

DISABILITY RIGHTS



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FOCUS

- To help attorneys identify and provide civil legal assistance to low-income Texans with disabilities related to access to public places, housing and education services

Battle Cry of persons with disabilities:

- *"To boldly go where everyone else has gone before."*

DISABILITY RIGHTS PRIMARY STATUTES

- ADA

Americans with Disabilities Act—Title III

- FHA

Fair Housing Act

- IDEA

Individuals with Disabilities Education Act

DISABILITY RIGHTS PRIMARY STATUTES

- **ADA**

42 U.S.C. § § 12101 et seq. (28 CFR Parts 36/49 CFR Parts 27, 37, 38)

- **FHA**

42 U.S.C. § § 3601 et seq. (24 CFR Parts 100 et seq.)

- **IDEA**

20 U.S.C. § § 1400 et seq. (34 CFR Parts 300 et seq.)

ADA - AMERICANS WITH DISABILITIES ACT

Comprehensive civil rights protection for
“individuals with disabilities”

The Americans with Disabilities Act guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications.

ADA - ELEMENTS

- Physical or mental impairment that substantially limits one or more major life activities
- A record of such impairment
- Regarded as having such an impairment

Definition of “Substantially Limiting”

Prohibiting or significantly restricting an individual's ability to perform a major life activity as compared to the ability of the average person in the general population to perform the same activity.

MAJOR LIFE ACTIVITIES

Caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, sitting, lifting

Mental and emotional processes such as thinking, concentrating, and interacting with others.

Added in 2008 – eating, reading, sleeping, concentration

ADA, TITLE III

PUBLIC ACCOMMODATIONS - ACCESS

- Lodging
- Restaurants/bars
- Exhibition/entertainment
- Public gathering
- Sales or rental establishments
- Service establishments
- Places of public display
- Places of recreation
- Social service center establishments

TITLE III COMPLIANCE FOR NEW AND EXISTING FACILITIES

Removing architectural barriers if:

1. Readily achievable
2. Easily accomplished
3. Can be carried out without much difficulty or expense
4. Won't pose an undue burden on the business

LIST OF COMPLIANCE MEASURES

Examples:

- Ramping steps
- Widening doors
- Rearranging partitions
- Installing grab bars in toilet stalls
- Installing flashing alarm lights
- Adjusting layout of display racks
- Rearranging tables
- Removing obstructing furniture
- Providing accessible signage
- Widening toilet stalls

ALTERNATIVE METHODS

Examples of alternative methods if removal of the barrier is not readily achievable:

- Provide curbside service
- Home delivery
- Retrieving merchandise from inaccessible shelves or racks
- Relocating activities to accessible locations

FAIR HOUSING ACT

- Further the policy of ensuring fair housing to every person of the US
- Ensure the removal of artificial, arbitrary and unnecessary barriers that operate to discriminate on the basis of impermissible characteristics including persons with disabilities

FAIR HOUSING ACT - PERSONS WITH DISABILITIES

- **Who is liable:**

Private landlords, architects, management companies, public housing authorities

- **What is prohibited:**

Refusal to sell, refusal to negotiate, steering away, refusal to allow reasonable modification (at expense of individual); refusing reasonable accommodation of rules and policies.

- **What is required:**

- Reasonable accommodation
- 504 Federally Assisted Housing requirements

FAIR HOUSING ACT -

- Multifamily Dwellings (after 3/13/91)
- Section 504 – Federal Financial Assistance
 - Must make reasonable accommodations
 - Must be readily accessible and usable by individuals with disabilities
 - Design requirements
 - 5% of units fully accessible – physical impairment
 - 2% accessible for visual or hearing impairments
 - Must make reasonable accommodations and modifications at no cost if request is made.

FAIR HOUSING ACT – REMEDIES

- HUD Process – Complaint filed – Options:
 - ALJ Hearing
- Private Right of Action
- Damages/Remedies
 - ALJ – compensatory and injunctive
 - Federal Court – compensatory, punitives and injunctive

PURPOSE OF THE IDEA

- “To ensure that all children with disabilities have available to them a free and appropriate public education” in the least restrictive environment that “emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.”
- “To ensure that the rights of children with disabilities and parents of such children are protected; . . .”

WHAT IS SPECIAL EDUCATION?

The Individual with Disabilities Act (IDEA)
defines special education as:

- “Specifically designed instruction, provided at no cost to the parent, to meet the unique needs of a child with a disability.”
- Purpose is to level the playing field between children with disabilities and those without disabilities.

IDEA - INDIVIDUALS WITH DISABILITIES EDUCATION ACT

FAPE – Free Appropriate Public Education

Who qualifies:

A child with mental retardation, hearing impairment speech/language impairment, visual impairment, orthopedic impairment, autism, serious emotional injury, brain injury

What must be provided:

- IEP – Individual Education Plan
- LRE – least restrictive environment
- Related Services – counseling, transportation
- Transition services

6 PRINCIPLES OF SPECIAL EDUCATION

- Guarantee of a free and appropriate public education (“FAPE”)
- Least Restrictive Environment (“LRE”)
- Nondiscriminatory Evaluations
- Development of the Individualized Education Plan (“IEP”)
- Parent Participation
- Procedural Due Process

CONTENT OF INDIVIDUAL EDUCATION PLAN

Provide an appropriate Individualized Special Education

- Not just what the school has available

Provide necessary related services

To confer a meaningful educational benefit

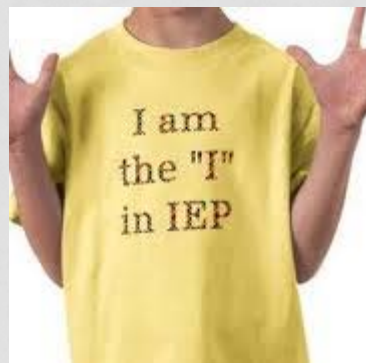
- Rowley – some educational benefit – not best
- No Child Left Behind Implications

In the least restrictive environment

HOW DOES THE IDEA WORK?

- **Child Find:** requires states to identify, locate, and evaluate all children with disabilities, aged birth to 21, who are in need of early intervention or special education services.
- **Referral for an evaluation:**
 - Requires parental consent
 - 60 days from consent
 - Assessed on all areas of suspected disability
 - Team meeting to determine if meets disability criteria and that disability affects ability to learn
 - Parent has right to ask for an independent evaluation at District expense.

DISABILITY RIGHTS PROJECT



“To support and ensure that individuals with disabilities are allowed to boldly go where everyone else has gone before.”