Research Paper Edit - Update

Introduction to Legal Assistant - PLA 1003

Vocational Rehabilitation Law

Professor Susan Demers
Coordinator, Legal Assisting Program
St. Petersburg Junior College
Clearwater Campus

Originally Submitted Monday Evening, April 27, 1998
by Neil J. Gillespie, St. Petersburg, Florida

Edit - Update March 28, 2015 (16 years, 11 months, 1 day later)

This edit and update includes the following:

1. Letter of Dr. Susan Demers, her Florida Bar profile, and SPJC Program description.

2. My original research paper, lightly edited for style, not content. Some parts are outdated. For example, DVR is now under the Department of Education. DVR is no longer under the Department of Labor. The ADA Amendments Act of 2008 upgraded the ADA 1990.

3. The Bibliography is updated where possible, and includes URL links if available.

4. Five appendices are updated/added: (39 pages)

   - *Incompetence as a disability*, by Robyn E. Blumner, St. Pete Times, March 22, 1998
     Archive edition of *Incompetence as a disability*, By Robyn E. Blumner
     Letter to the Editor: *Disabilities are real*, by Linda Marie Small (response)
     Image of the original article *Incompetence as a disability* and response
   - American Bar Association (ABA), Commission on Disability Rights, Resolution 111 Summary. Rejected the position of Robyn E. Blumner et al, re *Incompetence as a disability*. Adopted by the ABA House of Delegates February 6, 2012.
   - Employment discrimination case summary Cooper v Neiman Marcus Group
   - Cooper v. Neiman Marcus Group, 125 F.3d 786 (9th Cir. 1997) FindLaw
   - Americans with Disabilities Act (ADA) Amendments Act 2008 (ADAAA).
     An Act To restore the intent and protections of the ADA of 1990.
   - Proclamation In Re: Twentieth Anniversary of the ADA, Florida Supreme Court

   TITLE 29 - Section 701 - Findings; purpose; policy. 29 U.S. Code Chapter 16 - Vocational Rehabilitation and other Rehabilitation Services

5. Bibliography with exhibits, 30 additional pages. This document contains 87 pages.

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June 2, 1998

To Whom It May Concern:

Neil Gillespie is a student in SPJC's Legal Assisting Program of which I am the coordinator. As a result I was Mr. Gillespie's instructor in Introduction to Legal Assisting and had the opportunity to read his work. He is an excellent student who has previous experiences and synthesizes them with new information. He is a frequent and thought provoking questioner. I enjoyed his insights and have never known his work product to be less than perfect.

I cannot think of a better investment of scholarship dollars than someone of Mr. Gillespie's obvious intellect who is hard-working and whose presence in the classroom makes learning a fuller experience for his fellow students.

Sincerely,

Dr. Susan Demers
Coordinator
Legal Assisting Program

Susan Smotherman Demers

Member in Good Standing **Eligible to Practice Law in Florida**

Bar Number:	198595
Address:	2465 Drew St Clearwater, FL 33765-2816 United States
Phone:	727-791-2501
Fax:	727-791-5925
Email:	demers.susan@spcollege.edu
vCard:	?
County:	Pinellas
Circuit:	6
Admitted:	10/23/1975
10-Year Discipline History:	None
Sections:	Entertainment, Arts, & Sports Trial Lawyers

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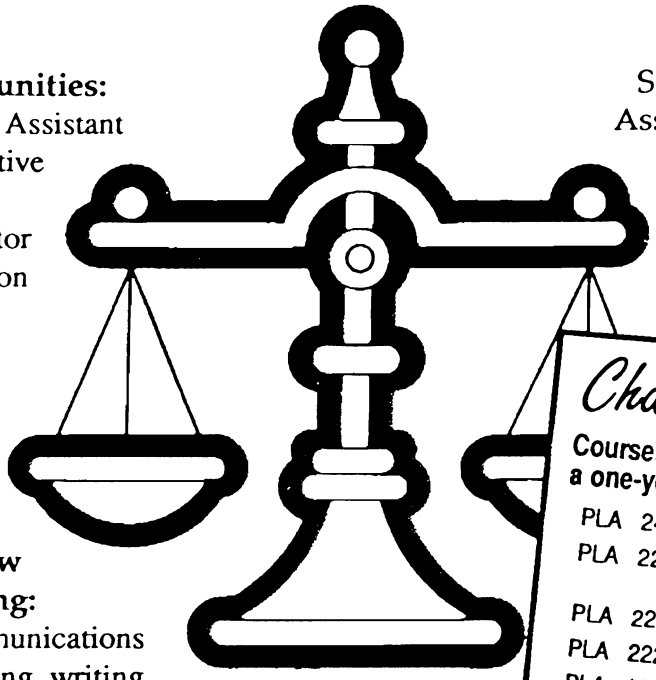

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Research Paper

Introduction to Legal Assistant
PLA 1003

Vocational Rehabilitation Law

Professor Susan Demers
Coordinator, Legal Assisting Program
St. Petersburg Junior College
Clearwater Campus

Submitted Monday Evening, April 27, 1998

Submitted by:
Neil J. Gillespie
1121 Beach Drive NE, Apt. C-2
St. Petersburg, FL 33701
Telephone: (813) 823-2390
E-mail: neilnet@gte.net

Introduction

Vocational rehabilitation (VR) law is a twentieth century development in the broad field of human services. Created by legislation, VR law is a cooperative effort between the federal government and the states. This legislation serves as the foundation of government efforts to assist people with disabilities become more independent, self-sufficient, and contributing members of society.

My interest in this subject stems from participating in vocational rehabilitation programs in Florida and elsewhere. The perspective presented in this paper is one of legal research and personal experience. VR law, by its nature, is inextricably tied to other areas of law, such as Social Security and Civil Rights legislation. The question proposed by this paper is, "Does VR law serve its intended purpose?"

Historical Perspective

The need for vocational rehabilitation dates from antiquity. "As soon as our human ancestors fashioned clubs and axes to facilitate hunting and gathering, others must have designed crutches and canes to compensate for physical disabilities." (Coombs).

The current era of VR law in America began after World War I, to address the needs of returning disabled soldiers. Beginning in 1917, the Smith-Hughes Vocational Act created the Department of Vocational Rehabilitation. The Soldiers Rehabilitation Act (Smith-Sears Act of 1918, P.L. 178) provided money to disabled solders for a ten-year period to assist with their rehabilitation. (Thompson, 1994).

The federal-state partnership in VR law began in 1920 with the Smith-Fess Act (P.L. 236) that provided federally based matching funds to states for rehabilitation

training for an additional four years. In 1935 the Social Security Act made VR permanent, with an initial budget of two million dollars. World War II brought another influx of disabled Americans needing VR services. In 1943 the Barden-Lafollette Act included mental illness as a disabling condition, allowing soldiers exposed to war atrocities and shell shock to obtain benefits. (Thompson, 1994).

The Rehabilitation Act of 1973

Today's VR law originates from the Rehabilitation Act of 1973, a federal act of the United States Congress. The act was last amended in 1992 and is currently up for reauthorization. (Robinson). The legislative mandate of the act is contained in federal statutory law, United States Code Title 29, Labor, Chapter 16, Vocational Rehabilitation and Other Rehabilitative Services (29 USC, Chapter 16). (United States Code). The product of a legislature is a ***law*** or ***statute***. (Bouchoux). The federal administrative function of the Rehabilitation Act of 1973 is proscribed in the Code of Federal Regulations, Chapter 34, Education, Part 361, The State Vocational Rehabilitation Services Program (34 CFR, Part 361). (Code of Federal Regulations). The product of an administrative agency is a ***rule*** or ***regulation***. (Bouchoux).

Apart from the technical aspects of the Rehabilitation Act of 1973 are the ***Congressional findings*** set forth in the General Provisions, 29 USC § 701. Some noteworthy findings include 29 USC § 701(a)(2), "individuals with disabilities constitute one of the most disadvantaged groups in society," and 29 USC § 701(a)(5), "individuals with disabilities continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations, education, transportation,

communication, recreation, institutionalization, health services, voting, and public services." (United States Code). Congress's stated ***purpose*** in 29 USC § 701(b) explains the following: "The purposes of this chapter are - (1) to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society, through (A) comprehensive and coordinated state-of-the-art programs of vocational rehabilitation; (B) independent living centers and services; (C) research; (D) training; (E) demonstration projects; and (F) the guarantee of equal opportunity; and (2) to ensure that the Federal Government plays a leadership role in promoting the employment of individuals with disabilities, especially individuals with severe disabilities, and in assisting States and providers of services in fulfilling the aspirations of such individuals with disabilities for meaningful and gainful employment and independent living." (United States Code). And finally, the stated ***policy*** of the US Congress: "It is the policy of the United States that all programs, projects, and activities receiving assistance under this chapter shall be carried out in a manner consistent with the principles of - (1) respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities[.]" (29 USC § 701(c) Policy). (United States Code).

Vocational Rehabilitation Defined

Vocational rehabilitation in Florida is defined in Florida Jurisprudence Second Series Words and Phrases (Fla Jur 2d Words and Phrases) as follows:

> **Vocational rehabilitation and vocational rehabilitation services**
>
> "Vocational rehabilitation" and "vocational rehabilitation services" mean any service, provided directly or through public

> or private instrumentalities, found by the department to be necessary to compensate a disabled individual or group of individuals for an employment handicap and to enable such individual or group of individual to engage in an occupation, including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, placement equipment and materials, maintenance, and training books and materials. 57 Fla Jur 2d, Welfare § 119fn

Statutory Definition: Fla. Stat. § 413.20

Fla. Stat. § 413.445

Florida Government Organization

Understanding the organization of Florida state government helps explain how VR services are provided throughout the state. The executive branch administers and enforces VR services through a state agency directly under the governor's control, the Department of Labor and Employment Security. The agency directly responsible for VR services is the Division of Vocational Rehabilitation (DVR), which is a division under the Department of Labor and Employment Security. The DVR is a ***parallel agency*** providing federal VR services on a localized basis. (Slossberg).

The DVR provides services under mandate of the Florida legislature through Florida Statutes Chapter 413 (Fla. Stat. ch 413). (Florida Statutes). The Florida Administrative Code pursuant to VR is limited to just one entry, Chapter 38J-1.001, Recovery From Third Parties. (Florida Administrative Code). While formal Florida administrative rules do not play a major part in VR services, state policies are contained

in the DVR counselor manual. (Robinson). A review of DVR administrative case law indicates that federal rules are applied at the state level, rules from 34 CFR, Part 361 et seq. When conflicts arise between parallel state and federal agency actions, federal law takes precedence over state law because of the ***Supremacy Clause*** of the United States Constitution. (United States Constitution).

When a dispute arises between the DVR and an affected party, the matter is heard before an Administrative Law Judge (ALJ) employed by the Florida Division of Administrative Hearings (DOAH). The DOAH process is governed by Florida Statutes, Chapter 120, and administered by Chapter 60Q-2 of the Florida Administrative Code. The hearings determine disputed matters of material fact. Requests for hearings are made by notifying the agency and then by petition to DOAH. At the hearing, facts are determined by the ALJ; there is no jury. Discovery is permitted pursuant to the Florida Rules of Civil Procedure. The details of the process are explained in layman's terms in a comprehensive pamphlet entitled "Representing Yourself before the Division of Administrative Hearings." Legal assistants are permitted to represent clients at DOAH hearings as proscribed by law. Appeals of DOAH decisions are taken to the appropriate District Court of Appeal within 30 days of the Final Order. (Representing Yourself before DOAH).

VR Eligibility - Florida Statutory Law

Florida VR statutory law, Fla. Stat. 413, is divided into two basic parts. Part I provides services for the blind, and Part II, General Vocational Rehabilitation Programs, pertains to all others. Eligibility for VR services in the general program is proscribed by Fla. Stat. § 413.30. The salient portion of the law states:

Fla. Stat. § 413.30 Eligibility for vocational rehabilitation services. -

(1) A person is eligible for vocational rehabilitation services if the person has a disability and requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment.

(2) Determinations by other state or federal agencies regarding whether an individual satisfies one or more factors relating to the determination that an individual has a disability may be used. Individuals determined to have a disability pursuant to either Title II or Title XVI of the Social Security Act shall be considered to have a physical or mental impairment that constitutes or results in a substantial impediment to employment and a severe physical or mental impairment that seriously limits one or more functional capacities in terms of an employment outcome. (Florida Statutes).

Because Social Security determinations are important to VR law, a discussion follows. Fla. Stat. § 413.30(2) states that determinations pursuant to Title II or Title XIV of the Social Security Act shall be deemed to meet the disability requirement of Fla. Stat. § 413.30(1).

Social Security Disability

Disability benefits under Social Security fall under either Title II or Title XVI of the act. Title II benefits are essentially insurance benefits and claimants qualify on the basis of disability and past contributions to the Social Security trust fund. To be eligible, a claimant must have worked 20 of the 40 quarters prior to becoming disabled. Medical benefits under Title II generally begin on the 25 month of disability payments. Title II categories include:

1. Disabled workers under age 65 who have been employed or self-employed long enough and recent enough under Social Security.

2. A person who has been disabled since childhood (before twenty-two) if one of the parents who is covered by Social Security retires, becomes disabled or dies.

3. A disabled widow or widower over the age of fifty if the deceased spouse was covered under Social Security and died in the past seven years.

Title XVI is an entitlement program that provides a minimum income level to the needy, aged, blind, and disabled who have not contributed to the trust fund. The Social Security Administration has national responsibility for the administration of both Title II and Title VXI programs. Disability requirements are complicated but generally the disability must be expected to last over one year and must keep one from working. Other rules apply to the Social Security program and this is only a very brief overview obtained from the Internet site of the Law Offices of Michael Doran. (Doran).

Presumption of Benefit from VR Services - Florida Statutory Law

Qualified persons are presumed to benefit from VR services. Fla. Stat. § 413.30(3) states: "An individual shall be presumed to benefit in terms of an employment outcome from vocational rehabilitation services under this part unless the division can demonstrate by clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome. To demonstrate that an individual cannot benefit from vocational rehabilitation services due to the severity of the individual's disability, the division shall conduct an extended evaluation, not to exceed 18 months. The evaluation must determine the eligibility of the individual and the nature and scope of needed vocational rehabilitation services. The

extended evaluation must be reviewed once every 90 days to determine whether the individual is eligible for vocational rehabilitation services." (Florida Statutes).

A review of DVR cases (appeals) indicates that the presumption section of the statute is interpreted in the state's interest, and serves as a de facto method of rejecting applicants. While the presumption itself is embracing, the 18 month extended evaluation period excludes applicants who can not, or choose not to endure 18 months of bureaucratic ritual. For those who continue with the process, one is subject to a method far removed from the rule of law. Social workers compile reports that serve as the basis for decisions. These reports are not compiled according to rules one might find in court, such as requiring evidence to substantiate facts. Instead, these reports are sometimes merely a compilation of the social workers prejudices. In effect, the state may reject a number of applicants as not qualified, because they are either not disabled enough, or too severely disabled. There is an appeal process for those who have the energy to proceed, after the extended evaluation process. One such person is Maria T. Ross, of Coral Springs, Florida. She appeared pro se in a case before the Florida Division of Administrative Hearings. Ms. Ross prevailed at the hearing and the DVR was ordered to provide services. In taking her appeal, Ms. Ross inadvertently opened her life to the world, because the case is displayed on the Internet. Ms. Ross's medical condition, home address, and personal information is now available on online for anyone to view. (Ross v. Florida, et al).

Popular Perceptions

Public perception is an important consideration in any discussion of law, and VR law is no exception. The court of public opinion often impacts the outcome of programs

involving human services. Current popular opinion runs against most anything associated with "welfare." VR is categorized as welfare under Florida law. (Florida Statutes, Title XXX, Social Welfare; Chapter 413, Vocational Rehabilitation).

An opinion recently appeared in the St. Petersburg Times by columnist Robyn E. Blumner, entitled "Incompetence as a disability." (Blumner). As the title suggests, Blumner is hostile toward persons with disabilities and the Americans with Disabilities Act (ADA). Blumner believes a number of disabled persons are freeloaders benefiting from public welfare. Her opinion is disturbing for several reasons. While Blumner is an attorney, you won't find much legal argument in her column. For example, Blumner uses stereotypes to describe her opinion of what constitutes a disability. In referencing recent ADA claims, Blumner writes, "The greatest number of those have not come from the blind, deaf or paraplegic, those whom we traditionally think of as disabled, but from those with back injuries and emotional and psychiatric impairments." Suffice it to say that Blumner's "disability at a glance test" may not hold up in court. More disturbing is her dismissive attitude toward emotional and psychiatric impairments, especially when juxtaposed with her recent stint as Executive Director of the Florida American Civil Liberties Union (ACLU). The cost to American society of emotional and psychiatric impairments is great. Attitudes like Blumner's assure that these disorders will not be properly addressed, and the country will suffer the increased costs.

Blumner's diatribe against accommodating disabilities culminates with her view of disabilities and the legal profession. Blumner writes, "Nowhere is this more ridiculous than in the multiple claims by law students for extra or unlimited time on their Bar exams." Blumner disagrees with decisions by federal courts favorable to the disabled.

She argues that slow reading lawyers will shortchange the public. At best, this position is speculative. My experience illustrates the fallacy of her claim, and involves a lawyer whom I hired to evaluate my situation with the DVR. After incurring over $1,200 in legal fees, it became apparent that his reading speed was irrelevant; he never read the documents needed to evaluate my legal question! He chose not to read the file, or even obtain the file from the DVR. One element of legal malpractice is when a lawyer fails to exercise ordinary skill and knowledge in the practice of law. When a lawyer does not read the file, the lawyer has not exercised ordinary skill and knowledge. It does not matter how fast a lawyer reads documents, but only that he has, in fact, read them and exercised ordinary skill and knowledge thereupon.

The Americans with Disabilities Act (ADA)

Congress makes meaningful statements about the need for the ADA in its findings, 42 USC § 12101(a), and purpose, 42 USC § 12101(b). I find this information important enough to accompany this report as addendum number one. My discussion of the ADA considers a case involving speech impairment, Cooper v. Neiman Marcus Group, CA 9, No. 96-15068, 12/4/97. (BNA's ADA Manual). Carol Cooper, an executive secretary at a Neiman Marcus store developed slurred speech, a condition known as dysarthria. All parties conceded that her position was a "key communication post" for the store, and the dysarthria made her unable to perform the job. The secretary inquired about other suitable jobs in the store (not requiring verbal communication) but was told none were available. She was offered two options; leave the job and collect pay for 90 days, then severance, or to continue working and try to improve her speech for 90 days. She left the job because she believed her speech would not improve. Upon suit

under the ADA, the district court found that she constructively resigned and denied the claim. The appeals court reversed and remanded, saying that neither option afforded her employment for longer than 90 days. Neiman Marcus failed to offer a reasonable accommodation for her disability. Ms. Cooper may qualify for a vocational rehabilitation program in her state.

Conclusion

VR law is complicated, not so much because of the statute, but due to the intersection of other law with VR, such as Social Security and the ADA. Another factor is the competition of states rights v. federal law. The United States Constitution is the highest law of the land. But until important amendments were made, for example, the Thirteenth Amendment, African-Americans were not free people. Or the Nineteenth Amendment, prohibiting any United States citizen from being denied the right to vote on the basis of sex, extended voting rights to American women. Discriminatory attitudes maintained the status quo for many years relative to those two issues.

The Untied States Congress finds that disabled individuals suffer discrimination and that vocational rehabilitation is a worthy effort. There is excellent legislation on the books to remedy and implement these findings. Nonetheless, problems remain. Public attitudes are moving against many types of "welfare." Public prejudices, from the uninformed citizen, to biased newspaper columnists, to the state bureaucrat charged with implementing this lofty legislation, remain formidable obstacles. Continued legal effort and activism may remedy the current state of affairs. The legislation exists to address the Congressional findings relative to disability and vocational rehabilitation. The challenge now is to implement the legislation.

Supplement to **Vocational Rehabilitation Law** research paper.

Submitted by Neil J. Gillespie, May 4, 1998,
PLA 1003, Introduction to Legal Assisting.

The following supplements and corrections are submitted:

1. The following correction applies to my designation of the Americans with Disabilities Act. The correct statutory reference is 42 USC § 12101(a) and (b). I incorrectly listed the statute as 121.01, not thinking a statute number could reach five places. When I read the five place number on the Internet, I assumed an error. Upon checking the actual United States Code text in the library, I discovered my mistake. I stand corrected.

2. In evaluating my DOAH petition, input from personnel at the Office of Federal Contract Compliance Programs. This federal agency is under the **US Department of Labor**, with oversight responsibility for the Rehabilitation Act of 1973 relative to the various states, including the Florida Division of Vocational Rehabilitation program.

First I spoke with Frank Taylor, a compliance officer for the Office of Federal Contract Compliance Programs in Washington, DC. He suggested that make-whole remedies were available and referred me to the federal government's office in Orlando.

In Orlando I spoke with compliance officer Carlos who educated me to the subtleties of law relative to parallel agency misconduct. In pursing such misconduct, it is ineffective to enumerate various agency transgressions of law; these are considered mere technical violations worthy of little, if any, redress. Considering the totality of the facts in my situation, Carlos suggested the make-whole remedies available under the ADA. This insight facilitated a crucial perspective on my case.

3. The lawyer referenced on page 11, "MK" was a referral from the St. Petersburg Bar Association Lawyer Referral Service.

Bibliography

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Chapter 34, Education, Part 361 - State Vocational Rehabilitation Services Program,
(Parts 300-399?) e-CFR Data is current as of March 26, 2015 (see link above to the CFR)

*Coombs, Norman, 1991, Disability and Technology: A Historical and Social Perspective (*attached)
http://www.edtechpolicy.org/MHEC/WebCT/HistoricalAndSocial.pdf

Florida Administrative Code (Annotated Vol. 13, Titles 30-38?); https://www.flrules.org/

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http://www.flsenate.gov/Laws/Statutes/2014/Chapter413/PART_II/
*413.30 Eligibility for vocational rehabilitation services. (2014) (*attached)
http://www.flsenate.gov/Laws/Statutes/2014/413.30

Representing Yourself before the Division of Administrative Hearings (update, alternatives)
https://www.disabilityrightsflorida.org/documents/Advocacy_101.pdf
http://apd.myflorida.com/brochures/administrative-hearings-guide-non-medicaid.pdf

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https://www.law.cornell.edu/uscode/text/29/chapter-16

Appendix No 1

Incompetence as a disability, by Robyn E. Blumner, St. Petersburg Times, March 22, 1998, pages 1D and 6D. Composite of the St. Pete Times story:

- Archive edition of *Incompetence as a disability*, By Robyn E. Blumner
- Letter to the Editor: *Disabilities are real*, by Linda Marie Small (response to Blumner)
- Image of the original article *Incompetence as a disability* and Letter to the Editor

Appendix No 2

American Bar Association (ABA), Commission on Disability Rights, Resolution 111 Summary. Rejected the position of Robyn E. Blumner et al, re *Incompetence as a disability.*
Adopted by the ABA House of Delegates February 6, 2012.
http://www.americanbar.org/content/dam/aba/administrative/mental_physical_disability/2011nov11_cdr_resolution.authcheckdam.pdf

Appendix No 3

3.1 Employment discrimination case summary Cooper v Neiman Marcus Group
3.2 Cooper v. Neiman Marcus Group, 125 F.3d 786 (9th Cir. 1997) FindLaw
http://caselaw.findlaw.com/us-9th-circuit/1195220.html
See, Cooper v. Neiman Marcus Group, 125 F. 3d 786 - C.A.9 (1997) - Google Scholar
http://scholar.google.com/scholar_case?case=7734166463975765568&hl=en

Appendix No 4

4.1 Americans with Disabilities Act (ADA) Amendments Act 2008 (ADAAA) [GPO]
Public Law 110-325 Sept. 25, 2008. An Act To restore the intent and protections of the Americans with Disabilities Act of 1990. 42 USC § 12101 et seq.
http://www.gpo.gov/fdsys/pkg/PLAW-110publ325/pdf/PLAW-110publ325.pdf

4.2 Proclamation In Re: Twentieth Anniversary of the ADA, Florida Supreme Court
http://www.floridasupremecourt.org/pub_info/documents/pressreleases/2010/7-1-2010_ADA_Proclamation.pdf

42 USC Chapter 126, Equal Opportunities for Individuals with Disabilities [GPO & LII links]
http://www.gpo.gov/fdsys/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap126.htm
https://www.law.cornell.edu/uscode/text/42/chapter-126

Appendix No 5

TITLE 29 - Section 701 - Findings; purpose; policy [LII]
Unofficial compilation of the U.S. Code current as of Jan. 7, 2011
https://www.law.cornell.edu/uscode/text/29/701
http://www.gpo.gov/fdsys/pkg/USCODE-2011-title29/pdf/USCODE-2011-title29-chap16-other-sec701.pdf

29 U.S. Code Chapter 16 - VOCATIONAL REHABILITATION AND OTHER REHABILITATION SERVICES [Cornell Law School, Legal Information Institute LII]
https://www.law.cornell.edu/uscode/text/29/chapter-16

Incompetence as a disability

[STATE Edition]

St. Petersburg Times - St. Petersburg, Fla.
Author: Blumner, Robyn E
Date: Mar 22, 1998
Start Page: 1.D
Section: PERSPECTIVE

Document Text

Remember those tough math and foreign-language requirements in college? Maybe you had a hard time not because you didn't study enough but because you had dyscalculia - a learning disability in math. If so, the college, in requiring you to take math as a condition of a liberal arts degree, may have been discriminating against you.

That is effectively what a group of 10 students from Boston University argued to a federal judge last year. The students were using the Americans with Disabilities Act, a law that requires employers and schools to accommodate the handicapped, to try to skirt academic requirements and testing regimens. Their argument is getting a serious hearing and could do irreparable damage to rigorous degree standards and academic freedom.

When passed in 1990, the ADA had a noble purpose: to protect people with disabilities from discrimination. But the way the law has been stretched and distorted has made it a perfect shill for the incompetent and lazy.

"Give an inch, take a mile" is the best way to describe the explosion of claims under the ADA. From August 1992 to March 1997, 81,595 disability-related complaints have been filed with the Equal Employment Opportunity Commission. The greatest number of those have come not from the blind, deaf or paraplegic, those whom we traditionally think of as disabled, but from those with back injuries and emotional and psychiatric impairments.

The ADA requires schools and employers to "reasonably accommodate" a person who is disabled, which is defined as anyone who has a "substantial impairment" to a "major life activity." Although these accommodations are not supposed to impose an "undue hardship" on schools and employers, courts and the EEOC have broadly defined disabilities and reasonable accommodations and have narrowly construed undue hardship.

As a result, boutique disabilities have blossomed. Every type of personal failing, character flaw and academic problem has been assigned a scientific-sounding syndrome.

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The results have put schools and employers in a quandary. What do you do when acting up, failing to complete work and doing a shoddy job become a function of a disability? It can be a violation of law to sanction those behaviors, and schools and businesses are learning that the hard way.

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Ten students then sued under the ADA. In August, U.S. District Court Judge Patti Saris ruled that the university had

EXHIBIT
Appendix 1

discriminated against the students by changing the rules that applied to them without proper notice and due process. But the court upheld the math requirements of the liberal arts degree; it has yet to rule on whether the foreign-language requirements violate the ADA.

The question becomes: When does accommodation become capitulation?

No professional institution should have to water down its substantive degree requirements because some students can't meet them. Isn't that the whole point of the credential? It declares that the graduate has successfully completed a course of study that not everyone could. The idea that being really bad in a subject qualifies one to be waived on through it is the ultimate reductio ad absurdum.

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The ADA may have done wonders for the handicapped community by opening access to public buildings and restrooms, but granting a shortcut through the rigors of the academic world and professional licensing standards is simply one accommodation too many.

Illustration

BLACK AND WHITE CARTOON, DON ADDIS; Caption: Members of the Sink Tank sit at a table at the Florida Aquarium (ran Pg. 6D)

Abstract (Document Summary)

Remember those tough math and foreign-language requirements in college? Maybe you had a hard time not because you didn't study enough but because you had dyscalculia - a learning disability in math. If so, the college, in requiring you to take math as a condition of a liberal arts degree, may have been discriminating against you.

That is effectively what a group of 10 students from Boston University argued to a federal judge last year. The students were using the Americans with Disabilities Act, a law that requires employers and schools to accommodate the handicapped, to try to skirt academic requirements and testing regimens. Their argument is getting a serious hearing and could do irreparable damage to rigorous degree standards and academic freedom.

Learning disability claims are especially popular on college campuses. Since 1988, the number of college freshman who claim to be learning disabled has more than doubled, to 45,000. In addition to the ubiquitous Attention Deficit Disorder, there's the lesser known problem of missed social cues or boorishness, known as dyssemia. If one's ability to think rationally is below intellectual capability, then one might suffer from dysrationalia. The American Council on Education lists symptoms of a learning disability that include "a short attention span," "difficulty following a schedule, being on time or meeting deadlines" and "difficulty telling or understanding a joke" - definitions that could fit just about anyone.

Letter to the Editor: Disabilities are real
by Linda Marie Small, Tucson Arizona

re: Incompetence as a disability, by Robyn Blumner, March 22, 1998.

Robyn Blumner's objection to giving the law school graduate who flunked the bar exam a testing environment commonly used by students with learning disabilities because her skills were said to be not suitable for law in any case lacks insight. It may actually be true that she could not keep up with the volume of information, speed and adversarial questioning style of a courtroom because of her disability. Still, there are plenty of non-courtroom jobs for lawyers who want to make a living.

Blumner finds fault with the increasing numbers of students with disabilities - including those not visible to a lay person - entering college and grad school. It was the intent of the Americans With Disabilities Act that more disabled students go to college. The increasingly numbers of alternatively able college entrants, including those with mental health diagnosis, are a testament to the ADA's growing success.

It is beneficial to society for the disabled to obtain degrees and good jobs, rather than hanging out at home collecting Social Security from a rapidly dwindling pot that already does not adequately support the nation's elderly.

Learning disabilities and attention deficits are not made-up excuses by the lazy and the not-smart for landing shortcuts through academics. There is scientific research showing altered neuro-activity using less efficient (slower speed) centers in the brain of those with these disabilities. No matter how tempting to grouse that the disabled only need to try harder to justify bigotry and myth, such brain activity is not under anyone's control.

I have been learning-disabled and attention-deficit-disoriented all my life, long before these became popular topics in *Time* magazine. I am not my disability; I am me. And while I did not run down to the corner store and say I take half-a-dozen (disabilities), my disabilities belong to me. I am responsible for living with them and working out my dreams.

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ROBYN E. BLUMNER
COLUMNIST

Incompetence as a disability

Remember those tough math and foreign-language requirements in college? Maybe you had a hard time not because you didn't study enough but because you had dyscalculia — a learning disability in math. If so, the college, in requiring you to take math as a condition of a liberal arts degree, may have been discriminating against you.

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When passed in 1990, the ADA had a noble purpose: to protect people with disabilities from discrimination. But the way the law has been stretched and distorted has made it a perfect shill for the incompetent and lazy.

"Give an inch, take a mile" is the best way to describe the explosion of claims under the ADA. From August 1992 to March 1997, 81,595 disability-related complaints have been filed with the Equal Employment Opportunity Commission. The greatest number of those have come not from the blind, deaf or paraplegic, those whom we traditionally think of as disabled, but from those with back injuries and emotional and psychiatric impairments.

The ADA requires schools and employers to "reasonably accommodate" a person who is disabled, which is defined as anyone who has a "substantial impairment" to a "major life activity." Although these accommodations are not supposed to impose an "undue hardship" on schools and employers, courts and the EEOC have broadly defined disabilities and reasonable accommodations and have narrowly construed undue hardship.

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Please see **BLUMNER** 6D

Blumner from 1D

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Ten students then sued under the ADA. In August, U.S. District Court Judge Patti Saris ruled that the university had discriminated against the students by changing the rules that applied to them without proper notice and due process. But the court upheld the math requirements of the liberal arts degree; it has yet to rule on whether the foreign-language requirements violate the ADA.

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Linda Marie Small, Tucson, Ariz.

Commission on Disability Rights

AMERICAN BAR ASSOCIATION

Resolution 111 Summary

Under the Commission on Disability Right's (CDR) resolution the ABA urges entities that administer law school admissions tests to provide accommodations that best ensure that the skills of the test-takers are measured, and not their disabilities. It would further urge that the process for determining whether to grant an accommodation be made public; a decision on approving an accommodation be conveyed to the applicant within a reasonable amount of time; and that there be a fair appeals process for a denied accommodation. The resolution also urges testing entities to not flag scores that have received a disability-based accommodation.

Since 2007, CDR has noted and compiled various problems individuals with disabilities have identified with regard to law school admissions tests. Reports and law suits brought to CDR's attention have shown that the process to apply for and obtain accommodations is often difficult and sometimes legitimate requests are denied. For example, many applicants are put through a burdensome process or are denied accommodations that they have been receiving in school for years. If an applicant is granted extra time as accommodation, his or her score is then "flagged" as achieved under special circumstances, which raises unfair questions about the score's legitimacy.

This position takes note of regulations issued by the Department of Justice regarding the examination and testing provision of the Americans with Disabilities Act. The intent is to ensure that deserving applicants are given accommodations that only test aptitude and do not test or highlight the person's disability. The resolution addresses portions of the accommodations process—i.e., administrative procedures, timeliness, and appeals—that have been noted by many in the disability community as problematic areas of the process. Finally, the position directly addresses the unfair practice of "flagging" by urging for its removal in the law school admissions testing process, a position already taken by most entities who administer admissions tests in other fields.

The resolution was adopted by the ABA House of Delegates on February 6, 2012.

EXHIBIT

Appendix 2

AMERICAN BAR ASSOCIATION

COMMISSION ON DISABILITY RIGHTS
CRIMINAL JUSTICE SECTION
GENERAL PRACTICE, SOLO AND SMALL FIRM DIVISION
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY
COUNCIL FOR RACIAL AND ETHNIC DIVERSITY IN THE EDUCATIONAL PIPELINE
STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES
UTAH STATE BAR
BAR ASSOCIATION OF BALTIMORE CITY
NATIONAL NATIVE AMERICAN BAR ASSOCIATION
COMMISSION ON LAWYER ASSISTANCE PROGRAMS
STATE BAR OF WISCONSIN
COMMISSION ON WOMEN IN THE PROFESSION
SECTION OF REAL PROPERTY, TRUST AND ESTATE LAW
SENIOR LAWYERS DIVISION
MULTNOMAH BAR ASSOCIATION
OREGON STATE BAR
PHILADELPHIA BAR ASSOCIATION
NATIONAL CONFERENCE OF WOMEN'S BAR ASSOCIATIONS
SECTION OF INTELLECTUAL PROPERTY LAW
ATLANTA BAR ASSOCIATION
HISPANIC NATIONAL BAR ASSOCIATION
KING COUNTY BAR ASSOCIATION
MICHAEL S. GRECO
NATIONAL LGBT BAR ASSOCIATION
NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION
NATIONAL ASSOCIATION OF WOMEN JUDGES
BAR ASSOCIATION OF SAN FRANCISCO
WASHINGTON STATE BAR ASSOCIATION
DELAWARE STATE BAR ASSOCIATION
YOUNG LAWYERS DIVISION
LAW STUDENT DIVISION
TORT TRIAL AND INSURANCE PRACTICE SECTION
GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION
BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA
NATIONAL BAR ASSOCIATION
H. THOMAS WELLS, JR.

REPORT TO HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association urges all entities that administer a law school admission test to provide appropriate accommodations for a test taker with a disability to best ensure that the exam results reflect what the exam is designed to measure, and not the test taker's disability.

FURTHER RESOLVED, That the American Bar Association urges all entities that administer, score, or report the results of a law school admission test to establish procedures to ensure that the application process, the scoring of the test, and the reporting of test scores is consistent for all applicants and does not differentiate on the basis that an applicant received an accommodation for a disability.

FURTHER RESOLVED, That the American Bar Association urges all entities that administer a law school admission test to:

1. Make readily accessible to applicants the policies, guidelines, and administrative procedures used for granting accommodations requested by those with disabilities;
2. Give notice to applicants, within a reasonable period of time, whether or not requested accommodations have been granted; and
3. Provide a fair process for timely reconsideration of the denial of requested accommodations.

REPORT

Introduction

The ABA's Goal III calls on the legal profession to eliminate bias and to enhance diversity, including for persons with disabilities. In spite of these assurances, the testing process for law school admission remains an obstacle to the full and equal participation of individuals with disabilities in the legal profession. Students with disabilities are substantially underrepresented in law schools across the country.[1] In part, this is due to the fact that the testing process relied upon by most law schools in the United States does not afford the same benefits to applicants with disabilities that it affords to other applicants.

The proposed resolution urges any entity that administers a law school admission test to ensure that law school applicants with disabilities are given no less than the accommodations that federal law requires, including, where appropriate, removal of architectural and communication barriers, modification of rules, practices and procedures, and provision of auxiliary aids and services.

The Americans with Disabilities Act (ADA), enacted in 1990, introduced a new way of looking at what it means to discriminate. For people with disabilities, affording identical treatment to all does not confer equal access to proceedings, programs, and activities. The person with deafness, the person with blindness, the person who uses a wheelchair, or the person with dyslexia might be excluded unless accommodations are made for his or her unique needs.

The proposed resolution also urges any entity that administers, scores, or reports a law school admission test to take steps to ensure that the application process, the scoring of the test, and the reporting of test scores do not discriminate based on disability, in particular that scores not be differentiated on the basis of whether an individual received any type of accommodation for a disability. It further urges any entity that administers a law school admission test to make public the policies, guidelines, and administrative procedures used for granting accommodations requested by those with disabilities; to give notice to applicants within a reasonable period of time whether requested accommodations have been granted; and to provide a fair process for timely reconsideration of the denial of requested accommodations.

For many years, the ABA has been committed to going beyond what the law requires in providing accommodations to lawyers, judges and law students with disabilities. In 1989, the ABA adopted policy supporting in principle proposed legislation that became the ADA. In 1997, the ABA approved a policy calling upon all courts to provide qualified language interpreters, including sign language interpreters, for persons who are deaf or hard of hearing. Policy adopted in 1998 urges that any nominating or evaluating entity, when making character and fitness determinations of state judicial candidates, narrowly tailor its questions concerning

[1] While persons with disabilities represent nearly 20% of the population, a much smaller percentage are found in our law schools. While there is no accurate count, because tracking based on disability lags well behind such statistics for race, ethnicity and gender, we do know that only 3.4% of law students requested accommodations for the 2009-2010 school year. E-mail from Kenneth R. Williams, Data Specialist, ABA Section of Legal Education and Admissions to the Bar (Jan. 18, 2011, 17:29 EST) (on file with author).

physical and mental disabilities or physical and mental health treatment in order to focus its inquiries on information relevant to a candidate's current fitness to serve as a judge, with such reasonable modifications as might be required. In 2002, the ABA adopted policy urging all federal, state and municipal courts to make courthouses and court proceedings accessible to individuals with disabilities, including lawyers, judges, jurors, litigants, witnesses, and observers, in order to ensure equal access to justice and compliance with the ADA. The policy also recommended that each courthouse appoint a disability accommodations coordinator to develop procedures for receiving requests for accommodations from individuals with disabilities and for responding creatively with reasonable accommodations that meet the needs of the individual, including removal of architectural barriers, modification of rules and practices, and provision of auxiliary aids and services.

The proposed resolution builds upon these existing policies by urging entities that administer law school admission tests to take specific steps to ensure that applicants with disabilities have equal access to legal education. The resolution is necessary because existing resolutions are incomplete in their application to the law school admission process and because developments in the 20 years since passage of the ADA have resulted in a wealth of experience that entities can draw upon to implement more effective programs.

Background

An individual who wishes to attend an ABA-accredited law school must take an admission test before entry. In order for a law school to become one of the over 195 ABA-approved law schools, an academic institution must adhere to standards promulgated by the Council of the ABA's Section of Legal Education & Admissions to the Bar (Council). The Council is identified by the U.S. Department of Education as the national accrediting agency for professional law schools. Although there is a process for consultation with the ABA House of Delegates on accreditation matters, decisions of the Council are final.[2] According to the Council's ABA Standards and Rules of Procedure for Approval of Law Schools (Standards), a law school must have an admission test which is "a valid and reliable admission test to assist the school and the applicant in assessing the applicant's capability of satisfactorily completing the school's educational program."[3]

Standard 503 of the Standards requires that, "In making admission decisions, a law school shall use the test results in a manner that is consistent with the current guidelines regarding proper use of the test results provided by the agency that developed the test."[4]

Presently, the only nationally-administered test available for such a purpose is the Law School Admission Test (LSAT). In its current state, the LSAT is a timed test with four scored and one unscored multiple choice sections. Each section is thirty-five minutes long. There is one reading comprehension section, one analytical reasoning section, and two logical reasoning/games sections. The LSAT is administered by the Law School Admissions Council (LSAC), a non-profit organization. Although the Section Council does not endorse a particular admission test

[2] 2007-2008 ABA Standards for Approval of Law Schools, Preface, at vi-vii.
[3] 2007-2008 ABA Standards for Approval of Law Schools, Standard 503.
[4] *Id.*

nor does it have official ties with the LSAC, it does acknowledge the LSAT in the Standard's Interpretation 503-1 which states:

> A law school that uses an admission test other than the Law School Admission Test sponsored by the Law School Admission Council shall establish that such other test is a valid and reliable test to assist the school in assessing an applicant's capability to satisfactorily complete the school's educational program.

The proposed resolution is not intended to apply only to the LSAC, but is meant to cover any and all entities that administer a law school admission test.

Flagging

The Standards append the guidelines developed by the LSAC regarding proper use of the test results as "Appendix 2: LSAC Cautionary Policies Concerning LSAT Scores." The cautionary policies single out LSAT scores earned under accommodated or nonstandard conditions. The policy states:

> **Carefully evaluate LSAT scores earned under accommodated or nonstandard conditions.**
> LSAC has no data to demonstrate that scores earned under accommodated conditions have the same meaning as scores earned under standard conditions. Because the LSAT has not been validated in its various accommodated forms, accommodated tests are identified as nonstandard and an individual's scores from accommodated tests are not averaged with scores from tests taken under standard conditions.

According to the LSAC's website, an applicant registered to take the LSAT must complete a packet. The packet contains forms to be filled out by the applicant and an evaluator describing and documenting the applicant's disability as well as the accommodation(s) requested by the applicant.[5] The LSAC has reported that, on average, 1,960 applicants requested an accommodation per testing year between 2002 and 2007.[6] Furthermore, during that timeframe, the majority of accommodations given, 67%, were for extra testing time, extra rest time, or a separate testing room.[7] An applicant who is granted extra time as an accommodation typically received up to time-and-a-half for the test.[8] When extra time is given as an accommodation, the score is reported individually and the person does not receive a percentile rating. The LSAC sends a letter to the law school notifying the institution of this practice and that the score attained with the extra time is "nonstandard." This procedure is commonly called "flagging" a score.

A consensus within the testing and academic communities recognizes that extra time for those with learning disabilities and some other disabilities is an acceptable accommodation for an entrance examination, although there continues to be disagreement about the amount of extra

[5] *See* LSAC – The LSAT - Accommodated Testing, http://lsac.org/JD/LSAT/accommodated-testing.asp.
[6] Thorton, Andrea, Marcus, Laura & Reese, Lynda, *LSAC Report Research Series: Accommodated Test-Taker Trends and Performance for the June 2002 through February2007 LSAT Administrations* (2008), at 4, available at: http://lsac.org/LsacResources/Research/TR/TR-08-02.pdf.
[7] *Id.* at 6.
[8] *Id*. at 7.

time that should be granted. For example, the LSAC typically grants at most time-and-a-half, while the College Board (which administers the SAT, PSAT, and Advanced Placement tests) gives up to double the amount of time. Yet when an accommodated score is labeled as "nonstandard" or when a testing agency tells the academic program that the score does not conform to the scores of students who were not given accommodations, the student with the accommodated score is placed at a serious disadvantage. There are serious policy, ethical, and social problems involved with flagged scores, including disregard for an applicant's desire not to have his or her disability revealed and the potential attachment of a stigma during the admission process. If scores are to be flagged, it should be done with the consent of the applicant.

Pursuant to a federal court case dealing with flagged SAT scores,[9] a Blue Ribbon Panel of experts was convened to study whether flagged/accommodated SAT scores were comparable, and as valid as, non-accommodated SAT scores. The Panel's majority concluded that the SAT scores of accommodated tests had results equivalent to tests with no accommodations.[10] Educational Testing Service (ETS), the entity which oversees administration of the SAT, has found there is a positive correlation between tests with extra time given and achievement in college; in other words, SAT scores of those with extra time as an accommodation "were fairly accurate predictors of [first year grade point averages] for students with learning disabilities."[11] Therefore, in 2003, the College Board abandoned the flagging of test scores that had extra time as an accommodation. Following the College Board's lead, American College Testing, Inc., halted flagging of the ACT test shortly thereafter.

There is a growing body of case law dealing with the granting of accommodations for and the flagging of law school admission tests. Additionally, there are numerous lawsuits involving the LSAC and other graduate school-related testing agencies that have been settled out of court. Most agreements are with individual plaintiffs and involve making accommodations for one applicant which expire after the applicant takes the test. In recent years, two larger settlement agreements were reached between the LSAC and both the U.S. Department of Justice (DOJ) and the National Federation of the Blind (NFB). The agreement with DOJ dealt primarily with the review process of accommodation requests. The agreement with the NFB is tailored towards accommodations for those with visual impairments.

Accommodations

Judge David S. Tatel, who is blind, described how accommodations made it possible for him to serve as Judge on the U. S. Court of Appeals for the D.C. Circuit in an address to the National Conference on the Employment of Lawyers with Disabilities, co-sponsored by the ABA Commission on Mental & Physical Disability Law, the ABA Office of the President and the U.S. Equal Employment Opportunity Commission in 2006. Judge Tatel described how the use of a

[9] *Breimhorst v. ETS*, 2000 WL 34510621 (N.D. Cal, Mar. 27 2000).
[10] NOEL GREGG, ET AL., THE FLAGGING TEST SCORES OF INDIVIDUALS WITH DISABILITIES WHO ARE GRANTED THE ACCOMMODATION OF EXTRA TIME: A REPORT OF THE MAJORITY OPINION ON THE BLUE RIBBON PANEL ON FLAGGING (2002).
[11] THE COLLEGE BOARD, PREDICTIVE VALIDITY OF SAT I: REASONING TEST FOR TEST-TAKERS WITH LEARNING DISABILITIES AND EXTENDED TIME ACCOMMODATIONS, RESEARCH REPORT NO. 2002-5, at 9 (2002).

reader, Braille Speak for note-taking, and other accommodations eliminated the impact of his disability on his work. He added:

> One of the most interesting things I noticed in my law firm, and I now notice on my court, is the extent to which the institution subconsciously accommodates to the needs of people with disabilities. When I first started people had never worked with a blind lawyer, and there were awkward moments. There were periods of time I would go to a meeting and people were talking about a document that I might not have seen ahead of time. People would be silently reading it, and I would clear my throat until finally one person would get the point and start reading aloud. Well, after a couple of years, people began to read things out loud just on their own. It became second nature. The same thing happened on the D.C. Circuit.[12]

In the landmark case of *Tennessee v. Lane*, the Supreme Court highlighted the importance of providing accommodations so as to prevent exclusion:

> The unequal treatment of disabled persons in the administration of judicial services has a long history, and has persisted despite several legislative efforts to remedy the problem of disability discrimination. Faced with considerable evidence of the shortcomings of previous legislative responses, Congress was justified in concluding that this "difficult and intractable proble[m]" warranted "added prophylactic measures in response." **. . .** Recognizing that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion, Congress required the States to take reasonable measures to remove architectural and other barriers to accessibility.

Accommodations, when needed, are essential to prevent discrimination against individuals with disabilities. Congress recognized this in the context of high stakes testing when it enacted the ADA. Title III of the ADA codifies the concept that it is discriminatory not to "offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals."[13] Moreover, DOJ regulations implementing ADA Title III state that a test-administering entity shall make sure that:

> [t]he examination is selected and administered so as to best ensure that, when the examination is administered to an individual with a disability that impairs sensory, manual, or speaking skills, the examination results accurately reflect the individual's aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual's [disability.][14]

Furthermore, private entities that offer admission testing are required to:

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[12] THE NATIONAL CONFERENCE ON THE EMPLOYMENT OF LAWYERS WITH DISABILITIES: A REPORT FROM THE AMERICAN BAR ASSOCIATION FOR THE LEGAL PROFESSION, at 30-31 (2006)
[13] *See* 42 USC §12189.
[14] 28 C.F.R. § 36.309(b)(1)(1).

> provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills, unless that entity can demonstrate that offering a particular auxiliary aid would fundamentally alter the measurement of the skills or knowledge the examination is intended to test or would result in an undue burden.[15]

Because ending discrimination requires accommodation of individual needs, determining what accommodations "best ensure" equality in a given instance requires a fact-specific, individualized analysis of the test taker's circumstances.[16] Regulations regarding testing and accommodations under the ADA, recently released by the DOJ, underscore the importance of this process and stress the importance of having the testing agency: request documentation of an impairment in a reasonable manner; give considerable weight to documentation of previously used accommodations; and work with the applicant in a timely manner.[17]

Law school entrance examinations are high stakes tests. The Attorney General, in issuing the regulations on testing accommodations, recognized this fact noting "the importance of ensuring that the key gateways to education and employment are open to individuals with disabilities."[18] An "accessible" exam must provide a qualified individual with a disability an opportunity to demonstrate his or her knowledge and ability equal to that which it extends to other test takers.[19]

Moreover, law school entrance examinations will continue to be relied on by most law schools even if the ABA decides no longer to make them a mandatory requirement in order to receive ABA-accreditation. They not only help to determine whether an applicant is admitted to law school, but whether an applicant will receive financial support and has access to the nation's leading law schools. Admission to a prestigious law school is more than an economic benefit for a student. Attending a prestigious law school opens up opportunities in government and public life, prestigious private law firms, judicial clerkships in higher courts, and access to judicial appointments at the highest levels later in life. The U.S. Supreme Court recognized the significance of gaining admission to the leading law schools in *Grutter v. Bollinger*:

> Individuals with law degrees occupy roughly half the state governorships, more than half the seats in the United States Senate, and more than a third of the seats in the United States House of Representatives. The pattern is even more striking when it comes to highly selective law schools. A handful of these schools accounts for 25 of the 100 United States Senators, 74 United States Courts of Appeals judges, and nearly 200 of the more than 600 United States District Court judges.
>
> In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have

[15] 28 C.F.R. § 36.309(b)(3).
[16] *See* 28 C.F.R. app. §35.160; 28 C.F.R. §35.160(b)(2); *See also Enyart v. NCBE*, 630 F.3d 1153, 1164-65 (9th Cir. 2011), *cert. denied*, 80 U.S.L.W. 3191 (U.S. Oct. 3, 2011)*; Wong v. Regents of Univ. of Cal.*, 192 F.3d 807, 818 (9th Cir. 1999); *D'Amico v. N.Y.S. Bd. of Law Examinerrs*, 813 F. Supp. 217, 221 (W.D.N.Y. 1993).
[17] *See* 75 Fed. Reg. 56,236 (Sept. 15, 2010) (codified at 28 C.F.R. §36.309(b)(iv-vi))
[18] 56 Fed. Reg. 35,544, 35,572 (July 26, 1991).
[19] *Id.*

> confidence in the openness and integrity of the educational institutions that provide this training. As we have recognized, law schools "cannot be effective in isolation from the individuals and institutions with which the law interacts." Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.[20]

Although the *Grutter* case concerned a program to promote diversity by race and ethnicity at the University of Michigan Law School, the Court's observation that all members of our heterogeneous society should have an equal opportunity to participate in the educational institutions that train our leaders also applies to individuals with disabilities.

Conclusion

Making law schools accessible to individuals with disabilities can help ensure that the legal profession is more open to persons with disabilities than it is now. The Association should encourage entities that administer law school admission testing and the law schools that rely on such testing to implement the ADA and to look for creative ways to make legal education and the legal profession more accessible to students with disabilities.

Respectfully submitted,
Katherine H. O'Neil, Chair
Commission on Disability Rights
February 2012

[20] *Grutter v. Bollinger*, 539 U.S. 306, 332-33 (2003) (citations omitted).

Cooper v. Neiman Marcus Group, 125 F.3d 786 (9th Cir. December 4, 1997)
Keywords: ADA (constructive discharge)

Introduction: Carol Cooper sued her former employer, Neiman Marcus, under the ADA for disability discrimination based on an alleged constructive discharge.

- The district court granted summary judgment on behalf of Neiman Marcus based on a finding that Cooper was not terminated.

- Because the Ninth Circuit finds that Cooper was terminated, it reverses and remands for a determination of whether the termination was in violation of the ADA.

Facts: Cooper was a secretary for the executive staff at the Scottsdale, Arizona store. During the summer of 1992, Cooper began having trouble speaking. Her speech was slurred. No underlying medical condition has ever been discovered.

On July 9, 1993 Cooper was given two options. First, she could continue to be paid for 90 days, but agree that her employment would conclude at the end of that time; or second, she could be on probation for 90 days and if her speech did not improve, then she would be terminated. There was no reason to believe her speech would improve and she chose the first option.

Law:
1. To establish a *prima facie* case of unlawful discharge under the ADA, Cooper must establish:

A. that she is a disabled person within the meaning of the ADA;

B. that she is qualified, with or without reasonable accommodation, to perform the essential functions of the job; and

C. that the employer terminated her because of her disability.

2. The district court held that Cooper was not constructively discharged because a reasonable person in her position would not have felt that she was forced to quit because of intolerable and discriminatory working conditions.

3. But the constructive discharge standard from other types of employment discrimination cases is inapplicable. In this case, Neiman Marcus gave Cooper two options -- either of which would lead to her termination in 90 days.

4. The district court also analogizes that this case is similar to ADEA reduction in force cases in which an older worker can choose an early retirement option or continue to work with no promise that he will be retained.

5. But Cooper was not given the option of continuing to work indefinitely under any conditions. One way or the other, Cooper's employment was to be terminated in 90 days.

6. Because the district court erred in determining that Cooper was not constructively discharged, this case is reversed and remanded for further proceedings on whether the discharge was in violation of the ADA.

United States Court of Appeals,Ninth Circuit.

COOPER v. NEIMAN MARCUS GROUP

Carol N. COOPER, An Individual, Plaintiff-Appellant, v. NEIMAN MARCUS GROUP, A Delaware Corporation, Susan B. Zegers, an Individual, Maria Dempsey Rebolledo, an Individual, Defendants-Appellees.

No. 96-15068.

Argued and Submitted March 3, 1997. -- September 11, 1997

Before: REINHARDT, HALL and THOMPSON, Circuit Judges.

Sally Clifford Shanley, Scottsdale, AZ, for plaintiff-appellant.David A. Selden, Julie A. Pace, Quarles & Brady, Phoenix, AZ, for defendant-appellee.

Carol N. Cooper appeals the grant of summary judgment in favor of defendants, including her employer Neiman Marcus Group, on her claim of constructive discharge under the Americans with Disabilities Act. We reverse.

BACKGROUND

In 1984, Cooper began working as an Executive Secretary with Neiman Marcus at its store in Newport Beach, California. She was transferred in 1991 to the Scottsdale, Arizona store and assigned to work as a secretary for Susan Zegers and other executive staff. Although she was not given a written job description until after this dispute arose, in 1987 Cooper was asked, in a job evaluation questionnaire, to outline what she thought her job entailed. She wrote: "[s]ee that all facets of the executive office run in smooth, efficient manner-relieving executive staff and store manager in particular of routine matters. Serve as key communication post for the store, a resource for executive staff, store personnel and customers as well as Dallas."

During the summer of 1992, Cooper began having trouble speaking, which manifested itself as slurred speech. Her condition worsened from June to December and she began to notice that her speech was slurred more often and that she was unable to enunciate clearly. She was diagnosed with dysarthria or slurred speech, but no underlying medical condition has ever been found.

The first time Neiman Marcus raised a question concerning Cooper's performance was in February 1993, when Susan Zegers, the store manager and person who had hired Cooper, discussed with her the deterioration in her speech. In early April 1993, Cooper met with Zegers and Maria Dempsey-Rebolledo, the human resources manager, who recommended that she take a thirty-day leave of absence in order to undergo speech therapy. Cooper declined their offer, stating that she wanted to continue working while she obtained the necessary therapy. All three agreed to that compromise. Neiman Marcus, however, continued to be unhappy with her speech.

Cooper underwent testing and evaluation at the Arizona State University Department of Speech and Hearing Science on April 20, 1993. Although her speech was slurred, the evaluator indicated that "she demonstrated sufficient loudness during testing procedures . [and] receptive and expressive language skills, voice quality, and fluency were judged to be within normal limits." Cooper was diagnosed with dysarthria, but "no abnormalities of the oral mechanism" were found. Cooper was labeled a "good candidate for speech therapy" and another evaluation was ordered in six months. However, even with the prescribed therapy Cooper's speech did not improve.

Zegers and Dempsey again met with Cooper on May 25, 1993 and agreed that Cooper would continue to attend speech therapy and that she would be permitted to leave work early to do so. The notes memorializing that meeting state that no action would be taken until the end of June, at which point Cooper's progress would be evaluated to see if she was speaking at the "standard level." According to the notes, "[i]t was discussed that our expectation was that Carol needed to be able to do the core of her job to a standard level which was verbally communicating one on one as well as answering the phone."

Beginning June 15, 1993, Zegers began documenting complaints from individuals both in and outside the store who had commented about Cooper's speech. While some of the individuals described her as sounding drunk or as if she were taking drugs, none ever complained that Cooper failed to provide all the requested information.

In response to Cooper's request for a description of her duties, Zegers and Dempsey prepared a description of her functions as executive secretary in July 1993. The description outlined a job that included extensive communication with those both in and outside the store and included tasks such as "[i]nitiate calls for Store Manager and Executives as business dictates" and "[c]ommunicate to all levels of staff within the store and within the total company." The description also stated that one of Cooper's duties was to assume responsibility for all communications by the Public Relations staff in their absence. In a deposition taken after this litigation commenced, Cooper denied that this had previously been one of her responsibilities. Moreover, Cooper states that she was less than confident in the accuracy of the job description because it was created after she made the request and did not come from the corporate headquarters.

On July 9, 1993, another meeting was held at which Zegers and Dempsey informed Cooper that her speech had failed to improve and as memorialized in a memo by Dempsey, "[b]ecause

communicating is the core of [the] job and [you are] unable to perform this to a standard level a 90 day probation will begin." (emphasis added). Cooper was then given two options as recorded in the memorandum:

Option # 1

A 90 day probation would commence in which you opt to formally advise us that you will leave Neiman Marcus and collect full pay for the 90 day period. This allows you to take this time to seek outside retraining or opportunities. After this 90 day period termination results, a two and a half week severance would ensue. In addition any unused vacation would be paid at this time.

Option # 2

A 90 day probation would commence in which you would continue to work and attempt to perform to a standard level in your job, specifically focusing on your communication being at a standard level, whether by phone or in person. If you did not perform to a standard level termination would result and payment of the two and a half weeks severance would ensue. In addition any unused vacation would be paid at this time.

At this meeting, Cooper asked about the possibility of applying for another position in the store that did not require significant verbal communication, such as gift wrapping. Dempsey stated that the pay would be substantially lower and that there were no positions at that time.

In a memorandum to Dempsey and Zegers dated July 22, 1993, Cooper again inquired about other opportunities in the company. She also explained that she thought she was doing her job well and that she was communicating effectively. In response to the complaints Zegers began collecting in June, Cooper suggested that perhaps some of Zegers' outside calls could be rerouted to another secretary. Cooper did not think that this would impose significant hardship on the company.

At a July 27 meeting, Zegers and Dempsey discussed Cooper's suggested job modifications with her. According to the memorandum memorializing this meeting, Dempsey explained to Cooper that because communication was the core of her job and because her "speech and verbal communication continue to be below the standard level of this position," no accommodation could be made. Cooper then agreed to take the 30-day leave of absence, originally offered her in April 1993, commencing on August 1. On August 27, she was to inform Neiman Marcus as to which option she was choosing with respect to the 90-day "probationary period".

On July 30, Cooper was given a job performance evaluation prepared by Zegers for the period covering June 1992 to May 1993. She was rated at either "meets requirements" or "exceeds requirements" in the clerical and operational components of her job. In the areas of interpersonal skills and customer service, she was rated "below requirements" and "unsatisfactory," respectively. One written comment noted that "[t]he deterioration of Carol's speech throughout this time has affected her level of enthusiasm." Zegers also stated that her communication level "has been significantly below standard due to the dramatic deterioration of

Carol's speech." In a place on the form for Cooper to comment on her evaluation she wrote "I do not feel this review is a fair evaluation when I am told in conversation that the only problem area with my job performance is with speech communication-primarily on the phone." In a memorandum Cooper wrote to document a conversation that she had regarding the review with Zegers and Sue Franklin, Dempsey's assistant human resources manager, she characterized the review as "unfair and prejudicial." Cooper asked Zegers to erase some of the more offensive commentary contained within the review, which she did. Zegers did not, however, adjust the overall ratings.

At some point during the leave period, Cooper expressed an interest in working in the gift gallery. Neiman Marcus refused her request on the ground that the job required speaking skills. By this time, Cooper had hired an attorney, who sent a letter dated August 25, 1993, stating that during all the relevant periods she had continued to do her job effectively. Furthermore, he stated, she spoke in a manner that was completely understandable and she was capable of performing all of her job functions adequately. Zegers and Dempsey took the position that at that time there were no job openings available in the entire company that would be suitable for Cooper due to the levels of communication skills required.

Although Cooper believed that she was communicating effectively, she knew that her speech had not improved notwithstanding speech therapy and that there was no evidence of any prospect for improvement. More important, she was aware that Neiman Marcus had concluded that the level at which she was able to communicate was not acceptable. In August, therefore, she decided to select Option # 1 of the two options given to her at the July 9 meeting.

Cooper then brought this action for violation of the Americans With Disabilities Act (ADA), 42 U.S.C. § 12101 et seq. violation of the Arizona Civil Rights Act on the ground of discrimination on the basis of disability, intentional infliction of emotional distress; defamation by self-publication, for having to explain to prospective employers why she was terminated; and wrongful termination. ER 1. Cooper alleged that she was terminated in violation of the ADA, because she had a speech impediment, and that an attempt at reasonable accommodation had not been made.

The district court granted the defendants' motion for summary judgment on all counts. As to the ADA claim, the district judge held, that by electing to receive 90 days pay prior to termination, Cooper constructively resigned and she was therefore not discharged, constructively or otherwise. Cooper filed a motion to reconsider which was denied. She appealed the grant of summary judgment on her Americans with Disabilities Act claim.

DISCUSSION

The ADA prohibits "excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual." 42 U.S.C. § 12112. Discrimination under the ADA is defined as "limiting, segregating, or classifying a job applicant in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such . employee" and includes "utilizing standards, criteria, or methods of

administration-(A) that have the effect of discrimination on the basis of disability." Disability is defined as "a physical or mental impairment that substantially limits one or more of the major life activities." 42 U.S.C. § 12102(2)(A). Major life activities include "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(i) (emphasis added).

In order to prevail on a claim of unlawful discharge under the ADA, the "plaintiff must establish: (1) that he is a disabled person within the meaning of the ADA; (2) that he is qualified, that is with or without reasonable accommodation (which he must describe), he is able to perform the essential functions of the job; and (3) that the employer terminated him because of his disability." Kennedy v. Applause, Inc., 90 F.3d 1477, 1481 (9th Cir.1996). In order to state a prima facie case under the ADA, Cooper must prove that she is a qualified individual with a disability who has been discharged because of the disability. Sanders v. Arneson Products, Inc., 91 F.3d 1351, 1353 (9th Cir.1996), cert. denied 520 U.S. 1116, 117 S.Ct. 1247, 137 L.Ed.2d 329 (1997). Cooper bears the burden of demonstrating that she can perform the essential functions of her job with or without reasonable accommodation. Kennedy, 90 F.3d at 1481. However, because the district court based its decision entirely on its conclusion that Cooper was not discharged, it never reached any of the other questions, including whether she was a qualified individual with a disability.

In holding that no discharge occurred, the district court analogized Cooper's case to constructive discharge cases in which the plaintiff has the burden of proving that, after an examination of the "totality of the circumstances, a reasonable person in [the employee's] position would have felt that he was forced to quit because of intolerable and discriminatory working conditions." Thomas v. Douglas, 877 F.2d 1428, 1434 (9th Cir.1989).

The constructive discharge line of cases is inapplicable here, because the facts and circumstances in this case are wholly dissimilar to those in such cases. Constructive discharge cases involve the imposition on an employee of intolerable work-related conditions which make it impossible for him to continue in his job and cause him to abandon it. Cooper's claim here, however, is entirely different. It is that Neiman Marcus was unwilling to permit her to continue to perform her job, because, in Neiman Marcus' view, she was unable to speak at a "standard level". No work-related conditions existed that made the job so intolerable that a reasonable worker would have quit her employment. Instead, according to Cooper, Neiman Marcus made the decision to discharge her, giving her only two options regarding the manner of her departure, under either of which her termination would be effective within 90 days.

On the basis of the record before us, there is at the most a genuine issue of material fact as to whether any improvement in Cooper's speech could have occurred in the foreseeable future. More likely, it appears that the parties are in agreement that there was no possibility of any short-term change for the better. Neiman Marcus repeatedly asserted that Cooper was "unable to perform" her job and that her speech was deteriorating. Cooper did not at any point assert her speech would improve, within the time allotted by Neiman-Marcus. To the contrary, Cooper's position was that her speech, as it was, was adequate for the job she held. On the record before us, it is clear that it was the disagreement over whether her speech met a

reasonable standard, permissible under the ADA, that led to her termination.

Given the evidence before us, we must assume for purposes of summary judgment that Cooper's speech would not have improved. Although her speech condition had been diagnosed as dysarthria, no underlying medical condition had been discovered and as both Cooper and Neiman Marcus were aware, Cooper's speech had not improved with therapy over the course of many months. While the two options provided Cooper may have been cast in a form that purported to offer her a choice, in actuality the choice was wholly illusory. Neither option afforded her the opportunity to remain an employee of Neiman Marcus beyond 90 days. She was for all intents and purposes terminated with 90 days notice and given only the option of continuing to work during all or a part of that brief period, or to leave immediately. Moreover, under the second option she would likely have been terminated well before the end of the option period because it required that during the option period she "perform to a standard level [or] termination would result." Neither option allowed Cooper to keep her job past the 90 day period because, as we must assume for purposes of this appeal, she was unable to speak to the standard established by Neiman Marcus and there was no prospect that her speech would improve. Thus, whether Cooper continued working or not during the brief pre-termination period, under both options she was to be terminated no later than the end of the 90 days.

For similar reasons, the district court's alternative analogy of Cooper's case to an Age Discrimination in Employment Act (ADEA) case is also unavailing. The district court compared the choice offered Cooper to the choice aging employees are sometimes given either to stay at their jobs with the normal risks of termination for cause or a reduction in force, or to accept the employer's offer of an early retirement package. Henn v. National Geographic Society, 819 F.2d 824, 826 (7th Cir.), cert. denied 484 U.S. 964, 108 S.Ct. 454, 98 L.Ed.2d 394 (1987). Henn involved a company's efforts to reduce its work force through the offering of early retirement incentive packages. The employees were given the option of accepting substantial economic benefits and retiring immediately or remaining on the job for as long as they could perform the work properly. In Henn, the choice was real. Those who declined the benefit package would retain their jobs, subject only to the same rigors and pressures as they were subject to prior to the offer of early retirement-the same rigors and pressure to which all other employees were subject. Cooper simply was not afforded the option enjoyed by the plaintiffs in Henn. She was not given the choice of continuing to work indefinitely under any conditions. To the contrary, in view of the deterioration in her speech, her employment was to be terminated at the end of 90 days at the latest, whichever option she took.[1]

Neither the constructive discharge line of cases nor the voluntary option cases under ADEA is controlling in ADA litigation. The considerations are substantially different. While there are no cases under the ADA that address facts similar to those present here, the proper result on this appeal is not difficult to discern. Under the facts, as we must view them, Cooper did not elect to resign in order to receive a benefit package any more than she resigned because the working conditions were intolerable. To the contrary, Cooper was effectively discharged by her employer because it concluded that she was unable to speak in the manner it considered necessary for the proper performance of her job. Whether the company was correct in that assessment, and whether, if so, the discharge was lawful under the ADA is not now before us.

On this appeal we decide only that the district court erred as a matter of law in holding that Cooper was not discharged.

Accordingly, we reverse the grant of summary judgment in favor of Neiman Marcus and remand for further proceedings.

REVERSED and REMANDED for further proceedings consistent with this opinion.

FOOTNOTES

1. Under both options, Cooper would receive no more than 90 days pay, plus two and a half weeks severance allowance, and any unused vacation. The principal difference in the options related to whether she would perform work during all, part, or none of the 90 days for which she would be receiving termination pay, and whether she would actually receive the full 90 days' compensation. Under either option, however, Cooper's employment was effectively terminated.

REINHARDT, Circuit Judge:

Public Law 110–325
110th Congress

An Act

To restore the intent and protections of the Americans with Disabilities Act of 1990.

Sept. 25, 2008
[S. 3406]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

ADA Amendments Act of 2008.
42 USC 12101 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "ADA Amendments Act of 2008".

42 USC 12101 note.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) in enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and provide broad coverage;

(2) in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;

(3) while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act of 1973, that expectation has not been fulfilled;

(4) the holdings of the Supreme Court in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect;

(5) the holding of the Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) further narrowed the broad scope of protection intended to be afforded by the ADA;

(6) as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities;

(7) in particular, the Supreme Court, in the case of Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), interpreted the term "substantially limits" to require a greater degree of limitation than was intended by Congress; and

(8) Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term "substantially limits" as "significantly restricted" are inconsistent with congressional intent, by expressing too high a standard.

(b) PURPOSES.—The purposes of this Act are—

(1) to carry out the ADA's objectives of providing "a clear and comprehensive national mandate for the elimination of discrimination" and "clear, strong, consistent, enforceable standards addressing discrimination" by reinstating a broad scope of protection to be available under the ADA;

(2) to reject the requirement enunciated by the Supreme Court in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) and its companion cases that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures;

(3) to reject the Supreme Court's reasoning in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in School Board of Nassau County v. Arline, 480 U.S. 273 (1987) which set forth a broad view of the third prong of the definition of handicap under the Rehabilitation Act of 1973;

(4) to reject the standards enunciated by the Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), that the terms "substantially" and "major" in the definition of disability under the ADA "need to be interpreted strictly to create a demanding standard for qualifying as disabled," and that to be substantially limited in performing a major life activity under the ADA "an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives";

(5) to convey congressional intent that the standard created by the Supreme Court in the case of Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) for "substantially limits", and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis; and

(6) to express Congress' expectation that the Equal Employment Opportunity Commission will revise that portion of its current regulations that defines the term "substantially limits" as "significantly restricted" to be consistent with this Act, including the amendments made by this Act.

SEC. 3. CODIFIED FINDINGS.

Section 2(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society,

yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;";

(2) by striking paragraph (7); and

(3) by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively.

SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUCTION.

(a) DEFINITION OF DISABILITY.—Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102) is amended to read as follows:

"SEC. 3. DEFINITION OF DISABILITY.

"As used in this Act:

"(1) DISABILITY.—The term 'disability' means, with respect to an individual—

"(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

"(B) a record of such an impairment; or

"(C) being regarded as having such an impairment (as described in paragraph (3)).

"(2) MAJOR LIFE ACTIVITIES.—

"(A) IN GENERAL.—For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

"(B) MAJOR BODILY FUNCTIONS.—For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

"(3) REGARDED AS HAVING SUCH AN IMPAIRMENT.—For purposes of paragraph (1)(C):

"(A) An individual meets the requirement of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

"(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

"(4) RULES OF CONSTRUCTION REGARDING THE DEFINITION OF DISABILITY.—The definition of 'disability' in paragraph (1) shall be construed in accordance with the following:

"(A) The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.

"(B) The term 'substantially limits' shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

"(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

"(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

"(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

"(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

"(II) use of assistive technology;

"(III) reasonable accommodations or auxiliary aids or services; or

"(IV) learned behavioral or adaptive neurological modifications.

"(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

"(iii) As used in this subparagraph—

"(I) the term 'ordinary eyeglasses or contact lenses' means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

"(II) the term 'low-vision devices' means devices that magnify, enhance, or otherwise augment a visual image.".

(b) CONFORMING AMENDMENT.—The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) is further amended by adding after section 3 the following:

42 USC 12103.

"SEC. 4. ADDITIONAL DEFINITIONS.

"As used in this Act:

"(1) AUXILIARY AIDS AND SERVICES.—The term 'auxiliary aids and services' includes—

"(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

"(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

"(C) acquisition or modification of equipment or devices; and

"(D) other similar services and actions.

"(2) STATE.—The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.".

(c) AMENDMENT TO THE TABLE OF CONTENTS.—The table of contents contained in section 1(b) of the Americans with Disabilities

Act of 1990 is amended by striking the item relating to section 3 and inserting the following items:

"Sec. 3. Definition of disability.
"Sec. 4. Additional definitions.".

SEC. 5. DISCRIMINATION ON THE BASIS OF DISABILITY.

(a) ON THE BASIS OF DISABILITY.—Section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) is amended—

(1) in subsection (a), by striking "with a disability because of the disability of such individual" and inserting "on the basis of disability"; and

(2) in subsection (b) in the matter preceding paragraph (1), by striking "discriminate" and inserting "discriminate against a qualified individual on the basis of disability".

(b) QUALIFICATION STANDARDS AND TESTS RELATED TO UNCORRECTED VISION.—Section 103 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12113) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and inserting after subsection (b) the following new subsection:

"(c) QUALIFICATION STANDARDS AND TESTS RELATED TO UNCORRECTED VISION.—Notwithstanding section 3(4)(E)(ii), a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.".

(c) CONFORMING AMENDMENTS.—

(1) Section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(8)) is amended—

(A) in the paragraph heading, by striking "WITH A DISABILITY"; and

(B) by striking "with a disability" after "individual" both places it appears.

(2) Section 104(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12114(a)) is amended by striking "the term 'qualified individual with a disability' shall" and inserting "a qualified individual with a disability shall".

SEC. 6. RULES OF CONSTRUCTION.

(a) Title V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201 et seq.) is amended—

(1) by adding at the end of section 501 the following: 42 USC 12201.

"(e) BENEFITS UNDER STATE WORKER'S COMPENSATION LAWS.—Nothing in this Act alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs.

"(f) FUNDAMENTAL ALTERATION.—Nothing in this Act alters the provision of section 302(b)(2)(A)(ii), specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

"(g) CLAIMS OF NO DISABILITY.—Nothing in this Act shall provide the basis for a claim by an individual without a disability

that the individual was subject to discrimination because of the individual's lack of disability.

"(h) REASONABLE ACCOMMODATIONS AND MODIFICATIONS.—A covered entity under title I, a public entity under title II, and any person who owns, leases (or leases to), or operates a place of public accommodation under title III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 3(1) solely under subparagraph (C) of such section.";

42 USC 12206–12211; 29 USC 706; 42 USC 12212, 12213.

(2) by redesignating section 506 through 514 as sections 507 through 515, respectively, and adding after section 505 the following:

42 USC 12205a.

"SEC. 506. RULE OF CONSTRUCTION REGARDING REGULATORY AUTHORITY.

"The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this Act includes the authority to issue regulations implementing the definitions of disability in section 3 (including rules of construction) and the definitions in section 4, consistent with the ADA Amendments Act of 2008."; and

42 USC 12210.

(3) in section 511 (as redesignated by paragraph (2)) (42 U.S.C. 12211), in subsection (c), by striking "511(b)(3)" and inserting "512(b)(3)".

(b) The table of contents contained in section 1(b) of the Americans with Disabilities Act of 1990 is amended by redesignating the items relating to sections 506 through 514 as the items relating to sections 507 through 515, respectively, and by inserting after the item relating to section 505 the following new item:

"Sec. 506. Rule of construction regarding regulatory authority.".

SEC. 7. CONFORMING AMENDMENTS.

Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

(1) in paragraph (9)(B), by striking "a physical" and all that follows through "major life activities", and inserting "the meaning given it in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)"; and

(2) in paragraph (20)(B), by striking "any person who" and all that follows through the period at the end, and inserting "any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).".

SEC. 8. EFFECTIVE DATE. 29 USC 705 note.

This Act and the amendments made by this Act shall become effective on January 1, 2009.

Approved September 25, 2008.

LEGISLATIVE HISTORY—S. 3406:

CONGRESSIONAL RECORD, Vol. 154 (2008):
Sept. 11, considered and passed Senate.
Sept. 17, considered and passed House.

○

Supreme Court of Florida

PROCLAMATION
In Re: Twentieth Anniversary of the ADA

WHEREAS, the Americans with Disabilities Act was passed by the United States Congress on July 26, 1990, to ensure the civil rights of citizens with disabilities; and

WHEREAS, the Supreme Court of Florida and the Florida State Courts System have committed themselves to full and fair access to courts for all residents of this great State, as guaranteed by Article I, section 21 of the Constitution of the great State of Florida; and

WHEREAS, the Florida courts strive to provide reasonable accommodations for judges and court employees with disabilities; provide auxiliary aids and services that ensure effective communication; and take other steps that afford accessibility of court services, programs, and activities; and

WHEREAS, the Florida State Courts System affirms the principals of equity and inclusion for persons with disabilities as embodied in the Americans with Disabilities Act, the laws of the State of Florida, and the policies and procedures of the state courts; and

NOW, THEREFORE, I, Charles T. Canady, Chief Justice of Florida, do hereby proclaim that July 2010 shall be known within the State Courts System as a month of commemoration in honor the Twentieth Anniversary of the passage of the Americans with Disabilities Act. I reaffirm the court system's commitment to full compliance with the Act, and I call upon judicial officers and court staff members to renew their efforts to eliminate obstacles that prevent full inclusion of all Floridians in the State Courts System.

AND THE SAME is hereby ordered and done at Tallahassee on this First Day of July, 2010.

Chief Justice Charles T. Canady

ATTEST:

Thomas D. Hall, Clerk of Court

EXHIBIT
Appendix 4.2

GENERAL PROVISIONS

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§ 701. Findings; purpose; policy

(a) Findings

Congress finds that—

(1) millions of Americans have one or more physical or mental disabilities and the number of Americans with such disabilities is increasing;

(2) individuals with disabilities constitute one of the most disadvantaged groups in society;

(3) disability is a natural part of the human experience and in no way diminishes the right of individuals to—

(A) live independently;

(B) enjoy self-determination;

(C) make choices;

(D) contribute to society;

(E) pursue meaningful careers; and

(F) enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society;

(4) increased employment of individuals with disabilities can be achieved through implementation of statewide workforce investment systems under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] that provide meaningful and effective participation for individuals with disabilities in workforce investment activities and activities carried out under the vocational rehabilitation program established under subchapter I of this chapter, and through the provision of independent living services, support services, and meaningful opportunities for employment in integrated work settings through the provision of reasonable accommodations;

(5) individuals with disabilities continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and public services; and

(6) the goals of the Nation properly include the goal of providing individuals with disabilities with the tools necessary to—

(A) make informed choices and decisions; and

(B) achieve equality of opportunity, full inclusion and integration in society, employment, independent living, and economic and social self-sufficiency, for such individuals.

(b) Purpose

The purposes of this chapter are—

(1) to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society, through—

(A) statewide workforce investment systems implemented in accordance with title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] that include, as integral components, comprehensive and coordinated state-of-the-art programs of vocational rehabilitation;

(B) independent living centers and services;

(C) research;

(D) training;

(E) demonstration projects; and

(F) the guarantee of equal opportunity; and

EXHIBIT

Appendix 5

(2) to ensure that the Federal Government plays a leadership role in promoting the employment of individuals with disabilities, especially individuals with significant disabilities, and in assisting States and providers of services in fulfilling the aspirations of such individuals with disabilities for meaningful and gainful employment and independent living.

(c) Policy

It is the policy of the United States that all programs, projects, and activities receiving assistance under this chapter shall be carried out in a manner consistent with the principles of—

(1) respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities;

(2) respect for the privacy, rights, and equal access (including the use of accessible formats), of the individuals;

(3) inclusion, integration, and full participation of the individuals;

(4) support for the involvement of an individual's representative if an individual with a disability requests, desires, or needs such support; and

(5) support for individual and systemic advocacy and community involvement.

(Pub. L. 93–112, § 2, as added Pub. L. 105–220, title IV, § 403, Aug. 7, 1998, 112 Stat. 1095; amended Pub. L. 105–277, div. A, § 101(f) [title VIII, § 402(b)(2)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–413.)

References in Text

The Workforce Investment Act of 1998, referred to in subsecs. (a)(4) and (b)(1)(A), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

Prior Provisions

A prior section 701, Pub. L. 93–112, § 2, Sept. 26, 1973, 87 Stat. 357; Pub. L. 95–602, title I, § 122(a)(1), Nov. 6, 1978, 92 Stat. 2984; Pub. L. 99–506, title I, § 101, Oct. 21, 1986, 100 Stat. 1808; Pub. L. 102–569, title I, § 101, Oct. 29, 1992, 106 Stat. 4346, related to findings, purpose, and policy, prior to repeal by Pub. L. 105–220, title IV, § 403, Aug. 7, 1998, 112 Stat. 1093.

Amendments

1998—Pub. L. 105–277 made technical amendment in original to section designation and catchline.

Short Title of 2010 Amendment

Pub. L. 111–213, § 1, July 29, 2010, 124 Stat. 2343, provided that: "This Act [enacting provisions set out as notes under sections 796f–1 and 796f–2 of this title] may be cited as the 'Independent Living Centers Technical Adjustment Act'."

Short Title of 1998 Amendment

Pub. L. 105–220, title IV, § 401, Aug. 7, 1998, 112 Stat. 1092, provided that: "This title [see Tables for classification] may be cited as the 'Rehabilitation Act Amendments of 1998'."

Short Title of 1993 Amendment

Pub. L. 103–73, § 1, Aug. 11, 1993, 107 Stat. 718, provided that: "This Act [enacting sections 753 and 753a of this title, amending sections 706, 718 to 718b, 721 to 723, 725, 730 to 732, 744, 761a, 762, 771a, 777, 777a, 777f, 783, 791, 792, 794e, 795l, 796, 796c, 796d to 796e–2, 796f to 796f–4, and 796k of this title, sections 1431, 4301 to 4305, 4331, 4332, 4351, 4353 to 4357, 4359, 4359a, and 4360 of Title 20, Education, and section 46 of Title 41, Public Contracts, enacting provisions set out as notes under section 725 of this title and section 4301 of Title 20, and amending provisions set out as a note under this section] may be cited as the 'Rehabilitation Act Amendments of 1993'."

Short Title of 1992 Amendment

Section 1(a) of Pub. L. 102–569 provided that: "This Act [see Tables for classification] may be cited as the 'Rehabilitation Act Amendments of 1992'."

Short Title of 1991 Amendment

Pub. L. 102–52, § 1, June 6, 1991, 105 Stat. 260, provided that: "This Act [amending sections 720, 732, 741, 761, 771, 772, 774, 775, 777, 777a, 777f, 785, 792, 795f, 795i, 795q, 796i, and 1904 of this title and section 1475 of Title 20, Education] may be cited as the 'Rehabilitation Act Amendments of 1991'."

Short Title of 1986 Amendment

Section 1(a) of Pub. L. 99–506 provided that: "This Act [enacting sections 716, 717, 752, 794d, 795j to 795q, and 796d–1 of this title and section 2000d–7 of Title 42, The Public Health and Welfare, amending this section and sections 702, 705, 706, 711 to 715, 720 to 724, 730 to 732, 740, 741, 750, 751, 760 to 761b, 762, 762a, 770 to 777b, 777f, 780, 781, 783, 785, 791 to 794, 794c, 795, 795d to 795i, 796a, 796b, 796d to 796i, and 1904 of this title, and section 155a of former Title 36, Patriotic Societies and Observances, repealing section 751 of this title, and enacting provisions set out as notes under this section and sections 706, 730, 761a, and 795m of this title and section 1414 of Title 20, Education] may be cited as the 'Rehabilitation Act Amendments of 1986'."

Short Title of 1984 Amendment

Pub. L. 98–221, § 1, Feb. 22, 1984, 98 Stat. 17, provided: "That this Act [enacting sections 780a and 1901 to 1906 of this title, amending sections 706, 712 to 714, 720 to 722, 730, 732, 741, 761 to 762a, 771, 772, 774, 775, 777, 777a, 777f, 780, 781, 783, 791, 792, 794c, 795a, 795c, 795f, 795g, 795i, 796e, and 796i of this title and sections 6001, 6012, 6033, 6061, and 6081 of Title 42, The Public Health and Welfare, repealing section 777c of this title, enacting provisions set out as a note under section 1901 of this title and amending provisions set out as a note under section 713 of this title] may be cited as the 'Rehabilitation Amendments of 1984'."

Short Title of 1978 Amendment

Section 1 of Pub. L. 95–602 provided that: "This Act [enacting sections 710 to 715, 751, 761a, 761b, 762a, 775, 777 to 777f, 780 to 785, 794a to 794c, 795 to 795i, and 796 to 796i of this title and section 6000 of Title 42, The Public Health and Welfare, amending this section, sections 702, 706, 709, 720 to 724, 730 to 732, 740, 741, 750, 760 to 762, 770 to 774, 776, and 792 to 794 of this title, section 1904 [now 3904] of Title 38, Veterans' Benefits, and sections 6001, 6008 to 6012, 6031 to 6033, 6061 to 6065, 6067, 6081, and 6862 of Title 42, repealing sections 764, 786, and 787 of this title and section 6007 of Title 42, omitting sections 6041 to 6043 of Title 42, enacting provisions set out as notes under sections 713 and 795 of this title and sections 6000 and 6001 of Title 42, and repealing a provision set out as a note under section 6001 of Title 42] may be cited as the 'Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978'."

Short Title of 1976 Amendment

Pub. L. 94–230, § 1, Mar. 15, 1976, 90 Stat. 211, provided that: "This Act [amending sections 720, 732, 741, 761, 771, 772, 774, 775, 783, 785, and 792 of this title and enacting provisions set out as a note under section 720 of this title] may be cited as the 'Rehabilitation Act Extension of 1976'."

Short Title of 1974 Amendment

Pub. L. 93–516, title I, § 100, Dec. 7, 1974, 88 Stat. 1617, provided that: "This title [amending sections 702, 706, 720 to 722, 732, 741, 750, 761, 762, 771, 772, 774 to 776, 783, 785, and 792 of this title and enacting provisions set out as a note under section 702 of this title] shall be known as the 'Rehabilitation Act Amendments of 1974'."

An identical provision is contained in Pub. L. 93–651, title I, § 100, Nov. 21, 1974, 89 Stat. 2–3.

Short Title

Pub. L. 93–112, § 1(a), as added by Pub. L. 105–220, title IV, § 403, Aug. 7, 1998, 112 Stat. 1093, and amended by Pub. L. 105–277, div. A, § 101(f) [title VIII, § 402(b)(1)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–412, provided that: "This Act [enacting this chapter] may be cited as the 'Rehabilitation Act of 1973'."

Pub. L. 93–112, title VI, § 601, as added by Pub. L. 105–220, title IV, § 409, Aug. 7, 1998, 112 Stat. 1210, provided that: "This title [enacting subchapter VI of this chapter] may be cited as the 'Employment Opportunities for Individuals With Disabilities Act'."

Pub. L. 93–112, § 1, Sept. 26, 1973, 87 Stat. 355, provided in part that Pub. L. 93–112, which enacted this chapter and repealed sections 31 to 41c and 42–1 to 42b of this title, could be cited as the "Rehabilitation Act of 1973", prior to repeal by Pub. L. 105–220, title IV, § 403, Aug. 7, 1998, 112 Stat. 1093.

Pub. L. 93–112, title VI, § 601, as added by Pub. L. 95–602, title II, § 201, Nov. 6, 1978, 92 Stat. 2989, and amended by Pub. L. 102–569, title I, § 102(p)(34), Oct. 29, 1992, 106 Stat. 4360, provided that title VI of Pub. L. 93–112, enacting former subchapter VI of this chapter, could be cited as the "Employment Opportunities for Handicapped

Individuals Act", prior to the general amendment of title VI of Pub. L. 93–112 by Pub. L. 105–220, title IV, § 409, Aug. 7, 1998, 112 Stat. 1210.

Ex. Ord. No. 11758. Delegation of Authority of the President

Ex. Ord. No. 11758, Jan. 15, 1974, 39 F.R. 2075, as amended by Ex. Ord. No. 11784, May 30, 1974, 39 F.R. 19443; Ex. Ord. No. 11867, June 19, 1975, 40 F.R. 26253; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code and as President of the United States of America, it is hereby ordered as follows:

Section 1. The Director of the Office of Management and Budget is hereby designated and empowered to exercise, without approval, ratification, or other action of the President, the authority of the President under section 500(a) of the Rehabilitation Act of 1973 (87 Stat. 390, 29 U.S.C. 790) with respect to the transfer of unexpended appropriations.

Sec. 2. The Secretary of Labor is hereby designated and empowered to exercise, without approval, ratification, or other action of the President, the authority of the President (1) under section 503(a) of the Rehabilitation Act of 1973 [29 U.S.C. 793 (a)] to prescribe regulations, after consultation with the Secretary of Defense and the Administrator of General Services, with respect to the employment of qualified handicapped individuals under Federal procurement contracts, and (2) under section 503(c) of that act [29 U.S.C. 793 (c)] with respect to prescribing, by regulation, guidelines for waiving the requirements of section 503 of the act [29 U.S.C. 793]. Changes in any regulations prescribed by the Secretary pursuant to the preceding sentence shall be made only after consultation with the Secretary of Defense and the Administrator of General Services.

Sec. 3. The head of a Federal agency may, in conformity with the provisions of section 503(c) of the Rehabilitation Act of 1973 [29 U.S.C. 793 (c)], and regulations issued by the Secretary of Labor pursuant to section 2 of this order, exempt any contract and, following consultation with the Secretary of Labor, any class of contracts, from the requirements of section 503 of the act [29 U.S.C. 793].

Sec. 4. The Federal Acquisition Regulations and, to the extent necessary, any supplemental or comparable regulation issued by any agency of the executive branch shall, following consultation with the Secretary of Labor, be amended to require, as a condition of entering into, renewing or extending any contract subject to the provisions of section 503 of the Rehabilitation Act of 1973 [29 U.S.C. 793], inclusion of a provision requiring compliance with that section and regulations issued by the Secretary pursuant to section 2 of this order.

Ex. Ord. No. 13078. Increasing Employment of Adults With Disabilities

Ex. Ord. No. 13078, Mar. 13, 1998, 63 F.R. 13111, as amended by Ex. Ord. No. 13172, Oct. 25, 2000, 65 F.R. 64577; Ex. Ord. No. 13187, § 4(b), Jan. 10, 2001, 66 F.R. 3858, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to increase the employment of adults with disabilities to a rate that is as close as possible to the employment rate of the general adult population and to support the goals articulated in the findings and purpose section of the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.], it is hereby ordered as follows:

Section 1. Establishment of National Task Force on Employment of Adults with Disabilities.

(a) There is established the "National Task Force on Employment of Adults with Disabilities" ("Task Force"). The Task Force shall comprise the Secretary of Labor, Secretary of Education, Secretary of Veterans Affairs, Secretary of Health and Human Services, Commissioner of Social Security, Secretary of the Treasury, Secretary of Commerce, Secretary of Transportation, Director of the Office of Personnel Management, Administrator of the Small Business Administration, the Chair of the Equal Employment Opportunity Commission, the Chairperson of the National Council on Disability, the Chairperson of the President's Disability Employment Partnership Board., [sic] and such other senior executive branch officials as may be determined by the Chair of the Task Force.

(b) The Secretary of Labor shall be the Chair of the Task Force; the Chairperson of the President's Disability Employment Partnership Board. [sic] shall be the Vice Chair of the Task Force.

(c) The purpose of the Task Force is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general adult population. The Task Force shall develop and recommend to the President, through the Chair of the Task Force, a coordinated Federal policy to reduce employment barriers for persons with disabilities. Policy recommendations may cover such areas as discrimination, reasonable accommodations, inadequate access to health care, lack of consumer-driven, long-term supports and services, transportation, accessible and integrated housing, telecommunications, assistive technology, community services, child care, education, vocational rehabilitation, training services, job retention, on-the-job supports, and economic incentives to work. Specifically, the Task Force shall:

(1) analyze the existing programs and policies of Task Force member agencies to determine what changes, modifications, and innovations may be necessary to remove barriers to work faced by people with disabilities;

(2) develop and recommend options to address health insurance coverage as a barrier to employment for people with disabilities;

(3) subject to the availability of appropriations, analyze State and private disability systems (e.g., workers' compensation, unemployment insurance, private insurance, and State mental health and mental retardation systems) and their effect on Federal programs and employment of adults with disabilities;

(4) consider statistical and data analysis, cost data, research, and policy studies on public subsidies, employment, employment discrimination, and rates of return-to-work for individuals with disabilities;

(5) evaluate and, where appropriate, coordinate and collaborate on, research and demonstration priorities of Task Force member agencies related to employment of adults with disabilities;

(6) evaluate whether Federal studies related to employment and training can, and should, include a statistically significant sample of adults with disabilities;

(7) subject to the availability of appropriations, analyze youth programs related to employment (e.g., Employment and Training Administration programs, special education, vocational rehabilitation, school-to-work transition, vocational education, and Social Security Administration work incentives and other programs, as may be determined by the Chair and Vice Chair of the Task Force) and the outcomes of those programs for young people with disabilities;

(8) evaluate whether a single governmental entity or program should be established to provide computer and electronic accommodations for Federal employees with disabilities;

(9) consult with the President's Committee on Mental Retardation on policies to increase the employment of people with mental retardation and cognitive disabilities; and

(10) recommend to the President any additional steps that can be taken to advance the employment of adults with disabilities, including legislative proposals, regulatory changes, and program and budget initiatives.

(d)(1) The members of the Task Force shall make the activities and initiatives set forth in this order a high priority within their respective agencies within the levels provided in the President's budget.

(2) The Task Force shall issue its first report to the President by November 15, 1998. The Task Force shall issue a report to the President on November 15, 1999, November 15, 2000, and a final report on July 26, 2002, the 10th anniversary of the initial implementation of the employment provisions of the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.]. The reports shall describe the actions taken by, and progress of, each member of the Task Force in carrying out this order. The Task Force shall terminate 30 days after submitting its final report.

(e) As used herein, an adult with a disability is a person with a physical or mental impairment that substantially limits at least one major life activity.

Sec. 2. Specific activities by Task Force members and other agencies.

(a) To ensure that the Federal Government is a model employer of adults with disabilities, by November 15, 1998, the Office of Personnel Management, the Department of Labor, and the Equal Employment Opportunity Commission shall submit to the Task Force a review of Federal Government personnel laws, regulations, and policies and, as appropriate, shall recommend or implement changes necessary to improve Federal employment policy for adults with disabilities. This review shall include personnel practices and actions such as: hiring, promotion, benefits, retirement, workers' compensation, retention, accessible facilities, job accommodations, layoffs, and reductions in force.

(b) The Departments of Justice, Labor, Education, and Health and Human Services shall report to the Task Force by November 15, 1998, on their work with the States and others to ensure that the Personal Responsibility and Work Opportunity Reconciliation Act [probably means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see Tables for classification] is carried out in accordance with section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], as amended, and the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.], so that individuals with disabilities and their families can realize the full promise of welfare reform by having an equal opportunity for employment.

(c) The Departments of Education, Labor, Commerce, and Health and Human Services, the Small Business Administration, and the President's Committee on Employment of People with Disabilities shall work together and report to the Task Force by November 15, 1998, on their work to develop small business and entrepreneurial opportunities for adults with disabilities and strategies for assisting low-income adults, including those with disabilities[,] to create small businesses and micro-enterprises. These same agencies, in consultation with the Committee for Purchase from People Who Are Blind or Severely Disabled, shall assess the impact of the Randolph-Sheppard Act [20 U.S.C. 107 et seq.] vending program and the Javits-Wagner-O'Day Act [now 41 U.S.C. 8501 et seq.] on employment and small business opportunities for people with disabilities.

(d) The Departments of Transportation and Housing and Urban Development shall report to the Task Force by November 15, 1998, on their examination of their programs to see if they can be used to create new work incentives and to remove barriers to work for adults with disabilities.

(e) The Departments of Justice, Education, and Labor, the Equal Employment Opportunity Commission, and the Social Security Administration shall work together and report to the Task Force by November 15, 1998, on their work to propose remedies to the prevention of people with disabilities from successfully exercising their employment rights under the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.] because of the receipt of monetary benefits based on their disability and lack of gainful employment.

(f) The Bureau of Labor Statistics of the Department of Labor and the Census Bureau of the Department of Commerce, in cooperation with the Departments of Education and Health and Human Services, the National Council on Disability, and the President's Committee on Employment of People with Disabilities shall design and implement a statistically reliable and accurate method to measure the employment rate of adults with disabilities as soon as possible, but no later than the date of termination of the Task Force. Data derived from this methodology shall be published on as frequent a basis as possible.

(g) All executive agencies that are not members of the Task Force shall: (1) coordinate and cooperate with the Task Force; and (2) review their programs and policies to ensure that they are being conducted and delivered in a manner that facilitates and promotes the employment of adults with disabilities. Each agency shall file a report with the Task Force on the results of its review on November 15, 1998.

(h) To improve employment outcomes for persons with disabilities by addressing, among other things, the education, transition, employment, health and rehabilitation, and independent living issues affecting young people with disabilities, executive departments and agencies shall coordinate and cooperate with the Task Force to: (1) strengthen interagency research, demonstration, and training activities relating to young people with disabilities; (2) create a public awareness campaign focused on access to equal opportunity for young people with disabilities; (3) promote the views of young people with disabilities through collaboration with the Youth Councils authorized under the Workforce Investment Act of 1998 [Pub. L. 105–220, see Short Title note set out under section 9201 of Title 20, Education]; (4) increase access to and utilization of health insurance and health care for young people with disabilities through the formalization of the Federal Healthy and Ready to Work Interagency Council; (5) increase participation by young people with disabilities in postsecondary education and training programs; and (6) create a nationally representative Youth Advisory Council, to be funded and chaired by the Department of Labor, to advise the Task Force in conducting these and other appropriate activities.

Sec. 3. Cooperation. All efforts taken by executive departments and agencies under sections 1 and 2 of this order shall, as appropriate, further partnerships and cooperation with public and private sector employers, organizations that represent people with disabilities, organized labor, veteran service organizations, and State and local governments whenever such partnerships and cooperation are possible and would promote the employment and gainful economic activities of individuals with disabilities.

Sec. 4. Judicial Review. This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

William J. Clinton.

Ex. Ord. No. 13187. The President's Disability Employment Partnership Board

Ex. Ord. No. 13187, Jan. 10, 2001, 66 F.R. 3857, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to promote the employment of people with disabilities, it is hereby ordered as follows:

Section 1. Establishment and Composition of the Board. (a) There is hereby established the President's Disability Employment Partnership Board (Board).

(b) The Board shall be composed of not more than 15 members who shall be appointed by the President for terms of 2 years. The membership shall include individuals who are representatives of business (including small business), labor organizations, State or local government, disabled veterans, people with disabilities, organizations serving people with disabilities, and researchers or academicians focusing on issues relating to the employment of people with disabilities, and may include other individuals representing entities involved in issues relating to the employment of people with disabilities as the President finds appropriate.

(c) The President shall designate a Chairperson from among the members of the Board to serve a term of two years.

(d) Members and the Chairperson may be reappointed for subsequent terms and may continue to serve until their successors have been appointed.

Sec. 2. Functions. (a) The Board shall provide advice and information to the President, the Vice President, the Secretary of Labor, and other appropriate Federal officials with respect to facilitating the employment of people with disabilities, and shall assist in other activities that promote the formation of public-private partnerships, the use of economic incentives, the provision of technical assistance regarding entrepreneurship, and other actions that may enhance employment opportunities for people with disabilities.

(b) In carrying out paragraph (a) of this section, the Board shall:

(i) develop and submit to the Office of Disability Employment Policy in the Department of Labor a comprehensive written plan for joint public-private efforts to promote employment opportunities for people with disabilities and improve their access to financial institutions and commercial and business enterprises;

(ii) identify strategies that may be used by employers, labor unions, national and international organizations, and Federal, State, and local officials to increase employment opportunities for people with disabilities; and

(iii) coordinate with the Office of Disability Employment Policy in the Department of Labor in promoting the collaborative use of public and private resources to assist people with disabilities in forming and expanding small business concerns and in enhancing their access to Federal procurement and other relevant business opportunities. Public resources include those of the Department of Labor, the Small Business Administration, the Department of Commerce, the Department of Education, the Department of Defense, the Department of Treasury, the Department of Veterans Affairs, the Federal Communications Commission, and of executive departments and agency offices responsible for small, disadvantaged businesses utilization.

(c) The Board shall submit annual written reports to the President, who may apprise the Congress and other interested organizations and individuals on its activities, progress, and problems relating to maximizing employment opportunities for people with disabilities.

(d) The Chairperson of the Board shall serve as a member and Vice Chair of the National Task Force on Employment of Adults with Disabilities established under Executive Order 13078 of March 13, 1998 [set out above].

Sec. 3. Administration. (a) The Board shall meet when called by the Chairperson, at a time and place designated by the Chairperson. The Chairperson shall call at least two meetings per calendar year. The Chairperson may form subcommittees or working groups within the Board to address particular matters.

(b) The Chairperson may from time to time prescribe such rules, procedures, and policies relating to the activities of the Board as are not inconsistent with law or with the provisions of this order.

(c) Members of the Board shall serve without compensation but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Federal service (5 U.S.C. 5701–5707).

(d) The Department of Labor shall provide funding and appropriate support to assist the Board in carrying out the activities described in section 2 of this order, including necessary office space, equipment, supplies, services, and staff. The functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, that are applicable to the Commission, shall be performed by the Department of Labor in accordance with guidelines that have been issued by the Administrator of General Services.

(e) The heads of executive departments and agencies shall, to the extent permitted by law, provide the Board such information as it may need for purposes of carrying out the functions described in section 2 of this order.

Sec. 4. Prior Orders and Transition. (a) Executive Order 12640 of May 10, 1988, as amended, relating to the establishment of the President's Committee on Employment of People with Disabilities, is hereby revoked. The employees, records, property, and funds of the Committee shall become the employees, records, property, and funds of the Department of Labor.

(b) Executive Order 13078 of March 13, 1998 [set out above], is amended in sections 1 (a) and (b) by striking "Chair of the President's Committee on Employment of People with Disabilities" and inserting "Chairperson of the President's Disability Employment Partnership Board."

William J. Clinton.

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§ 702. Rehabilitation Services Administration

(a) There is established in the Office of the Secretary a Rehabilitation Services Administration which shall be headed by a Commissioner (hereinafter in this chapter referred to as the "Commissioner") appointed by the President by and with the advice and consent of the Senate. Except for subchapters IV and V of this chapter and as otherwise specifically provided in this chapter, such Administration shall be the principal agency, and the Commissioner shall be the principal officer, of such Department

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Disability and Technology: A Historical and Social Perspective

Norman Coombs Ph.D.
Rochester Institute of Technology
One Lomb Memorial Drive
Rochester NY 14623
Electronic mail: NRCGSH@RITVAX.BITNET

(Presentation for the Organization of American Historians held in Washington DC, March, 1990.)

The relationship between disabled persons and the rest of society has always had an ambivalent dimension. On one hand, the disabled depend on and appreciate the assistance of others in compensating for their handicaps, but, on the other hand, they often feel that the negative attitudes towards them held by society serve to increase their disabilities and enlarge their sense of powerlessness and dependence. This frequently placed the disabled person in the position of needing help while, simultaneously, presenting the helper. In response, some became angry and hostile. Others, feeling their own lack of gratitude, turned their resentment inward. Transcending the handicap through developing new personal skills or creating tools which could compensate for the disability became one way to escape from this personal and social trap. In one sense the use of assistive technology by the disabled goes back into prehistoric times. As soon as primitive humans fashioned clubs and axes to facilitate hunting and gathering, others must have designed crutches and canes to compensate for physical handicaps. Yet in 1990, the use of the term, technology, usually implies mechanical devices if not electronic inventions.

The social history of the disabled in the twentieth century can be divided into two major periods: one covering the time from World War I through World War II, and the other the time since World War II. The first period should be seen against the background of nineteenth century humanitarian movements and nineteenth century mechanization of industry. Humanitarianism provided a network of social and rehabilitation agencies which was devoted to the needy of society including the disabled. An industrial economy, besides producing convenience machines for domestic use, created a limited number of adaptive devices to help the handicapped. The thrust of these activities was to help the disabled persons adjust to their handicaps as much as possible.

The latter period occurred within the context of both the civil rights movement and the emergence of a society based on electronic and information technologies. The years following the Second World War saw the proliferation of organizations lobbying for a social transformation which would permit their members full and equal participation in society. Rather than merely training the disadvantaged to compete better, these organizations insisted that society itself had been structured in ways that caused the disadvantage. The solution was to modify society for equal opportunity and not only to better equip those who were struggling to get ahead. Electronics technology produced a multitude of products with consumer applications. Many of these devices became inexpensive and miniaturized. This permitted portable, personalized devices some of

which became almost miraculous tools for the physically disabled. On one hand, the disabled began lobbying society to become more open and accessible to them, and, on the other hand, they began looking to the new technologies for devices that might empower them to function on a more equal basis with the rest of society.

At the Beginning of the twentieth century, society had been reshaped by the growth of humanitarianism which led to an expanded concern for the problems of physically and mentally disabled people. The neglect or brutal mistreatment of previous ages was replaced with the establishment of special facilities providing care and maintenance. This was a kind of warehouse mentality. Hospitals, asylums and special institutions had been built and staffed which, while providing minimal care, segregated and isolated them from the rest of society. While those who would have suffered from neglect were better off, others who might have struggled towards independence were prevented from testing their potential. The goal was care rather than rehabilitation or restoration.
In the middle of the nineteenth century the New York Association for Improving the Conditions of the Poor (founded 1843) attempted to meet the social needs of U.S. cities by training and supervising volunteers to visit the poor, the unemployed and the disabled. At about the same time, the Perkins School for the Blind was established in Watertown, Mass., and Thomas Hopkins GALLAUDET, began the first school for the deaf in the United States, now known as The American School for the Deaf, in Hartford, Conn In 1889, Jane Addams had established Hull House in Chicago to provide social services to underprivileged immigrants helping them to adjust to American society. Thereafter, the field of social work grew rapidly and provided the framework for the twentieth century social welfare system including the development of rehabilitation services.

With the arrival of the industrial revolution, almost everyone had become comfortable with using machines and began to conceptualize the world in mechanical terms. The Newtonian universe is generally understood to portray a mechanistic world view. People began to think of human anatomy as a kind of machine, and it was an easy step to develop more sophisticated, artificial arms and legs for those needing the use of a prothesis. Mass production of wheelchairs became another creation of the mechanical age. While spectacles have become so common as not to be thought of as an aid for the disabled, they do function, in fact, in the identical manner. Eye glasses have become so common and, for many, totally compensate for the reduction of vision that no one considers their users as disabled. This is to say that the concept of the physically disabled is, in part, socially defined.

World War I was a landmark in the social history of the disabled with the movement away from purely custodial services to ones emphasizing rehabilitation. Many soldiers were returning without limbs, sight, or hearing, and they were not prepared to be shut away for the rest of their lives. Society felt an obligation to attempt to compensate them for the price they had paid for the nation's security. The government passed the Soldier's Rehabilitation Act in 1918 to provide vocational retraining of handicapped veterans. This legislation accepted a social responsibility for the disabled soldiers in a way that had not been true after any previous war. It reflects both a broadened humanitarian spirit and the existence of trained social and rehabilitation personnel to staff the newly legislated system. Soon thereafter, the Vocational Rehabilitation Act of 1920 extended the same benefits to civilians.

The organization of Disabled American Veterans was founded in 1921 by Judge Robert S. Marx and became the vehicle for disabled soldiers to have a voice in their own rehabilitation. Veterans were not the only members of the disabled community who sought to shape rehabilitation services. Many of the early organizations to assist handicapped persons were initiated by those with disabilities themselves. For example, The Association for the Blind and Visually Impaired of Rochester New York had its roots in the creation of the Rochester Cooperative Association for the Blind begun by four graduates from the nearby State School for the Blind at Batavia. They founded the organization so that they could provide newly blinded adults with the skills needed for becoming independent. Such organizations quickly became controlled by professionals and required financial support by the community to pay for facilities and professional staff. Decisions soon became the province of the experts and of community boards of directors rather than of the disabled. The New Deal programs expanded the scope of these services to the disabled along with the development of a host of other federal welfare programs. While this meant the availability of more assistance, it also meant that policies were now shaped by government officials as well as by professional rehabilitation personnel. As important as these services were for the welfare of the handicapped community, the fact that basic life decisions were being made by others for the disabled served to increase their sense of powerlessness and dependence.

World War II Impacted American society in many diverse ways. Women, minorities and some disabled persons were integrated into the workplace as never before. They found paid employment gave them a sense of worth, and they clearly benefited from the income. They were not eager to give up these new opportunities to the men returning from the front lines. Among the men who came home were still larger numbers of disabled soldiers who were injected into the American society. While the ranks of the handicapped were growing and the problem becoming larger, America emerged from the war as the world's most industrialized and wealthy nation. Not only did America feel it had the ability to fulfill the aspirations of the workers at home and the returning veterans, America saw itself having to fill the role of world champion of democracy and humanitarianism. During World War II, it had played that role in opposition to nazi racism, and it continued to portray itself in that light in contrast to Russian communism. While this spirit was embodied in legislation granting all returning veterans the right to government assistance in attending college or purchasing homes, disabled veterans were entitled to even more generous rehabilitation services than after World War I. These expanded rehabilitation opportunities were usually opened to handicapped civilians as well.

When the newly established United Nations Organization set forth its universal declaration of human rights, the United States sought to portray itself as the world leader of such enlightened views. While some Southern senators were worried about the possible loss of national sovereignty and states rights, African Americans became more optimistic that this humanitarianism would lead their country to live up to its own promises. In 1954 the Supreme Court encouraged this view when it declared that school segregation was unconstitutional. The following year, the Rev. Dr. Martin Luther King Jr. became the leader of the Montgomery bus boycott to begin the challenge of the entire edifice of legal segregation. Blacks had struggled to develop skills and education during the previous decades with the hope that they could compete on an equal basis in society.

By the 1950s they shifted their tactics to pressure the White- dominated society into granting them the equal rights guaranteed in the Constitution. In the subsequent years, women and other ethnic groups organized civil rights movements of their own. Disability organizations similarly, began to proliferate and to change the focus of their activities. While not as common as some of the other protest demonstrations, there were protest marches consisting of disabled persons with crutches, white canes and wheelchairs.

Disability advocacy groups petitioned Congress and state legislatures for two kinds of legislation. On one hand, they wanted civil rights legislation which outlawed discrimination by government agencies and by employers to be expanded to include prohibiting discrimination against the handicapped. On the other hand, they wanted the passage of laws aimed at guaranteeing "equal access" to programs and facilities. Architectural design was a barrier for those with mobility impairments. When essential information was only available in print, it was a barrier to the visually impaired. Similarly, when important material was presented orally, it was not accessible to the hearing impaired. Defining and enforcing such provisions was and is difficult. Many institutions were frightened at the possible expense it could necessitate. This was usually recognized by a clause requiring only "reasonable" compliance. Many were reluctant to initiate these changes as they seemed to only serve the needs of a very small population. Statistics on the number of disabled persons are very unreliable. Many disabled persons do not like to count themselves among such a disadvantaged group and avoid being counted. Organizations to assist the disabled have a vested interest in making the statistics appear larger so they can fight for more funding.

Interestingly, the uses of facilities designed to alleviate the difficulties of the physically disabled were often more widespread than imagined. Side walk curb cuts are used more by women with Carriages than by the mobility impaired. The presentation of material in both print and oral form serves more than the needs of the blind and the deaf. Educators are increasingly aware that people learn differently. Some comprehend material better in text format while others learn best by the spoken word. Adaptations originally made to assist a special group were conveniences appreciated by society at large.

At the same time as disability advocacy groups were demanding a voice for the handicapped in shaping their lives, space age electronic and materials technologies were providing still another form of empowerment. War is not only a time of devastation, it is a time when all kinds of technical and scientific advances are stimulated. The multitude of physical and mental problems resulting from wartime provide the field of medicine with unusual opportunities to learn and grow. Along with the increase in medical need came an increase in medical skill and ability. Doctors developed new procedures, and producers of medical devices and drugs developed amazing new tools to assist them. The cold war provided a continuing incentive for the military to further stimulate technological innovations. In 1948, the transistor was invented by Walter H. Brattain, John Bardeen, and William Shockley at Bell Laboratories and began an entire electronics revolution. Sputnik 1 was launched from the BAIKONUR COSMODROME on Oct. 4, 1957, and the Russians initiated a Cold War space race which further stimulated technological developments. NASA, the National aeronautics and Space Administration has as part of its official mission the encouragement of technology

transfer from military to civilian uses. The artificial heart pacemaker, invented in 1958 by Wilson Greatbatch, is one of its best known achievements in the field of medicine and disability technology.

The list of such devices is long and varied. Computerized voice recognition devices, fore example, help paralyzed persons use words to control their environments. These machines are activated by verbal commands and can--among other things—enable users to dial telephones, turn fixtures on and off, and even write checks and letters. Other recent technological advances include: computerized devices that can read printed documents aloud; specially adapted "talking" computer terminals that enable blind persons to gain access to data banks; sip-and-puff air tubes that control the movements of motorized wheelchair, and computerized electronic grids attached to video cameras that translate eye movements into speech.

Central to most of these adaptive devices is some kind of computer or microprocessor. This implies that many of the disabled can have access to computers and the whole new information society which is being born today. The competitive edge in our economy will go to those who can access and manipulate electronic information. Many disabled persons see the possibility of a new access to opportunity and an exciting personal independence in the near future, but they also worry that new generations of computer equipment might be thoughtlessly designed in ways that could shut them out again. This is where advocacy organizations continue playing an important role in impacting the shape of society so it will not contribute to their handicap. At this moment the House of Representatives is considering the Americans with Disabilities Act, and various advocacy groups have been petitioning congress to extend civil rights to include the disabled. Last week a group of people with a variety of handicaps staged a protest at the Capitol on behalf of this legislation. One of the speakers was King Jordan the hearing-impaired president of Gallaudet College who said that we are simply asking for the same rights and equality any other American has. Some of the participants engaged in civil disobedience, and over 100 were arrested by the Capitol police.

During the twentieth century, there have been a few disabled persons who, in spite of their handicaps, have achieved international recognition. Franklin Delano Roosevelt, in spite of being paralyzed, was the only four-term president of the United States and was one of the key world leaders in the crisis of World War II. Perhaps the most famous story of personal triumph over severe disabilities is the story of Helen Keller. Yet, as impressive as was her achievements, the triumph was also one of patience and persistence on the part of her teacher and friend, Ann Sullivan. Helen's story was also Ann's story.

What many disabled persons find exciting about the new technological devices is the possibility of both achievement and independence. Steven Hawking is an example of what can be accomplished by the human spirit in conjunction with state-of-the-art technology. A preeminent scientist, the British physicist Stephen W. HAWKING, has been confined to a wheelchair for many years with Lou Gehrig's disease (amyotrophic lateral sclerosis). Since 1985, Hawking has been unable to speak; he now communicates with a computerized speech synthesizer attached to his wheelchair. Hawking continues to write books and still travels and lectures extensively.

Over the course of this century, the attitude of the disabled towards the rest of society has undergone a fundamental shift in focus. At first, they looked to the humanitarian spirit which at emerged to provide them with paternalistic assistance. They hoped for

training and tools to help them to cope with their handicaps and with their struggle to survive in a competitive world. As it became clear that paternalism itself contributed to their powerlessness and disability, they followed the lead of other interest groups in demanding that the social and economic structure be made more equally accessible. New technologies also gave promise of better equipping them to compete if and when equal access was provided. What the disabled were asking society for was not so much humanitarian assistance as it was human empowerment.

In 1990 empowerment for the disabled means equal access to opportunities and the development of technologies to compensate for the physical impairment. Leaders in the disabled community are working to develop the dignity which comes with independence and self determination. As much as the physically impaired continue to look to society at large for understanding and support, they have a new realization that the real empowerment is something they must do for themselves.

The Florida Senate

2014 Florida Statutes

Title XXX SOCIAL WELFARE	Chapter 413 VOCATIONAL REHABILITATION **Entire Chapter**	**PART II** **GENERAL VOCATIONAL REHABILITATION PROGRAMS** **(ss. 413.20-413.74)**

PART II

GENERAL VOCATIONAL REHABILITATION PROGRAMS

The Florida Senate

2014 Florida Statutes

Title XXX SOCIAL WELFARE	Chapter 413 VOCATIONAL REHABILITATION Entire Chapter	**SECTION 30** **Eligibility for vocational rehabilitation services.**

413.30 Eligibility for vocational rehabilitation services.—

(1) A person is eligible for vocational rehabilitation services if the person has a disability and requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment.

(2) Determinations by other state or federal agencies regarding whether an individual satisfies one or more factors relating to the determination that an individual has a disability may be used. Individuals determined to have a disability pursuant to Title II or Title XVI of the Social Security Act shall be considered to have a physical or mental impairment that constitutes or results in a substantial impediment to employment and a significant disability.

(3) An individual is presumed to benefit in terms of an employment outcome from vocational rehabilitation services under this part unless the division can demonstrate by clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome. Before making such a determination, the division must consider the individual's abilities, capabilities, and capacity to perform in a work situation through the use of trial work experiences. Trial work experiences include supported employment, on-the-job training, or other work experiences using realistic work settings. Under limited circumstances, if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted, the division shall conduct an extended evaluation, not to exceed 18 months. The evaluation must determine the eligibility of the individual and the nature and scope of needed vocational rehabilitation services. The extended evaluation must be reviewed once every 90 days to determine whether the individual is eligible for vocational rehabilitation services.

(4) The division shall determine the eligibility of an individual for vocational rehabilitation services within a reasonable period of time, not to exceed 60 days after the individual has submitted an application to receive vocational rehabilitation services, unless unforeseen circumstances beyond the control of the division prevent the division from completing the determination within the prescribed time and the division and the individual agree that an extension of time is warranted.

(5) When the division determines that an individual is eligible for vocational rehabilitation services, the division must complete an assessment for determining eligibility and vocational rehabilitation needs and ensure that an individualized plan for employment is prepared.

(a) Each individualized plan for employment must be jointly developed, agreed upon, and signed by the vocational rehabilitation counselor or coordinator and the eligible individual or, in an appropriate case, a parent, family member, guardian, advocate, or authorized representative, of the individual.

(b) The division must ensure that each individualized plan for employment is designed to achieve the specific employment outcome of the individual, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual, and otherwise meets the content requirements for an individualized plan for employment as set out in federal law or regulation.

(c) Each individualized plan for employment shall be reviewed annually, at which time the individual, or the individual's parent, guardian, advocate, or authorized representative, shall be afforded an opportunity to review the plan and jointly redevelop and agree to its terms. Each plan shall be revised as needed.

(6) The division must ensure that a determination of ineligibility made with respect to an individual before the initiation of an individualized plan for employment, based upon the review, and, to the extent necessary, upon the preliminary assessment, includes specification of the reasons for such a determination; the rights and remedies

available to the individual, including, if appropriate, recourse to administrative remedies; and the availability of services provided by the client assistance program to the individual. If there is a determination of ineligibility, the division must refer the individual to other services that are part of the one-stop delivery system under s. 445.009 that address the individual's training or employment-related needs or to local extended employment providers if the determination is based on a finding that the individual is incapable of achieving an employment outcome.

(7) If the division provides an eligible individual with vocational rehabilitation services in the form of vehicle modifications, the division shall consider all options available, including the purchase of a new, original equipment manufacturer vehicle that complies with the Americans with Disabilities Act for transportation vehicles. The division shall make the decision on vocational rehabilitation services based on the best interest of the eligible individual and cost-effectiveness.

(8) If the division is unable to provide services to all eligible individuals, the division shall establish an order of selection and serve those persons who have the most significant disabilities first.

History.—s. 9, ch. 25364, 1959; s. 13, ch. 65-239; ss. 19, 35, ch. 69-106; s. 5, ch. 69-344; s. 311, ch. 77-147; s. 8, ch. 87-227; s. 16, ch. 94-324; s. 1, ch. 2009-60; s. 2, ch. 2010-70.

Note.— Former ss. 229.33, 229.0110.

Advocacy Center
FOR PERSONS WITH DISABILITIES, INC.

2671 EXEC. CENTER
CIRC. W. • SUITE 100
TALLAHASSEE, FL 32301-5092
(850) 488-9071
(850) 488-8640 (FAX)
(800) 342-0823 (VOICE)
(800) 346-4127 (TDD ONLY)

198 WILSHIRE BLVD.
CASSELBERRY, FL 32707
(407) 262-7656
(407) 262-7661 (FAX)
[redacted]
(800) 408-3074
(VOICE OR TDD)

2901 STIRLING ROAD
SUITE 206
FT. LAUDERDALE, FL 33312
(954) 967-1493
(954) 967-1496 (FAX)
(800) 350-4566
(VOICE TDD OR ESPAÑOL)

March 4, 1998

Neil J. Gillespie
1121 Beach Drive NE, Apt. C-2
St. Petersburg, Fl 33701

Dear Neil:

I am in receipt of your March 2, 1998, fax informing me that you may wish to request a Fair Hearing (Administrative Hearing). That is your right; you would do so by corresponding directly with the Division of Vocational Rehabilitation (DVR) in writing to make that request. You would send your letter to the DVR Director, Tamara Allen, and you should outline the nature of the dispute as well as what you suggest as a remedy. Ms. Allen will then forward your request for appeal to the Department of Administrative Hearings and you will be assigned a hearing officer.

As we discussed, this is a formal hearing; DVR will be represented by an attorney. You can represent yourself and may wish to contact the Division of Administrative Hearings directly at (904) 488-9675 for their materials if you choose to represent yourself. You can also obtain an attorney who is willing to represent you.

The Client Assistance Program (CAP) obligation is to first negotiate with DVR, which, as you know, we have done. If you elect to appeal to a Fair Hearing, you should do so independent of CAP.

CAP has secured DVR reconsideration and reversal of your case closure and change of counselor if you contact Bill Gorman as indicated in his February 16, 1998 letter so that he can proceed to carry out the arrangement he has offered you.

1. CAP has successfully negotiated your placement back into the DVR program in an extended evaluation status. Mr. Gorman has advised that you can select a vendor from their panel for the neuropsychological evaluation. Your questions regarding this evaluation can best be answered by your new counselor after you have an opportunity to meet. Certainly, we agree that you should proceed as an informed consumer and your new counselor should facilitate this

process for you.

2. I advised you that since DVR has agreed to reverse your case closure, CAP does not require your Washington file to proceed further on this dispute. I understood that you had a copy of your Washington file. Am I incorrect?

3. The PAR reimbursement you referenced was an evaluation you initiated and paid for which is something you will not likely prevail against DVR for reimbursement. CAP cannot support your request for reimbursement of a service that DVR did not authorize.

3a. You contend that you have evidence of a pattern of discriminatory behavior. If you think this discrimination is based on your disability, you can address this through a complaint to the Office of Civil Rights located in Atlanta. Their phone number is (404) 562-7886; the address is Office of Civil Rights, 61 Forsyth Street, Atlanta Federal Center, Atlanta, Georgia 30303. They will send you an official complaint form to fill out once you contact them. The Office of Civil Rights can then conduct an investigation.

You also indicated a desire to understand the "controlling legal authority", both federal and state, pursuant to vocational rehabilitation law. The Rehabilitation Act of 1973 was last amended in 1992. It is currently up for Reauthorization. The Code of Federal Regulations is 34 CFR Part 361 et al. The Florida Statute is 413. DVR also has state policies which are contained in the DVR counselor manual.

In closing, I hope this information is helpful and aids you in making a decision on how you will proceed.

Sincerely,

M. Ann Robinson, M.S.
CAP Director

Details for Case No: 98-003444CVR

Judge: J. LAWRENCE JOHNSTON

Petitioner: **
vs.
Respondent: DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY, DIVISION OF VOCATIONAL REHABILITATION

Date Filed: 7/24/1998
Date Assigned: 7/31/1998
Last Docket Entry: 12/2/1998

Location:
District: Middle
Agency: Department of Education
Division: **

Status: Closed
Settled and/or Dismissed prior to entry of RO/FO on Thursday, November 12, 1998.

Case No: 98-003444CVR is not available online based on statute, rule, or court order.

Client Assistance Program (CAP)
29 USC § 732

Title 29-- Labor
Chapter 16-- Vocational Rehabilitation and Other Rehabilitation Services
Subchapter I-- Vocational Rehabilitation Services

Sec. 112.-- Basic Vocational Rehabilitation Services

(a) Establishment of grant program

From funds appropriated under subsection (h), the Secretary shall, in accordance with this section, make grants to States to establish and carry out client assistance programs to provide assistance in informing and advising all clients and client applicants of all available benefits under this Act, and, upon request of such clients or client applicants, to assist and advocate for such clients or applicants in their relationships with projects, programs, and services provided under this Act, including assistance and advocacy in pursuing legal, administrative, or other appropriate remedies to ensure the protection of the rights of such individuals under this Act and to facilitate access to the services funded under this Act through individual and systemic advocacy. The client assistance program shall provide information on the available services and benefits under this Act and title I of the Americans with Disabilities Act of 1990 (*42 U.S.C. 12111 et seq*.) to individuals with disabilities in the State, especially with regard to individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs. In providing assistance and advocacy under this subsection with respect to services under this title, a client assistance program may provide the assistance and advocacy with respect to services that are directly related to facilitating the employment of the individual.

(b) Existence of State program as requisite to receiving payments

No State may receive payments from its allotment under this Act in any fiscal year unless the State has in effect not later than October 1, 1984, a client assistance program which--

> **(1)** has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of rights of individuals with disabilities who are receiving treatments, services, or rehabilitation under this Act within the State; and
>
> **(2)** meets the requirements of designation under subsection (c).

(c) Designation of agency to conduct program

> **(1) (A)** The Governor shall designate a public or private agency to conduct the client assistance program under this section. Except as provided in the last sentence of this subparagraph, the Governor shall

designate an agency which is independent of any agency which provides treatment, services, or rehabilitation to individuals under this Act. If there is an agency in the State which has, or had, prior to the date of enactment of the Rehabilitation Amendments of 1984, served as a client assistance agency under this section and which received Federal financial assistance under this Act, the Governor may, in the initial designation, designate an agency which provides treatment, services, or rehabilitation to individuals with disabilities under this Act.

(B) **(i)** The Governor may not redesignate the agency designated under subparagraph (A) without good cause and unless—

(I) the Governor has given the agency 30 days notice of the intention to make such redesignation, including specification of the good cause for such redesignation and an opportunity to respond to the assertion that good cause has been shown;

(II) individuals with disabilities or the individuals' representatives have timely notice of the redesignation and opportunity for public comment; and

(III) the agency has the opportunity to appeal to the Commissioner on the basis that the redesignation was not for good cause.

(ii) If, after the date of enactment of the Rehabilitation Act Amendments of 1998—

(I) a designated State agency undergoes any change in the organizational structure of the agency that results in the creation of 1 or more new State agencies or departments or results in the merger of the designated State agency with 1 or more other State agencies or departments; and

(II) an agency (including an office or other unit) within the designated State agency was conducting a client assistance program before the change under the last sentence of subparagraph (A),the Governor shall redesignate the agency conducting the program. In conducting the redesignation, the Governor shall designate to conduct the program an agency that is independent of any agency that provides treatment,

services, or rehabilitation to individuals with disabilities under this Act.

(2) In carrying out the provisions of this section, the Governor shall consult with the director of the State vocational rehabilitation agency, the head of the developmental disability protection and advocacy agency, and with representatives of professional and consumer organizations serving individuals with disabilities in the State.

(3) The agency designated under this subsection shall be accountable for the proper use of funds made available to the agency.

(d) Class action by designated agency prohibited

The agency designated under subsection (c) of this section may not bring any class action in carrying out its responsibilities under this section.

(e) Allotment and reallotment of funds

(1) **(A)** The Secretary shall allot the sums appropriated for each fiscal year under this section among the States on the basis of relative population of each State, except that no State shall receive less than $50,000.

(B) The Secretary shall allot $30,000 each to American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(C) For the purpose of this paragraph, the term "State" does not include American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(D) **(i)** In any fiscal year that the funds appropriated for such fiscal year exceed $7,500,000, the minimum allotment shall be $100,000 for States and $45,000 for territories.

(ii) For any fiscal year in which the total amount appropriated under subsection (h) exceeds the total amount appropriated under such subsection for the preceding fiscal year, the Secretary shall increase each of the minimum allotments under clause (i) by a percentage that shall not exceed the percentage increase in the total amount appropriated under such subsection between the preceding fiscal year and the fiscal year involved.

(2) The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for

reallotment by the Secretary at appropriate times to other States with respect to which such a determination has not been made, in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period, and the total of such reduction shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any such amount so reallotted to a State for a fiscal year shall be deemed to be a part of its allotment for such fiscal year.

(3) Except as specifically prohibited by or as otherwise provided in State law, the Secretary shall pay to the agency designated under subsection (c) the amount specified in the application approved under subsection (f).

(f) Application by State for grant funds

No grant may be made under this section unless the State submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary deems necessary to meet the requirements of this section.

(g) Regulations; minimum requirements

The Secretary shall prescribe regulations applicable to the client assistance program which shall include the following requirements:

(1) No employees of such programs shall, while so employed, serve as staff or consultants of any rehabilitation project, program, or facility receiving assistance under this Act in the State.

(2) Each program shall be afforded reasonable access to policymaking and administrative personnel in the State and local rehabilitation programs, projects, or facilities.

(3) **(A)** Each program shall contain provisions designed to assure that to the maximum extent possible alternative means of dispute resolution are available for use at the discretion of an applicant or client of the program prior to resorting to litigation or formal adjudication to resolve a dispute arising under this section.

(B) In subparagraph (A), the term "alternative means of dispute resolution" means any procedure, including good faith negotiation, conciliation, facilitation, mediation, fact finding, and arbitration, and any combination of procedures, that is used in lieu of litigation in a court or formal adjudication in an administrative forum, to resolve a dispute arising under this section.

(4) For purposes of any periodic audit, report, or evaluation of the performance of a client assistance program under this section, the Secretary shall not require such a program to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under such program.

(h) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for fiscal years 1999 through 2003 to carry out the provisions of this section.

Details for Case No: 91-004626CVR

Judge: MICHAEL M. PARRISH

Petitioner: **
vs.
Respondent: DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY, DIVISION OF VOCATIONAL REHABILITATION

Date Filed: 7/24/1991
Date Assigned: 7/30/1991
Last Docket Entry: 1/17/1992

Location:
District: Southern
Agency: Department of Education
Division: **

Agency Action: ADOPTED IN TOTO
Agency Final Order on 1/15/1992.

Status: Closed
Recommended Order on Wednesday, December 04, 1991.

Case No: 91-004626CVR is not available online based on statute, rule, or court order.

An Examination of the Evolution and Role of Persons with Disabilities within American Society

Mike Thompson -- April 5, 1994

INTRODUCTION:

Culture, from an anthropological perspective, can be viewed as an integrated pattern of human knowledge, belief, and behavior which is transmitted to succeeding generations. The culture of the United States of America is highly diversified and is influenced by numerous subgroups, each with a variety of opinions, lifestyles, values, interests, experiences, and behaviors. Some of these subgroups have been categorized according to ethnicity, social and economic class, and/or religious order. Equally important, are subgroups which are cross sections of any or all of the groups just mentioned. For example, these other subgroups might be categorized according to gender, political affiliation, athletic ability, or intelligence. The boundaries are anything but clear, and an individual may fit into many of these or other categories. Nevertheless, there does seem to be a common "core" which represents American culture in general. As Americans, we have pursued common goals during historical periods that have become part of our past, and we strive for common causes today. We have a creed which states that we are all equal and that no one shall be disadvantaged by their race, religion or color. The Declaration of Independence and the American Constitution lay out in detail, many of our Ideals (Spindler 1990). If there is a "core" or mainstream American culture of which various combinations of subgroups are a part, then we can certainly better understand who we are as Americans by understanding the relationship between that "core" and these various subgroups. The focus of this paper will be on the evolution and role of the subgroup of persons with disabilities within American society. It will examine the relationship between ideational systems (people's perceptions and stereotypes of disabilities) and the social structure (the social roles and relationships) of people with disabilities within American culture in both the past and the present.

Overview of the Characteristics of Persons with Disabilities within American Society:

The subgroup of people with disabilities is in fact, a cross section of American society in general. People with disabilities include both men and women from every ethnic group, religious background, political party, income bracket, and educational background. This particular subgroup has members who range in athletic ability from none to exceptional. It is made up of people of the highest integrity and moral character to the most hardened criminals. The distinguishing characteristic of the group is that members have some type of disability. Definitions for disability vary slightly under different laws, however, generally people are considered to have a disability if they:

1) Have a physical or mental impairment which substantially limits one or more major life activity(ies), such as walking, talking, seeing, hearing, self care, learning, or working; or
2) Have a record of having had an impairment such as a history of cancer, or past mental illness; or
3) Are regarded by others as having an impairment, for example, a facial scar, limp or positive HIV test. (Leeds, 1992)

Some examples of conditions involving disabilities include Absence of Arm(s)/Hand(s)/Leg(s), Blindness, Cancer, Cerebral Palsy, Diabetes, Emphysema, Epilepsy, Hearing Impairments, Heart Disease, Hypertension, Intervertebral Disk Disorders, Learning Disorders, Mental Disorders,

Multiple Sclerosis, Nervous Disorders, Orthopedic Impairments, Osteomyelitis/Bone Disorders, Paralysis in Other Sites (Complete/Partial), Parkinson's disease, and Visual Impairments

.

According to the National Center for Health Statistics, over 34 million Americans have disabilities. This figure constitutes roughly 20 percent of the population and is the largest and most diverse minority group in the country which is rapidly entering (or re-entering) the mainstream of society (Leeds, 1992). More than 14 percent of the civilian non-institutionalized population, are limited in their activity due to long-term disability. Approximately 2 million more people live in a variety of long-term care institutional settings, including 1.5 million in nursing and related-care homes and nearly a quarter million in mental health facilities (Leads, 1992).

RESEARCH:

Discussion of Anthropological Research on American Culture and Persons with Disabilities:

George and Louise Spindler began doing field research as anthropologists in America in 1948, and their work continues today. The Spindlers attempt to define American Culture through a series of concerns phrased as value orientations which they refer to as "cultural dialogue" which expresses oppositions as well as agreements. These expressions occur in public speech and behavior, in editorials, campaign speeches, classrooms, the mass media, music and literature, as well as churches and religious ideology (Spindler, 1990).

Information on persons with disabilities comes from a broad range of sources including anthropological, historical, sociological, and psychological, Census data, government documents, and disability organization publications. Harold E. Yuker has conducted pioneering and extensive research on attitudes toward persons with disabilities. In addition, Ervinl Goffman relates the concept of stigma to the role of persons with disabilities in society.

Historical Background of the role of Persons with Disabilities within American Society:

"As soon as our human ancestors fashioned clubs and axes to facilitate hunting and gathering, others must have designed crutches and canes to compensate for physical disabilities" (Coombs 1991). In fact, the archaeological record contains evidence that people with disabilities played a role in societies as early as the Neanderthals (Trinkaus, 1978). Cultural attitudes toward people with disabilities have been influenced directly and indirectly by philosophies within various cultures through time. For example, early Greek and Roman philosophers including Plato and Aristotle stressed perfection. The term "stigma" originated with the Greeks to refer to bodily signs designed to expose something unusual or bad about the status of the signifier. These signs were cut or burnt into the body and advertised that the bearer was a blemished person, ritually polluted, to be avoided, especially in public places (Goffman 1963). Late medieval Christianity embraced the Platonic philosophy of fixity, where everything in the universe shared a metaphysical essence with every other thing of the same type--different things did not and never could. This fixed, stable view of an unchanging universe implied that variation of type was degenerative and superficial. People with disabilities were certainly a variation from the "norm". In the 1690s, John Ray was examining biological conditions on Earth and concluded that the forms of all things are immutable and static. By the 1850s, this concept of an unchanging universe had long since been replaced by theories of both

biological and cultural progression. During this time, Hubert Spencer was responsible for the concept of "Survival of the Fittest". He concluded that everything in the universe progresses through time: That progress was the result of competition between similar forms; The more advanced forms would survive, while the less advanced would be defeated. He believed in "Laissez faire" Capitalism where society should not help the less advanced forms; that humanity as a whole would be better off if we simply let nature take its course. In fact, the concepts of eugenics and Social Engineering were being pressed in the late 1800's or early 1900's to give those who are superior a better chance to survive over the inferior, and therefore, promote the idea of a "better" human being. The original model for some state laws was put forth in 1922 by Laughlin who recommended sterilization for all of the social undesirables. In this list, he included mentally ill and deviants, but then went on to include people who were blind, deaf, and hearing impaired. These state laws permit mandatory sterilization of certain persons and are generally justified under what are called "state police powers", i.e., providing for the health, safety and general welfare of citizenry. (Don Waugh Executive Chairperson, Disabled Students Association (Alumni) SUNY Potsdam College waugh18@snypotva.bitnet AXSLIB-L list Tue, 7 Dec 1993 16:01:00 EDT)

Over the course of this century, the role of people with disabilities within American society has undergone a fundamental shift in focus. They have gone from a state of being abandoned, exterminated, or left to fend for themselves as beggars, to being institutionalized and placed in sheltered workshops (Jernigan, 1973) with a humanitarian spirit which emerged to provide them with paternalistic assistance. As it became clear that paternalism itself contributed to their powerlessness and disability, they followed the lead of other interest groups in demanding that the social and economic structure be made more equally accessible. "What people with disabilities were asking society for was not so much humanitarian assistance as it was human empowerment" (Coombs, 1991).

An examination of legislation concerning persons with disabilities provides a chronology of socio-cultural and economic changes over time. These legislative acts mark major turning points, whereby, the role of Americans with disabilities is evolving, as human rights are officially recognized and ideational systems are modified.

Beginning in 1917, the Smith-Hughes Vocational Act marked the creation of the Department Vocational Rehabilitation in the United States. In 1918, the Smith-Sears Act or Soldiers Rehabilitation Act (P.L. 178) addressed the issues of disabled American soldiers returning from World War I by providing money for vocational rehabilitation training for a ten year period. The Smith-Fess Act (P.L. 236) of 1920 provided federally based matching funds to states for Rehabilitation training for an additional four years. The Social Security Act of 1935 made Vocational Rehabilitation permanent and started off with a budget of about two million dollars. In 1936, the Randolf Sheppard Act targeted specific disabilities for various rehabilitation provisions. The 1938 Wagner-O'Day Act Created Workshop supported employment, giving government preference to purchasing products made by blind workers. World War II was a source for a second major increase in the number of people with disabilities. Concurrently, significant medical advancements were taking place at this time which made it possible for people to survive longer even with sever disabilities. In 1943, the Barden-Lafollette Act included mental illness and mental retardation. Mental disorders resulting from war atrocities and shell shock were recognized with respect to rehabilitation provisions. The Vocational Rehabilitation Act of 1954 (P.L. 565) provided training and facilities for Vocational Rehabilitation professionals. The Vocational Rehabilitation Act of 1965 (P.L. 333) provided for a wider range of rehabilitation including services to prison inmates and to the poor.

By 1973 there were several rehabilitation acts and amendments including sections 501, 502, 503, 504 which helped make rehabilitation more of a partnership between the various federal agencies and their clients as opposed to a paternalistic relationship. They also first addressed the issues of architectural barriers in federal public buildings. In 1975, the Education for all Handicapped Children Act (P.L. 94-142) was enacted to provide education in the least restrictive environment. This law guaranteed children with disabilities the right to attend public school. By 1990, landmark legislation was passed in the form of the Americans with disabilities act which prohibits discrimination against persons with disabilities in education, employment, services, and public transportation and facilities.

When President Bush signed in to law the Americans With Disabilities Act--the world's first comprehensive civil rights law for people with disabilities--in front of 3,000 people on the White House Lawn on July 26, 1990, the event represented an historical benchmark and a milestone in America's commitment to full and equal opportunity for all of its citizens.

The President's emphatic directive on that day--"Let the shameful walls of exclusion finally come tumbling down"--neatly encapsulated the simple yet long overdue message of the ADA: that 43 million Americans with disabilities are full-fledged citizens and as such are entitled to legal protections that ensure them equal opportunity and access to the mainstream of American life.

Enactment of the ADA reflects the embodiment in public policy of deeply held American ideals which treasure the contributions which individuals can make when free from arbitrary, unjust, or outmoded societal attitudes and practices that prevent the realization of their potential. The ADA reflects a recognition that the surest path to America's continued vitality, strength and vibrancy is through the full realization of the contributions of all of its citizens (Preamble from EEOC Americans With Disabilities Handbook, 1993).

The Americans With Disabilities Act makes a formal statement concerning the role of persons with disabilities within society. However, many of the earlier philosophies are very much ingrained within our culture. The reality of how people with disabilities fit in to modern American society is somewhat varied. Consequently, there are a number of common social problems. What are these common concerns and what aspects of American culture have caused them to exist?

Critical Issues Facing Persons with Disabilities within American Society Today:

People with disabilities are seeking higher standards of living, housing and public accommodations, full employment and conditions of economic and social progress and development. Critical issues involve human rights and fundamental freedoms, the dignity and worth of the human person and social justice. In a presentation before the Senate Committee on Labor and Human Resources, June 23, 1989, the concern was stated that "persons with disabilities all too often are not allowed to participate because of stereotypical notions held by others in society -- notions that have, in large measure, been created by ignorance and maintained by fear." Some people predict a continuing role of economic dependance and second-class citizenship for people with disabilities, while others predict and strive for progress toward equality, independence, and full membership in society (Jernigan, 1973).

Employment:

Roughly two-thirds of "working-age" (ages 16 and older) people with

disabilities -- tens of millions of Americans -- are unemployed. This staggering figure represents the highest rate of joblessness among any sizable minority in this country. According to 1988 figures, distinctions in employment by disability status were far more prevalent for occupations than for industries. People with a disability were far less likely to be employed in managerial and professional specialty positions than their counterparts without a disability. Both men and women with a disability were more likely to work as operators, laborers, and fabricators and in service occupations than their counterparts with no disability. Men and women with a disability were somewhat less likely to be employed in technical, sales, and administrative support positions than those with no disability (Ficke, 1992).

Education:

Over 4.3 million students in the public school system have been identified as having disabilities and are guaranteed legal rights to a public education. There are over 1.5 million colleges students with disabilities on our campuses. Based on demographics alone we can expect the numbers of individuals with disabilities participating in higher education to continue to rise over the next ten year period (Ficke, 1992). Access to classrooms, equipment, facilities, services and materials will be among the leading concerns.

Attitudes:

Perhaps one of the most critical issues facing persons with disabilities are the attitudes of individuals within the mainstream culture toward them. These attitudes can affect personal and professional relationships as well as influence policy, and laws concerning integration and accessibility issues.

According to (Yuker, 1988) attitudes toward persons with disabilities are shaped by language and terminology, pity, mindless and mindful perception, and treatment of disabilities in television, films, and media. It was not until 1984 when Levi Strauss made a commercial for 501c Jeans with a person in a wheelchair that the disabled community was even thought of as a market. Attitudes are also shaped by religious views. For example, some people hold convictions that a disability is moral punishment for sin. An acquired cultural value based on parental emphasis on importance of health and normality to children is perhaps one of the less direct ways in which our attitudes are formed.

Society establishes the means of categorizing persons and the complement of attributes felt to be ordinary and natural for members of these categories (Goffman, 1963,2). As we encounter a person with a disability, one of the most common reactions is to notice that something is different, and wonder "What's wrong with that person?" According to (Yuker, 1988), there exists a condition known as the fundamental negative bias. "It is important because it steers perception, thought and feeling along negative lines to such a degree that positives remain hidden. It is a powerful source of prejudice that ill serves those who are already disadvantaged" (Yuker, 1988). The basic proposition is that if something that is observed stands out sufficiently, and if it is regarded as negative, and if its context is vague or sparse, then the negative value assigned to the object of observation will be a major factor in guiding perception, thinking and feeling to its negative character (Yuker, 1988). Thus, the reaction "What's wrong with that person?" indicates that the observed disability by nature is wrong and a negative attribute.

Another example of attitudes toward persons with disabilities is referred to by (Wright 1975), as the "Fortune Phenomena". This concept

shows how easily "devalued" groups are regarded as unfortunate, despite the fact that the members of those groups do not view themselves as unfortunate. In a relationship with strangers, there is not much to go on other than distinct characteristics that are observed. Therefore, in sparse context, a disability becomes the outstanding characteristic. A study cited by (Yuker, 1988) shows that the fundamental negative bias plays an important role in terms of familiarity. Friends who have disabilities are rated as being much more fortunate than strangers with the same disabilities. Similarly, People with disabilities indicated that strangers regarded them as being much more unfortunate than friends did (Yuker 1988, 11).

Indications of Cultural Attitudes Concerning Disabilities:

Our literature and music are aspects of our culture which both reflect and influence what we are like as a society. People with disabilities are often referred to as "Blind", "Deaf", and/or "Lame". If we examine quotations from classic literature, and lyrics from popular and folk music, we can find numerous references to the terms blind, deaf, and lame. Often these references use the terms blind, deaf, or lame in a less than desirable and negative context. For example, some quotations from classic literature include:

THE BIBLE

NEW TESTAMENT. ST. MATTHEW

They be blind leaders of the blind. And if the blind lead the blind, both shall fall into the ditch.

ST. LUKE

Go out quickly into the streets and lanes of the city, and bring in hither the poor, and the maimed, and the halt, and the blind.

LORD BOWEN 1835-1894

On a metaphysician: A blind man in a dark room--looking for a black hat which isn't there.

ALFRED, LORD TENNYSON 1809-1892

Where blind and naked Ignorance Delivers brawling judgments, unashamed, On all things all

day long.

ARTHUR WALEY 1889-1966

What is hard today is to censor one's own thoughts--To sit by and see the blind man On

the sightless horse, riding into the bottomless abyss.

H.G. WELLS 1866-1946

In the Country of the Blind the One-eyed Man is King.

NICHOLAS BRETON 1545?-1626?

He is as deaf as a door.

PERCY BYSSHE SHELLEY 1792-1822

Our Adonais has drunk poison--oh! What deaf and viperous murderer

could crown Life's early

cup with such a draught of woe?

JONATHAN SWIFT 1667-1745

They never would hear, But turn the deaf ear, As a matter they had no concern in.

WILLIAM COWPER 1731-1800

Beggars invention and makes fancy lame.

WILLIAM SHAKESPEARE 1564-1616

THE TEMPEST

When they will not give a doit to relieve a lame beggar, they will lay out ten to see a

dead Indian.

Music:

The terms blind, deaf, and lame are frequently used in popular and folk song lyrics. However, blindness is generally equated with ignorance and foolishness. It is described by blackness and darkness. Feelings most commonly affiliated with blindness are fear, apathy, bewilderment, confusion, guilt, hate, hopelessness, loneliness, pity, and stupidity. Actions involving the word blind include fumbling, groping, and stumbling. The word deaf is generally affiliated with an uncaring attitude and the word lame is used to mean undesirable in popular and folk music. In order to illustrate this point, the following lines were extracted from a collection of popular and folk song lyrics from ftp.uwp.edu:/pub/music/lyrics. The list is over 2000 lines long and contains lines with the words blind, deaf, and lame. Here are a few examples:

Blind:

... Eyes of blind ignorance
... So blind, it's ignorance you wear
... Soon I shall be taken down, drowned in blind ignorance.
... But I'm as blind as a fool can be
... Blind fools who see only what they tell you to
... Blinded by passion, you foolishly let someone in
... Fools are blind, unwilling to accept, decline...
... How could I have been so foolish, how could I be so blind
... I was a fool to be blind to the things you do
... Like a hurt lost and blinded fool
... Oh they're kinda close, though only a blind crazy fool would think
... Well you blind old fool, your children are gone,
... You blind fool, you drunken fool, can't you never see?

Deaf:

... But the old man was deaf to her cries,
... Can you turn a deaf ear to my call
... If I turn a deaf ear to the thunder in the sky
... were deaf to our own demands

Lame:

... For lame I've been, since I was born, and so I'm forced to beg

... Your wasting your tongue with lame excuses,
... The little lame child cried aloud in her fright,
... There was poor old Jess, the old lame cuss

CONCLUSION:

For as long as humans have existed, some percentage of people within the various populations have been characterized by disabilities. A disability is by nature, a deviation from what is considered to be normal. Structures within societies are designed to accommodate people and things that are normal. Consequently, inequitable conditions will exist for the disabled minority unless accommodations are made. Culture will determine the nature and extent of these accommodations as well as the relationships between the normal core population and the disabled minority for any given society. The mainstream core American cultural is not the product or possession of any particular class or ethnic group. The value orientations and their oppositions that constitute the mainstream version of the dialogue have been formed by history, and that history defined White Anglo-Saxon, North European, Protestant culture as a primary cultural force in the development of American culture. These values are there for anyone to use, and they are being used (Spindler, 1990). In America, we have seen the most dramatic change in these relationships within the last century. The role of persons with disabilities within American society has evolved from one of isolation where people belonging to the disabled minority were forced to fend for themselves as beggars, to one of being institutionalized and provided for, to one of recognition as citizens. The aspiration of this minority is one of equality. According to (Spindler, 1990), many of the current social problems in America are the result of inequity. To illustrate this point, he makes the following arguments:

Disparity between the poisonous condition of the inner city and the affluence of the suburbs and high-rise apartments, between the mainstream rich and the minority poor, between Black and White, corrupts the dialogue of achievement, success, hard work, honesty, individualism, optimism, independence, and equality. The dialogue of equality, honesty, concern for others, is still alive, but has lost ground to the opposition, the dialogue of extreme self interest, within the total complex of values and motivations. The underlying problem is individualistic, self oriented success, the successful drive for wealth by individuals uncommitted to public good. The drive for material success is obsessive. Equity is not created only from the top down. Equity is achieved as well as legislated and managed (Spindler, 1990).

Examples presented in this paper illustrate that the same type of disparity exists between the disabled minority and mainstream American culture as for ethnic minorities and that same "core" culture. (Spindler, 1990) predicts that we can expect to see increasing conflicts among ethnic groups and between ethnic groups and the "non-ethnic" mainstream. Ethnic groups will compete for their share of the benefits. Middle and upper class mainstream Americans will resent incursions into their socio-economic and cultural territory as the economy continues to express the uncertainties of the modern world. However, Americans are attempting to do what no one else has done in the pursuit of liberty, justice and equal opportunity for all citizens. The dialogue is a process not a fixed entity; there is continuity and change. Inequality in the distribution of power, wealth, and opportunity in our society has been dramatic and destructive. (Spindler 1990 ,167) History shows that progress is being made concerning issues of integration and equality for persons with disabilities. However, it is obvious by the general lack of accessible public services and facilities, and educational and employment opportunities, that the role of people with disabilities is currently

anything but equal. Even so, we can be reminded that there are certain exceptions to that case as we realize that people with disabilities have held prominent positions within our society. For example, presidents Abraham Lincoln (chronic disease), Woodrow Wilson (learning disability), (Franklin D. Roosevelt (polio), and John F. Kennedy (Addison's disease) all had conditions which would qualify them as being disabled under our current legal definitions. Other prominent people with disabilities include Thomas Edison and Albert Einstein. More recent notable figures include Cher, Whoopie Goldberg, Tom Cruise, Robin WIlliams, and Charles Schwab. The list goes on, however, these people are the exception and not the rule as far as the roles of people with disabilities within American Society.

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mthompso@nmsu.edu