

## **The ADA and Outdoor Programs**

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The Americans with Disabilities Act (ADA) has inspired hope and freedom, as well as anxiety and confusion. For outdoor programs the ADA is good news because it lays out clear guidelines. In this article we are going to look at the growing opportunity to involve people with disabilities, specific responsibilities and practical steps outdoor program providers can follow to ensure their programs remain both safe and equitable.

The experience is richer for all in mainstreamed groups, and there are legal requirements to ensure that all people have an equal opportunity to participate in programs. Since 1973, Section 504 of the Rehabilitation Act has required that all Federal agencies and all those operating under permit issued by a Federal agency are required to ensure that all people, including people with disabilities, have an equal opportunity to participate in their program.

In 1990 the Americans with Disabilities Act (ADA) extended that requirement to all State and local government services, public accommodations, which are businesses open to the public, and to public transportation. Religious organizations and private clubs, that are not open to the public, are the only entities exempt from the requirement to integrate people with disabilities. For simplicity, I'll just refer to the ADA.

To understand the ADA, it is important to remember several key points. First, the ADA is essentially civil rights legislation, in that it is designed to protect the rights of people with disabilities in employment, public transportation, the services of state and local governments and the programs and activities offered by public accommodations that are businesses that are open to the public.

An underlying concept of the ADA is that decisions for employment and program participation should not be based on stereotypes. Service providers cannot base their decisions simply on the fact that an individual carries the label of a disability. Instead, they must look to what that individual can do. If the individual can perform the basic functions of an activity, he or she must be permitted to participate.

Secondly, the ADA covers both facility access and access to programs and services. In other words, not only must buildings be accessible, but the activities that take place within and outside those buildings must also be accessible. The law emphasizes independence, integration and dignity.

The ADA states that businesses and organizations may not prohibit an individual with a disability from participation in or the benefits of programs, services, and activities solely because he or she has a disability. Further, the program must be provided with dignity for all and in the most integrated setting.

### **What is a “Program”?**

Simply put a program is the reason a person visits that area. At campground it is camping, and also access to the restroom, the water, the swimming beach and other program opportunities offered at that site. At an outfitters store the program is looking at, trying on or trying out and hopefully purchasing the clothing, equipment, etc. for sale. It might also be signing up for a trip or for paddling instruction and so forth.

### **Facility Access**

Of course a person must be able to access the facility in order to be able to participate in the program inside that facility, so access to the program provider’s facilities is an important issue. In fact access to facilities is required under the ADA, if the facility has to be entered in order to participate in the program being offered

If you own, operate, lease, or lease to a business that serves the public, then, you are covered by the ADA and have obligations for those facilities as well as for compliance when a facility is altered or a new facility is constructed. Existing facilities are not exempted by "grandfather provisions" that are often used by building code officials.

New construction, or alteration, of facilities is to be accessible in compliance with the current accessibility standards. Privately owned businesses are required to use the ADA standards for accessibility (at [www.ada.gov](http://www.ada.gov)) or the local or State code if either has higher requirements, for new construction and alterations.

The accessibility guidelines are based on access for a person using a wheelchair. The wheelchair is the “canary in the mine” for accessibility. That is if a person using a wheelchair can get into a building and participate in the activities inside that building then it is likely that all other people could also access that building and therefore it would be “accessible” to all people. However, to a more limited degree, the guidelines also, address access by people who are deaf or hard of hearing and for those who are blind or have limited vision.

Since everyone appreciates more room in the restroom, etc. accessible design is being viewed as good “universal design”, it works well for everyone. The basic requirement is that whatever is provided to the all participants in the program is also to be provided to the individual, who also has a disability, and who is qualified for the program.

OK, so new facilities have to be accessible, but what about existing facilities? Again the facility is to be accessible if a person has to enter that building in order to participate in the program being offered. So you need to evaluate your facility to determine if it is accessible stating with:

- Are all doorways a minimum of 32” wide?
- Is there 60” of clear space inside and outside the doors?
- Does the restroom and changing room have a 60” turning radius?
- Does the restroom meet the ADA accessibility standards for grab bars, heights and reach ranges?
- Do doors have lever handles not door knobs?

- Do parking lots, walkways have firm and stable surfaces?
- And do they have a minimum of 36” of clear width?

There is a rule of thumb that is handy when evaluating a surface. Keep in mind that the purpose of ensuring the firmness and stability of a surface is to prevent mobility devices from sinking into the surface, thereby making it difficult for a person using crutches, a cane, a wheelchair, or other mobility device to move through the area with reasonable effort. The primary mobility device used for measurement purposes in the accessibility guidelines is the wheelchair because its dimensions and multiple moving surface contacts points, its four wheels, often make it difficult to accommodate. Thus, if a person using a wheelchair can utilize an area, most other people also can utilize that area.

The rule of thumb to determine if a surface is firm and stable enough to accommodate a person using a wheelchair, one should look at the surface and consider two questions:

- (1) Could a person riding a narrow-tired bicycle cross the surface easily without the wheels sinking into or disturbing the surface?
- (2) And could a heavy child in a folding umbrella stroller, with the small plastic wheels, be pushed across that surface without those small wheels sinking into or distorting the surface? The wheel configurations on those two devices are similar to the large rear tires and the small front casters of the average wheelchair.

There is a handy checklist for evaluating facilities available at [www.usdoj.gov/crt/ada/racheck.pdf](http://www.usdoj.gov/crt/ada/racheck.pdf).

If the facility or site is not independently accessible, warn any person with a disability BEFORE they arrive. In printed materials on your web site, etc. state “If you have special needs please call (list a name and number)”. The person can then determine if they have a “special need” for which they need to check with you. Their “need” may be to locate babysitting services, or to find out if there is a nearby location where they can get lunch, or if your shop is wheelchair accessible, and so forth.

### **What about the Cost?**

Retrofits/ alterations to make a facility accessible must be “readily achievable”, that means the retrofit / alteration can be accomplished without much difficulty or expense. The "readily achievable" requirement is based on the size and resources of the business. So larger businesses with more resources are expected to take a more active role in removing barriers than small businesses. The ADA also recognizes that economic conditions vary. When a business has resources to remove barriers, it is expected to do so; but when profits are down, barrier removal may be reduced or delayed. Barrier removal is an ongoing obligation -- you are expected to remove barriers in the future as resources become available.

If it would cost too much to alter the facility, the program provider must find another way to ensure that services (the programs) that are available to all other customers are also available to those who can't enter the facility due to lack of accessibility. It often takes creativity to think of a method of providing access to those programs through an

alternative but integrated way. Here are a few examples: a doorbell at the base of the stairs, delivery to one's vehicle, and so forth. The options are limited only by one's imagination.

This does not necessarily mean that every facility, or every part, of an existing facility must be accessible to and usable by a person with a disability. However, the person must be able to obtain the services / participate in the program offered in the facility just like people who do not have disabilities. This can be done by moving services to accessible buildings, delivery of services to alternate accessible sites, altering facilities to make them accessible, or by constructing new accessible facilities

However, in accordance with ADA the method of providing such alternate accessibility to the program is to be chosen based on offering that program "in the most integrated setting to obtain the full benefits of the program" and to do so with dignity. For example, in an existing multi story building that does not have an elevator but has a restaurant on the top floor, a smaller dining area could be established on the first floor providing the same menu and services offered by the restaurant on the top floor. A caution, this alternative first floor restaurant could not be segregated only for persons with disabilities because that would not meet the legal requirement for the most integrated setting, this first floor service must also be available to people who do not have disabilities.

### **Good News about Making Facilities Accessible**

The good news is that tax credits are available for expenditures made to improve accessibility., information is available at [www.irs.gov](http://www.irs.gov). A *Tax Incentives* booklet, the *ADA Guide for Small Businesses* and lots of other helpful information is available at [www.ada.gov](http://www.ada.gov).

Also, if no facility has to be entered to participate in the program you are offering, than not facility access is required. For example, if you offer paddling instruction but meet the students at the launch area and don't use any other facilities, then there are no facility accessibility issues.

### **Accessibility at Launching Sites**

There are no legal requirements for accessibility at "carry-down" craft (canoe and kayak) launching areas, other than the accessible parking space requirements, if there are more than 4 designated parking spaces. However, the ADA does require your program to be accessible.

Therefore, your launch area should have a firm and stable surface and not too much of an angle. The use of mobility devices (walkers, canes, crutches, wheelchairs, etc.) in launching areas can be difficult with sand, steep terrain and so forth. An excellent launching area, when someone in program uses a mobility device, is a boat ramp. While the boat ramp angle is steeper than the ideal at 13% to 17% in order to facilitate launching boats from vehicle trailers, the firm and stable surface connecting directly to the parking lot facilitates movement with a mobility device across the surface and transfer into the partially floating canoe or kayak at the base of the ramp.

In some cases there are no good launch site options and it may be necessary to carry an individual. When this is the case, you cannot advertise the program as accessible. Keep in mind there is no dignity in being carried. Always tell a person who uses a mobility device BEFORE they come to participate in the program if the area is not accessible and alternative means, such as carries, will need to be used. Accurate expectations are important to all.

### **Security**

The security of a person's wheelchair and other mobility device is vital. If a person is dependent on such a device for their mobility, if they have to leave it behind when they go paddling it is like leaving your legs behind. They will be concerned. Never leave an empty wheelchair or other mobility device unattended. Lock them in a building or return them to a vehicle. Discuss such security options with the person who uses the mobility device before he/she gets into the boat. It may be necessary for that person to show you how to stow the device in their vehicle, operate a wheelchair lift, etc. and once that individual is in their boat such training will be very difficult.

### **Accessible Information**

22 million people are deaf or hard of hearing so printed information is essential. You also need to be aware of the TTY (text-telephone) Relay System (711).

TTYs are a means of communication used by people who are deaf, hard of hearing, those who have difficulty speaking and so forth, in place of voice phones. The 711 Relay System is a nation wide system established under the ADA. The Relay operators have both a TTY, which looks like a small computer keyboard with a narrow LED screen at the top of the keyboard, and a voice phone. A person who uses a TTY can use it to call the Relay operator, at no charge.

The operator then uses the voice phone to place the call for the person using the TTY to the business or individual they are seeking to communicate with but who does not have a TTY. The Relay operator then acts as an interpreter between the two types of communication devices. The person who answers the voice phone is told by the Relay operator that they are receiving a "Relay call" and who is calling them from their TTY. The person answering the voice phone then says "Hello and the name of the person who has placed the call...for example "Hello Mr. Jones". It is very important to keep in mind that this communication is between the 2 individuals, the Relay operator is to be considered an invisible communication link and not to be addressed during the call. For example one is not to say to the operator "Tell Mr. Jones I say Hello". After the person answering the voice phone has greeted the caller, the Relay operator types that greeting message into the operator's TTY which in turn is read by the person placing the call on their TTY. Then that person replies on their TTY and the Relay operator reads that TTY message over the voice phone to the person being called. This process goes back and forth until the call is completed. When the conversation is complete one of the parties says "SK" to indicate they have nothing further to say, if the other party has nothing further to add that party would say good bye and then "SK, SK" indicating that they too

have completed their conversation.

11 million people have low vision or are blind. Of that number only a very small percent are completely blind. So large print and high color contrast of printed materials is key to reaching the majority of people. With the aging population of the U.S., large print and high contrast materials will continue important for getting your message to potential customers.

### **Issues of Safety**

Is there a potential in outdoor programming for conflict between accessibility needs and safety concerns? No, many of these anticipated conflicts are misperceptions, based on stereotypes and misinformation about access measures. There is no obligation to compromise client safety to provide for accessibility. Safety must never be compromised. Medical issues can impact safety, therefore, completion of the Medical information Sheet by all parties is essential and will be discussed on the second day of the Adaptive Paddling Workshop (APW).

### **Program Access**

The ADA requires programs be modified to accommodate persons with disabilities, unless modifying a program would “fundamentally alter” that program. For example transporting a person with a disability by motorized vehicle in an area closed to motorized use would be a fundamental alteration of that program and so should not be provided.

At the same time, under the ADA, a person with a disability can not be denied participation in a program that is available to people who do not have disabilities, unless that person with a disability does not meet the “eligibility criteria” that is applied to all people prior to participation in that program (ADA Title III Sec. 302). During the second day of the APW program access will be addressed in depth. To be ready for that issue it is important to understand the relationship of program access to subjectivity and to stereotyping.

**Subjectivity:** The guidelines a program provider / business uses to determine who can participate in their program are often subjective. Most providers pass their program’s traditions through the oral method and do not have these criteria written down. This could spell trouble if you’re ever challenged on whether you apply the criteria equally to everyone. Eligibility criteria needs to be documented carefully.

**Stereotyping:** Many program providers are forced to make quick assessments of a potential client’s abilities without any real knowledge of what the potential client’s capabilities. Also people may have some stereotypes about the abilities of people with disabilities. When these stereotypes shape the decision process, the chances are likely to increase of unfairly assessing the ability of a potential client, who has a disability, resulting in discrimination. For example I am a quadriplegic, that is I have some level of paralysis in all four limbs. Looking at me in my wheelchair one might conclude that I won’t be qualified to participate in paddling instruction or a canoe trip. However, what one would not know from looking at me is that I have been paddling canoes and sea kayaks for over 40 years, including the 21years since the accident that caused my

disability. In addition I am an American Canoe Association instructor trainer educator, enjoy wilderness camping and I am in excellent health, other than being quadriplegic. The laws require that I should not be turned away from a paddling program solely because I have a physical disability. However, I must complete the medical information sheet, answer the related questions and be evaluated through the essential eligibility criteria for the program in which I am interested in participating, just as all other potential participants must complete that same process.

**Resources:**

- [www.ada.gov](http://www.ada.gov); for lots of information on the ADA and how it applies to businesses.
- **Accessibility Guidebook for Outfitter/Guides Operating on Public Lands** - 35 page document from the US Forest Service that contains much more detail on all aspects of accessibility including the development of essential eligibility criteria. This guidebook is available only in electronic format at [www.fs.fed.us/recreation/programs/accessibility](http://www.fs.fed.us/recreation/programs/accessibility).