

October 2014

VOLUME 11 ISSUE 1

Trainings & Events

Central Standard Time

AccessibilityOnline Webinar Series

Accessibility Standards - "Building Blocks" - A Refresher
October 2nd, 2014 1:30-3:00 CT.
In this session, we will provide an in-depth review of the criteria for ground and floor surfaces, turning spaces, clear floor and ground spaces, knee and toe clearances, protruding objects, reach ranges, and operable parts. Special attention will be given to how these criteria affect the usability of an element or space using illustrations from the Board's new "Guide to the Standards".
Attendees are encouraged to review the previous session on this topic and submit questions in advance for this discussion.

Presenters:
Dave Yanchulis, Coordinator of Public Affairs, Office of Technical and Information Services, US Access Board

Bill R. Botten - Accessibility Specialist, Office of Technical and Information Services, US Access Board

For more information visit [AccessibilityOnline](http://www.accessibilityonline.org) or call (877) 232-1990

AccessibilityOnline Webinar Series

Accessible Retail Stores and Spaces - "Advanced Session"
November 6, 2014, 1:30-3:00.

Presenters:
Paul Beatty, Coordinator of Public Affairs, Office of Technical and Information Services, US Access Board

Earlene Sesker Accessibility Specialist, Office of Technical and Information Services, U.S. Access Board

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News from the Federal Agencies

U.S. Equal Employment Opportunity Commission (EEOC)

EEOC Sues Sushi at the Lake for Disability Discrimination

Greenhouse Enterprise, Inc., dba Sushi at the Lake, which operates a restaurant in Cornelius, N.C., violated federal law when it refused to hire a job applicant because of his disability, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it filed. According to the EEOC complaint, Matthew Botello's left arm was amputated above his elbow around November 2010. On or about Oct. 4, 2013, Botello applied to work as a busboy (or "busser") at Sushi at the Lake, and on Oct. 10, Botello was told to report to the restaurant to work the following day. Shortly after Botello arrived on Oct. 11, the restaurant's owner saw that Botello's left arm had been amputated. The EEOC said that the owner gestured at Botello's left side and told Botello that he could not bus tables because he had only one arm.

[Read More about the EEOC Lawsuit against Sushi at the Lake at http://www.eeoc.gov/eeoc/newsroom/release/10-14-14.cfm](http://www.eeoc.gov/eeoc/newsroom/release/10-14-14.cfm)

EEOC Sues FedEx Ground Package System, Inc., for Nationwide Disability Discrimination

FedEx Ground violated federal law nationwide by discriminating against a large class of deaf and hard-of-hearing package handlers and job applicants for years, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it has filed. The EEOC says that FedEx Ground failed to provide needed accommodations such as American Sign Language (ASL) interpretation and closed-captioned training videos during the mandatory initial tour of the facilities and new-hire orientation for deaf and hard-of-hearing applicants

[Read More about Lawsuit against FedEx Ground at http://www.eeoc.gov/eeoc/newsroom/release/10-10-14.cfm](http://www.eeoc.gov/eeoc/newsroom/release/10-10-14.cfm)

EEOC Sues The Lash Group for Disability Discrimination

The Lash Group, a Charlotte, N.C.-based consulting company, refused to provide a reasonable accommodation to an employee with post-partum depression and instead fired her because of her disability the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it filed. According to the EEOC lawsuit, Meron Debru worked as a reimbursement case advocate at The Lash Group's Rockville, Md., facility when she went on maternity leave. She received short-term disability benefits while on maternity leave and advised the disability benefits carrier that she needed additional unpaid leave due to post-partum depression, the EEOC said. The Lash Group initially fired her, but later extended her short-term disability leave. When Debru was medically released to return to work, however, The Lash Group did not return her to her position as a reimbursement case advocate because it had filled her position.

[Read More about the EEOC Lawsuit against the Lash Group at http://www.eeoc.gov/eeoc/newsroom/release/10-8-14.cfm](http://www.eeoc.gov/eeoc/newsroom/release/10-8-14.cfm)

ADA Audio Conference Series

ADA Case Law Update

November 18, 2014 1-2:30 CT

Join us for this popular yearly session and learn what the courts and federal agencies have done to shape the ADA through their decisions and settlements. This session will review key issues that are currently before the courts and analyze the trends. Discussion will include some of the trends in case law at the lower courts which may have an impact on decisions at all levels, including issues that may find their way to the Supreme Court.

Speakers:

[Barry Taylor](#) - Director of Legal

Services, Equip for Equality

[Rachel M. Weisberg](#) - Staff

Attorney, Equip for Equality

For more information visit [ADA Audio Conference site](#) at

<http://www.ada-audio.org/or> call

(877) 232-1990.

ADA Legal Webinar Series

The ADA, FMLA/Leave of Absence & The Rehab Act: An Update

November 19, 2014 1-2:30 CT

The Family Medical Leave Act (FMLA) requires covered employers to provide eligible employees with up to 12 weeks of job-protected leave every year for various family and medical reasons. In particular, an eligible employee can take a leave if he/she is unable to work because of a serious health condition. On the other hand, the Americans with Disabilities Act prohibits discrimination against qualified disabled individuals and requires employers to provide accommodations that allow these individuals to perform the essential functions of their jobs. A leave of absence may be a reasonable accommodation if taking the leave would allow the disabled employee to return to work and perform the essential functions of the job. During this session we will discuss employer obligations to provide extended leaves of absence or other accommodations to employees who are on a leave of absence and have a

Kaiser Permanente to Pay \$75,000 to Settle EEOC Disability Discrimination Suit

Kaiser Permanente, the largest managed care organization in the United States, will pay \$75,000 and furnish other relief to settle a disability discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC). According to the EEOC, a food service worker at Kaiser's San Diego facility has a medical condition, hydrocephalus, which causes difficulties with memory, dizziness and concentration. Upon hire, the worker requested additional training time and the assistance of a temporary job coach to effectively learn the job and perform the required job duties.

[Read More about the EEOC Settlement with Kaiser Permanente at=](#)

<http://www.eeoc.gov/eeoc/newsroom/release/10-8-14b.cfm>

Suncup / Gregory Packaging Sued by EEOC for Disability Discrimination

Gregory Packaging, Inc., a nationwide manufacturer and distributor of juice products to school districts and medical institutions, violated federal law by firing an employee because of his disability, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it recently filed. EEOC's complaint alleges that Gregory Packaging admitted it terminated the employee because of his impairment.

[Read More about the EEOC Lawsuit against Suncup / Gregory Packaging at=](#)

<http://www.eeoc.gov/eeoc/newsroom/release/10-6-14b.cfm>

EEOC Lawsuit Challenges Flambeau Over Wellness Program

Flambeau, Inc., a Baraboo, Wis.-based plastics manufacturing company, is alleged to have violated federal law by requiring an employee to submit to medical testing and assessment in connection with a "wellness program" or face consequences. That violated the Americans with Disabilities Act the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it filed.

[Read More about the EEOC Lawsuit against Flambeau at=](#)

<http://www.eeoc.gov/eeoc/newsroom/release/10-1-14b.cfm>

U.S. Department of Justice (DOJ)

Justice Department Reaches Agreement with Private Montessori Day School to Prevent Discrimination Against Children with Disabilities

The Justice Department announced that it has reached an agreement with Milwaukee Montessori School, a private day school in Wisconsin serving over 400 children from 18 months old through eighth grade, to remedy alleged violations of the Americans with Disabilities Act (ADA). The agreement resolves allegations by the Department that the school failed to reasonably modify its policies for, and then impermissibly disenrolled, a young child whose disability caused him to stumble and fall more frequently than his peers. The agreement is being filed as a consent decree along with a complaint in the U.S. District Court for the Eastern District of Wisconsin, and must be approved by the court. Under the consent decree, the school will adopt a disability nondiscrimination policy, including procedures for prompt handling of requests to reasonably modify school policies for children

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disability protected by the ADA. Because the term reasonable accommodation includes accommodations that enable the employee to perform the essential functions of his or her job, various courts have agreed with the EEOC that unpaid medical leave, for a finite period, is a reasonable accommodation if it does not pose an undue hardship. The session will explain the manner in which the EEOC and courts have evaluated extended leaves of absence as well as claims of undue hardship. We will examine issues of overlap when it comes to FMLA and ADA accommodations, discuss recent cases that have emerged and how these might affect upcoming policy/guidance. During this session we will discuss:

Differences between someone who is deemed to have a "serious health condition" versus someone who is a "qualified individual with a disability" and how this affects ADA coverage

How and when medical inquiries can be used to determine coverage under the ADA and FMLA

Situations where both ADA and FMLA apply

How FMLA might differ at the federal versus state level

Differing reinstatement requirements under ADA versus FMLA

Undue Hardship

Recent or emerging cases surrounding these issues

Speakers:
[Martin S. "Marty" Ebel](#), JD, Deputy Director, Equal Employment Opportunity Commission, Houston District Office
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with disabilities; train teachers, administrators, and board members on ADA requirements and report to the Department on its compliance with the agreement; pay \$50,000 in compensatory damages to the child identified in the complaint and his parents; and pay a civil penalty of \$5,000 to the United States.

[Read More about the Consent Decree with the Milwaukee School at=](http://www.ada.gov/milwaukee_montessori/milwaukee_montessori_cd.htm)
http://www.ada.gov/milwaukee_montessori/milwaukee_montessori_cd.htm

Great Lakes In Focus

Bullying of Students with Disabilities Addressed in Guidance to America's School

As part of National Bullying Prevention Awareness Month, the U.S. Education Department's Office for Civil Rights (OCR) today issued [guidance to schools](#) reminding them that bullying is wrong and must not be tolerated—including against America's 6.5 million students with disabilities.

The Department issued guidance in the form of a letter to educators detailing public schools' responsibilities under Section 504 of the Rehabilitation Act and Title II of Americans with Disabilities Act regarding the bullying of students with disabilities. If a student with a disability is being bullied, federal law requires schools to take immediate and appropriate action to investigate the issue and, as necessary, take steps to stop the bullying and prevent it from recurring.

"While there is broad consensus that bullying cannot be tolerated, the sad reality is that bullying persists in our schools today, especially for students with disabilities," said Catherine E. Lhamon, Assistant Secretary for Civil Rights. "Basic decency and respect demand that our schools ensure that all their students learn in a safe environment. I look forward to continuing our work with schools to address and reduce incidents of bullying so that no student is limited in his or her ability to participate in and benefit from all that our educational programs have to offer."

Since 2009, OCR has received more than 2,000 complaints regarding the bullying of students with disabilities in the nation's public elementary and secondary schools.

Today's guidance builds upon anti-bullying guidance the Department has issued in recent years concerning schools' legal obligations to fix the problem, including:

- A [2013 dear colleague letter](#) and [enclosure](#) by the Office of Special Education and Rehabilitative Services (OSERS) clarifying that when bullying of a student with a disability results in the student not receiving meaningful educational benefit under IDEA, the school must remedy the problem, regardless of whether the bullying was based on the student's disability.
- A [2010 dear colleague letter](#) by the OCR, which elaborated on potential violations when bullying and harassment is based on race, color, national origin, sex, or disability.
- A [2000 dear colleague letter](#) by the OCR and OSERS, which explained that bullying based on disability may violate civil rights laws enforced by OCR as well as interfere with a student's receipt of special education under the Individuals with Disabilities

For more information please call 800-949-4232 (Voice/TTY) or Online via [Contact Us form](#).

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Accessible Technology Webinar Series

Accessibility anywhere almost, CART and captioning for web based applications

November 20, 2014 1-2:30 CT.

This webinar will cover the entire process of delivering realtime captioning over the internet for a number of applications. With the rapid advancement of technology services can be provided in many locations that were not viable options just a few years ago. If you have a smartphone or an iPad you can now participate from almost anywhere. First we will review real caption applications including stadiums, providing services in the classroom and captioning of web based applications like Google Hangouts. We will also review who is really doing the work of converting speech to text. This includes covering a number of options from text interpreting, voice recognition and stenographers and how their technologies work. By the end of this webinar you should be familiar with the latest options for receiving realtime captions and how the service is provided.

Speakers:

[Nick Wilkie](#) -CEO StreamText.Net Inc

For more information visit [ADA Audio Conference site](#) at [http://www.ada-audio.org\(877\) 232-1990](http://www.ada-audio.org(877) 232-1990)

AccessibilityOnline Webinar Series

Accessible Emergency Transportable Housing

December 4th, 2014 1:30-3:00 CT.

On May 7, 2014, the Access Board has issued guidelines that address access to temporary housing provided by the government in emergencies and natural disasters. The new requirements supplement the Board's accessibility guidelines for facilities covered by the Americans with Disabilities Act (ADA) and the Architectural

Education Act (IDEA).

The latest letter makes clear that the protections for students with disabilities who are bullied on any basis extend to the roughly three quarters of a million students who are not eligible for IDEA services but are entitled to services under the broader Section 504 of the Rehabilitation Act of 1973. That law bars discrimination on the basis of disability in all programs or activities that receive federal financial assistance.

Help is available for those who are either targets of disability bullying or know of someone who might be, such as:

- A [fact sheet for parents](#) on schools' obligations under federal law to address bullying. The fact sheet is also available in [Spanish](#).
- Visiting the federal Web site, www.stopbullying.gov, which provides useful information on bullying prevention and remedies.
- Asking to meet with the student's team that designs his or her individualized education program—the IEP or Section 504 teams.
- Asking to meet with the principal or school district's special education coordinators to have the school address bullying concerns.
- Seeking help from OCR. The office investigates complaints of disability discrimination at schools. To learn more about federal civil rights laws or how to file a complaint, contact OCR at 800-421-3481 (TDD: 800-877-8339), or ocr@ed.gov. OCR's Web site is www.ed.gov/ocr. To fill out a complaint form online, go to <http://www.ed.gov/ocr/complaintintro.html>.

To view OCR's guidance detailing public schools' responsibilities regarding the bullying of students with disabilities in Spanish, [click here](#)

Contact: Press Office, (202) 401-1576, press@ed.gov

The Docket

REDBOX AND LIGHTHOUSE FOR THE BLIND: Disability Rights Advocates (DRA) ANNOUNCES SETTLEMENT AGREEMENT

San Francisco-based Lighthouse for the Blind and Visually-Impaired, Disability Rights Advocates, and the Law Offices of Jay Koslofsky entered into a settlement agreement with Redbox Automated Retail, LLC (“Redbox”) that is expected to significantly improve access for blind individuals to Redbox’s® self-service, touchscreen video-rental kiosks in California. Redbox has agreed to modify all its interactive, touchscreen video-rental kiosks in California by adding nonvisual accessibility features. Redbox offers the nation’s most popular video-rental service for DVDs, Blu-ray® discs, and video games and operates thousands of video rental kiosks in California. Redbox kiosks provide a very affordable and flexible entertainment option to thousands of Californians daily, and the company’s commitment will ensure that blind customers receive the same streamlined access to its services that other customers enjoy.

Key provisions of the settlement include:

- Within 24 months of the court’s approval of the settlement agreement, Redbox will

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Barriers Act (ABA) by adding provisions and exceptions specific to emergency transportable housing units. The supplemental rule covers access for people who use mobility aids as well as communication access for people with hearing loss. This session will provide an in-depth review of these new guidelines. A presenter from FEMA has been invited

Speakers:

Marsha K. Mazz -Director, Office of Technical and Information Services, US Access Board

For more information visit [Accessability Online](http://www.accessibilityonline.org) at <http://www.accessibilityonline.org> (877) 232-1990

ADA Audio Conference Series Accommodating Persons with Environmental Sensitivities: Challenges and Solutions

December 16, 2014 1-2:30 CT.

This webinar will focus on people with chemical, electrical, and/or environmental sensitivities or intolerances. The presenters will address the nature of these disabilities and examine federal recognition and policy development. They will discuss how to accommodate people with environmental illnesses by reducing or eliminating environmental barriers in the public and private sector including housing, employment, healthcare, and in other areas.

Session Objectives:

Provide back ground information regarding the nature of environmental sensitivities including how these disabilities impact individual lives.

Discuss the prevalence of chemical and electrical sensitivities in the general population.

Review some of the key public policy issues surrounding the rights of people with environmental

develop and install nonvisual user interfaces consisting of standard headphone jacks, tactile keypads, and text-to-speech output on all Redbox video-rental kiosks in California. The nonvisual user interfaces will enable blind customers to independently browse, select, pay for, pickup, and return media from Redbox kiosks.

- Until Redbox completes installation of the nonvisual user interfaces, the company will continue to provide blind customers with a customer service phone line whereby customer service agents will assist blind customers with using kiosks by remotely operating kiosks.
- Redbox will make accessibility improvements to its website, redbox.com, to ensure that blind customers using screen-reading technology can browse available movies and kiosk locations, reserve movies for pick-up and register their email addresses on Redbox.com independently.

The settlement creates a \$1.2 million class damages fund to compensate eligible settlement class members who submit valid claims before November 12, 2014.

This settlement is the product of nearly two years of extensive and collaborative negotiations between the San Francisco-based Lighthouse for the Blind and Visually-Impaired, several blind individuals, and Redbox. The plaintiffs are represented by Disability Rights Advocates and the Law Offices of Jay Koslowsky.

Bryan Bashin, the Chief Executive Officer of the Lighthouse for the Blind and Visually-Impaired, commented, "Lighthouse applauds Redbox for demonstrating that companies doing business with sighted and blind Californians using kiosks and the Internet can do so while providing full access to both. Ensuring that blind people continue to have independent access to the marketplace—as new vending technologies emerge—is essential to full community integration of this or any other community."

Michael Nunez, a Staff Attorney at Disability Rights Advocates representing plaintiffs, stated, "This agreement advances the goal of the Americans With Disabilities Act to integrate people with disabilities into mainstream society, so it is fitting that the agreement was finalized in connection with the twenty-fourth anniversary of the Americans With Disabilities Act. We hope that this agreement will lead to continued expansion of access opportunities for customers including people with disabilities as businesses increasingly connect with the public through modern technologies."

From the ADA Expert

Question: Would an orchestra camp for elementary and middle school youth sponsored by the community orchestra (non-profit) and with the camp space being provided by the public school be responsible under the ADA for providing a sign language interpreter?

Answer:

The first question to ask is if and how the ADA applies to this situation. The public school is covered by Title II of the ADA. If the school is only providing space for the camp and if the school is not a partner or co-sponsor then it is not a program of the public school and there are no obligations for the school to provide effective communication.

Next it needs to be determined if the community orchestra is a Title III entity. Title III of the

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sensitivities.

Highlight the importance of indoor environmental quality to enhanced access for people with these disabilities.

Discuss what policies and practices can improve access for people with chemical and electrical sensitivities.

Understand how to reduce or eliminate environmental barriers to promote accommodations for people with environmental sensitivities.

Review advocacy initiatives that promise to advance medical and disability research, enhance understanding, and promote access for impacted populations.

Speakers:

[Darrell Lynn Jones](#), IL-NET and New Community Opportunities Center Independent Living Research Utilization, Houston, TX

[Mary Lamielle](#), Executive Director National Center for Environmental Health Strategies, Inc.

For more information visit [ADA Audio Conference site](#) at <http://www.ada-audio.org>(877) 232-1990

AccessibilityOnline Webinar Series

Accessible Hospitals and Medical Care Facilities - "Advanced Session"

January 8th, 2015 1:30 -3:00 CT.

Section 223 of the 2010 ADA Accessibility Standard and the Architectural Barriers Act Accessibility Standard includes scoping provisions for medical care and long term care facilities.

Presenters will engage in a more "advanced" level discussion on patient room scoping for both medical and long term care facilities, special technical provisions for parking at specialized facilities, alarm systems and toilet rooms in intensive care units, etc. Presenters

ADA applies to both for profit and non-profit entities as an entities tax status does not determine an entities coverage under the ADA. It would appear that the camp would be covered by Title III.

Title III of the ADA requires that places of public accommodation provide the same level of access to information to individuals with disabilities that are provided to individuals with out disabilities. Title III entities must furnish auxiliary aids and services in order to achieve effective communication unless doing so would result in an undue burden or a fundamental alteration in the goods or services being provided. This is perhaps where an entities tax status may come into play as some non-profits may not have the same resources as for profit businesses. That is not to say that all non-profits don't have the resources to provide a qualified interpreter. A non-profit organization should not only look at the fees charged for the single event but the entire resources it has at its disposal. If the provision of an auxiliary aid or service would result in an undue financial burden the covered entity must look at other means to provide effective communication that would not result in an undue burden.

The ADA does not state that in every instance a sign language interpreter is requested that one must be provided. The bottom line is that a covered entity must provide effective communication with individuals with disabilities. First consideration should be given to the requested auxiliary aid or service however, if effective communication can be achieved through other means then the covered entity would be meeting its obligations under the ADA. In many instances due to the complexity of the information being provided and the duration of the delivery of the oral information a sign language interpreter is likely the only way to achieve effective communication.

For additional information please contact the DBTAC: Great Lakes ADA Center at (800) 949-4232 (V/TTY) or by completing the online [Contact Us form](#)

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will also provide an update on the Board's rulemaking on Medical Diagnostic Equipment. Attendees are encouraged to review the previous session on this topic and submit questions in advance for this discussion.

Speakers:

[Rex Pace](#), Senior Accessibility Specialist and Technical Assistance Coordinator, US Access Board
[Earlene Sesker](#), , Accessibility Specialist, US Access Board

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ADA Audio Conference Series

Accessible Construction Management

January 20, 2015 1-2:30 CT

Understanding the implications of integrated accessibility in new construction and alteration projects starts at the very beginning stages of concept and site development. It's important to involve everyone in all aspects of the design process from the architects and designers to the construction team and most importantly, the end users. This session will discuss these concepts and introduce the Universal Design balance with ADA compliance. A concept of "Experiential Equity" will be discussed in the realm of design and construction processes.

Achieving ideal accessibility requires comprehension and commitment from all involved with an inclusive vision from the project leaders. This session will examine and explore successful techniques to achieve this goal.

Speakers:

[Andrea Haenlin-Mott](#), Cornell University

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AccessibilityOnline Webinar Series

Accessible Play Areas - "Advanced Session"

February 5th, 2015 1:30 -3:00 CT.
It's been over 2 years since the new

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accessibility standards have been required for all newly constructed and altered play areas. This session will focus on a more "advanced" level discussion regarding issues such as the selection of suitable play ground surfaces, applying the scoping and technical provisions to altered sites, and other more frequently asked questions.

Attendees are encouraged to review the previous session on this topic and submit questions in advance for this discussion.

Speakers:

[Bill R. Botten](#), Accessibility Specialist, Office of Technical and Information Services, US Access Board

[Peggy H. Greenwell](#), Accessibility Specialist, Office of Technical and Information Services, US Access Board

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