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Historical Context of the Americans with Disabilities Act

The following information is excerpted from the Core Curriculum developed by Adaptive Environments, Inc. for the National Institute on Disability and Rehabilitation Research.

Please note: The ADA has been amended several times since its passage in 1990 and is undergoing continuous interpretation in the court systems. Contact your regional DBTAC at 1-800-949-4232 V/TTY for the most up-to-date information.

Civil Rights Era (1960's)

Three major civil rights statutes were enacted during the legislative phase of the Civil Rights Era, 1964 through 1968. In 1963, decades of organizing and struggle by African Americans culminated in the historic March on Washington. At the march, Dr. Martin Luther King, Jr. stood before the Lincoln Memorial and defined the Civil Rights Movement's vision of a just and inclusive society to the refrain "I Have A Dream."

Late in 1963, following the assassination of John F. Kennedy in Dallas, Lyndon Johnson assumed the Presidency. Capitalizing on the momentum generated by the march and other effective Movement strategies, and applying his own unparalleled understanding of the workings of Capitol Hill, Johnson pressed the civil rights agenda forward. The enactment of the first of the major civil rights statutes, the Civil Rights Act of 1964, was a watershed moment in American history. Among its other ramifications, it established the statutory foundation on which Section 504 of the Rehabilitation Act of 1973 and later the ADA were constructed.

The Civil Rights Act of 1964 was broad in its scope, encompassing recipients of federal funds, employers, and places of public accommodation such as the bus stations, restrooms, and lunch counters which had figured so prominently in "sit-ins" and "freedom rides." The Act was also broad in its definition of protected classes. It prohibited discrimination on the basis of race, religion, and national origin. However, the Civil Rights Act did not cover people with disabilities. Disability would not be linked to the mainstream of civil rights law which flowed from the Civil Rights Act of 1964 until Section 504 of the Rehabilitation Act of 1973 was enacted almost a decade later.

In 1965, the second major anti-discrimination statute of the civil rights era, the Voting Rights Act, was enacted, and three years later, the last of the major civil rights acts of the era, the Fair Housing Act was passed.

Following Dr. King's assassination in Memphis in 1968, the last of the major civil rights statutes of the 1960s was passed. The Civil Rights Act of 1968 moved through Congress with extraordinary speed, spurred by an outpouring of anger by African Americans and other concerned people across the United States. Title VIII of the Act prohibited discrimination on the basis of race, religion, national origin and sex in the sale and rental of housing, but the Fair Housing Act, like the Civil Rights Act of 1964, did not include people with disabilities among its protected classes. In 1988, however, the Fair Housing Act was amended to add two new protected classes: people with disabilities and families with children.

In the same year as the Fair Housing Act, a significant piece of disability legislation was enacted, one which demonstrated, however, that the redefinition of disability policy in terms of civil rights was not yet underway. The Architectural Barriers Act of 1968 (ABA) requires that buildings constructed or altered by or on behalf of the United States, leased by the Federal Government, or financed by federal grants or loans -- if the authorizing statute permits design standards -- be designed and constructed to be

accessible to persons with disabilities. The ABA, while not initially effective, nevertheless established the foundation for later efforts to provide accessibility in federally funded facilities.

The ABA was not civil rights legislation. It had no teeth and was poorly enforced until later action by the Congress linked access policy to civil rights and created an enforcement and technical assistance agency, the federal Architectural and Transportation Barriers Compliance Board. The Architectural and Transportation Barriers Compliance Board, known as the federal Access Board, was established in 1973 under Section 502 of the Rehabilitation Act, part of the same Title V as Section 504. The Access Board is composed of the heads of 12 federal agencies (or their high-ranking designees) and 13 public members appointed by the President (at least a majority of whom must be persons with disabilities). Physical and communication accessibility is crucial to the integration of people with disabilities. As recognition of this grew within the federal government, the Access Board was strengthened through a series of congressional actions. Eventually it assumed its current status as a key federal agency, establishing design and scoping standards for facilities covered by the Architectural Barriers Act, by Section 504, and by the Americans with Disabilities Act.

In political terms, the influence of the civil rights era lies in the fact that many individuals with disabilities who later became active in the Disability Rights Movement were inspired by the struggle of African Americans for civil rights and by the Women's Movement. Both movements demonstrated the possibilities for creative political and personal responses to discrimination and social devaluation, and emphasized the need for personal empowerment and community organizing among people with disabilities who had traditionally been isolated, not only from the mainstream of society, but from one another.

Origins of Disability Rights Law

Reference: Wodatch J. (1990). The ADA: What it says. *Worklife*, 3, 3

The legal and political roots of the ADA are deep in the civil rights era of the 1960's. This is true in both a formal legal and in a political sense. In terms of formal legal precedent, the ADA has been described as, "... an amalgam of two great civil rights statutes, the Civil Rights Act of 1964 and Title V of the Rehabilitation Act of 1973 ... The ADA generally uses the framework of Titles II and VII of the Civil Rights Act of 1964 for coverage and enforcement ... and the terms and concepts of Section 504 ... for what constitutes discrimination."

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of a disability towards "otherwise qualified" people with disabilities by recipients of federal financial assistance. The passage of Section 504 established the critical bridge between disability and anti-discrimination policy and law. The statutory language of Section 504 is based on Title VI of the Civil Rights Act of 1964. However, Section 504 is much narrower in its coverage. Unlike the Civil Rights Act of 1964, Section 504 does not mandate compliance with nondiscrimination requirements by employers or public accommodations in the private sector. It also does not reach publicly funded programs which are not recipients of federal financial assistance.

The Rehabilitation Act of 1973 which contained Section 504 was the product of controversy and compromise between Congress and the Nixon Administration. Richard Nixon had vetoed an earlier version of the Rehabilitation Act in 1972, because it included provisions expanding the traditional vocational focus of the federal/state rehabilitation system into the area of non-vocational, independent living services. Section 504 and the other provisions of Title V, however, were not part of the dispute between Congress and the Administration. To the congressional leadership of the time, many of whom had been supporters of the civil rights legislation of the previous decade, the extension of the guarantees of equal opportunity and equal protection to people with disabilities seemed a necessary step, in keeping with the fundamental values of our democratic, constitutional traditions. In practice, however, addressing the particular forms of discrimination experienced by people with disabilities posed

new and distinctive challenges.

It was four years before regulations implementing Section 504 were finally issued by the Carter Administration. The publication of the regulations occurred only after an aggressive national campaign by disability rights advocates to prevent weakening of the regulations and further delay in their implementation. The highlight of the campaign was an occupation of the U.S. Department of Health, Education and Welfare (HEW) offices in San Francisco by people with disabilities which lasted for approximately four weeks.

Disability Rights Laws (the 1970's)

Four years after enactment of the Rehabilitation Act in 1973, the first set of regulations implementing Section 504 were issued by the Department of Health, Education and Welfare. In 1975, the Education for all Handicapped Children Act was passed. Since renamed the Individuals with Disabilities Education Act (IDEA), Public Law 94-142, as it is commonly known, mandated that all children with disabilities receive a free, appropriate public education in the *least restrictive* environment. The Education for All Handicapped Children Act of 1975 was the first federal law mandating that children with disabilities be provided an education.

Coming two years after the passage of the Rehabilitation Act and Section 504, PL 94-142 made it clear that a major revision of national disability policy was taking place, a revision driven by the integration imperative and grounded in a fundamental reevaluation of the role of people with disabilities in American society.

Public schools have obligations to students with disabilities under both IDEA and ADA. As local government entities, public schools have obligations under ADA which extend not only to students with disabilities who qualify for services under IDEA, but also to other students with disabilities, employees, parents and members of the public who have disabilities.

The movement towards the inclusion of children with disabilities remains controversial today. Many more children with disabilities now receive publicly funded education, but what constitutes "the least restrictive environment" is often a matter of conflict among education officials, parents, advocates and children with disabilities.

Disability Rights Law (1970's to the Present)

During the 1970's and up to the present, activism among people with disabilities has become increasingly visible, both nationally and internationally. The emergence of the Disability Rights and Independent Living Movements has been critical to the development of state and federal disability policy leading up to and including the ADA. Over the past several decades disability activism in the United States has been directed at basic civil rights issues such as:

- 0. [pressuring the Department of Health, Education and Welfare to issue the regulations implementing Section 504 in 1977,](#)
- 0. [carrying out the national campaign to train people with disabilities, parents of children with disabilities and other advocates and supporters in the use of Section 504 in the late '70s,](#)
- 0. [organizing the defense of Section 504 and IDEA from threatened deregulation by the Reagan Administration in the early 1980's,](#)
- 0. [strengthening disability rights law at the state and local level throughout the whole period,](#)
- 0. [advocating for education for children with disabilities and fulfillment of the mandate of IDEA to educate children with disabilities in "the least restrictive environment,"](#)
- 0. [organizing to support the enactment and implementation of the ADA.](#)

Disability activism has also been directed at "independent living" issues related to the development of services and resources needed to support the personal independence of people with disabilities and to expand options for living in the community and participating fully in community life, such as:

- 0. developing the national network of Centers for Independent Living which combine self-help services and advocacy in organizations which typically are controlled and led by people with disabilities,
- 0. closing down custodial institutions for people with cognitive and psychiatric disabilities and developing housing and services to support community integration,
- 0. expanding adaptive equipment and home modification services.

In the early 1980's, the Reagan Administration, as part of its general deregulatory effort, attempted to weaken Section 504 and PL 94-142. The Administration's effort was spearheaded by the Commission of Regulatory Relief, chaired by Vice President George Bush. A broad coalition, including people with disabilities, parents, legal and professional advocates, and service providers, organized quickly and was successful in protecting both Section 504 and PL 94-142. George Bush, as president, later vigorously supported the passage of the ADA.

Following the successful defense of Section 504 and PL 94-142, the focus on disability rights shifted to the state and local levels. Many states enacted or strengthened state nondiscrimination statutes, accessibility codes and other progressive disability policies. Independent Living Centers continued to spread. State and municipal offices and commissions on disability appeared in many communities. Protection and advocacy agencies broadened their scope to represent and to involve persons with a wider range of disabilities. The Parents Movement continued to fight for inclusive education and community services.

Air Carrier Access Act (ACAA)

In 1986 Congress passed the Air Carriers Act which addressed the rights of people with disabilities to the use air transportation. Any individual or private entity that directly or indirectly by lease or other arrangement, engages in air transportation has obligations under the Air Carrier Access Act (ACAA):

- 0. to operate in a nondiscriminatory manner,
- 0. to provide accessible and usable facilities,
- 0. to provide access features in certain new and renovated aircraft, and
- 0. to provide limited communications access for persons with hearing impairments including:
 - 0. access to phone reservation and information services,
 - 0. at least one Telecommunication Device for the Deaf in each terminal, and
 - 0. open captioning or equivalent alternative means of communication when safety briefings are presented to passengers on video screens.

Reference: 14 CFR 382.23 382.7, 382.23, 382.39, 382.43, 382.45, 382.47

Nineteen eighty-eight was a watershed year for disability rights in which a number of critical developments occurred:

- 0. Congress passed the Civil Rights Restoration Act that repaired damage to civil rights enforcement resulting from the decision of the Supreme Court in the Grove City case.
- 0. The Fair Housing Amendments Act was passed, bringing people with disabilities under the protection of the Fair Housing Act of 1968 and adding specific obligations addressing disability discrimination.
- 0. The U.S. Department of Housing and Urban Affairs (HUD), eleven years after HEW's issuance of the first Section 504 regulations, issued its regulations covering federally funded public housing and other recipients of HUD funds like the Community Development Block Grant Programs.
- 0. The first version of the ADA was introduced in Congress in 1988.

Civil Rights Restoration Act of 1988

In enacting the Civil Rights Restoration Act of 1988, the Congress took the initiative in broadening the application of civil rights laws, including Section 504 and the Civil Rights Act of 1964, to recipients of

federal funds. In the Grove City Case the Supreme Court had narrowed the obligation of federal recipients to comply with anti-discrimination mandates to only those specific programs within larger organizations which directly received federal dollars. The Civil Rights Restoration Act mandated that organizations as a whole comply with anti-discrimination requirements.

Fair Housing Amendments Act of 1988 (FHAA)

FHAA prohibits discrimination towards people with disabilities in the sale or rental of housing and in the terms, conditions, services or facilities provided. The Act was signed into law by President Reagan in September 1988 and became effective on March 12, 1989. FHAA extends the civil rights protections of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, to two new protected classes: people with disabilities and families with children.

There are exemptions from coverage under FHAA for four or fewer rental units if they are owner occupied and for certain housing designed and operated for elders. There is also an exemption for single family housing sold directly by the owner if no advertising or other listing services are used.

The definition of disability under the FHAA is the same as the definition under the ADA. The ADA does not cover private housing. Congress addressed housing discrimination related to disability in FHAA. Also HUD's 504 regulations issued in 1988 include detailed requirements covering federally funded public housing.

FHAA has specific requirements related to disability in three areas:

- 0. Reasonable accommodations in operating policies and procedures,
- 0. Modifications to dwelling units and premises, and
- 0. Design standards for new construction.

The landlord or rental agent may not refuse to make reasonable accommodations in rules, policies, practices, and services to afford a person with a disability equal opportunity to occupy and enjoy full use of a unit. It is unlawful under the FHAA for a landlord to refuse to permit a tenant to make reasonable modifications necessary to enjoy full use of the premises. Modifications must be made, however, at the tenants own expense.

The landlord has the right to require that the tenant:

- 0. demonstrate that any modifications will be carried out competently and professionally,
- 0. make reasonable restoration of the interior of the premises to its original condition, and, in some cases,
- 0. establish an escrow account to cover the cost of the restoration.

FHAA Accessible Design Standards

- 0. At least one building entrance on an accessible route
- 0. Accessible and usable public and common use areas
- 0. All doors in premises wide enough for wheelchairs
- 0. All ground floor units and all units on elevator floors must have:
 - 0. An accessible route into and through dwelling
 - 0. Accessible switches, outlets, and other controls
 - 0. Reinforced bathroom walls at toilet, tub and shower
 - 0. Wheelchair maneuverable kitchens and bathrooms

Enactment of the ADA

In 1986, the National Council on Disability issued, "Toward Independence," recommending that a comprehensive law requiring equal opportunity for individuals with disabilities be enacted. The Council drafted the first version of the ADA which was introduced in 1988 during the 100th Congress. The Task

Force on Rights and Empowerment of Americans with Disabilities, under the energetic chairmanship of Justin Dart, Jr., built support nationally, holding hearings in every state.

A second version of the Act was introduced in May 1989 and after further amendments passed by the Senate on September 7, 1989. Five separate House Committees held hearings before the House of Representatives passed its version of the bill on May 22, 1990. Following two conferences between the House and Senate to resolve their differences on the bill, the ADA in its final form passed both Houses in mid-July. The ADA passed both Houses of Congress by overwhelming majorities and had key sponsors and supporters from both parties. The ADA is extremely complex, and the deliberations within Congress and between Congress and the Administration were detailed and not without controversy. The Disability Rights Education and Defense Fund led a very effective negotiating team on behalf of the disability community.

On the morning of July 26, 1990, on the south lawn of the White House, with 3000 disability rights advocates, members of Congress and the Administration looking on, President George Bush signed the Americans with Disabilities Act into law. It was the largest such signing ceremony in history. President Bush described the ADA as:

"the world's first comprehensive declaration of the equality of people with disabilities, and evidence of America's leadership internationally in the cause of human rights. With today's signing of the landmark Americans with Disabilities Act, every man woman and child with a disability can now pass through once closed doors, into a bright new era of equality, independence and freedom."

Reference: Wodatch J. (1990). The ADA: What it says. *Worklife*, 3, 3

The President traced the ADA's roots in American history back through the Civil Rights Act of 1964, to the Declaration of Independence, stating that

"We are keeping faith with the spirit of our ... forefathers who wrote ... 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights.' This Act is powerful in its simplicity. It will ensure that people with disabilities are given the basic guarantees ... (of) freedom of choice, control of their lives, the opportunity to blend fully and equally into the ... mosaic of the American mainstream."

During the Clinton Administration, the President and the Attorney General have reaffirmed the commitment of the Executive Branch to energetic implementation of the ADA.

In its deliberations on the ADA, Congress cited a figure of 43 million Americans having one or more physical or mental disabilities. This estimate has been revised to 53 million based on recent census data. These numbers are broad estimates. It is clear, however, that the number of people who have disabilities in the American population is large and is growing significantly with the "graying of America." The incidence of disability rises sharply as individuals reach their sixth and seventh decade of life. The life expectancy of an infant born in America today is approximately 75 years, and by the time that infant reaches the age of 75 that horizon of longevity may well have been pushed back. Advances in medical practice such as the development of trauma care centers and treatment of life threatening diseases tend to increase rather than decrease incidence of disability among younger persons.

The ADA is opening doors. . .

The scope of the ADA in addressing the barriers to participation by people with disabilities in the mainstream of society is very broad. The ADA's civil rights protections are parallel to those that have previously been established by the federal government for women and racial, ethnic and religious minorities.

The ADA's definitions of what constitutes discrimination towards people with disabilities and how barriers to their participation are to be eliminated are based on more than a decade of experience with

the implementation of Section 504 of the Rehabilitation Act of 1973.

0. Employment

0. The ADA prohibits discrimination against qualified individuals with disabilities in public and private sector employment. This includes a requirement that those employers covered under the Act make reasonable accommodations to the known physical or mental limitations of qualified applicants and employees, unless providing such accommodations would impose an undue hardship on the employer.

0. State and Local Government

0. The ADA expands on the requirement of Section 504 that state and local government programs that receive federal financial assistance provide equal opportunity to individuals with disabilities to participate and benefit. The ADA extends the requirement to public programs that are not recipients of federal financial assistance and, therefore, not covered by Section 504.

0. Public Accommodations

0. The ADA's requirements that a wide range of "public accommodations" in the private sector eliminate physical, communications and procedural barriers to access addresses the widespread exclusion of people with disabilities from the routine activities of daily life which most Americans take for granted. The ADA reaches a broad range of sales, rental and service establishments, as well as educational institutions, recreational facilities and social services centers.
0. Reference: Wodatch J. (1990). The ADA: What it says. *Worklife*, 3, 3

0. Telecommunications

0. The ADA addresses the need to make telephone communications services accessible to individuals who have impaired hearing or speech. The ADA requires that all common carriers provide nationwide TRS, or Telecommunications Relay Services. Relay Services are operator systems that relay conversations between people who use TDDs (Telecommunication Devices for the Deaf) or nonvoice terminal devices and those who use the general voice telephone network.

0. Transportation

0. The ADA seeks to ensure that individuals with disabilities have access to a full range of public and private transportation. If transportation were to remain inaccessible to many individuals with disabilities, the ADA's goal of real social integration would be impossible to achieve.

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