The Americans with Disabilities Act (ADA): Perspectives on Implementation

Katrina Arndt, Ph.D.: Professor, Inclusive Education, St. John Fisher College, Rochester, NY

David Rostetter, Ed. D.: Independent Monitor, U.S. District Court, Chanda S. Consent Decree, Los Angeles, CA

Joanna Bohn, M.S.Ed.: Teacher, Maui High School, Maui, HI

This paper analyses the implementation of Title I - Employment and Title II - Nondiscrimination on the basis of disability in state and local government services of the Americans with Disabilities Act (ADA). Two of the authors are intended beneficiaries of the ADA. Dr. Rostetter is functionally blind and Ms. Bohn has numerous neurological and physiological conditions which render both “qualified handicapped persons”. They, therefore, have a unique relationship to the Act and its regulations and the purported benefits it does, and does not, result in.

It has been 27 years since the passage of ADA and 23 years since implementation of its Title II requirements. Hundreds of billions of dollars have been spent in the public domain in nationwide efforts to construct facilities to enable persons with disabilities to access walkways, public transportation, airports, buildings, and community facilities to vote and access recreational opportunities. Familiar sights today are curb cuts, ramps, grab bars, lowered sinks and countertops, power-assisted doors, and Braille menus to allow fellow citizens to meet their mobility challenges.

However, in many communities, litigation and unnecessarily contentious attitudes and behaviors persist in resistance to these readily available physical adaptations and changes. Even when undertaken and completed, adaptations are often lacking in meeting the compliance standards set forth in federal and state regulations. For example, John Hopkins Hospital in
Baltimore, Maryland, a world-renowned institution, has inadequate bathroom facilities and doorways. Architectural barriers often prove to be even more problematic in colleges, universities, and school districts. Los Angeles, Chicago, and New York City are just now beginning plans to address physical and program accessibility.

An analysis of individual needs within the statutory framework illustrates the deficits in how the ADA is applied in the workplace and public education. Conflict sociology subscribes to a view of human behavior as in constant conflict, and assumes that interactions are typically contentious and chaotic (Collins, 2009). Analyzing individual needs related to implementation of the ADA includes the supposition that when faced with conflict, a natural human tendency is to push back. Conflict sociology proposes that it is human nature to seek conflict; the result is that a first response to a directive is resistance, the second is flight or escape, and the third and last response is grudging, minimal compliance if and only if the first two options are not feasible. We propose that this model of human behavior explains a great deal of the struggle the ADA has faced.

The purposes of this paper to review:

- the “Martinizing” (Porter, 2013) strategy for reviewing reasonable accommodation decisions
- a case study in a reasonable accommodation decision by a school district for a teacher (Ms. Bohn)
- the scope of implementation of reasonable accommodations by three large urban school districts - Los Angeles, California; New York City, New York; Chicago, Illinois
- recommendations for strengthening enforcement of reasonable accommodations
To address these purposes the paper is organized with a brief review of literature; an analysis of the deficits in the application of Title I; a review of implementation in educational settings; and recommendations for conducting analysis.

Literature Review

The Americans with Disabilities Act (ADA)

The passage of the Americans with Disabilities Act (ADA) in 1990, issuance in 1991, and implementation in July 1992 changed the employment landscape for public and private employers. Prior to the passage of the ADA, 39 states had strong protections against disability-based discrimination (Kim & Rhee, 2018); after implementation, all states adhered to the ADA’s definition of disability as “a physical or mental impairment that substantially limits one or more major life activities” (42 U.S.C. §12102(2)(A)). Kim and Rhee (2018) analyzed the effects of the ADA between 1991 and 1999 (before the Supreme Court restricted eligibility of protection under the ADA to individuals with conditions not offset by medical devices or medicines). They found that “the ADA reduced firing of disabled workers, but at the same time, had a negative impact on their job-finding rates” (p. 127)

The Americans with Disabilities Act Title I concerns on employment; Title II focuses on Public Services (United States Department of Justice Civil Rights Division, n.d.). In Title I, Congress found that

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. Americans with Disabilities Act of 1990.
A basic principle of the Act is to prevent treating people with disabilities in “a different or inferior manner” (U. S. Department of Justice, 2015, p. 2). Cases that have asserted different or inferior treatment vary widely, as do the way “different or inferior” is interpreted.

Title I deals with issues of individual discrimination on the basis of disability. It has, indeed, helped many individuals. But its successes are not uniformly effective and seem to be dependent on state and agency discretion rather than consistent application of the standards. We propose that Title I of the ADA is limited not by statutory language but by the attitudes and beliefs of those required to meet its requirements.

Deficit Inherent in ADA Application

A major deficit in the application of the ADA is the simple fact of application. When applying statutory requirements to people, there is a misfit between the coercive nature of law and what people need. When lawyers look at the law, they look at “what do we have to do?” and “what does the law require us to do?” vs. “what does this person need?” The same issue exists with the Individuals with Disabilities Education Act; an agency being compliant with the law does not necessarily mean that an individual with a disability benefits from the expected entitlement.

The problem is exacerbated related to disabilities because people with disabilities are typically misunderstood through a deficit model in the first place; seeing individuals with disabilities through a deficit lens means that any remediation is seen as sufficient. There is an inherent sense of being grateful for minimal access; both a medical and pity/charity model are endemic in American society.

Title I SEC. 12112. [Section 102]
(a) General rule. - No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. Retrieved from: https://www.eeoc.gov/laws/statutes/ada.cfm

Martinizing Strategy

In her critique of reasonable accommodation decisions, Porter (2013) notes that there are four types of accommodations that fall within the boundaries of employer-employee relationship: accommodations to physical structure, to the environment, to shifts or schedules, and accommodations to remedy subtle barriers (p. 570). A related factor in decisions about accommodations is the sense that providing accommodations gives an unfair advantage to the recipient. [section under development]

Educational Settings

We discuss the implementation of the ADA in public education through two lenses; an individual case study and a district’s slow movement toward implementation of reasonable accommodation in the educational setting. Porter (2013) analyzed Title I decisions and proposes two prongs of review: first, an accommodation is unreasonable if it fundamentally alters the employee-employer relationships, and second, an accommodation is unreasonable if it gives the employee with a disability an unfair advantage over other employees.

Joanna Bohn was a tenured teacher and dismissed without cause because the ADA failed to protect her. As a person with a disability, she is guaranteed protection and that was not provided to her. In this section specifics of her quest for reasonable accommodation and denial of services and eventual job loss are reviewed.
Ms. Bohn reflects on her response as a whole to her diagnosis, and endeavors to work once her body was “fixed,” or at times taped together. The human body is given directives by the nervous system, and in 2013, hers began to seemingly short out. At this time, she was working as a special education teacher for the Hawaii Department of Education. Each day after tutoring, she drove up the mountain home to grade and sleep. But she only truly “lived” at Maui High School.

The body’s first response to conflict, resistance, occurs in the immune system. After a year of MRIs, blood tests, blurry vision and broken chalk, a doctor at Johns Hopkins confirmed a diagnosis of lupus, RA, and primary Antiphospholipid Syndrome, an autoimmune disease that affects the blood.

How this diagnosis and its effects on her body altered the employer-employee relationship and how Ms. Bohn and the district engaged in whether or not accommodations gave an unfair advantage are explored below.

Altering the employer-employee relationship

   Accommodations to physical structure

   Accommodations to the environment

   Accommodations to shifts or schedules

   Accommodations to remedy subtle barriers

Giving an unfair advantage: you don’t look disabled; you look smart; what’s the problem?

[section under development]

Implementation of ADA in Los angeles,
The Los Angeles Unified School District (LAUSD) is emblematic of many large districts in its slow progress toward compliance with the ADA. After 27 years, the LAUSD has plans to implement the ADA. This is of course long overdue and upon the plan’s completion, the LAUSD will take half a century to become compliant. Five generations of children will have endured substandard educational settings despite the passage of ADA in 1992. This is a travesty. We explore why this particular district has had such difficulty moving toward compliance and gotten away with it.

People learned early on that there are no consequences for failing to comply. Collins says the greater the aggression, the greater the counter aggression. If there are no resources to fight back, you attempt to escape compliance. If that does not work, you will dull compliance. So, most districts say they will do it - knowing there is no real hammer to force compliance. A review of data from the Department of Justice (DOJ) and the Office for Civil Rights (OCR) reveals continuing difficulties in the nation's largest school districts. The Department of Justice has laid down with all big entities it has had to confront.

An example of the pushback by LAUSD to implementing title to the ADA this is exemplified in the following response to the Independent Monitors report in March, 2019:

“General Comments Comparing The District's Accessibility Rate With Those of Other School Districts. In your report, you make statements to the effect that the District's rate of compliance with accessibility requirements is not on par with other school districts. It appears that these statements are inaccurate and unsupported. Comparative compliance is difficult to gauge, as there are no statistics about how many public entities have achieved program accessibility, have completed plans, or have implemented them; most do not publish plans
online, for example. However, it seems likely that the school districts that do comply with program accessibility requirements are those that are relatively small and with newer buildings (especially if most of the buildings post-date the ADA (1992)) or those that have relatively few "choice" or magnet programs). Large school systems with a variety of programs and older buildings - such as LAUSD - face greater challenges. But in fact, especially with its new Transition Plan, LAUSD is faring better than other large districts.” (LAUSD)

The point was that based upon the number of students with disabilities in the PAL program that elevate to the need of facilities modifications such as renovation of restrooms and/or the installation of grab bars, the number of those students is 5% of the total population of students in the PAL program. Of course, the District is not limiting accessibility to PAL facilities or any facilities to 5%. As we all know, resources are not unlimited. The location of a PAL program and attendance at a particular school or other facility by students with disabilities related to access is certainly one of the factors taken into account when designating schedules and plans for improvements. As necessary, also according to the Transition Plan, RAP requests will "fill in" for unanticipated needs.

A review of complaints against elementary, secondary, and post-secondary schools that were under investigation by the Office for Civil Rights (OCR) of the U.S. Department of Education as of March 1, 2019, shows that physical accessibility is still one of the prime concerns to those seeking to access school programs and activities. This suggests that many schools may not be in compliance with provisions related to existing, new, and altered facilities. Of course, a complaint does not prove violations, but it is telling that almost one quarter of the 1628 complaints about disability discrimination by
elementary and secondary schools (i.e., 434) are "disability access" complaints. Of the seven categories used by OCR in this tally, only one (denial of benefits) shows a larger number of complaints.

The closest comparators to the LAUSD are other large districts. Of the 35 largest school districts in the country by enrollment as of 2017, 25 are currently under investigation (and some under more than one investigation) by OCR. LAUSD is not among them. In fact, of the five largest school districts in the US, only LAUSD is not under investigation.

The other four of the five largest districts in the United States are subject to a U.S. Department of Justice (DOJ) or OCR investigation or private litigation about physical accessibility. The largest districts, in order of population size, are (1) New York City (NYC), (2) LAUSD, (3) City of Chicago, (4) Dade, and (5) Clark County. As detailed below, NYC is subject to a DOJ finding of system-wide violations of program access requirements, and the City of Chicago faces continuing litigation after an OCR settlement about accessibility of its magnet schools. Dade and Clark County are listed as under investigation by OCR for physical accessibility issues.

Almost four years ago, DOJ found that the City of New York had failed to make its public elementary school system accessible in its entirety and that "significantly more" of the schools needed to be accessible to comply with the ADA’s program access obligations. The DOJ letter of findings of December 2015 found that 83% of public elementary schools were not "fully accessible" to people with disabilities and six of the City's school districts, serving over 50,000 elementary school students, did not have a single school that was "fully accessible" to people with disabilities. In addition, children with disabilities were frequently denied the experience of
attending their local public school with their friends and neighbors and must instead travel long distances on buses.

DOJ directed NYC to develop a comprehensive plan to survey all elementary schools and recommend a system-wide remediation plan to address the lack of accessibility, making it a priority to increase the accessibility of the first floors of school buildings and the rooms used by all students, teachers, parents, or other visitors to the schools. While NYC rejected the findings and there is no further public information about any resolution of the DOJ complaint, the City has allocated $100 million for accessibility improvements over five years, far less than the $600 million that LAUSD (with about two thirds of the student population of the NYC schools) anticipates spending in Phase One of its effort. In fact, in October 2018 Advocates for Children of New York recommended that while the City should commit to making every school accessible, it should at least make an investment to make at least one third of the schools in each district accessible, with an allocation of $750 million over five years in addition to the $100 million that had already been allocated.

The City of Chicago Public Schools system is third in size after LAUSD, with about half the number of students. It has made program access changes as a result of a 1996 settlement agreement with OCR, which required it to make its magnet schools accessible, but continues to receive complaints from individuals. In 2017, a parent of a young girl who attends a Chicago magnet school and recently began using a wheelchair filed suit against the school system because it refuses to move the girl's classroom, which is on an inaccessible floor of the building, to the first floor, which is accessible (G.P. v. Claypool, No. 1:17-cv-01891).

The goal is to create some sort of urgency about ADA compliance.
Recommendations for Analysis Using Conflict Sociology

First, there is a significant need for further research to codify the range of ADA accommodations under Title I, the employment accommodations. We need to be able to say that these are the kinds of things that commonly occur and you should not have to go to court to get them. A few places have identified kinds of accommodations (Joanna has several handouts - add that information).

Second, the Department of Justice needs to conduct more monitoring and enforcement. We need more resources allocated to ADA enforcement. If there seems to be no accountability after 25 years, businesses are not going to comply because it can be expensive. [ section under development].

References


Nondiscrimination on the Basis of Disability in State and Local Government Services


