

MH3400: LESSON SUMMARY AND REQUIRED ASSIGNMENT

The Legal Rights of People with Disabilities Under United States Law - Part 2

INTRODUCTION: As was discussed in Part 1 of this lesson, it is crucial for helping professionals to understand the legal rights of people with disabilities so that we can help our clients with disabilities access appropriate support services and exercise the rights which they are entitled to under law. In Part 1 of this lesson, we looked at two important laws:

- a) The Individuals with Disabilities Education Act (IDEA) which specifies the rights that ALL children with disabilities and their parents have in our public education system, and
- b) the federal government's definition of a developmental disability and the rights of people with developmental disabilities to a case manager and life long support services.

The Americans with Disabilities Act of 1990:

In this summary, we will look at the Americans with Disabilities Act (usually referred to as the ADA) of 1990. The purpose of the ADA is to prevent discrimination against ALL people with disabilities in THREE specific areas:

- higher education (i.e., college)
- employment
- public accommodations (examples of public accommodations are: transportation such as busses and subways, large stores, shopping malls, hotels, etc.).

BACKGROUND/HISTORY of the ADA: While the circumstances faced by people with disabilities are far from perfect, as a result of the passage of the ADA, great strides have been made in terms of preventing discrimination against people with disabilities. For a number of reasons, the ADA has been far more effective than previous laws in accomplishing the goal of preventing this kind of discrimination. Hopefully a little background information on this law will clarify why this is true.

STRICT PENALTIES: Before the ADA was passed in 1990, it was already illegal to discriminate against people with disabilities. However, if someone did discriminate, there was little or no penalty for doing so. To get an idea of the effect this lack of penalties had, let's use the example of shoplifting. Shoplifting is against the law, but let's imagine that if anyone did actually shoplift, he or she would NOT be punished for doing so! In other words, just imagine you could go into Target, shoplift any items that you wanted, and if you got caught, all they would say to you is "shoplifting is illegal" but there would be no punishment! If this were the case, what percentage of the population do you think would shoplift? Not everyone, but certainly a very substantial percentage of people would shoplift if there were no penalty for doing this. Pretty much the same thing

happened with discriminating against people with disabilities... since it was illegal, but there were no penalties for discriminating, most people just went ahead and discriminated against people with disabilities when it served their own best interests.

The ADA changed all of this by imposing VERY strict penalties for discriminating against people with disabilities. Most of these penalties were in the form of imposing heavy fines on organizations for discriminating. Because it would now cost a lot of money to discriminate, people and organizations paid attention and there was far less discrimination as a result. In 1990 when the ADA was passed, I was a social worker and a large percentage of the people in my caseload had at least one disability. I clearly remember the lawyers for the agency where I worked holding meetings to tell us that discriminating against anyone with a disability was now over because, if discrimination now took place, it was going to cost our agency a lot of money. Over and over, these lawyers kept emphasizing the money rather than the people and I remember being disgusted by that. But, the fact is, hitting people in their pocketbook got their attention and it strongly motivated them to stop discriminating!

CIVIL RIGHTS AND WOMEN'S MOVEMENTS: Throughout the 1960s, 1970's and 1980's, people who were discriminated against based on race, and later based on gender, had staged large protests throughout the United States. These protests had been very effective in raising awareness of the harmful effects of discrimination and also in bringing about substantial changes in our practices and our laws. Many people with disabilities (and their families) watched these protest movements and became aware of the similarities between the way these other groups were treated and the discrimination they faced as the result of having a disability. Because of this, many people with disabilities and their family members began to organize their own protests. They demanded stricter laws prohibiting discrimination against people with disabilities and stricter penalties for doing so. These protest movements helped insure that a strict law with strict penalties would be passed.

TWO IMPORTANT PROVISIONS OF THE ADA: 1) Reasonable Accommodations, and 2) Disclosure

1) **REASONABLE ACCOMMODATIONS:** Under the ADA, public accommodations (such as transportation, shopping malls, large stores), places of employment, and higher education (college), must make "reasonable accommodations" so that people with disabilities have an equal chance to succeed in employment and higher education and to access public accommodations such as busses, subways, shopping malls, swimming pools, recreational facilities and so on. What follows are some examples of reasonable

accommodations in public accommodations, higher education and employment so that you can get an idea of what “reasonable accommodations” actually are. Public Accommodations: Since the ADA was passed, there have been HUGE changes in public accommodations. For example, sidewalks now have little ramps at each street corner so that people in wheelchairs can cross the street without having to navigate a six inch high curb. Our New York City subway system now has elevators in many stations and our busses now have a step that lowers to lift up someone in a wheelchair. Braille markings on elevators are common to accommodate people with severe visual impairments and wheel chair ramps are common. It is important to note that prior to passage of the ADA in 1990, these accommodations were rare or non-existent! Just think what it must have been like to be in a wheelchair when there were no little ramps in the sidewalk curbs at each street corner! If you were in a wheelchair before 1990 and you wanted to go off your block, you would have to rely on someone to help you get over the sidewalk curb!

Higher education: The “reasonable accommodations” for people with some physical disabilities are most obvious. For example, at Kingsborough, restrooms now have at least one larger stall that accommodates a wheel chair, some buildings have doors that open automatically or with the push of a button, and classrooms generally have one desk that is high enough so that a wheelchair fits under it. You may also know that Kingsborough also makes “reasonable accommodations” for students with other, less visible disabilities. Some examples: students with learning disabilities who need more time to take an exam, are given this extra time, usually up to double the amount of time students without this type of disability have to complete the exam. Other students who have difficulty taking notes (either due to a physical disability or learning disability) are given a note taker who attends class and takes notes for them. Some students with reading disabilities are given auditory versions of the textbooks for their courses. The point is, if a student has a documented disability, it is Kingsborough’s obligation under the ADA to provide this student with the support services they need in order to be successful in learning and passing their courses.

It is important to note that before the ADA was passed, less than twenty students with disabilities were attending Kingsborough. Now, thirty years after the ADA, there are over 1,000 students with a wide variety of disabilities attending Kingsborough. These disabilities include learning disabilities, developmental disabilities such as cerebral palsy, intellectual disabilities, physical disabilities such as hearing and visual impairments, and psychological disabilities such as bipolar disorder, anxiety disorders and schizophrenia.

Employment: Some common reasonable accommodations in the workplace (employment) are: longer time to learn job duties, the use of a voice activated computer, time off for doctor visits or counseling sessions, written instructions for people who have difficulty with auditory (hearing) instructions, and modification of work duties. In order to get a “reasonable accommodation,” a person with a disability must request it. If the reasonable accommodation requested is NOT provided, then the person has the right to go to court and be heard by a judge who determines: 1) whether or not the reasonable accommodation should be provided, and 2) imposes fines on the agency or a monetary settlement to the person with a disability, if the agency was ordered to provide the reasonable accommodation by the court and did not do so,

IMPORTANT: The ADA does NOT specify exactly what a “reasonable accommodation” is. This was done on purpose, so that people with disabilities could be creative in thinking about what they need in order to succeed in a particular setting, i.e., in higher education, employment, or accessing public accommodations. The point is, the person with a disability has a right to ask for anything that might help them succeed. Here’s an example: A few years back, there was a young woman who went to pharmacy school for four years after college in order to become a pharmacist. Pharmacy school is challenging because it requires students to take lots of math and science courses. However, despite having a severe anxiety disorder, this young woman was able to pass all her courses and to become a licensed pharmacist. She obtained a job in the pharmacy of a hospital near where she lived working the day shift. The hospital pharmacy was extremely busy during the day and it triggered her anxiety to the point where she could not complete her job duties effectively. At that point, this young pharmacist requested the “reasonable accommodation” of being placed on the overnight shift when the pharmacy was less busy. She was awarded this reasonable accommodation, and, as a result, was able to perform her job duties well.

At first glance, it may seem as though requiring a reasonable accommodation in the workplace may sometimes impose an unfair burden on employers. However, I want to point out that “accommodations” are made all the time in the workplace. For example, I have worked with people who had small children whom they had to get ready for school/daycare. These employees were often allowed to come to work a bit later (and thus had to stay later) than the rest of us. Years ago, I worked in an office setting where I could run a machine better than any of the other office workers. The boss then turned over all the running of the machine to me and gave my other duties to other office staff members. The point is, that adjustments are made all the time in the workplace for us “so called

normal” people. Why not make similar adjustments for people with disabilities so they too can succeed?

2) **DISCLOSURE:** Under the ADA, people who request reasonable accommodations must **DISCLOSE** the general nature of their disability and must provide written documentation of their disability from a health care professional if requested to do so. The purpose of this requirement is probably obvious. It is done so that people **WITHOUT** disabilities do not take advantage of the law. For example, many students without disabilities would like to have a longer time to take an exam, particularly if they had not studied for it as much as they should have, or they might want to request a note taker so that they could skip going to class! Disclosure, particularly when the disability is “hidden” such as a psychological or cognitive disorder, does come with some risks. When people disclose this kind of disability, others may stereotype them or resent them for getting “special treatment” or try to avoid interacting with them. I personally know of a case where an employee named Allison disclosed that she had a learning disability and needed a little longer time to learn her job duties. The employee who was assigned to teach Allison refused to do so, stating in front of Allison “Allison is stupid and can’t learn so I’m not going to waste my time trying to teach her.” Allison felt discouraged and humiliated but did not give up. Eventually, the situation was resolved and Allison ultimately proved herself to be an excellent and dedicated worker.

WHEN TO DISCLOSE: The ADA specifies that people with disabilities are allowed to request reasonable accommodations at **ANY** time. So, for example, in the area of employment, a person who has a disability can disclose and request accommodations at the job interview **OR** wait until offered the job **OR** wait until their first day at the job **OR** they might wait and see if they can do the job first and then disclose and request accommodations later if they discover that they can **NOT** do the job without reasonable accommodations. In other words, there is **NO** deadline for requesting reasonable accommodations.

THE ADA AND THE ROLE OF THE HELPING PROFESSIONAL: Our role when working with people with disabilities is to inform them of their rights under the ADA and to help them use this law in a way that would be most helpful for them personally. This consists of:

- 1) Explaining what is meant by “reasonable accommodations”
- 2) Brainstorming with the person with a disability to determine possible reasonable accommodations that would best help him or her succeed in a given environment
- 3) Explaining the need for disclosure in order to receive reasonable accommodations and the potential advantages and disadvantages of disclosing a disability that is “hidden” such as a psychological disorder or a learning disability.

4) Discussing when to disclose: There are advantages and disadvantages of disclosing at each point (i.e., during the job interview, or the first day of work, etc). Our job is to help the person with a disability to determine which time frame for disclosure works best for them personally, given the potential advantages and disadvantages of each.

REQUIRED ASSIGNMENT:

Answer the questions below using the following scenario: Imagine you are working in an employment program for people with disabilities and it is an important part of your job to help your clients understand their rights under the Americans with Disabilities Act of 1990. One of your clients struggles with severe depression and will be going for a job interview within the next week. You know what the client will need to disclose the general nature of her disability in order to get the reasonable accommodations she may need to succeed on the job, but you also know that the client can choose WHEN to disclose (i.e., at the job interview, later after being offered the job, and so on).

-Think about and describe potential reasonable accommodations a client with learning disabilities might ask for at a place of employment. Be creative!

-Describe what this client will need to do in order to get these reasonable accommodations? What is meant by “disclosure?” What are the potential ADVANTAGES and DISADVANTAGES of disclosing a disability such as a learning disability at a job in order to get reasonable accommodations?

-Part of your job as a helping professional in this scenario would be to help your client to decide WHEN to disclose. Describe the ADVANTAGES and DISADVANTAGES of disclosing at EACH of the following points in time:

1) Advantages and disadvantages of disclosing a disability at the initial job interview

2) Advantages and disadvantages of waiting to disclose a disability until the job offer of employment is made.

3) Advantages and disadvantages of waiting to disclose a disability until the first day of employment.

4) Advantages and disadvantages of trying out the job first to see if the person with a disability can successfully do the job WITHOUT reasonable accommodations and then disclosing if needed.

-Imagine your client’s request for reasonable accommodations is NOT granted by their place of employment. IN YOUR OWN WORDS, describe what you would say to the client to explain where she can go to appeal her employer’s decision to deny the reasonable accommodation she requested.

EXTRA CREDIT OPTION: Check out the ADA website!

PURPOSE OF THIS ASSIGNMENT: To help you learn about how the ADA operates and also cases that have been brought to court for violations of the ADA.

INSTRUCTIONS: Go to the ADA website: www.ada.gov

IN YOUR OWN WORDS (don't copy from the website), answer as **MANY OR AS FEW** of the following questions as you wish (it's extra credit so why not do just the things which interest you):

Part 1: The ADA and service animals. When you reach the website, look at the upper right hand side and click on "Featured Topic: Service Animals." Read the information that comes up and answer the following questions:

-IN YOUR OWN WORDS, describe what you learned about service animals from reading the information on the website.

-Do you think that the information was clearly written and easy for people to understand?

-Was the information complete or did it leave you with questions?

Part 2: Celebrating 30 years of the ADA: On the left side of the front page of the website, at the bottom of the list of headings, there's a heading which reads "Celebrating 30 Years of the ADA. Click on the article about voting rights.

-IN YOUR OWN WORDS, describe what you learned from reading this article describing voting rights, disability and the ADA.

Part 3: Enforcement: On the top right hand side of the front page of the website, click on "Enforcement" to check out some of the cases that have been brought before the ADA.

-IN YOUR OWN WORDS, describe the topics that interested you and what you learned from reading this information.

-Were there any findings you particularly agreed or disagreed with? Explain.

Part 4: Complaints and Settlements: On the left hand side of the front page of the website, there is a list of items, several of which are "Settlement Agreements" or "Complaints." Click on one or more of them.

-IN YOUR OWN WORDS, describe what you learned from reading either one or more "complaints" or "settlement agreements."