

Public Accommodation Under the Americans with Disabilities Act: How the ADA Applies to Your Small Business

July 10, 2019



NFIB Small Business Legal Center

- We are the voice for small business in the courts and the legal resource for small business owners nationwide.
- While the information provided in this presentation is intended to be accurate, it should not be considered legal advice. The Legal Center cannot be held responsible for any errors or omissions.



Rocky Mountain ADA Center

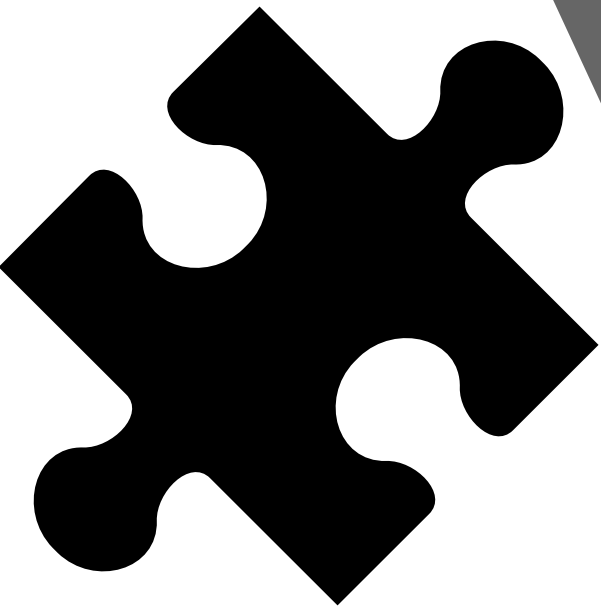
- The Rocky Mountain ADA Center (RMADAC) provides information, guidance, and training on the Americans with Disabilities Act (ADA) tailored to meet the needs of individuals and organizations.
- RMADAC is a member of the ADA National Network and is actively involved with national projects.
- RMADAC helps individuals, institutions and businesses understand their rights and responsibilities under the ADA and supports full implementation of the ADA.

Agenda



- An overview of public accommodation under the ADA
- Common accessibility issues, including: parking, restroom, service animals and website
- Q&A

Americans with Disabilities Act



What is the ADA?

- Americans with Disabilities Act (1990)
- Federal Civil Rights law that prohibits discrimination against people with disabilities in employment, state and local government services, private businesses, telecommunications and transportation
- **Goal: The full inclusion of people with disabilities in all aspects of American society**

Disability

Disability is a **physical or mental impairment** that **substantially limits a major life activity**

"The definition of disability . . . Shall be construed in favor of broad coverage . . . To the maximum extent permitted by the terms of this Act."

ADA Title III

Title III of the Americans with Disabilities Act (“ADA”) prohibits discrimination on the basis of disabilities in places of [public accommodations](#), commercial facilities, and private entities that offer certain examination and courses related to educational and occupational certification.

What are Public Accommodations?

The ADA defines **public accommodations** as private entities that own, operate, **or lease** places of public accommodation. Examples of public accommodations include stores and shops, restaurants and bars, service establishments, theaters, hotels, recreation facilities, private museums and schools.

What Must Public Accommodations Do?

In order to comply with the ADA accessibility guidelines, public accommodations must:

- Provide goods and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.
- Eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy the goods and services of a place of public accommodation.
- Make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration would result in the nature of the goods and services provided.
- Furnish auxiliary aids when necessary to ensure effective communication, unless an **undue burden** or fundamental alteration would result.
- **Remove architectural and structural communication barriers in existing facilities where readily achievable.**
- **Provide readily achievable alternative measures when removal of barriers is not readily achievable.**
- Provide equivalent transportation services and purchase accessible vehicles in certain circumstances.
- Maintain accessible features of facilities and equipment.
- Design and construct new facilities and, when undertaking alterations, alter existing facilities in accordance with the Americans with Disabilities Act Accessibility Guidelines.

Why Access Matters

- Making your business friendly to people with disabilities will:
 - Tap into the population with significant discretionary spending funds.
 - Generate free marketing through “word of mouth” advertising within the population of people with disabilities and their families/friends.

Title III Enforcement

- Title III also enforced by U.S. Department of Justice
- Court may award injunctive relief
- No punitive damages available

Title III Enforcement

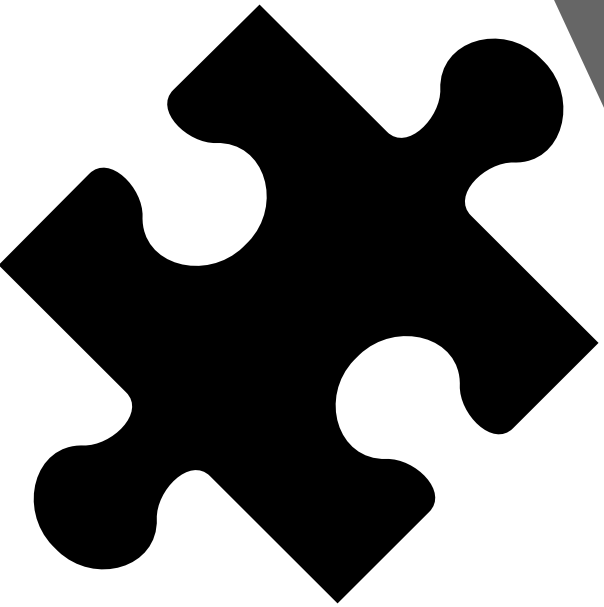
- Individuals who believe they have been discriminated against due to a disability may bring lawsuits under Title III of the ADA
- No monetary damages available
- Reasonable attorney's fees may be awarded

Title III Lawsuits

- In 2016, 6,601 ADA Title III lawsuits were filed in federal court, a 37% increase over the previous year
- Prediction that attorneys' fees paid to plaintiffs' lawyers in Title III litigation could reach \$500,000,000 over a 10-year period (doesn't include defense costs).

*sources: <http://www.adatitleiii.com> and <http://thehill.com/opinion/finance/360079-drive-by-lawsuits-under-disabilities-statute-costing-economy>

Common Accessibility Issues

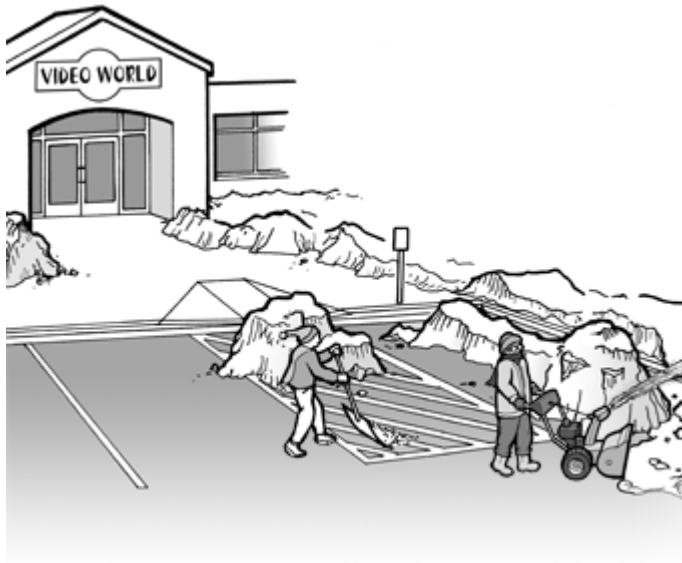


1. Main Entrance



- If possible, make it [accessible](#).
- If not, post clear signage directing customers to an alternative entrance that is accessible.
- Use the International Symbol of Accessibility.
- Provide parking near the accessible entry.

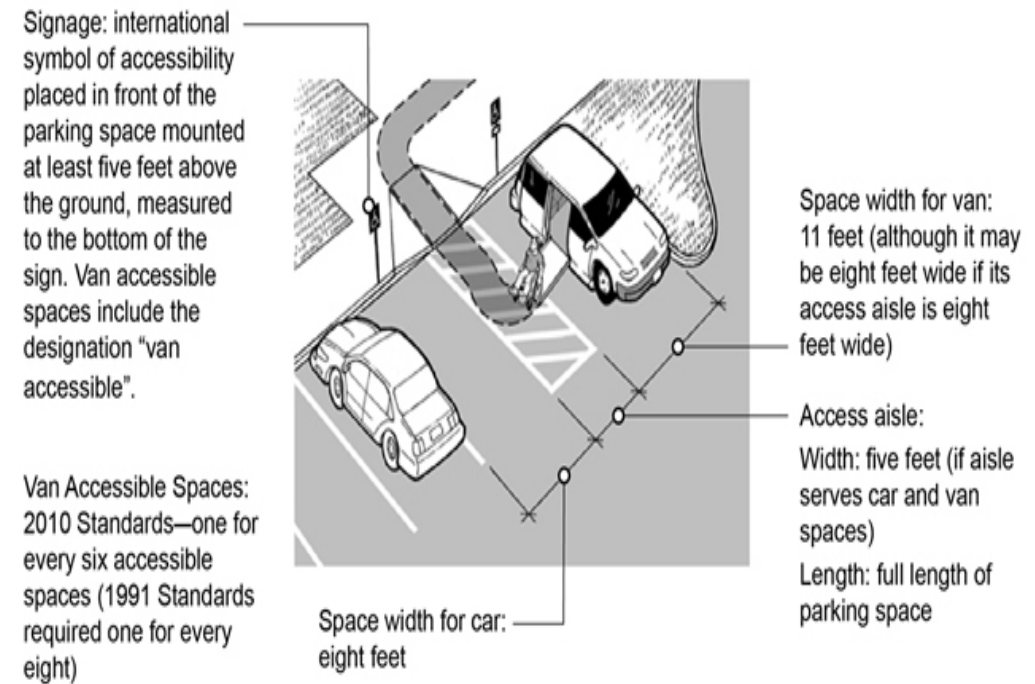
2. Outdoor Pathways



- Keep clear and free from clutter and snow.
- Trees, flowers, and bushes should be trimmed so as not to obstruct individuals who are blind or have low vision or who use wheelchairs or have a mobility-related disability.

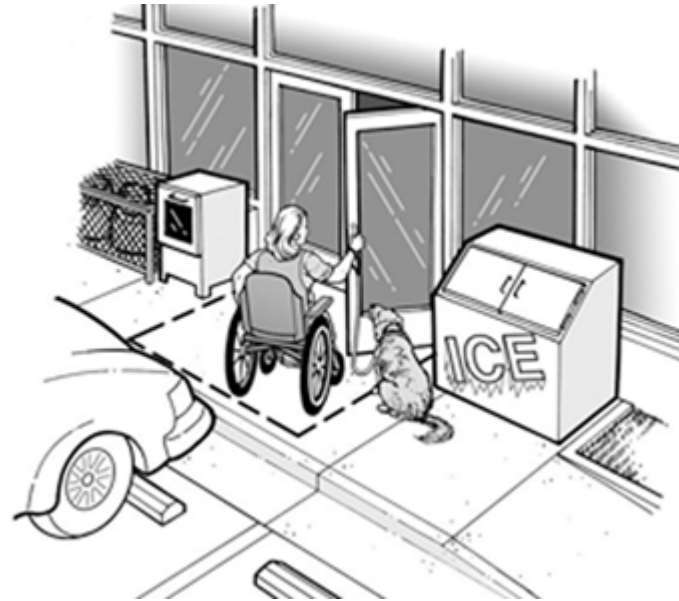
3. Parking

- Provide accessible parking spaces as close to the accessible entrance as possible.
- Ensure that spaces and access aisles include appropriate signage.



4. Doors

- Adjust doors so less force is needed to open them.
- Heavy and hard-to-open doors can be difficult for anyone, including people with disabilities



5. Offer Assistance

- Always ask a person with a disability if they need assistance. Never assume they need assistance



6. Indoor Pathways

- Have an accessible register or checkout open and available.
- Keep aisles and clothes racks wide enough for a wheelchair to pass through.



7. Counters

- Provide a lowered counter at checkout and other integral places within your business.
- Keep counters free of clutter.



8. Restrooms

- Keep areas around toilet and sink clear; do not block spaces in accessible stall with trash receptacle.



9. Communicate Effectively

- Businesses must to take steps to provide “auxiliary aids or services” (exchange written notes, provide sign language interpreter services, Braille materials, etc.) when necessary to communicate effectively with customers with vision, hearing and speech disabilities
- If a specific communication aid or method would be an undue burden or fundamental alteration, a business must provide an effective alternative, if there is one

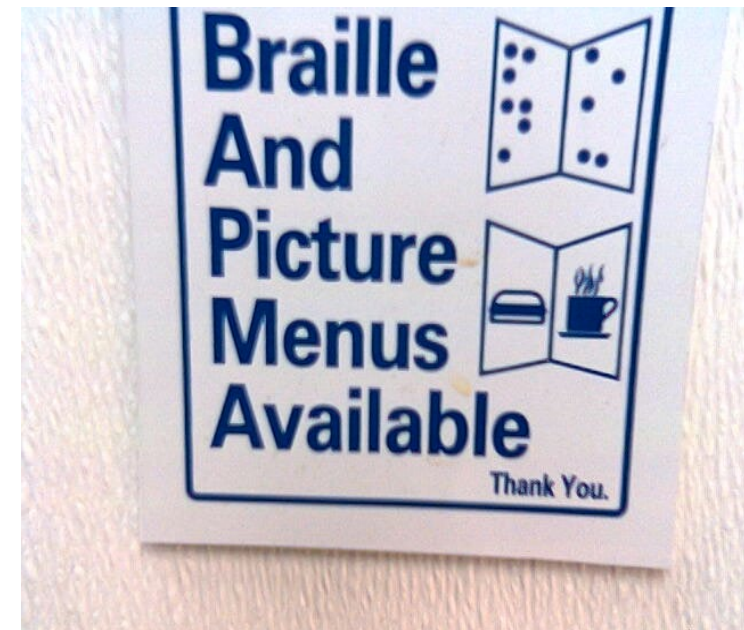
10. Alternate Service Provision

- If your business is not accessible, consider options for service delivery:
 - Sidewalk service
 - Home delivery
 - Personal shopper



10. Alternate Service Provision (continued)

- Make menus available online so that (with technology) individuals with blindness and low vision can read them.
- Have your staff be ready to read or verbally present the menu to people with blindness.



11. Service Animals

Where it is not apparent that the dog is a service animal, a business may ask only two questions:

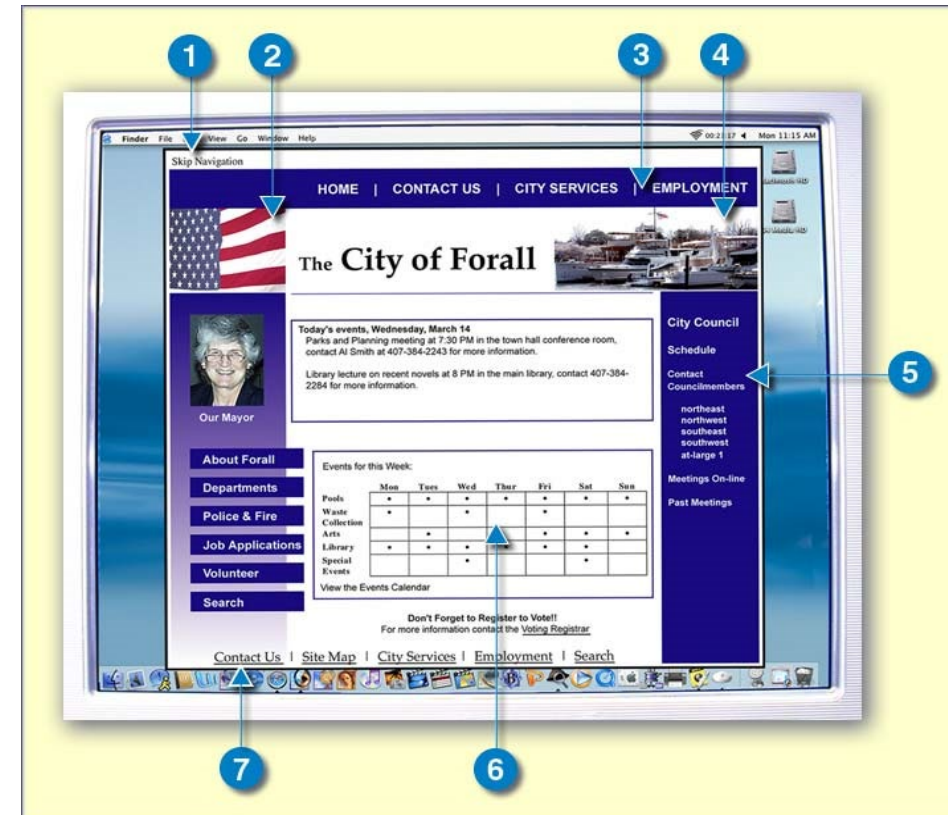
- 1) is the animal required because of a disability; and
- 2) what work or task has the animal been trained to perform?

No other inquiries about an individual's disability or the dog are permitted. Businesses cannot require proof of certification or medical documentation as a condition for entry.



12. Website Accessibility

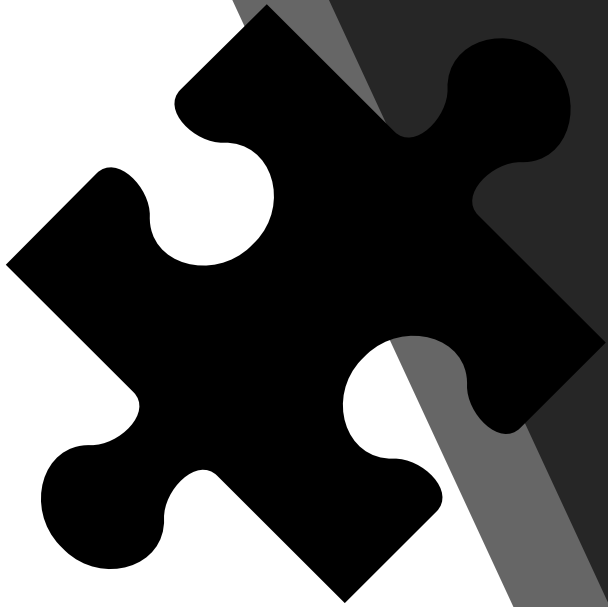
- Many people with disabilities use “assistive technology” to enable them to use computers and access the Internet.
- Blind people who cannot see computer monitors may use screen readers – devices that speak the text that would normally appear on a monitor.
- People who have difficulty using a computer mouse can use voice recognition software to control their computers with verbal commands.



12. Website Accessibility (continued)

- When accessible features are built into web pages, websites are more convenient and more available to everyone – including users with disabilities.
- **Provide a way for visitors to request accessible information or services by posting a telephone number or E-mail address on your home page.** Establish procedures to assure a quick response to users with disabilities who are trying to obtain information or services in this way.

To summarize . . .



ADA National Network's Quick Tips for providing excellent service to customers with disabilities:

- Treat everyone as a valued customer; don't treat people with disabilities with pity or disrespect.
- Learn about accessibility features at your place of business (e.g., is there a ramped or level entrance?) so you can answer questions and provide accurate information.
- Make sure there is a clear path of travel for customers using mobility devices or service animals.
- Service animals are used by people with a variety of types of disabilities. If you can't tell whether an animal is a service animal, you may ask only two questions: (1) is the animal a service animal needed because of a disability, and (2) what work or task has the animal been trained to perform.
- A mobility device is considered part of an individual's personal space; do not lean on it or move it without permission.
- When you offer assistance, wait for the individual to respond; don't make assumptions, listen, ask for instructions, and respect the individual's wishes.
- There are resources to assist you that are both available and willing to help.
- Contacting a regional **ADA Network** center is a great place to start.



You Don't Have to Do It Alone.

- There are resources to assist you that are both available and willing to help.
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1 of 10 Regional Centers Providing:

- Information
- Guidance
- Materials
- Newsletter/E-Bulletin
- Training
- Toll-free phone number:
800-949-4232 V/TTY
- Website: www.ADAinfo.org



U.S. Department of Justice

<http://www.ada.gov>



U.S. Department of Justice

ADA HOME PAGE
www.ada.gov

Information and Technical Assistance
on the **Americans with Disabilities Act**

New | [ADA Publications](#) | [Enforcement](#) | [Site Map](#) | [Search](#)

[ADA Design Standards](#) | [ADA Information Line](#) | [Technical Assistance Program](#) | [Enforcement](#) | [Code Certification](#)

[ADA Business Connection](#) | [Status Report](#) | [New or Proposed Regulations](#) | [ADA Mediation Program](#) | [Contact Us](#)

Federal Resources

Other Federal Agencies with ADA Responsibilities

[Employment \(EEOC\)](#)

[Public Transportation \(DOT\)](#)

[Telephone Relay Service \(FCC\)](#)

[Proposed Design Guidelines \(Access Board\)](#)

[Education \(ED\)](#)

[Health Care \(HHS\)](#)

[Labor \(DOL\)](#)

[Housing](#)



U.S. Department of Justice

Americans with Disabilities Act

ADA HOME PAGE

[What's New to ADA.gov](#)
(updated February 24, 2012)

 [Sign Up for E-mail Updates](#)

Receive notifications by E-mail when new ADA information is available.

[Revised ADA Regulations Implementing Title II and Title III](#)
(Published in the Federal Register, September 15, 2010,
and taking effect on March 15, 2011)

ADA Publications

General Publications

[Guide to Disability Rights Laws](#)

[ADA Questions & Answers](#)

[ADA Designated Investigative Agencies](#)

[Enforcing the ADA: A Status Report from the Department of Justice](#)

[ADA Mediation Program](#)

[Service Members with Disabilities and the ADA](#)

Businesses and Non-Profit Service Providers

United States Access Board

<http://www.access-board.gov>

The screenshot shows the homepage of the United States Access Board. The header features the agency's name and tagline, "A Federal Agency Committed to Accessible Design," along with navigation links for Home, Site Map, and Contact Us. A secondary navigation bar lists various sections: The Board, Guidelines & Standards, Research, Training, Publications, Enforcement, and Links. The main content area is divided into three columns. The left column contains a search bar and a list of topic categories: Communications (Section 508, Telecommunications, Classroom Acoustics), Facilities (ADA Standards, ABA Standards, Emergency Housing, Outdoor Areas), Pedestrian Networks (Public Rights-of-Way, Shared Use Paths), Transportation (Vehicles, Transit Facilities, Passenger Vessels), and Equipment (Medical Diagnostic Equipment). The middle column displays several news items, each with a title, a brief description, and a date: "Rights-of-Way Guidelines" (June 16), "Board Members" (May 24), "New Staff" (April 18), "Board Chair" (March 31), "Shared Use Paths" (March 28), "Research Report" (February 23), "Surface Tolerances" (February 23), "Board Members" (September 14), "New Meeting Space" (August 3), "Classroom Acoustics" (July 30), and "Medical Equipment" (July 20). The right column includes a "Sign Up" button for updates, a "POPULAR LINKS" section with links to ADA Standards, 508 Refresh, Webinars, Courthouse Access, Voting Access, Emergency Egress, and Board Meetings, and an "ON-LINE SERVICES" section with links to Order Publications, File an ABA Complaint, and En Español.

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United States Access Board
A Federal Agency Committed to Accessible Design

THE BOARD : GUIDELINES & STANDARDS : RESEARCH : TRAINING : PUBLICATIONS : ENFORCEMENT : LINKS

Search **GO**

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Section 508
Telecommunications
Classroom Acoustics

Facilities
ADA Standards
ABA Standards
Emergency Housing
Outdoor Areas

Pedestrian Networks
Public Rights-of-Way
Shared Use Paths

Transportation
Vehicles
Transit Facilities
Passenger Vessels

Equipment
Medical Diagnostic
Equipment

Rights-of-Way Guidelines The Board plans to release for comment proposed guidelines for public rights-of-way later this summer. (June 16)

Board Members President Obama names new members to the Board. (May 24)

New Staff Rex Pace joins the Board as its new technical assistance coordinator. (April 18)

Board Chair Nancy Starnes is elected Chair of the Access Board. (March 31)

Shared Use Paths The Board seeks public comment on new guidelines to be developed for shared use paths. (March 28)

Research Report The results are in from a major study of people who use wheeled mobility aids sponsored by the Access Board and the Department of Education. (February 23)

Surface Tolerances A report from a Board project on dimensional tolerances for accessible surfaces is now available. (February 23)

Board Members President Obama appoints new members to the Access Board. (September 14)

New Meeting Space The Board opens its new conference space. (August 3)

Classroom Acoustics The Board votes to undertake rulemaking on classroom acoustics. (July 30)

Medical Equipment The Board holds a public meeting on new access standards to be developed for medical diagnostic equipment. (July 20)

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Disability.gov
USA.gov
Government Made Easy
Regulations.gov

? Questions ?



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