

Interpreting the ADA for Outdoor Programs

By Janet Zeller

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.

According to the U.S. Census Bureau one in every five Americans has a limitation of one or more of their major life functions such as walking, seeing, hearing, breathing and so forth. So one in five Americans has a disability. That number has been increasing by about one million people every year. People with disabilities often travel and recreate with family and friends who may not have disabilities. All of them are seeking opportunities in which to participate together.

In addition, by the year 2030 the Census Bureau tells us over 50% of the U.S. population will be over 55 years of age, and likely to be feeling some of the body slowing effects of aging, such as stiffer joints and decreased vision, though still anxious to participate fully in life's opportunities. Keep in mind that the majority of disabilities are invisible such as hearing loss, decreased vision, breathing impairments, and so forth. All these people are potential participants of mainstreamed outdoor programming.

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 from a Federal agency ensure that all people, including people with disabilities, have an equal opportunity to participate. In 1990 the Americans with Disabilities Act (ADA) extended that requirement to all State and local government services, public accommodation, 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 .

Key Points

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, transportation, public accommodation, and access to public services.

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 ADA states that organizations may not prohibit an individual with a disability from participation in or the benefits of programs, services, and activities on the basis of disability. Further, the program must be provided in the most integrated setting.

Facility Access

Access is an important issue. Access to facilities is required under the ADA, if the facility has to be entered in order to participate in the program being offered. Accessibility is to be provided unless the cost to do so would be an undue financial burden for the owner, based on the cost of the retrofit in comparison with the profit generated by the business. The good news is that tax credits are available for expenditures made to improve accessibility; information is available at www.irs.gov.

If it would cost too much to retrofit the facility, the program provider must find another way to ensure that services 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 alternate access, such as a door bell at the base of the stairs, delivery to one's vehicle, the options are limited only by your imagination. So long as the alternative provides equitable service with dignity, it is likely to be acceptable.

Also new construction is to be accessible. 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.

Program Modification

Programs must be modified to accommodate persons with disabilities, unless modifying a program would "fundamentally alter" that program (ADA Title III Sec. 302). 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.

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. All potential participants, with and without disabilities, should complete medical screening regardless of the length of the trip. There are outstanding models for this screening.

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). Clearance of the medical screening process can be one of the steps in the criteria.

Who Can Participate?

Outdoor programs provide a wide spectrum of activities. The purpose of essential eligibility criteria is to establish whether or not an individual can participate in an activity based on his or her ability to perform the basic functions of the activity. The goal of essential eligibility criteria is to give the program provider and the potential participant the information they need to make an accurate, objective assessment when deciding if the individual's abilities are a good fit for that activity.

In order to participate in an activity, all potential clients must be able to meet the nondiscriminatory essential eligibility criteria established by the outdoor program provider for that specific activity.

The essential eligibility criteria should be posted on the program's website as a portion of the specific program's description, on any materials provided to the potential client, and as part of the registration materials signed by the client. The key is that the essential eligibility criteria must be applied to ALL potential clients. If the essential eligibility criteria is only applied to potential clients who have disabilities, the criteria would likely be considered to be discriminatory, if put to a legal challenge.

In reality, the concept of essential eligibility criteria is something most program providers already apply to potential clients - that is following your own goals, concepts and guidelines in determining which potential clients are likely to be able to participate successfully in the program. The problem is the criteria many programs follow is only in the head of the individual presenting the program, instead of being written down. As a result, two mistakes are likely to be made in applying essential eligibility criteria to a potential client who has a disability:

Subjectivity: The guidelines used 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. Many people 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 a level of paralysis in all four limbs. Looking at me in my wheelchair one might conclude that I won't be qualified to participate on 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 19 years since I became disabled. In addition I am an American Canoe Association instructor trainer educator, enjoy wilderness camping and I am in excellent health, other than being quadriplegic. I should not be turned away from a paddling program solely because I have a physical disability. I should complete medical screening and be evaluated through the essential eligibility criteria for the program in which I am interested in participating.

The basis for the essential eligibility model suggested here, was originally developed by Greg Lais of Wilderness Inquiry and is similar to the job description required by employers. Employers must identify the essential and nonessential functions of a job, and then determine whether the individual can perform those essential functions. Following this logic, program providers are urged to identify the basic eligibility criteria of the experience their program is providing and then determine whether the individual can safely perform those functions.

In determining whether a person can successfully participate in your services, you must base your decision on what an individual can do-not on a stereotype. If they can perform the basic functions of an activity, they can participate. Therefore, employees and potential clients must understand the eligibility criteria.

Example: An Outfitter/Guide might have the following essential eligibility criteria for all clients on a Guided/Rental White Water Float Trips

Each participant must have the ability to:

- Wear all protective equipment recommended/required by industry standards.
- Enter and exit the raft (boat, canoe, kayak) independently or with the assistance of a companion.
- Remain seated and balanced with the use of adaptive equipment if necessary.
- In the event of a capsized: get out from under the watercraft, remain face up in the water with the aid of a lifejacket, and make progress to the shoreline.
- For rentals: At least one person in the watercraft must have the ability to move it through the water in a stable manner and return it to the rental area.
- For trips including overnight camping: mobility about the campsite independently or with the assistance of a companion.

The bottom line is that the ADA is saying don't count a person out just because they have a disability. It isn't a question of disability, it's a question of ability. Does the individual have the ability to participate in the program? Develop your essential eligibility criteria, it's hard work, but it will help every future participant to have a clearer understanding of what to expect in your outdoor program.

Resources:

- www.ada.gov; for lots of information on the ADA and how it applies to businesses.
- www.access-board.gov for technical specifications for accessible facilities
- *Accessibility Guidebook for Outfitter/Guides Operating on Public Lands* - 37 page document from the US Forest Service that contains much more detail on the development of essential eligibility criteria. Available in draft, electronic format only. Request by sending an e-mail to Janet Zeller at jzeller@fs.fed.us.

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