Inclusive Environments: Legislative Framework

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Legislative Framework

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Institutionalization
Forced sterilization
Prohibited from marriage
Ugly laws
Soldier’s Rehabilitation Act 1918: provided funds for rehabilitation of disabled veterans of WW1
WW1: 200,000 permanently disabled veterans return (Maleney, 2017)
Various other acts focused on funding and rehabilitation programs for disabled war veterans

History
• Disability rights movement has parallels with the civil rights movement

• ANSI A1171.1 design standards – first beginnings

• Developed by the University of Illinois

• “Accredited Standards Committee A117 on Architectural Features and Site Design of Public Buildings and Residential Structures for Persons with Disabilities”

• Current version ICC A117.1 Accessible and Usable Buildings and Facilities 2017
Civil Rights Act 1964

- Banned segregation in all public places
- Banned employment discrimination to individuals based on race, color, national origin, religion and gender
Architectural Barriers Act 1968

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Applies to buildings owned or leased, built or altered by Federal agencies or with federal money

“shall prescribe standards for the design, construction, and alteration of buildings (other than residential structures . . .) to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.”

Includes, e.g., government housing, US Postal Services, Department of Defense (unless purely for use by able bodied military personnel), Veterans Affairs hospitals
1970s drivers for change

- Routine disability discrimination
- 1975 end Vietnam War
- Civil Rights Movement 1960s
- Gay Rights Movement: Stonewall 1969
- Disability Rights Movement 1970s
• Section 504 – focused federal funding on people with a disability

• No “individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” (Department of Education [DOE], 2007, p. 1).

• Section 502 – creates the Access Board

• Establishes FAPE
Each child with a disability must be provided with an education free of charge, “a free appropriate public education regardless of the nature or severity of the person’s disability” (DOE, 2007, p. 1.).
Prompted by the infamous Willowbrook State School case

Provides protection for “persons who are mentally ill, disabled, or retarded, or chronically ill or handicapped” living in state institutions
Fair Housing Amendments Act 1988

- Provides protection from discrimination to people who are renting or buying a house
- Covers housing in the public and private sectors and federally funded programs
- Protection extended to cover individuals with a disability and families with children
- Protection already includes individuals based on their race, color, national origin, religion and gender
“Capitol Crawl”
Quick Quiz

Q1 The Architectural Barriers Act applies to:

A All Federal buildings
B Private clubs
C Architects as designers
Quick Quiz

Q2 FAPE is important for providing:

A Free college education for adults with disabilities

B Free public education for students with disabilities

C Free play equipment for children with disabilities
Q3 The Fair Housing Act applies to:

A  Housing in the public sector

B  Housing in the private sector

C  Both A and B
Several sections:
- Title I: Employment
- Title II: Public Services
- Title III: Public Accommodations and Services Operated by Private Entities
- Title IV: Telecommunications
- Title V: Miscellaneous
Recognizes 43m disabled Americans

A group who has experienced “inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally” and “subjected to a history of purposeful unequal treatment”

Provides a legal recourse to address discrimination

Civil Rights legislation
“a physical or mental impairment that substantially limits one or more of the major life activities”

Not covered:

- Illegal drug user
- Transvestism/homosexuality/bisexuality
- Sexual behavior disorders
- Gambling addiction, kleptomania, pyromania
What is covered? (2008)

Major life activities clarified under ADA Amendment Act (2008)

“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.”

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.”

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What is not covered? (2008)

“impairments that are transitory and minor”

A transitory impairment is one that lasts for 6 months or less

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Who is covered?

1. A person with a broken leg?
2. A person suffering from influenza?
3. A student with asthma?
4. A student with seasonal allergies?
5. A woman who is pregnant?
6. A person who is obese?
7. A person who is color blind?
Who is covered - answers

1. A person with a broken leg? Not likely >6 months
2. A person suffering from influenza? Not likely >6 months
3. A student with asthma? Likely usually considered a disability
4. A student with seasonal allergies? Maybe, maybe not
5. A woman who is pregnant? Pregnancy is not a disability but pregnancy complications could be – also Pregnancy Discrimination Law so that could be invoked
6. A person who is obese? Not covered unless “outside of a “normal” range and results from a “physiological disorder.”
7. A person who is color blind? In most case law no
5 Sections

Title 1: Employment
Title 2: Public Services
Title 3: Public Accommodations and Services Operated by Private Entities
Title 4: Telecommunications
Title 5: Miscellaneous Provisions
Title I: Employment

- Covers businesses with 15 or more employees
- Covers an individual with a disability qualified for a job who could perform the essential duties of the position with reasonable accommodation

Excludes:
- A corporation owned by a US government
- An Indian tribe
- A private membership club
Reasonable Accommodation

May include:
• Making facilities more accessible
• Job restructuring
• Providing auxiliary equipment
• Adjusting training materials or policies
• Providing interpreters or readers

Can claim “undue hardship” depending on:
• Nature and cost of amendment
• Financial resources of the business, number of employees
• Type of business
Discrimination

Includes:

• Not making reasonable adjustments
• Refusing to hire someone because you have to make reasonable adjustments
• Using tests to screen out applicants

Exceptions: religious organizations can give preference to individuals based on their religion

Enforcement: Civil Rights Act 1964
Title II: Public Services

- Covers state, local government, National Railroad Passenger Corporation, all authorities providing Rail Passenger Services (defined under said Act)

- Enforcement: Rehabilitation Act 1973
New regulations to be created by the Architectural & Transportation Barriers Compliance Board

Requires purchase or lease of bus, rail, and other transport vehicles to be accessible to individuals with a disability, including wheelchair users

Applies to fixed route

Paratransit must be comparable level of service and comparable response time (“to the extent practicable”) unless “undue financial burden” can be demonstrated
New transport facilities must be accessible

Existing facilities, when altered, must be accessible “to the maximum extent feasible”

Focus on alterations to path of travel, bathrooms, telephones, drinking fountains

Stations with “extraordinarily expensive structural changes” given up to 30-year grace period

“One car per train rule” must be accessible if two or more cars on a light or rapid rail system

Passenger coaches must have:
- Entry for a wheelchair user
- Space to park/secure a wheelchair
- Restroom for use by a wheelchair user
Title III: Public Accommodations and Services Operated by Private Entities

Covers all businesses, including:

- Inn, hotel, motel
- Restaurant, bar
- Theater, concert hall, stadium
- Grocery store, retail environment
- Laundromat, bank, funeral parlour, gas station
- Professional offices, e.g. lawyer
- Public transport terminal/station
- Museum, library, gallery
- Park, zoo, amusement park
- Private schools
- Day care, social service center
- Gym, bowling alley, golf course
Includes an individual with a disability:

- Denied access to goods, service, facilities and accommodations
- Denied equal benefit
- Given separate treatment (unless necessary to provide as effective service as to others)
- Provided in the most integrated setting
- Provided the same opportunity to participate in programs or activities
- Denying access to someone because they have a relationship with someone with a disability
Discriminatory Practices

Includes:

- Screening out people with disabilities from enjoying access
- Failure to make reasonable adjustments to “policies, practices, or procedures”
- Failure to provide auxiliary aids or services
- Failure to remove architectural or communication barriers in existing facilities
  - If not readily achievable make alternative methods available
Sec. 303 New Construction & Alterations in Public Accommodation & Commercial Facilities

Make alterations accessible to individuals with a disability, including wheelchair users

Focus on alterations to path of travel, bathrooms, telephones, drinking fountains

Elevator not required if < 3 storey or < 3000 sq. ft. per storey unless a shopping center or mall or office of a healthcare provider

Enforcement: Civil Rights Act 1964

• Remedies include order to alter facilities
• If “pattern or practice of discrimination” can award monetary damages > $50k first violation, > $100k second violation
• Excludes punitive damages
• Telecommunications providers must provide a telecommunications relay services to individuals with a hearing or speech impairment who use a TDD (telecommunications device for the Deaf)

• Must operate 24 hours a day

• Cannot charge more than other equivalent voice communication services

• Any TV public service announcement made with government funds must include closed captioning
Title V: Miscellaneous Provisions

• Architectural & Transportation Compliance Boards to issue minimum guidelines to supplement existing Minimum Guidelines and Requirements for Accessible Design

• National Council on Disability to conduct a study to report on access of individuals with disabilities to Federal Wilderness Areas
Q4 Who has to take legal action in an ADA case?

A  An individual who has been discriminated against or the body representing them

B  Law enforcement
Quick Quiz

Q5 What types of entity does Title II apply to?

A State and local government bodies

B Providers of rail passenger services

C Both A and B
Quick Quiz

Q6 What type of business does Title III apply to?

A Restaurants
B Dental clinics
C Movie theatres
D All of the above

Q5 Answer C
Q7 Legal enforcement under the ADA legislation can include an order to make facilities accessible and a monetary award

A TRUE

B FALSE
• Provision of FAPE extended to all children with a disability from the ages of 3 to 21

• Least Restrictive Environment (LRE)
  • Children with a disability must be educated to the greatest degree possible and in the least restrictive setting with children who do not have a disability
  • Supplementary aids must be provided as appropriate to support the student, e.g. physical aids, equipment, staff

• Individualized Education Program (IEP)

• Related Services
  • E.g. audiology, psychology, nurses

• Staffing
  • Highly qualified special education teacher

Q7 Answer A
Additional Legislation

- Access to medical diagnostic equipment (2010)
- Update of accessibility requirements for information and communication technology (2017)
Around the world

1992
Australia: Disability Discrimination Act 1992 (DDA)

1995

1995
UK: Disability Discrimination Act 1995 (DDA)

2002
Germany: Equality for Persons with Disabilities Act 2002
Various legislation has been passed to support people with disabilities since the 1960s. This culminated in the Americans with Disabilities Act in 1990. Legislation and caselaw is evolving.
Q1 The Architectural Barriers Act applies to: A

Q2 FAPE is important for providing: B

Q3 The Fair Housing Act applies to: C

Q4 Who has to take legal action in an ADA case? A

Q5 What types of entity does Title II apply to? C

Q6 What type of business does Title III apply to? D

Q7 Legal enforcement under the ADA legislation can include an order to make facilities accessible and a monetary award A