



The New ADA: Overview of Requirements for Fitness, Fishing, Boating, and Aquatics

Frequently Asked Questions

from the Webinar Conducted September 30, 2010 by John N. McGovern
in cooperation with the National Recreation and Parks Association

Introduction

These three webinars were great! It is the hope of NRPA and the presenter that you enjoyed these as much as we did.

There were many questions asked in the September 30, 2010 webinar regarding the new ADA regulation specifically regarding fitness, fishing, and boating areas, and aquatics facilities. We simply couldn't answer all of them in our brief time together. However, thanks to your patience, we can now provide **some** answers and guidance.

*It is important to note here that these remarks are just **my** opinion. These remarks do not necessarily represent the view of NRPA and certainly not any court or federal agency.*

Some of the questions merit a black-and-white answer and for those we have so provided. Others though are subject to interpretation and there too we are happy to offer our thoughts. Finally, the answers to some hinge on the facts and characteristics of the sites and we really cannot answer without knowing more. For those we have tried to create some hypothetical situations to answer a similar question, or to give you some food for thought.

Our answers rely on several sources. The first is the text and preamble of the recently issued title II regulation. The second is our familiarity with the US Access Board 2004 ADA/ABA Guidelines, which are now known as the Department of Justice (DOJ) 2010 Standards for Accessible Design. The third is you, and your experience in serving people with disabilities. Your successes are referred to here as a smart practice.

Our firm, Recreation Accessibility Consultants LLC, advises public and private agencies regarding compliance with the ADA access and inclusion mandates. We follow court and administrative decisions applying the ADA to recreation, and have participated in every recreation rulemaking. If your agency has an issue like the ones in these FAQs, or another compliance issue, please reach us at 224/293-6451 or at john.mcgovern@rac-llc.com.

Visit our website at www.rac-llc.com too for our monthly newsletter and more. In the next six months, our website will also post some questions and answers on these and other issues.

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By the way, this is not legal advice. For legal advice, see a licensed attorney in your state that is familiar with the application of the ADA to parks and recreation issues.

Finally, use the federal agencies as resources. The Access Board is at 202/272-0080 or www.access-board.gov and the DOJ is at 202/514-0301 or www.ada.gov.

**The New ADA: Fitness Centers, Fishing Areas
Boating Areas, and Aquatics Frequently Asked Questions**

Basic Information

1. Where can I get a copy of the 2010 standards?

The US Department of Justice released the 2010 Standards, and here it is:

<http://www.access-board.gov/ada-aba/ada-standards-doj.cfm>

By the way, here is what it says on the website

(effective March 15, 2012, but can be
used now instead of the 1991 standards)

That means use these ***now!*** Evaluate facilities with these...***now!*** Build new facilities with these...***now!*** Design new facilities with these...***now!*** Can you use the old standards? Yes...but when you do so you risk noncompliance with the new standards, which is what your new site or facility will be measured against.

2. Are any facilities considered “grandfathered?”

No!

No!

No!

Is that clear? There is no such thing as “grandfathering” of existing sites and facilities in the ADA. The test for existing facilities is much more difficult to meet and is the program access test (see September 2 webinar or call me at 224/293-6451).

The program access test instead requires a thorough assessment of ***each existing site***, and for recreation elements, the jurisdiction is required to measure recreation sites, such as a wading pool, playground, or golf course, against the 2010 Standards.

Why spend scarce dollars to design and construct a wading pool today that is noncompliant in less than 13 months?

3. When do existing facilities need to be compliant?

In our opinion, that’s not ***exactly*** clear. Title II, in section 35.105, gave every state, county, city, special district, and town 3 years (January 26, 1992 to January 26, 1995)

to complete the access audit and then finish the work. For recreation elements, like playgrounds, we doubt it is different...so the answer here is *likely* that entities have 3 years from March 15, 2012 to become complaint. That's March 15, 2015. It makes sense that DOJ would give you the same timeframe...doesn't it?

However, we would suggest that a call to the Department of Justice technical assistance line at 202/514-0301 is a good idea. DOJ does not specifically say that a three-year window exists.

4. Is there a self-audit form that agencies can use for the new requirements?

The US Access Board has a self evaluation checklist for the built environment. Many states have one for state access codes too. Additionally, there are commercially available checklists. There are few, today, available for recreation environments.

5. Do ADA requirements supersede building codes?

The ADA is a federal civil rights law. It has sweeping provisions that go far beyond the 2010 Standards. In my opinion it is far more important than a building code.

Fitness Centers

6. How many lockers need to be reserved for people with disabilities? When can we release these lockers to the non-disabled public?

The 225.2.1 the requirement is clear: 5% or a minimum of one locker, whichever is greater.

7. If there are no lockers is it still required to provide a bench designated for ADA?

No. Section 225.2.1 applies in a changing room with lockers. The question does not ask, but we'll add that if a changing room has benches only with no lockers, we would urge as a smart practice that one be an accessible bench.

8. Does access need to be provided to equipment that a disabled individual probably wouldn't use?

Yes. No one of us can know the extent of mobility an individual has. Some who use a wheelchair or another assistive device can stand, ambulate, and use standard exercise equipment. The rule here is access to one of each type.

9. Does equipment need to be accessible from the front or side, or from the front and side?

Good question from someone who pays attention to every word. See sections 236.1 and 1004 regarding clear floor space and the accessible route. We recommend

equipment be accessible both front and side, and not one, either front or side. That said, some machines, like an elliptical, cannot be accessed from the rear.

- 10. When equipment is moveable, does staff need to move the equipment back to an accessible configuration or does the equipment need to be bolted in place?**

We suggest it move back to an accessible configuration. Adding this to staff checklists assures that if the piece is out of an accessible alignment when a person with a disability approaches it, the issue is maintenance, not inaccessibility.

- 11. Is a gym that is only used by city employees and their families required to meet the fitness facility requirements?**

Yes. This answer would also apply to employee only locker rooms, employee only fields, employee only aquatics environments, and so forth.

- 12. Can the 30" x 48" space on both sides of the equipment include the accessible route?**

No, the clear floor space can be shared by two pieces of equipment that are adjacent to each other, but the accessible route cannot be obstructed.

Fishing Areas

- 13. Is there a minimum handrail height requirement?**

The handrail height, where they are provided has a 34" maximum, but no stated minimum.

Boating Areas

- 14. Does an accessible slip need to be reserved solely for disabled patrons?**

As a smart practice, accessible slips should be held for boaters with disabilities until a designated time, perhaps 30 minutes after dusk. Give a boater with a disability the same opportunity to enjoy the sun and the water until the last opportunity to come in.

- 15. Do boating standards include whitewater or canoe facilities?**

Yes. If a whitewater or canoe facility has constructed elements, and slips for canoes or rafts, the same minimum number required is applicable.

- 16. Is there a requirement/guideline for providing access to entry onto a paddleboat?**

There is no specific guideline that specifies entry to a paddleboat, but the guideline details access to water craft via an accessible route and accessible boat slips and piers. The access board is developing a guideline about vessel access.

17. If a marina has a waitlist, do they need to keep a second waitlist for accessible slips?

As a smart practice it is advisable to keep a second waitlist for accessible slips.

Aquatic Facilities

18. What is the deadline for retrofitting a pool?

As discussed earlier, the 2010 Standards become effective March 15, 2012. At the very least by that date your public entity pool should have been evaluated against the Standard and you should have a plan for barrier removal. We suggest that barrier removal occur not later than 3 years after that date, by March 15, 2015. That said, this schedule may be accelerated.

Additionally, under the program access test, a community with 2 or 3 pools may find itself in a situation where one pool remains inaccessible while retrofits occur elsewhere. This is a community-by-community test. Do not assume that what worked in Albuquerque will work in Chattanooga.

19. Are facilities required to have a family changing/locker room?

No. Most state health codes though permit the creation of an accessible family changing room as an alternative to renovation of existing men's and women's locker rooms if changes there are technically infeasible.

20. What is the pool slope requirement?

If this is referring to a sloped entry, the slope cannot exceed 8.33% and must have handrails on two sides, creating a ramp. The cross slope cannot exceed 2%. See the 210 Standards...there is much more to this requirement.

21. Does a slope entry count as wall space?

We are not sure what this question asks.

If it is asking about a ramp into water where the ramp has an interior wall on one side and on the other side, is part of the exterior wall of the pool, we would suggest the answer is no, the exterior wall should be counted in calculating whether the pool has 300 linear feet of pool wall.

22. What is the handrail spacing requirement?

Per 1009.3.3 the handrails must be 33" to 38" apart at a sloped entry to the pool. For pool stairs, the handrails spacing is 20" to 24" apart. (1009.6.2)

23. What access needs to be provided to a baby/wading pool?

A wading pool must have a sloped entry.

24. Do spray pools have the same requirements?

If referring to spraygrounds, they need to follow the same requirements at a playground, with the exception of any ramp requirements.

25. Do you have to have handrails on spray pools?

No.

26. Are service animals allowed on spraygrounds?

Service animals, if under the control of the user and housebroken, are allowed everywhere that other members of the public are allowed. We have said, and we stick to this belief, that service animals can be prohibited from being in swimming pool water. We start with the answer here being yes and move from there.

27. Would a ladder be considered a secondary entry into a lap pool?

No, ladders are not considered an accessible means of entry into a pool.

28. Is a chair that goes directly into the water considered an accessible access point?

If this refers to the use of an aquatic wheelchair, the provision of an aquatic wheelchair is an advisory guideline, and is usually provided where there is a sloped entry, which would be considered an access point.

29. Do all pools in the facility need to be compliant?

We cannot answer this question without a lot more information.

What types of pools are in the facility?

Is it an existing facility?

Is it a new facility?

Does this department or agency operate other pools and if so, are these accessible?

30. If a facility has two pools or hot tubs, one indoor and one outdoor, does the indoor pool or hot tub need to be made accessible?

Believing that the indoor pool operates year round as opposed to the seasonal outdoor pool, we would lean towards making the indoor pool accessible. That said, if these are the agency's only pools, we suggest that these provide different experiences too. That makes us lean towards making both indoors and outdoors accessible.

31. What if a pool has various means of accessibility, but lacks the accessibility to the building from the outside?

An exterior accessible route from parking and to the cashier and locker rooms should exist.

32. What is the difference between a transfer wall and a transfer system?

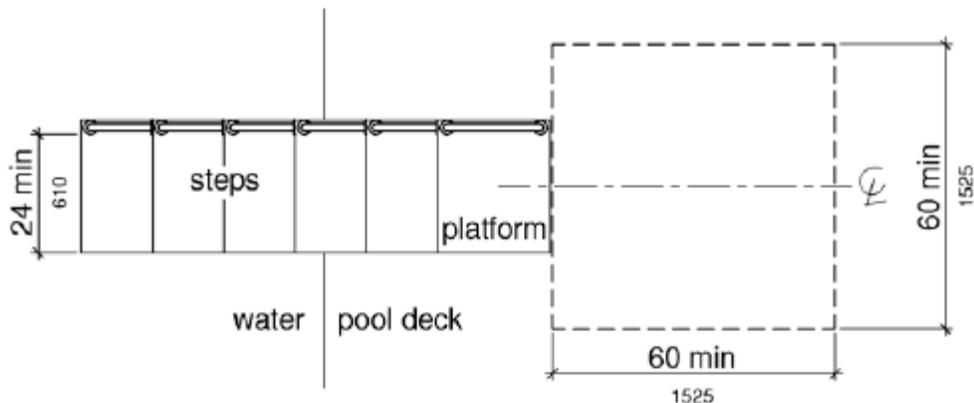
A transfer wall is, as suggested, a raised portion of the pool wall that is 16" to 19" above the deck, 12" to 16" deep and has grab bars that allow a swimmer to transfer to the wall and then directly into the water.

Figure 1009.4.2 Transfer Wall Height



A transfer system consists of a raised platform that is 24" wide and 19" deep that connects to a series of transfer steps that descend into the water. The platform and each step have grab bars provided.

Figure 1009.5.2 Clear Deck Space at Transfer Platform



33. What is the minimum height for a transfer wall?

The height of a transfer wall is 16" minimum to 19" maximum.

- 34. Do these requirements apply to school pools, or pools in a gated community?**
For school pools, so long as publicly operated schools, the answer is absolutely **YES**. See title II at 28 CFR part 35 for entities covered by title II. As to gated communities, a pool at such a site is addressed by 1988 amendments to the Fair Housing Act Amendments. The US Department of Housing has not adopted the recreation elements of the 2010 Standards. Look for clarity in the next 12 months.

- 35. If a recreation program uses a school pool, whose responsibility is pool retrofit?**

In the absence of an intergovernmental agreement that specifies which entity (school or parks and recreation) is responsible for access, both may be responsible. We usually suggest that an approach like a landlord/tenant arrangement is effective. In that approach, the school (the landlord) maintains the pool, makes sure that the parking lot is accessible, that a route to the pool is compliant, that the doors to the pool can be opened with the right pounds of force, and that water access is accessible.

The parks and recreation agency (the tenant) provides extra staff for swim lessons if a student has a cognitive impairment, or a sign language interpreter of the swim lesson student is deaf or hard of hearing.

- 36. Is a railing required for a zero entry pool that is less than 24" in total depth? How would it work?**

Yes. If built new, must have it...if existing, must be evaluated against the 2010 Standard.

As to the second question, direct your pool designer to align the railing along an edge...be sure that both handrails are 33" to 38" apart from each other.

- 37. If the pool has a continuous slope of less than 8.33% up to 54" does the pool also need a landing between 24" – 30"?**

Yes. A sloped entry that exceed 24" in depth and does not have a landing fails the 2010 Standards.

- 38. Are there any standards for beach access?**

Sorry for this complex answer. There is a final **regulation** for federally operated sites. It is likely that a final federal guideline, which is a step short of a regulation, for states and local governments, will look exactly like that...why would a federal agency beach be different than a state or city beach? Go to www.access-board.gov for more.