



Chapter 30

Americans with Disabilities (ADA)

by John McGovern

Editors Note: Although the ADA as it applies to aquatic facilities has been mentioned frequently throughout this book, John McGovern does an excellent job in discussing the ADA in detail as it specifically affects aquatic facilities both now and in the future. This definitive chapter will answer most of the questions that aquatic personnel have about the ADA and their particular facility.

INCLUDING PEOPLE WITH DISABILITIES:
POLICIES, PROGRAMS, AND DESIGN ISSUES IN
AQUATIC SETTINGS

This chapter will review key policy issues regarding inclusion and access, discuss program strategies, review the design requirements for new and existing aquatic facilities, and identify resources for aquatic facility managers.

Introduction

“Our neighbors told us about the aquatic center. We were excited, having just moved to town. After buying a family pass, we loaded up the car one hot June day and drove to the pool. We left five hours later and had the time of our lives. Our ten-year-old son, who uses a wheelchair and has muscular dystrophy, easily wheeled past the cashier and was able to use everything in the locker room. His route to the deck was wide open and the center had both a lift and a transfer station for him to get into the water. The staff was friendly—it was like they wanted Jimmy at the pool. Jimmy used both the lift and the transfer station, depending on his strength. Even the concession area was accessible, with space at the tables for his wheelchair and a lowered counter so he could spend his own money without dragging me along to handle the transaction for him. I didn’t know places would do that without us threatening them first.”

Sound like your pool? It should if it doesn’t. Pools and aquatic centers across the United States are welcoming people with disabilities and making pool programs and facilities inclusive and accessible.



What is an Aquatic Setting?

Aquatic settings for the purpose of this chapter, include swimming pools, wading pools, spas, spraygrounds, water slides, and pool themed parks.

What is the Americans with Disabilities Act (ADA)?

The ADA is a federal civil rights law, passed in 1990, that prohibits discrimination on the basis of disability by units of local government such as city parks and recreation departments, park districts, school districts, and counties; units of state government; businesses that provide aquatic opportunities such as health and fitness clubs; and non-profit organizations in the aquatic industry, such as Boys and Girls Clubs, Easter Seals, YMCA, and YWCA.

There are only two exemptions to the type of pools covered by the ADA. Both are intended to be interpreted very narrowly. Pools managed by private clubs, for the benefit of club members and family only, may be exempt from the Act. But when used by the general public, that exemption is jeopardized. The other type of facility exempt from the ADA is a pool managed by a religious organization, such as a church or synagogue, for the benefit of its congregation. As with private clubs, when the public uses a religious organization pool, that exemption is jeopardized.

It is appropriate here to remind aquatic facility operators that state laws may also prohibit discrimination on the basis of disability and may not have such exemptions. It is important to check with local counsel on this matter.

One type of discrimination occurs when a pool facility has architectural barriers, such as narrow entries, steps, or shower controls out of reach. While unintentional, these design flaws are just as effective as a sign that prohibits people with disabilities from using the pool.

The ADA became effective in 1992. Enforcement has been steady since that date, with most facility access and program access decisions going in favor of the complainant. Enforcement may be sought in an internal complaint at the pool operator itself, or through a federal agency such as the Department of Justice, Interior, or Education, or in Federal District Court.

Who is a Person with a Disability?

A person with a health condition or disorder, that has a substantial affect on one or more major life areas such as learning, working, walking, recreation, speaking, hearing, procreation, is a person with a disability under the ADA. This is a broad, functional definition and protects 50,000,000 Americans from discrimination on the basis of disability.

The definition includes persons with traditional “disabilities” that you or your staffs know. It includes persons with physical disabilities, sight impairments, deafness, cognitive impairments such as mental retardation, mental health disorders, and cardiac conditions. It also includes health conditions such as HIV positive status.

Policy Issues

There are many policy requirements that promote access and inclusion. The U.S. Congress intended that units of state and local government would have to do more to promote access and inclusion than a private pool does. However, the techniques required of a publicly operated pool can also benefit privately owned pools. This author recommends these techniques for all.



Notice & Invitation

The ADA requires units of local government to tell the public how the agency’s compliance with the Americans with Disabilities Act will affect services. This dry notice requirement can be enhanced with an invitation that sends a strong message of welcome to potential pool patrons with disabilities. The notice and invitation statement sends two messages: one, it invites people with disabilities to the pool. Two, it tells the public the pool operator knows something about the ADA and is complying. From a pool perspective, a notice statement could be something as simple as the one below:

“The Greenacre Swimming Pool invites all persons to enjoy our aquatic programs, including people with disabilities. We comply with the Americans with Disabilities Act. For more information, contact the Pool Manager at 555/555-1234.”

Staff

Pools recognize that conducting swim lesson instruction requires staff with Red Cross Instructor credentials. Most pools have an aquatic facility operator on staff to handle, among other things, water chemistry, filtration, maintenance, design, and risk management. So why is aquatic programming for people with disabilities any different?

Pools should have on staff, or should have access to, a Certified Therapeutic Recreation Specialist. This voluntary national credentialing plan grew out of a program administered by the National Recreation and Park Association. A CTRS is the best bet for an employee who will know adaptive techniques, disability awareness, and communication skills. This person can enhance programming for people with disabilities and can also conduct the necessary assessments of ability.

Inclusion

All aquatic programs are open to people with disabilities. Period.

This participation alongside people without disabilities is the essential element of the ADA. It defines “the most integrated setting” as the one in which people with and without disabilities interact together to the maximum extent feasible. This interaction requirement is easy to measure—do the children take swim lessons together? Does the staff encourage interaction between kids with and without disabilities?

Aquatic programs can have neutral conditions that must be met for any person to register for a program. These neutral conditions are considered “essential eligibility requirements” under the ADA. A person with a disability who, with or without a reasonable accommodation, can meet these requirements must be admitted to the program. These conditions typically include:

Capacity: If there is only adequate space for 12 swimmers in a learn-to-swim program, and the 13th child is registered, his disability, race, age, gender, or religion does not matter. What matters is that he registered after the class was full. He can be denied participation.

Charges: If the aquatic daily facility admission fee is \$4, and a person comes to the facility but cannot or will not pay the \$4, he or she may be denied admission. The denial isn’t because of his or her disability, race, gender, age, or religion. It is because he or she did not pay the admission fee.

Conduct: Reasonable, consistently applied, expectations for conduct may be part of “essential eligibility”. Examples include “no running on the deck”, and “no glass containers on the deck”.

Capability: Certain programs may by necessity have a prerequisite skill requirement. Swimming skills are required for SCUBA lessons, for example. An aquatic facility may reject a registrant for SCUBA lessons if he or she does not have basic swim skills. The denial isn’t because of his or her disability, race, gender, age, or religion.

Reasonable

Accommodation

A reasonable accommodation is a person, policy, or thing that enables a person with a disability to meet the essential eligibility requirements discussed above. In deciding when to provide a reasonable accommodation, an assessment by a qualified Certified Therapeutic Recreation Specialist, as a part of an inclusion process, is highly recommended. For more on inclusion, contact the National Recreation and Park Association at 703/858-2151. Reasonable accommodations include, but are not limited to:

Providing Extra Staff: When a pool patron with a disability would be able to meet essential eligibility requirements with an extra staff member as an assistant or aide, providing one is appropriate. The aide may help with communication, act as an auxiliary instructor in the water or on the deck, or assist in the locker room. These aides should only be assigned if, after careful assessment by a Certified Therapeutic Recreation Specialist of the abilities of the registrant, it is clear one is necessary. The aide should have strong aquatic skills, good communication skills, good disability knowledge or a good aptitude for learning about disabilities, and may need additional skill, such as behavior management knowledge.

For a pool patron with cognitive or physical disabilities, an extra staff member makes the pool experience as effective as it is for pool patrons without disabilities.

Providing Sign Language Interpreters: For pool patrons who are deaf or hard of hearing, a sign language interpreter is essential for programs in which aural communication is an element. For example, in an instructional setting, the instructor’s oral direction is complemented by demonstration of strokes and breathing techniques. But the

oral direction is still critical. For a deaf swim student, a sign language interpreter makes the swim lesson as effective as it is for hearing swim students.

Changing Rules and Policies: Pool rules and policies are intended to make the aquatic experience as good for the 900th patron that day as it was for the first patron that day. But rules and policies may by their very nature discriminate against people with disabilities. When a person with a disability can meet essential eligibility requirements with a change in a pool rule or policy, doing so is appropriate.

An example is a policy against the use of personal flotation devices in a pool. There are many reasons why this is a valid risk management policy. But for a swimmer with a disability who has limited head control, for example, the PFD may help him keep his head out of the water. In such an instance, changing the policy for that patron to allow the use of the PFD is appropriate.

Providing Adaptive Equipment: This reasonable accommodation is subject to careful scrutiny by pool employees. Pool employees may regulate the type, size, and color of adaptive devices used in the water, but are generally encouraged to permit the use of such devices. Safety reasons may, from time to time, overcome the rationale for the use of personal flotation devices or other adaptive devices used by a person with a disability.

Relocating or Duplicating the Program: If a municipality has three pools, and one is 20 years old, another is ten years old, and the third is one year old, it is likely that state laws or the ADA will have affected the design and construction of the third pool, and it will be accessible. In that event, swim lessons at one of the pools that are not accessible can be moved to the accessible pool so that a person with a physical disability can participate. Or, the pool that is accessible can merely duplicate programs offered at the other two pools, allowing persons near those two pools to access aquatic activities, but at the other pool. Unfortunately, this option does not work if the accessible pool is smaller or has fewer features than the inaccessible pools.

Other: There are other types of reasonable accommodations. For example, the regulation issued July 26, 1991 by the U.S. Department of Justice (28 CFR Part 35) mentions home visits as a reasonable accommodation. It is unlikely, but not impossible, that a pool operator would

provide a home visit for a person with a disability interested in aquatic activities. Risk management, the availability of a pool, and whether providing such staff would be an undue administrative burden, would all be factors.

Denial of Accommodation

When a pool operated by a state or local government denies an accommodation, the ADA requires that it prepare a memo regarding the denial and place it in a risk management file. For example, if a person with a physical disability who does not drive a car asks for transportation to and from the pool for his swim lessons, and the pool denies the request, it must prepare a factual memo for its files. The memo need not be shared with the person making the request and should be viewed as a writing in anticipation of litigation. The memo should provide pertinent information about the request made, the process by which denial was decided, and options considered and offered.

Separate Programs

An important question is whether a pool may offer separate aquatic programs designed just for people with disabilities. The answer is a resounding yes, with one warning: the existence of these separate programs cannot be used to justify the denial of inclusive participation alongside people without disabilities. Some people with disabilities may not choose inclusion, and the existence of separate programs makes another aquatic program choice available. As with other aquatic programs, staff assigned to work in these programs need a high level of aquatic expertise plus disability awareness, perhaps behavior management, and other knowledge about the disability of those who choose these programs.

Fees

No fee or surcharge can be passed on to the pool patron for the cost incurred by the pool in providing the reasonable accommodation. For example, in a group swim lesson, the fee is established to offset staff costs, pool time, overhead, and probably an operating profit. If the reasonable accommodation of an extra staff member is provided for that lesson group, the fee may no longer offset all costs. This extra staff cost cannot be passed on to the registrant with a disability.

Pools should consider building the cost of extra staff into a projected number of aquatic programs. This would ensure that fee revenue would offset some of the cost of making reasonable accommodations.

Personal Services

One of the greatest controversies in the discussion about reasonable accommodations regards personal services, such as changing, feeding, and toileting. Municipal pools should not address this alone, but should instead have this issue examined along with all other parks and recreation functions, such as day camps, afterschool programs, community-based therapeutic recreation programs, programs for older Americans, and sports programs.

Design Issues

Overview

The ADA requires units of state and local government, and businesses and nonprofits, to design and construct new facilities so that they meet design guidelines published by the federal government. General guidelines for buildings and facilities have been available since 1991 and govern some areas of pools, such as parking lots, sidewalks, entries, locker rooms, bathrooms, showers, concession areas, phones and conveniences, and other typical features.

On September 3, 2002, the U.S. Access Board published the Recreation Guidelines, which address pools and spas (36 CFR Part 1191). The access board is a small federal agency responsible for the development of minimum design guidelines for accessibility. The guidelines are one step away from being final and enforceable, that being an implementing regulation by the U.S. Department of Justice. But most courts and administrative agencies will look first to the access board work in the event of a lawsuit or complaint, so agencies, both public and private, are strongly urged to adhere to these guidelines.

New Facilities: Pools, Wading Pools, Spas

Newly designed or constructed pools are required to feature an accessible means of entry into the water. This makes sense since the reason people visit the pool is to get



(Photo courtesy of Aquatic Access)

in the water. Larger pools are required to have two means of entry. A large pool is one with 300 linear feet of swimming pool wall or more. All swimming pool requirements can be found in the Americans with Disabilities Act Accessibility Guidelines (ADAAG) section 15.8.1.

In a new pool with only one means of water access, it must be a swimming pool lift or a sloped entry. In a larger pool with two or more entries, one entry must be a swimming pool lift or a sloped entry, and the other means of entry can be something other than the first means of entry, and can also include transfer walls, transfer systems, and pool stairs.

In wave action pools, leisure rivers, sand bottom pools, and other pools that require user access in one limited area, a swimming pool lift, sloped entry, or transfer system is the minimum requirement.

In wading pools, at least one sloped entry must be provided. In spas, at least one accessible entry must be provided, and can be any of the following: swimming pool lifts, transfer walls, or transfer systems. Where spas are provided in clusters, at least five percent, but a minimum of one shall be accessible.

The requirements include some specific exemptions. No accessible route is required to serve raised diving boards or diving platforms, and no accessible route to a

water slide platform is required. An accessible route is an unobstructed path that connects the accessible elements at a pool. Appropriately, a catch pool need not have a means of access into the water, but is required to have an accessible route to the edge of the catch pool, permitting a person using a wheelchair or other assistive device to have the device close to the edge of the catch pool.

The access board requirements for swimming pool lifts include provisions for location of the lift, seat location, clear deck space around the lift, seat height from the deck, seat width, footrests and armrests, unassisted operation controls, submerged depth, and lifting capacity. These can be found at ADAAG 15.8.5.1 through 15.8.5.9.

The access board requirements for sloped entries include provisions for slope, submerged depth, handrails (with exceptions for extension and certain types of pools). These can be found at ADAAG 15.8.6.1 through 15.8.6.3.

The access board requirements for transfer walls include provisions for clear deck space, height, wall depth and length, surface characteristics, and grab bars. These can be found at ADAAG 15.8.7.1 through 15.8.7.5.

The access board requirements for transfer systems include provisions for the transfer platform, clear deck space, height, transfer steps, surface characteristics, size, and grab bars. These can be found at ADAAG 15.8.8.1 through 15.8.8.7.

The access board requirements for pool stairs include provisions for riser height, tread width, nosings, and handrails (with exceptions for extension at the bottom of a pool stair). These can be found at ADAAG 15.8.9.1 through 15.8.9.2.

New Facilities:



(Photos courtesy of Water Technology, Inc.)

Spraygrounds

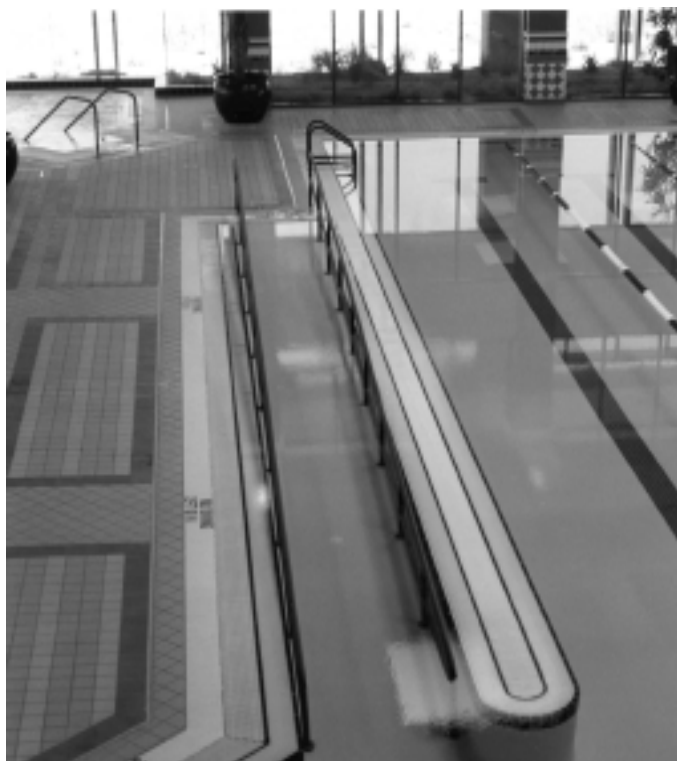
The access board requirements, in section 15.8.10, address water play components. The basic approach is to apply the guidelines developed by the access board and published in 2000 for playgrounds. These guidelines apply a minimum requirement for access to elevated water play components, ground or surface water play components, operating mechanisms such as levers and knobs, but do make exceptions for accessible routes that are submerged underwater. In addition, transfer systems may be used in lieu of ramps throughout the water play components to provide vertical access to platforms.

Existing Facilities

When existing facilities are altered, the element being altered shall be made accessible. In addition, an accessible route shall connect that newly made accessible element to other existing accessible elements at the pool. However, the cost of this path of travel need not exceed 20% of the cost of the alteration (this is the concept of disproportionality discussed in the early Department of Justice guideline at 28 CFR Part 36).

The key question is when does an existing site have to be made accessible, or when do architectural barriers have to be removed?

Removal of Architectural Barriers: If a municipality or agency only has one pool, and if the choice above of



moving or duplicating services does not exist, then the agency must consider making the pool physically accessible by removing architectural barriers. This is an area where units of state and local government must meet a much higher standard than nonprofit organizations and businesses.

The nonprofit and business test is called ready achievability. For the layman, this means “cheap and easy to do”. A simple example is replacing three steps into a locker room with a ramp, if there is adequate space. This case-by-case analysis depends on the resources of the business or nonprofit.

Remember that businesses can take advantage of several tax incentives (see sections 44 and 190 of the Internal Revenue Code).

The state and local government test is called program accessibility. It requires the city, county, school district, park district, or town to make the programs, services, and activities of government accessible to and usable by people with disabilities. For example, if swim lessons are offered for people without disabilities, that program of local government shall be available to people with disabilities who, with or without a reasonable accommodation, can meet the essential eligibility requirements.

This author believes that in a unit of local government with only one pool, that eventual removal of architectural

barriers is indeed required. The sooner it starts, the less likely that the city or entity will lose an ADA complaint. For larger cities, a planning approach should be used that identifies regions within the community and attempts to make a portion, between one-third and one-half of the same type of facilities (here, swimming pools) accessible by removing architectural barriers.

Resources

The U.S. Department of Justice provides technical assistance on program access in all environments, including pools. Call 202/514-0301 for information or visit www.usdoj.gov.

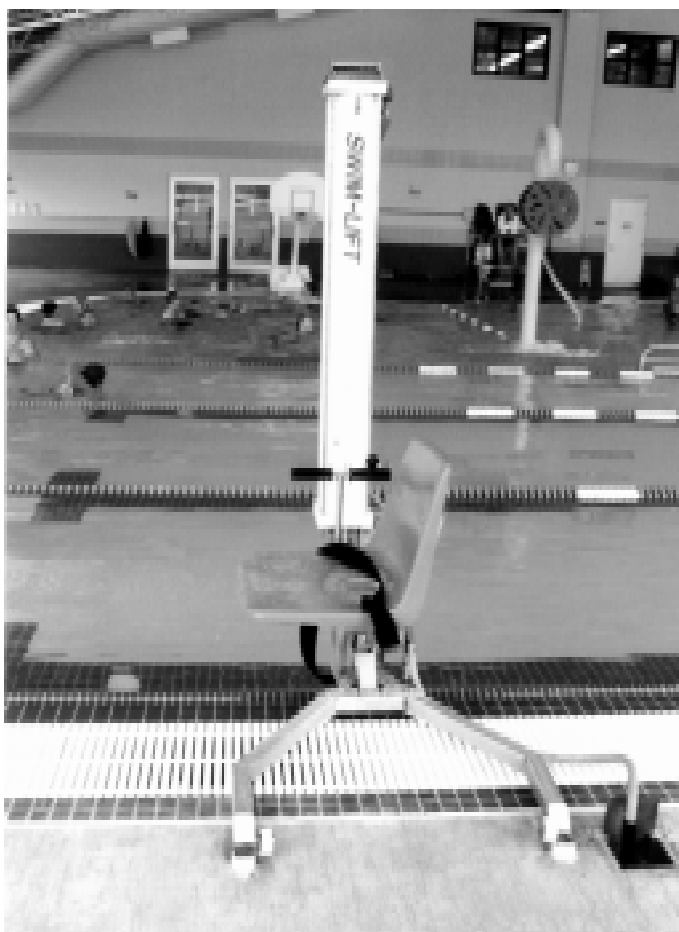
The U.S. Access Board provides technical assistance on the design guidelines. Call 202/272-0017 for information or visit www.access-board.gov.

The Disability and Business Technical Assistance Centers (DBTAC) provide information across the country. For the DBTAC nearest you, call 800/949-4232.

The National Recreation and Park Association has great resources in this area. Contact the National Aquatics Branch, a branch of NRPA, at 847/843-7529 or the National Therapeutic Recreation Society, also a Branch of NRPA, at 703/858-2151.

Conclusion

Since 1992, when the ADA became effective, more and more people with disabilities have sought recreation experiences in their communities. That has included swimming and aquatics, where a growing number of people with disabilities have asked community pools,



(Photo courtesy of Water Technology, Inc.)



(Photo courtesy of Aquatic Access)

The Complete Swimming Pool Reference

private pools, and business facilities to include them. In response, more and more municipalities and private agencies have acted to make pools accessible, even in the absence of guidelines, and change policies to promote involvement by people with disabilities.

Within the National Recreation and Park Association membership are many people working at agencies across the country who have made inclusion in aquatics a reality. You can, too.



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