

## **The Americans With Disabilities Act (ADA) – Beyond Basic Etiquette PATH, Intl., Conference – Denver, CO. November 9, 2019 – Deborah Manasco**

*This is not intended to be a complete legal ADA presentation and should not be considered as legal advice for any specific circumstance. It is designed for educational purposes, to inform of the history and purposes of the ADA, and to raise awareness of some of the complexities of the ADA laws.*

**Introduction** – The Americans With Disabilities Act (ADA) (42 U.S.C. Section 12101, et seq.) is federal law that is the primary civil rights law for people with disabilities. The written requirements found in the United States Code and the Code of Federal Regulations (CFR), which provides working guidelines and policies, fill numerous hardbound books. The ADA applies to almost every area of life so it is necessary to “break it down” for application to conduct business and offer services in the U.S. that comply with the ADA.

In the eyes of the law, a *disability* is similar to any other area of diversity. People with disabilities are the largest minority in the U.S. In part, the ADA defines a *covered disability* as a physical or mental *impairment* that substantially limits one or more major life activities. The condition may be permanent or temporary. The primary goal of the ADA is to provide people with disabilities equal opportunities and equal access as everyone else. Another goal is independent living – easy to remember the complexities of the ADA if you think about it providing a fundamental right “to just live” in the U.S. regardless of ability. Another easy way to think of what the ADA provides is to think of the term “barrier free” – not only to facilities, but to jobs, living conditions, education, services, etc. To personalize it, ask the question – Does everyone have equal opportunities and equal access to the services our center offers?

“People with disabilities” is the preferred term. NOT – a disabled person, a person suffering or afflicted with a condition, etc. – simply **PEOPLE** with disabilities. Their life goals are the same as everyone else – same hopes and dreams, same desires for family, home, friends, good food, fun, independence, happiness, fulfillment, etc.

The ADA expressly prohibits discrimination against people with disabilities solely because of the disability. It also prohibits *associative discrimination*, which is experienced by people who associate with a person with a disability -- parent, sibling, spouse, child, caregiver, friend, business partner, etc. The ADA does not invalidate or limit other federal, state, or local laws that may provide greater protection for the rights of individuals with disabilities or individuals associated with them. It requires certain employers to offer reasonable accommodations to certain employees and imposes accessibility requirements on public accommodations. ADA coverage is expressly extended to a multitude of specifically named conditions such as deafness, blindness, mobility impairment, autism, cancer, diabetes, epilepsy, multiple sclerosis, muscular dystrophy, etc. and it expressly excludes certain other conditions to prevent abuse of the very purposes of the ADA. Examples of excluded conditions include anti-social conditions that generally lead to criminal activity such as kleptomania, pedophilia, exhibitionism, voyeurism, etc.

**HISTORY** – The term “handicap” has always had negative connotations and at best, is offensive! What was once a stakes game where values were assigned to items for trade, became the description for the stance of a beggar – cap in hand. The term handicap is often thought of as something that places a physical or mental disadvantage and hinderance to involvement. In some children’s games, a handicap is something that may equalize the chance of success for someone in a competition – like a head start in a race, additional weight or distance or a complication for an older/larger child or adult competitor against a smaller child, the restriction of a hand or foot, the use of the non-dominate hand, blindfolding, etc. Even in golf and horse racing, we view a handicap as an acceptable way to equalize competition. In the 1800’s a multitude of local laws, called “ugly laws” prohibited persons who were diseased, maimed, mutilated, or deformed in any way so as to be unsightly or disgusting, to be exposed to public view. These laws promoted unfairness and inequity as people who were viewed as “handicapped” were hidden from public view, placed in institutions, and marginalized.

Before and since the enactment of the ADA a multitude of federal and state laws have attempted to address the complexities of unequal access and the discrimination that accompanies those inequities. Laws providing opportunities for Veterans returning from war with service-inflicted disabilities may have been some of the first laws to start the break in this stigma and bring awareness to the value of the **PERSON** who happens to have a disability. Consider – the Civil Rights Act, Rehabilitation Act, Individuals with Disabilities Education Act, Fair Housing Act, etc. Laws addressing more narrow segments of our population continue to be enacted to address old inequities and to equalize the playing field of life in the U.S.

**LEGAL** – The ADA was designed to be a comprehensive law addressing many areas of inequality. It was passed in 1990 and significantly amended in 2008 to be even more inclusive and encompassing. It basically consists of five Titles that address various areas of life in the U.S. as follows: Title I. Employment; Title II. Public Entities; Title III. Public Accommodations; Title IV. Telecommunications; and V. Miscellaneous provisions, which includes prohibiting retaliation for those who assert ADA rights. For our purposes, we are mostly concerned with Titles I, II, and III.

**An oversimplified statement of those titles for our purpose follows and should not be considered as legal advice. These summaries are for educational and guidance purposes ONLY. Additional research and seeking legal counsel are essential when there is a specific question or circumstance.**

**Title I.** Employment. A *covered entity* (certain employers) cannot discriminate against a *qualified individual with a disability* from the point of job application throughout the entire process -- hiring, training, supervising, and ultimate voluntary or involuntary releasing from employment. A *reasonable accommodation* is a change in the way things are typically done; the *individual* must still be able to perform the *essential functions* of the job and meet performance requirements. In other words, the work product or service cannot be negatively compromised in order to make the *accommodation*.

**Title II.** Public Entities. Regulates access to programs and services offered by *public entities*. *Public entities* can include all government-regulated or -funded facilities and services. Do you receive ANY public funds? Grants? Do you serve participants from a *public entity* such as a school program? Physical access can include parking lots, buildings, restrooms, open activity sites, etc. Design of the physical facilities and programs must *accommodate* the population served.

**Title III.** Public Accommodations. *Public accommodation* includes places of recreation, education, dining, shopping, lodging, transportation, care providers, public displays, etc. A place of *public accommodation* cannot discriminate on the basis of disability with regards to the full and equal enjoyment of the goods, service, or facilities. Exceptions exist for certain private, religious, or historic organizations and for facilities that pre-exist the ADA – however, compliance to the extent possible is expected. CFR provides policies relating to the specifics and dimensions of areas such as doors, hallways, restrooms, etc.

Use of *service animals* falls within Title III. The ADA provides coverage for the animal and *individual* served and grants the business limited indemnification for damages relating to the access of the *service animal*. Very limited inquiries about the use of the service animal – 1) Is this a service animal? and 2) What tasks is it trained to perform for you? Can't ask to see special ID for animal, to see any task actually performed, or what disabilities the individual may have. Removal may be requested only if the animal is out of control or is a direct threat to the health and safety of other people present. (Allergies and fears are not valid reasons for removal or access denial under the ADA.) Cannot charge an extra fee for access of the *service animal*, cannot isolate or treat the *individual* differently than population served.

**APPLICATION** – Various PATH, Intl., standards concerning administration, facilities, and services offered require knowledge and compliance with ADA to offer EAAT services. Examples include:  
A6 Does the center meet federal, state, and local laws?  
F2 Is there at least one entrance to each building that complies with governing accessibility requirements and local fire and safety codes?  
F4 Accessible toilet facility -- Does it comply with governing accessibility regulations?  
F5 Parking access – Designated parking area for a person with a disability?  
F35 Mounting ramp – specific design and construction.

PATH, Intl., professionals are expected to comply with the ADA in facilities and practices. PATH, Intl., Standards provide limited guidance on compliance with ADA requirements. The Standard question, Interpretation, and Compliance Demonstration provide a great minimal starting point and should help you towards developing a deeper understanding of the purpose and the importance of compliance with specific ADA requirements and create a better awareness of the legal, health, service, and safety issues at your center.

Incidental events and accommodations such as the presence and use of assistants, service dogs, equipment, etc. give rise to ADA considerations unique to EAAT. We serve a diverse population and must create an environment where people with a disability and people without a disability are treated as similarly as possible. The EAAT professional is uniquely

qualified to see clearly that ability merely controls HOW one navigates life. A huge area of concern for the EAAT professional is what is appropriate under the circumstances for addressing the needs of the participants served.

Frequently in our centers, volunteers are exposed to an unfamiliar segment of the population for the first time. That lack of familiarity can cause a degree of discomfort for a volunteer to the extent that may be a reluctance to volunteer or limitation to what the volunteer is willing to offer. We become accustomed to and comfortable with our work environment, to participants, and to practices that can be totally foreign to a volunteer.

The emphasis should always be on **people** first, before referencing a disability or impairment. A person with a disability has a functional limitation that may interfere with activities of daily living – such as vision, hearing, mobility, processing, memory, age, mental or physical development, etc. The functional limitation does not define the person and should never be used to identify an individual. Disability is a natural part of the human experience and may be temporary or permanent – disability from an injury, too short to reach something, too long-legged to fit somewhere, too quick to be fooled or too slow to catch a joke, too young to be admitted somewhere or to earn a privilege, and if you are lucky enough, you will someday face the disabilities of old age. A person with a disability simply has access and functional needs today that may differ from yours. The distinction between disability and handicap can be understood by contrasting – a disability is a limiting condition caused by an accident, genetics, trauma, or disease, while a handicap is something imposed upon a person, such as a physical barrier or attitude, regardless whether the person has a disability.

### **Simply Stated Disability Etiquette Guidelines**

- ^ Be courteous! People with disabilities expect equal treatment—not special treatment.
- ^ Be sensitive (and sensible!) about physical contact – sometimes a person with a disability relies on their arms or hands to ambulate or balance. Sensory issues may also influence.
- ^ Consider equipment as a part of personal space – don't lean on or play with any assistive device. Don't separate a person with a disability very far from the necessary device. That creates anxiety. Device always should be within reach.
- ^ Treat a person with a disability in an age-appropriate manner – treat an adult as an adult!
- ^ Make eye contact and speak directly to the person with a disability, rather than a companion or assistant. Validate him or her as a **person** same as anyone else.
- ^ Don't let a negative experience with one person with a disability cloud your attitude with experience with another person with a disability.
- ^ An accommodation is NOT a complaint! Respond graciously to a request.
- ^ If a person speaks slowly, let him finish – don't finish the sentence for him. It's HIS thought process to express. Listen attentively and don't pretend to understand, repeat if necessary.
- ^ Don't treat a person with a disability as a victim, restricted, confined, dumb, unhealthy, afflicted or suffering. A disability does not indicate less intelligence, doesn't imply lack of good health, and is not regarded as continual suffering or affliction.

^ Always ASK how to help before assisting person with a disability – don't assume that they want you to do something. He or she knows best how others can help. When you want to offer assistance, do so, but don't be offended if refused. LISTEN to the instructions!

^ When you make a mistake – apologize, correct, learn, and move on! Acknowledging your mistake empowers others and humanizes you!

^ Relax in your communication and use your regular tone, yelling doesn't improve the situation and can actually hinder it by drawing attention to a miscommunication. Speaking too slowly can be as detrimental as yelling.

^ Don't be embarrassed if you use commonly accepted expressions – See you later, Run over here, stand up for what you believe, etc. Many people with disabilities develop a great sense of humor in awkward situations and actually enjoy your awkward struggles. Laugh at yourself with them when appropriate.

^ When having a conversation with a person using a wheelchair, sit to eye level if possible to facilitate the conversation

^ When possible, consider needs ahead of time and be ready – remember, it may have taken the person with a disability much longer to prepare for seeing you!

**A person with a disability has the same hopes and dreams as anyone else → home, family, friends, job, fulfilling a purpose, recreation, independence, happiness, etc. Just BE RESPECTFUL and everything else falls into place!**

**Resource Guidelines** Be clear in what you seek – guidance, reference materials, grants, educational information, activities, referrals, etc. Be open to what is offered.

Try **local** first – National and state organizations may have a regional office near you. If you are working with a particular population, there are generally government and private agencies that specialize in your population. Contact them for assistance in understanding, assessing needs, and ways to provide the best possible services for your participants. Whenever possible, go in person, scheduled or as a walk-in. Personal inquiries get better responses.

**Government agencies** – Frequently offer free reference materials and instructional resources. Do Internet research to locate, then follow instructions for contacting. Allow adequate time for response before a follow up contact. Find and learn a name – it helps to have a point of contact.

Network with similar organizations – if you are operating as a non-profit, seek other non-profits. If faith-based, look at other area faith-based organizations. Assure other organizations in your area that you are not competing with them for funding, clients, volunteers, and other area resources. Seek to join or establish a local team that works together to provide the best services and exchanges useful information. Collaboration can help with referrals, benefit participants, help build a stronger volunteer base, and is mutually beneficial to a community, particularly one with limited resources. \*\*\* **Get competition OUT and cooperation IN!**