall be on an accessible route.</p>
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4.1.3 Accessible Buildings: New Construction

	Number of each type of telephone provided on each floor	Number of telephones required to comply with 4.31.2 through 4.31.8¹
<p>(12) Storage, Shelving and Display Units:</p> <p>(a) If fixed or built-in storage facilities such as cabinets, shelves, closets, and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with 4.25. Additional storage may be provided outside of the dimensions required by 4.25.</p>	<p>1 or more single unit</p>	<p>1 per floor</p>
<p>(b) Shelves or display units allowing self-service by customers in mercantile occupancies shall be located on an accessible route complying with 4.3. Requirements for accessible reach range do not apply.</p>	<p>1 bank²</p>	<p>1 per floor</p>
<p>(13) Controls and operating mechanisms in accessible spaces, along accessible routes, or as parts of accessible elements (for example, light switches and dispenser controls) shall comply with 4.27.</p>	<p>2 or more banks²</p>	<p>1 per bank. Accessible unit may be installed as a single unit in proximity (either visible or with signage) to the bank. At least one public telephone per floor shall meet the requirements for a forward reach telephone³.</p>
<p>(14) If emergency warning systems are provided, then they shall include both audible alarms and visual alarms complying with 4.28. Sleeping accommodations required to comply with 9.3 shall have an alarm system complying with 4.28. Emergency warning systems in medical care facilities may be modified to suit standard health care alarm design practice.</p>	<p>¹ Additional public telephones may be installed at any height. Unless otherwise specified, accessible telephones may be either forward or side reach telephones.</p>	<p>² A bank consists of two or more adjacent public telephones, often installed as a unit.</p>
<p>(15) Detectable warnings shall be provided at locations as specified in 4.29.</p> <p>(16) Building Signage:</p> <p>(a) Signs which designate permanent rooms and spaces shall comply with 4.30.1, 4.30.4, 4.30.5 and 4.30.6.</p> <p>(b) Other signs which provide direction to or information about functional spaces of the building shall comply with 4.30.1, 4.30.2, 4.30.3, and 4.30.5.</p> <p>EXCEPTION: Building directories, menus, and all other signs which are temporary are not required to comply.</p>	<p>³ EXCEPTION: For exterior installations only, if dial tone first service is available, then a side reach telephone may be installed instead of the required forward reach telephone (i.e., one telephone in proximity to each bank shall comply with 4.31).</p>	<p>(b)* All telephones required to be accessible and complying with 4.31.2 through 4.31.8 shall be equipped with a volume control. In addition, 25 percent, but never less than one, of all other public telephones provided shall be equipped with a volume control and shall be dispersed among all types of public telephones, including closed circuit telephones, throughout the building or facility. Signage complying with applicable provisions of 4.30.7 shall be provided.</p>
<p>(17) Public telephones:</p> <p>(a) If public pay telephones, public closed circuit telephones, or other public telephones are provided, then they shall comply with 4.31.2 through 4.31.8 to the extent required by the following table:</p>	<p>(c) The following shall be provided in accordance with 4.31.9:</p>	<p>(i) if a total number of four or more public pay telephones (including both interior and exterior phones) is provided at a site, and at least one is in an interior location, then at least one interior public text telephone shall be provided.</p>
		<p>(ii) if an interior public pay telephone is provided in a stadium or arena, in a convention center, in a hotel with a convention center, or</p>

Department of Justice

Pt. 36, App. A

4.1.3 Accessible Buildings: New Construction

in a covered mall, at least one interior public text telephone shall be provided in the facility.

(iii) if a public pay telephone is located in or adjacent to a hospital emergency room, hospital recovery room, or hospital waiting room, one public text telephone shall be provided at each such location.

(d) Where a bank of telephones in the interior of a building consists of three or more public pay telephones, at least one public pay telephone in each such bank shall be equipped with a shelf and outlet in compliance with 4.31.9(2).

(18) If fixed or built-in seating or tables (including, but not limited to, study carrels and student laboratory stations), are provided in accessible public or common use areas, at least five percent (5%), but not less than one, of the fixed or built-in seating areas or tables shall comply with 4.32. An accessible route shall lead to and through such fixed or built-in seating areas, or tables.

(19)* Assembly areas:

(a) In places of assembly with fixed seating accessible wheelchair locations shall comply with 4.33.2, 4.33.3, and 4.33.4 and shall be provided consistent with the following table:

Capacity of Seating in Assembly Areas	Number of Required Wheelchair Locations
4 to 25	1
26 to 50	2
51 to 300	4
301 to 500	6
over 500	6, plus 1 additional space for each total seating capacity increase of 100

In addition, one percent, but not less than one, of all fixed seats shall be aisle seats with no armrests on the aisle side, or removable or folding armrests on the aisle side. Each such seat shall be identified by a sign or marker. Signage notifying patrons of the availability of such seats shall be posted at the ticket office. Aisle seats are not required to comply with 4.33.4.

(b) This paragraph applies to assembly areas where audible communications are integral to the use of the space (e.g., concert and lecture halls, playhouses and movietheaters, meeting rooms, etc.). Such assembly areas, if (1) they accommodate at least 50 persons, or if they have audio-amplification systems, and (2) they have fixed seating, shall have a permanently installed assistive listening system complying with 4.33. For other assembly areas, a permanently installed assistive listening system, or an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system shall be provided. The minimum number of receivers to be provided shall be equal to 4 percent of the total number of seats, but in no case less than two. Signage complying with applicable provisions of 4.30 shall be installed to notify patrons of the availability of a listening system.

(20) Where automated teller machines (ATMs) are provided, each ATM shall comply with the requirements of 4.34 except where two or more are provided at a location, then only one must comply.

EXCEPTION: Drive-up-only automated teller machines are not required to comply with 4.27.2, 4.27.3 and 4.34.3.

(21) Where dressing and fitting rooms are provided for use by the general public, patients, customers or employees, 5 percent, but never less than one, of dressing rooms for each type of use in each cluster of dressing rooms shall be accessible and shall comply with 4.35.

Examples of types of dressing rooms are those serving different genders or distinct and different functions as in different treatment or examination facilities.

4.1.4 (Reserved).

4.1.5 Accessible Buildings: Additions.

Each addition to an existing building or facility shall be regarded as an alteration. Each space or element added to the existing building or facility shall comply with the applicable provisions of 4.1.1 to 4.1.3, Minimum Requirements (for New Construction) and the applicable technical specifications of 4.2 through 4.35 and sections 5 through 10. Each addition that

Department of Justice

Pt. 36, App. A

4.32 Fixed or Built-in Seating and Tables

4.31.7 Telephone Books. Telephone books, if provided, shall be located in a position that complies with the reach ranges specified in 4.2.5 and 4.2.6.

4.31.8 Cord Length. The cord from the telephone to the handset shall be at least 29 in (735 mm) long.

4.31.9* Text Telephones Required by 4.1.

(1) Text telephones used with a pay telephone shall be permanently affixed within, or adjacent to, the telephone enclosure. If an acoustic coupler is used, the telephone cord shall be sufficiently long to allow connection of the text telephone and the telephone receiver.

(2) Pay telephones designed to accommodate a portable text telephone shall be equipped with a shelf and an electrical outlet within or adjacent to the telephone enclosure. The telephone handset shall be capable of being placed flush on the surface of the shelf. The shelf shall be capable of accommodating a text telephone and shall have 6 in (152 mm) minimum vertical clearance in the area where the text telephone is to be placed.

(3) Equivalent facilitation may be provided. For example, a portable text telephone may be made available in a hotel at the registration desk if it is available on a 24-hour basis for use with nearby public pay telephones. In this instance, at least one pay telephone shall comply with paragraph 2 of this section. In addition, if an acoustic coupler is used, the telephone handset cord shall be sufficiently long so as to allow connection of the text telephone and the telephone receiver. Directional signage shall be provided and shall comply with 4.30.7.

4.32 Fixed or Built-in Seating and Tables.

4.32.1 Minimum Number. Fixed or built-in seating or tables required to be accessible by 4.1 shall comply with 4.32.

4.32.2 Seating. If seating spaces for people in wheelchairs are provided at fixed tables or counters, clear floor space complying with 4.2.4 shall be provided. Such clear floor space shall

not overlap knee space by more than 19 in (485 mm) (see Fig. 45).

4.32.3 Knee Clearances. If seating for people in wheelchairs is provided at tables or counters, knee spaces at least 27 in (685 mm) high, 30 in (760 mm) wide, and 19 in (485 mm) deep shall be provided (see Fig. 45).

4.32.4* Height of Tables or Counters.

The tops of accessible tables and counters shall be from 28 in to 34 in (710 mm to 865 mm) above the finish floor or ground.

4.33 Assembly Areas.

4.33.1 Minimum Number. Assembly and associated areas required to be accessible by 4.1 shall comply with 4.33.

4.33.2* Size of Wheelchair Locations. Each wheelchair location shall provide minimum clear ground or floor spaces as shown in Fig. 46.

4.33.3* Placement of Wheelchair Locations. Wheelchair areas shall be an integral part of any fixed seating plan and shall be provided so as to provide people with physical disabilities a choice of admission prices and lines of sight comparable to those for members of the general public. They shall adjoin an accessible route that also serves as a means of egress in case of emergency. At least one companion fixed seat shall be provided next to each wheelchair seating area. When the seating capacity exceeds 300, wheelchair spaces shall be provided in more than one location. Readily removable seats may be installed in wheelchair spaces when the spaces are not required to accommodate wheelchair users.

EXCEPTION: Accessible viewing positions may be clustered for bleachers, balconies, and other areas having sight lines that require slopes of greater than 5 percent. Equivalent accessible viewing positions may be located on levels having accessible egress.

4.33.4 Surfaces. The ground or floor at wheelchair locations shall be level and shall comply with 4.5.