

ADA Q&A...Back to School

By Deborah Leuchovius, PACER ADA Specialist

Many audience members come to PACER workshops on the Americans with Disabilities Act (ADA) expecting to find provisions specifically addressing school access.

While it is true that the ADA does apply to schools, both public and private, it is important to remember that the ADA is foremost a civil rights act with a broad application. It does not specifically guarantee the right to a free appropriate public education. It prohibits discrimination against people with disabilities in a wide range of settings—employment, transportation, state and local government programs, and public accommodations (private businesses and not for profit agencies that offer goods and services to the public.)

In order to apply the ADA provisions to schools, one must first have a basic understanding of the three major titles of the ADA and their key concepts, such as:

- (1) providing reasonable accommodations to employees and applicants with disabilities,
- (2) providing auxiliary aids and services necessary for effective communication and program access, and
- (3) providing reasonable modifications of policies, practices and procedures.

The ADA does not contain specific special education rules or requirements. Remember that earlier legislation such as the Individuals with Disabilities Education Act (IDEA) already addressed educational issues in greater detail. However, the ADA will definitely have an impact on education. Some of the ways are outlined below.

Q. How does the ADA relate to other state and federal laws relating to education of individuals with disabilities?

A. The ADA works in concert with other state and federal laws affecting the education of students with disabilities. In some instances

there will be duplicate coverage and an individual situation will be covered under more than one law, such as IDEA, Section 504 of the Rehabilitation Act and the ADA. When this happens, whichever law or portion of a law provides the greatest protection for the individual with a disability will prevail.

Q. Could a student who does not qualify for special education services be protected by the ADA?

A. Yes. As long as the person meets the criteria established in the ADA's definition of a person with a disability he or she would be protected by the ADA from discrimination on the basis of disability. The ADA defines an individual with a disability as someone who (1) has a physical or mental impairment which substantially limits one or more major life activities of the individual; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. There may be instances where an individual would meet these criteria even though the person would not be eligible for special education. However, virtually all children who meet IDEA eligibility criteria will be protected by the ADA and Section 504 as well. Such a person would have rights and protections under all three laws.

Q. Does the ADA protect parents with disabilities as well as students with disabilities?

A. Yes. Public schools generally operate programs and activities that are open to students' parents such as parent teacher conferences, school plays, athletic events and graduation ceremonies. Parents who meet the ADA's definition of a qualified person with a disability are entitled to protection under Title II of the Act.

Q. How are public schools expected to comply with the ADA?

A. Public schools are covered under Title

II of the ADA which covers “public entities.” The two key provisions of Title II are that public entities must provide (1) program access (2) in an integrated setting — unless separate programs are necessary to ensure equal benefits or services. Program access under Title II means that school districts are required to operate their programs so that when viewed in their entirety they are accessible to and usable by individuals with disabilities. This applies to all existing facilities.

Making structural improvements to an existing building such as installing ramps or elevators is one way of achieving program accessibility. However, structural accessibility is not required if there are alternative means of achieving program access such as providing the service at an accessible site, relocating a class or activity to a different room in the building, or having library staff retrieve books for students or teachers who use wheelchairs. Auxiliary aids and services such as interpreters would have to be provided if necessary for effective communication at school programs, conferences and other activities.

School districts are not required to take any action that would result in a fundamental alteration of the nature of the program or activity or in undue financial and administrative burdens. However, public entities must take any other action that would not result in a fundamental alteration or undue burden but would ensure that individuals with disabilities receive the same benefits and services offered to others without disabilities.

Q. Isn't the undue burden standard a legal loophole that will allow school districts a convenient way to avoid their responsibilities?

A. Providing program accessibility is not expected to result in undue burdens for most public entities. All resources of the public entity available to fund and operate the program must be considered. In addition, claiming undue burden does not relieve a public entity of all obligations to individuals with disabilities. They must still provide program access through means that would not result in a fundamental alteration or undue financial or administrative burden.

Keep in mind that any decision that achieving program accessibility would result in a fundamental alteration or create undue burdens must be made by the school district superintendent or the senior official who has budgetary and spending authority for the school district, or a staff person designated by that official. The reasons for such a decision must be presented in writing.

Q. Must school districts eventually remove architectural barriers from all their existing buildings?

A. Not necessarily. If school districts can provide program access without making structural alterations, they are not obligated by the ADA to remove those architectural barriers.

When there is no alternative means to achieve program accessibility, however, structural changes will be necessary, unless this would impose undue burdens on the district.

Small school districts may have to make each of their school buildings accessible in order to provide program access. A larger school system should provide for wheelchair access at schools dispersed throughout its service area so that children who use wheelchairs can attend school at locations comparable in convenience to those available to other children. Any needed structural changes must be made as soon as possible, but no later than January 26, 1995.

Q. Is carrying an individual with a disability considered an acceptable method of achieving program access?

A. No, with two exceptions. First, when program access in existing buildings can be achieved only through structural alterations, carrying may serve as a temporary expedient until construction is complete. Second, carrying is permitted in manifestly exceptional cases if carriers are formally instructed on the safest and least humiliating means of carrying and the service is provided in a reliable manner. Carrying is contrary to the goal of providing accessible programs, which is to foster independence.

Q. Will school districts be required to make their magnet programs accessible?

A. Where “magnet” schools or schools offering different curricula or instruction techniques are available, the range of choice provided to students with disabilities must be comparable to that offered to other students.

Q. Does the ADA apply to extracurricular activities like school-affiliated choirs or school patrols?

A. Yes. The ADA is not limited in application to classroom activities. School districts cannot discriminate against people with disabilities in any of the services, programs or activities they provide including preschool, latch key or adult community education programs.

Q. My school district is constructing a new school in my neighborhood. Will it have to be accessible?

A. Yes. New schools and construction projects altering existing facilities must meet new ADA accessibility standards, unless the state code has stricter guidelines.

Q. How can I be sure that my school district intends to comply with the ADA?

A. Ask for a copy of their ADA self-evaluation and transition plans. Under Title II, school districts that employ 50 or more persons must have evaluated their programs by January 1993, and have developed a transition plan setting forth the steps necessary to make their programs accessible. This was to be completed by July 26, 1992. Title II regulations require that public entities involve people with disabilities and other interested people in the self-evaluation and in the development of the transition plan. Ask if the school district has done this. There may still be an opportunity for you to participate in this process as many Title II entities are late in meeting the above deadlines and have not yet complete their transition or self-evaluation plans. If they have not, and have no plans in process to do so, they are not in compliance with the ADA and you can file a complaint.

Q. Does the ADA affect private schools?

A. Yes, Title III of the ADA prohibits discrimination by public accommodations. They must eliminate unnecessary eligibility standards that deny access to individuals with disabilities, make reasonable modifications in policies practices and procedures that deny access to individuals with disabilities—unless a fundamental alteration in the nature of the program would result—and furnish auxiliary aids such as interpreters, notetakers, or readers when necessary to ensure effective communication—unless an undue burden of fundamental alteration would result.

Be aware that Title III does not cover religious institutions; thus, private schools which are directly operated by religious institutions are not covered by the ADA. Minnesota's Human Rights Act, however, closely follows the provisions of the ADA and does not exempt religious institutions from coverage.

Q. How will the ADA affect employees with disabilities who work for schools?

A. Applicants and employees who work for or apply to work for schools, who are qualified for the job and who can perform the essential job functions are entitled to reasonable accommodations so long as the accommodations are not an undue hardship for their employer. Employees are protected from discrimination on the basis of disability in all work activities: advancement, compensation, training, firing, etc. In addition, school districts will be prohibited from making

medical inquiries or requiring medical examinations prior to an offer of employment.

Q. How do I file a complaint if I don't think our school district complies with ADA requirements?

A. If you feel you or another person have been discriminated against by your school district, and have found your district's internal grievance procedure unresponsive, send a letter to the Department of Justice including:

- (1) your name, address and phone number, and the name of the party discriminated against;
- (2) the school district that you believe has discriminated;
- (3) a description of the act(s) of discrimination, the date(s) of the discriminatory acts and the name(s) of any individuals who you believe discriminated;
- (4) other information that you believe necessary to support your complaints.

Do not send original documents.

Send to: U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, 950 Pennsylvania Ave., NW, Washington, DC 20530.

FOR MORE INFORMATION

These answers are an effort to identify and interpret key ADA provisions that affect schools. Primary sources were the *Americans with Disabilities Act Title II Technical Assistance Manual*, and the *ADA Title II Action Guide for State and Local Governments*. These sources were prepared by legal professionals, although this article was not. An article on "The Americans with Disabilities Act and Its Implications for School Districts" published by the Parent Information Center (PIC) of Concord, NH, was also consulted. If you would like a copy of this 19-page article which discusses these and other issues in greater depth, contact PIC at (603) 224-7005 or PACER at (952) 838-9000.

For further technical assistance on this subject, contact PACER or any of the following:

- the Disability Rights Education and Defense Fund (DREDF), (510) 644-2555;
- the Disability and Business Technical Assistance Center serving your area, (800) 949-4232; or
- the Department of Justice ADA technical assistance line, (800) 514-0301, Voice or (800) 514-0383, TTY.