

# **The Americans with Disabilities Act**

*Tracey M. Crawford, CTRS, CPRP, Executive Director,  
Northwest Special Recreation Association  
Rolling Meadows, IL*

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*Park and Recreation Policy Tools for a  
Healthier Future*

# **Laws About Disability Are *Not* New**

In 1968 we recognized that children with disabilities deserved a free and appropriate public education (FAPE) and Congress passed the Individuals with Disabilities Education Act (IDEA)

- Revolutionized education
- Has become the way we do business in schools
- Serves 5,800,000 students annually

# Individuals With Disabilities Education Act (IDEA)

- An education act to provide federal financial assistance to State and local education agencies to guarantee special education and related services to eligible children with disabilities.
- IDEA provides federal funds under parts B and H to assist State and local education agencies in meeting IDEA requirements.
- IDEA requires written notice to parents regarding identification, evaluation, and/or placement and prior to changes. Reevaluation must be conducted every 3 years.
- IDEA delineates specific requirements for local agencies to provide impartial hearings.

# **Laws About Disability Are *Not* New (part II)**

In 1973 Congress passed the Rehab Act, and within it, Section 504 prohibited discrimination by recipients of federal funds

- Applied to universities, governments, and others
- Limited to the program funded by federal \$\$\$
- Developed the “program accessibility test”
- Still in effect today, but has birthed the ADA

# **Section 504 of the Rehabilitation Act of 1973**

- A civil rights law to prohibit discrimination on the basis of disability in program and activities, public and private, that receive federal financial assistance.
- There are no federal funds. State and local jurisdictions have responsibility.
- Section 504 requires notice to parents regarding identification, evaluation, and/or placement. Notice must be made only before “significant change” in placement. Only notice not consent is required for evaluation.
- Section 504 requires local education agencies to provide impartial hearings.

# Laws About Disability Are *Not* New (part III)

On January 23, 1990 , the 101<sup>st</sup> Congress passed the “Americans with Disabilities Act of 1990” (ADA), which was then signed by President George Bush and became effective January 26, 1992

- ADA grew out of the Civil Rights Movement of the 1960’s.
- No use of federal funds? Still must comply!
- Over 54 million Americans with physical or mental impairments that substantially limit daily activities are protected under the ADA.
- 89,000 states and local governments must comply
- 7,000,000 businesses and nonprofits must comply
- New and effective methods to seek compliance

# Why?

- **Some 43,000,000 Americans had one or more physical or mental disabilities, and that number was increasing as the population as a whole grew older.**
- **Society tended to isolate and segregate individuals with disabilities, such forms of discrimination against individuals with disabilities continued to be a serious and pervasive social problem.**
- **Discrimination persisted in employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.**

- **Individuals with disabilities experiencing discrimination had no legal recourse to redress such discrimination.**
- **Individuals with disabilities continually encountered various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make accommodations to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities.**
- **Census data, national polls, and other studies documented ,as a group, people with disabilities occupied an inferior status in society, and were severely at a disadvantage socially, vocationally, economically and educationally.**

# And...

- Individuals with disabilities were subject to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in society, based on characteristics that are beyond their control and resulting from stereotypic assumptions not truly indicative of the individual ability to participate in, and contribute to, society.
- The nations goals for regarding individuals with disabilities was to assure equality of opportunity, full participation, independent living, and economic self-sufficiency.
- The continued existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on and pursue those opportunities for which the free society is justifiably famous!

# **Americans with Disabilities Act of 1990 (ADA)**

- A civil rights law to prohibit discrimination solely on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation and telecommunications.
- There are no federal funds but limited tax credits may be available for removing architectural or transportation barriers. Also, some federal agencies provide grant funds to support training and to provide technical assistance to public and private institutions.

# ADA continued...

- The ADA specifies provisions of reasonable accommodations for individuals with disabilities in activities and settings. Reasonable accommodations may include, but not limited to, redesigning equipment, assigning aides, hiring interpreters, providing written communication in alternative formats, modifying tests, changing rules, moving programs or services to accessible locations, altering existing facilities, and building new facilities.

# And...

- **The ADA does not delineate specific due process procedures. People with disabilities have the same remedies that are available under Title VII of the Civil Rights Act of 1964, as amended in 1991. Individuals who are discriminated against may file a complaint with the relevant federal agency or sue in federal court.**

**The Americans with Disabilities Act  
(ADA) consist of five titles**

# ADA Title I: Employment

- Requires employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others.
- For example, it prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities, and other privileges of employment.
- It restricts questions that can be asked about an applicant's disability before a job offer is made, and it requires that employers make reasonable accommodations to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship.
- Charges of employment discrimination on the basis of disability may be filed at any U.S. Equal Employment Opportunity Commission field office.

# **ADA Title II: State and Local Government Activities**

- Covers all activities of State and local governments regardless of the government entity's size or receipt of Federal funding.
- Requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings).
- State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They must also relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision, or speech disabilities.
- Public entities are not required to take actions that would result in undue financial and administrative burdens.

# ADA Title II: continued

- They are required to make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, unless they can demonstrate that doing so would *fundamentally* alter the nature of the service, program, or activity being provided.
- Complaints of Title II violations may be filed with the Department of Justice within 180 days of the date of discrimination.
- In certain situations, cases may be referred to a mediation program sponsored by the Department. The Department of Justice may bring a lawsuit where it has investigated a matter and has been unable to resolve violations.
- Title II may also be enforced through private lawsuits in Federal court. It is not necessary to file a complaint with the Department of Justice (DOJ) or any other Federal agency.

# ADA Title II: Public Transportation

- The transportation provision of title II cover public transportation services, such as city buses and public rail transit (e.g. subways, commuter rails, Amtrak).
- Public transportation authorities may not discriminate against people with disabilities in the provision of their services.
- They must comply with requirements for accessibility in newly purchased vehicles, make good faith efforts to purchase or lease accessible used buses, remanufacture buses in an accessible manner, and unless an undue burden, provide paratransit where operating fixed-route bus or rail systems.
- Complaints about public transportation should be directed to the Office of Civil Rights Federal Transit Administration in the US Department of Transportation.

# ADA Title III: Public Accommodations (and Commercial Facilities)

- Covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial facilities.
- Public accommodations are private entities who own, lease, lease to, or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers, and recreation facilities including sports stadiums and fitness clubs.
- Complaints of title III violations may be filed with the Department of Justice. In certain situations, cases may be referred to a mediation program sponsored by the Department. The Department is authorized to bring a lawsuit where there is a pattern or practice of discrimination in violation of title III, or where an act of discrimination raises an issue of general public importance.

# **ADA Title IV: Telecommunications Relay Services**

- Addresses telephone and television access for people with hearing and speech disabilities.
- Requires common carriers (telephone companies) to establish interstate and intrastate telecommunications relay services (TRS) 24 hours a day, 7 days a week.
- TRS enables callers with hearing and speech disabilities who use telecommunications devices for the deaf (TDDs) which are also known as teletypewriters (TTY's), and callers who use voice telephones to communicate with each other through a third party communications assistant.
- Also requires closed captioning of Federally funded public service announcements.
- More information: Federal Communications Commission

# **ADA Title V: Miscellaneous Provisions**

- Title V includes information regarding the ADA's relationship with other federal and state laws, including the Rehabilitation Act of 1973, requirements relating to the provision of insurance, construction and design regulations by the U.S. Access Board, prohibition of state immunity, inclusion of Congress as a covered entity under the law, promotion of alternative means of dispute resolution, and establishment of technical assistance resources

# **New Regs, New Policies, & Finally, Recreation Design Standards**

US DOJ issued amended regulations in 2010

Became effective for governments, businesses,  
and nonprofits on March 15, 2011 for policies

Include recreation design standards effective for  
new sites on March 15, 2012

# Summary of Changes

- **Adoption of the 2010 ADA Standards for Accessibility Design-** *The Department has adopted revised ADA design standards that include the relevant chapters of the Access Board's 2004 ADA/ABA Accessibility Guidelines as modified by specific provisions of this rule.*
- **Effective Date** – *The rule became effective on March 15, 2011. On March 15, 2012, compliance with the 2010 Standards will be required for new construction and alterations.*
- **Ticketing** – *The rule provides guidance on the sale of tickets for accessible seating, the sale of season tickets, the hold and release of accessible seating to persons other than those who need accessible seating, ticket pricing, prevention of the fraudulent purchase of accessible seating, and the ability to purchase multiple tickets when buying accessible seating.*

# More Changes

- **Service Animals-** *The rule defines “service animal” as a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability. Other animals, whether wild or domestic, do not qualify as service animals. Dogs that are not trained to perform tasks that mitigate the effect of a disability, including dogs that are used purely for emotional support, are not service animals. The rule permits the use of trained miniature horses as an alternative to dogs, subject to certain limitations.*
- **Wheelchairs and Other Power-Driven Mobility Devices –** *The rule adopts a two tiered approach to mobility devices, drawing distinctions between wheelchairs and “other power –driven mobility devices.” Wheelchairs must be permitted in all areas open to pedestrian use. “other power –driven mobility devices” must be permitted to be used unless the covered entity can demonstrate that the class of devices cannot be operated in accordance with legitimate safety requirements.*

**Outcome?**

# **First, Changes to the Way We Do Business**

**Hire candidates with disabilities and change  
the workplace**

**Budget for access retrofits and recreation  
inclusion support**

**People with and without disabilities, together**

**Design & build facilities & sites to be accessible**

# **Second, Inclusion becomes the *Norm, Not the Exception***

Every program and service

Create inclusion process to invite and support

Adopt and fund elements of an inclusion model

Add the right staff, and train current staff so that  
a culture of inclusion thrives

# **Third, start *evaluating existing sites* and retrofit the right number for access**

Modifies the 1991 Standards for the built environment

Adopted by the International Building Code (IBC)

Includes a regulation for playgrounds, sports fields and courts, golf, swimming, fitness facilities, boating, and fishing

**NOTHING** in this is new...all were published in 2000 and 2002

***DISCOVER* THE BENEFITS OF  
RECREATION INCLUSION**

# ONE

Inclusion provides

**OPPORTUNITIES**

For people with and without  
disabilities to experience  
recreation together.

# TWO

Inclusion provides **SUPPORT**

In the form of extra staff, sign language interpreters, adapting rules and policies, behavior management support, disability awareness training, and other services necessary to include people with disabilities in recreation.

# THREE

Inclusion looks at the  
**NEEDS, INTEREST, and ABILITIES**  
of people instead of focusing on their  
disabilities.

# FOUR

Supports the process of

**PREPARING, LEARNING, EXPERIENCING,**  
**and GROWING**

with each person, each family and each  
recreation staff.

FIVE

Inclusion provides a  
**RECREATIONAL CHOICE!**

**INCLUSION IS OUR JOB!**

# **INCLUSION IS A GOOD STRATEGY!**

Avoid paying 6-figure legal fees when losing

Enjoy a better connection to the community

Truly serve ALL your residents

Catch up with your Minnesota neighbors  
who are already making inclusion happen

# CLOSE and RESOURCES

Tracey Crawford at NWSRA at [tcrawford@nwsra.org](mailto:tcrawford@nwsra.org)

John McGovern at [john.mcgovern@rac-llc.com](mailto:john.mcgovern@rac-llc.com)

Department of Justice at 202/514-0301 or [www.ada.gov](http://www.ada.gov)

Access Board at 202/272-0080 at [www.access-board.gov](http://www.access-board.gov)