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## The impact of the Americans with Disabilities Act requirement that school districts make accommodations to classroom teachers

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THE IMPACT OF THE AMERICANS WITH DISABILITIES ACT  
REQUIREMENT THAT SCHOOL DISTRICTS MAKE ACCOMMODATIONS  
TO CLASSROOM TEACHERS

by

James LaBuda

A dissertation submitted in partial fulfillment  
of the requirements for the degree of

Doctor of Education

in

Educational Administration and Higher Education

Department of Educational Administration  
and Higher Education  
University of Nevada, Las Vegas  
December 1995

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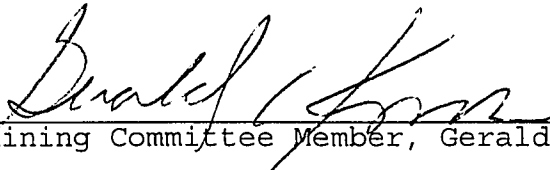
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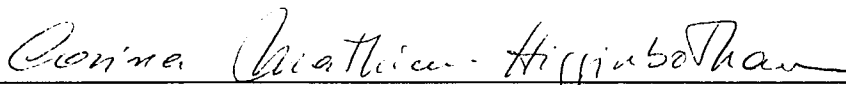
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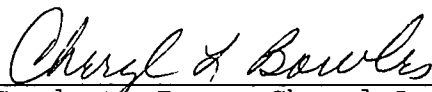
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## ABSTRACT

For decades, people with disabilities have been fighting for equal access to schools, jobs and the market place. Disabled people throughout the United States desired legislation that would guarantee them the rights of full inclusion into the mainstream of American life. As a result, the Americans with Disabilities Act was signed into law by President George Bush on July 26, 1990. The purpose of this act was to provide a clear and comprehensive national mandate to end discrimination against people with disabilities.

The purpose of this study was to measure how the twenty largest school districts in the United States have been impacted by Title I of the Americans with Disabilities Act requirement that they make reasonable accommodations to classroom teachers with disabilities. A survey was sent out to the ADA compliance directors of each school district. The survey collected information on the demographics of each ADA compliance director, the number of accommodations requests, the number of accommodations granted, types of accommodations, cost factors and the development of job descriptions.

Findings from this study indicate, that although ADA was enacted in 1990, some school districts have not taken



the appropriate actions to comply with the law. The findings also indicate that a wide range of accommodations are being granted but costs are impacting school districts greater than predicted.

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## Chapter 1

### INTRODUCTION

The principle of equality is powerful; however, it is also limiting. It demands that the person seeking inclusion be "similarly situated" to others, so that he or she can participate without changes in the environment. From this principle, the common catchphrases of equality were developed, such as the "level" playing field, "equal opportunity" and, in the context of racial discrimination, "color blind" rules. In other words, according to the traditional idea of equality, differences should be irrelevant. That is why even slight deviations from neutral standards in favor of past discrimination victims are controversial, as the debate about affirmative action for racial minorities attests (Rubenstein and Milstein 1993).

For many persons who have disabilities, this common notion of equality is problematic at best, since there are usually apparent differences between them and others. These differences in mobility, in communication, in cognitive capacity, and in emotional stability do not render them similarly situated (Rubenstein and Milstein 1993). Equality

has tended to exclude persons with disabilities. The very notion that a person must be given something "extra" or "different" in order to participate seems fundamentally at odds with the traditional idea of equality. Put most directly, the need to demand something extra seems to prove that the person is not, after all, equal (Minow 1990).

For decades, people with disabilities have been fighting for equal access to schools, jobs and the marketplace. There are millions of people with mental, physical, sensory, and health related disabilities who would like the opportunity to participate in the community and the workplace, but are denied that opportunity. Some of the reasons for this discrimination include limited expectations and attitudes of professionals in the field, the unwillingness of businesses to make reasonable accommodations for people with disabilities, lack of sufficient funds for training and placement, and government disincentives to work. However, in the United States today there is a civil rights movement occurring for adults with disabilities who historically have been either unemployed or grossly underemployed (Wehman 1993). Disabled people throughout the United States desired legislation that would guarantee the rights of full inclusion into the mainstream of American life.

On July 26, 1990 President Bush signed the Americans with Disabilities Act ,42 U.S.C.A. § 12101, into law. Hailed as the most important civil rights legislation since the Civil Rights Act of 1964, it is the 20th century emancipation proclamation for people with disabilities. The purpose of this act is to provide a clear and comprehensive national mandate to end discrimination against people with disabilities and bring them into the economic and social mainstream of U.S. life (Harkin 1990). After a two year waiting period, the ADA went into effect on July 26, 1992 and covered all employers who employed 25 or more employees. The act, as of July 26, 1994, will cover employers who employ 15 or more employees.

The ADA prohibits discrimination against persons with disabilities in employment (Title I); government programs and services (Title II); public accommodations and services, including hotels, restaurants, retail stores, service establishments, and other public facilities (Title III); and telecommunications (Title IV). This law will have wide ranging effects and a dramatic impact on how organizations treat their employees and customers.

Title I of this act is primarily directed at the employer. Employers cannot discriminate against qualified applicants and employees on the basis of their disability. They must assure that any employment standard that might

exclude a disabled person is job related and of business necessity with respect to the essential functions of the job (Rumrill, Gordon & Roessler, 1993).

School districts will be required to accommodate teachers with disabilities, who are otherwise qualified. The cost of these accommodations will vary, but employers fear they could become very costly.

Determining the essential functions of a teaching position and developing reasonable accommodations for disabled teachers will be important issues with school districts. The Americans with Disabilities Act is now law and school districts will have to move quickly to comply.

#### Statement of the Problem

How have twenty selected school districts with enrollment in excess of 100,000 students been impacted by Title I of the Americans with Disabilities Act requirement that school districts make reasonable accommodations to classroom teachers with a disability?

#### Subproblems

1. What types of accommodations have been made to classroom teachers with disabilities in order for them to perform the essential functions of the job?



2. What costs have been incurred by the school districts in providing accommodations to disabled classroom teachers?

#### Definition of Terms

Disability -- A disability is defined as a physical or mental impairment that substantially limits one or more major life activities. This would include individuals with actual disabilities, those with a record of a disability and those who are regarded or treated by others as having a disability. These major life activities would include walking, seeing, hearing, speaking, learning and others (Rumrill, Gordon & Roessler 1993).

Substantially Limits -- An impairment is only a "disability" under ADA if it substantially limits one or more major life activities. An individual must be unable to perform, or be significantly limited in the ability to perform, an activity compared to an average person in the general population (U.S. EEOC 1992).

Qualified -- A qualified person is one who satisfies the primary requirements of the position and can perform essential functions of the job with or without reasonable accommodations. To be protected against discriminatory employment practices, a person must have a disability and be

qualified for the position he or she seeks or holds (Rumrill, Gordon & Roessler 1993).

Essential Functions -- Essential job functions are those primary duties the person must be capable of performing with or without reasonable accommodations (Rumrill, Gordon & Roessler 1993). Each job should be carefully examined to determine which functions or tasks are essential to performance. Factors to consider in determining if a function is essential include: whether the reason the position exists is to perform that function; the number of other employees available to perform the function or among whom the performance of the function can be distributed; and the degree of expertise or skill required to perform the function (U.S. EEOC 1991).

Reasonable Accommodations -- reasonable accommodations are defined as modifications to a job or the work environment that enable a qualified applicant or employee with a disability to perform essential job functions. Examples of accommodations include: technological devices; architectural modifications; work schedule modifications; and changes in the work environment (Rumrill, Gordon & Roessler 1993).

Undue Hardship -- An accommodation may be labeled an undue hardship if it exceeds the bounds of practicality. An employer would not be required to provide an accommodation if it costs more than equally effective alternatives, if it requires extensive and disruptive renovations, or if it negatively affects other employees or customers. Undue hardship is determined on a case by case basis. Criteria are prescribed in the Title I regulations and include the cost and nature of the accommodation, the overall financial resources of the facility, the overall resources of the employer, and the employer's type of operation (Rumrill, Gordon & Roessler 1993).

#### Conceptual Rationale

The Americans with Disabilities Act is designed to provide anti-discrimination protection as well as access to employment opportunities, public services and accommodations, and communication systems. Perhaps most significantly, the ADA extends responsibility for accommodations to the private sector, which had been exempt from such existing disability legislation as Public Law 94-142 and the Rehabilitation Act of 1973 (Rumrill, Gordon & Roessler 1993). This is particularly important to the over

13 million people aged 16-64 who are limited in the kind or amount of work they can do because of a disability (Waldrop, 1990).

Of these people only 36 percent of the men and 28 percent of the women are employed. These disabled workers earn about 20 percent less than their able-bodied counterparts (Waldrop 1990).

Mark Donovan, manager of Marriott's community employment and training program in Kalamazoo, Michigan states, "People with disabilities are not just a viable alternative but a critical one. They are the largest, best educated, least tapped employment resource in America." The cost of maintaining people with disabilities out of the employment mainstream in a dependent posture is staggering and has been increasing at an alarming rate. In fiscal year 1970, total disability expenditures amounted to \$19.3 billion dollars. By 1986, these expenditures had increased cumulatively by 779 percent to \$169.4 billion. Every year more than 780,000 U.S. workers sustain injuries or illnesses that disable them for at least five months. Approximately half of these people never return to work, supported instead by disability benefits, even though most are considered capable of further gainful employment. Disability expenditures, as part of our Gross National Product (GNP),

have increased from 1.9 percent of the GNP in 1970 to 4 percent in 1986. In contrast, 5 percent of our GNP is spent on our Nation's defense (Waldrop 1990).

The Americans with Disabilities Act is designed to end the discrimination against disabled Americans and move them into the mainstream of employment. As members of the workforce, disabled individuals will become productive taxpayers and consumers.

Many employers will have to revise their hiring procedures and work assignment practices in order to comply with the ADA, or face an onslaught of litigation for back pay, reinstatement, attorney fees and possibly compensatory and punitive damages to be determined by a jury. The burdens imposed by the ADA can potentially range from the expense of hiring a reader for a blind typist to restructuring job assignments so that a disabled employee can perform a tailor-made job (Postol & Kadue, 1991). Businesses fear the unknown price tag. They have concerns about the clarity of the language within the law and the case-by-case approach to enforcement, which can increase legal-consulting fees.

Title I of the ADA addresses the employment needs of persons with disabilities. It requires public and private entities alike to maintain nondiscriminatory hiring practices. Moreover, it compels employers to provide

reasonable accommodations that enable otherwise qualified persons with disabilities to perform essential job functions (Rumrill, Gordon & Roessler 1993).

The Equal Employment Opportunity Commission (EEOC) investigates all discrimination complaints and attempts to settle grievances without litigation. If attempts to conciliate the grievance fail, the EEOC may file suit or issue a "right to sue" letter to the complainant. If the charge is against a state or local agency, as would be the case when public schools are involved, the case is referred to the Justice Department for legal action. Compensatory and punitive damages may be awarded when deliberate discrimination can be proven (Shelton 1993). Penalties of \$50,000 for a first violation and \$100,000 for each subsequent violation may be levied. Courts have the power to compel payment of monetary damages to plaintiffs and payment of attorney's fees to prevailing parties (Cross 1993).

This places school districts in the position of having to provide accommodations to the qualified disabled employee so that they can perform the essential functions.

### Significance of the Study

The purpose of this study was to examine how school districts have been impacted by the enactment of the Americans with Disabilities Act requirement that employers make reasonable accommodations for qualified individuals with a disability. As ADA is interpreted by the school districts and courts, the information obtained in this study will help define the range of reasonable accommodations made for teachers, the financial impact it has had on school districts, and serve as a resource for school district ADA compliance directors.

This will be extremely important to school districts because there will not only be a cost factor involved in implementing the reasonable accommodations, but they will be liable for compensatory and punitive damages if they are found to be in violation of the ADA. Discrimination charges by employees with the EEOC have skyrocketed. In August of 1993, there were over 1600 charges filed (BNA 1993). This compares to 1127 charges filed six months earlier in February of 1993 and 248 charges filed a year earlier, in August of 1992. As these numbers rise, so does the importance of the issue for school districts and other employers.

The remedies of such charges could cost the school district federal funding and award damages that would

include lost wages, lost benefits, compensation for mental distress, punitive damages and attorney's fees and costs (Weller, Freidrich, Ward & Andrew 1993). This study provides information to aid compliance actions on the part of the school districts, thus enabling them to protect their funds while providing a proper work environment for disabled teachers.

#### Delimitations

Twenty school districts with enrollments in excess of 100,000 students were selected for this study. Due to their large employment base, access to legal counsel and large budgets, it was felt that they would be among the first school districts to be impacted by the Americans with Disabilities Act. The selected districts do not include other large school districts, smaller school districts, parochial schools or private schools. These school districts were selected only on the basis of enrollment and did not take into account their geographic location. The study was limited only to classroom teachers.



### Limitations

Due to ADA's recent effective date of July 26, 1992, the courts, employers and the disabled are presently interpreting the law. Since the terms and guidelines will be further defined in the future, this study is limited by the evolving guidelines and applications of ADA.

## Chapter 2

### REVIEW OF THE LITERATURE

#### Historical Background

In colonial times and in early days of our country, taking care of the needs of an individual with a disability was viewed as the responsibility primarily of the person's immediate family. These individuals usually boarded with their own family or possibly a neighboring household. Only a few towns maintained any type of institution. These were used only as a last resort in very special cases (Ogletree, Deakin, Nash, Smoak & Stewart 1993).

In the early nineteenth century, society views as to the treatment of persons with disabilities began to change. The care of the disabled became a community concern, rather than one limited to family and relatives. Around 1800, most communities had, or had access to, an almshouse or poor house, to which the sick, the poor and persons considered insane were confined. Almshouses were characterized by an appalling lack of sanitary conditions and attentive care. Residents were sheltered from public view and so were conditions (Bowe 1978).

In the early 1800's, state governments also began to provide funding for the insane, blind and deaf. Social reformers such as Thomas Hopkins Galludet, who in 1817 opened a school for the deaf in Hartford, Connecticut, and John Dix Fisher, who in 1829 began the New England asylum for the blind in Boston, Massachusetts, began to work with the disabled. Though by the time of the Civil War there were about 50 state-supported asylums for the mentally ill and 38 schools for persons who were deaf and blind, helping the disabled was not viewed as a role of the federal government (Ogletree, Deakin, Nash, Smoak & Stewart 1993).

In fact, in 1854 Congress allocated funds for public mental hospitals but the legislation was vetoed by President Franklin Pierce on the basis that caring for persons with physical and mental disabilities was not the responsibility of the federal government but one for the states alone (Bowe 1978).

With the start of the Civil War, Congress recognized the federal responsibility to aid those soldiers who had become disabled during military service. In 1861 Congress enacted a law providing invalid pensions for Union volunteers wounded or disabled in service. In 1864, Congress authorized a nation-wide system of institutional care for disabled veterans. At this time Samuel Gudley Howe, one of the nation's foremost educators of the blind

and a leading theorist of public welfare, strongly opposed these institutions because he felt they would improperly separate persons with disabilities from the rest of society. He felt disabled individuals should be integrated throughout society (Ogletree, Deakin, Nash, Smoak & Stewart 1993).

As was the case during the Civil War, the First World War expanded the role of the federal government. Servicemen returning from World War I who had incurred service-connected disabilities encountered severe adjustment problems at home. While previously, compensation to disabled veterans of American wars had been limited to governmental pensions, the large number of soldiers disabled during the 1914-18 conflict, combined with increasing social concern for disabled people in general, led to the enactment on June 27, 1918, of the Smith-Sears Vocational Rehabilitation Act appropriating federal funds for job training and education for disabled veterans. The Act is significant because it represents a major advance beyond institutionalization and beyond education on the elementary and secondary level to encompass vocational preparation and job placement of disabled persons (Bowe 1978).

In 1920 Congress enacted the more far-reaching Smith-Fess Act, 29 U.S.C.A. § 331, which was the first broad-based federal program to provide assistance to all physically disabled Americans, not merely disabled veterans. The Act

mandated a variety of services, including job counseling and placement as well as vocational rehabilitation (Ogletree, Deakin, Nash, Smoak & Stewart 1993). This act inaugurated a state-federal partnership in which federal financial assistance was offered on a matching basis to state agencies which provided counseling, training, and job placement services. The program focused from its beginning upon the less severely disabled population; blind persons, for example, were usually excluded (Bowe 1978).

The election of Franklin Delano Roosevelt to the presidency in 1932, eleven years after his legs had been paralyzed by poliomyelitis, marked the beginning of a major change in America's treatment of its disabled citizens (Bowe 1978).

The Social Security Act of 1935, 42 U.S.C.A. § 1301, provided permanent status to federal vocational rehabilitation programs. The basic objective of these programs was to assist persons with disabilities to enter or reenter the workforce. A later amendment to this Act defined vocational rehabilitation and vocational rehabilitation services as any services necessary to render a disabled individual fit to engage in a remunerative occupation (Ogletree, Deakin, Nash, Smoak & Stewart 1993).

In 1943, Congress stepped into the picture with passage of the Barden-LaFollete Act, 42 U.S.C.A. § 4151, which required that blind persons be given rehabilitation to improve their chances of securing gainful employment. The gains by blind people were meager at the start, but a precedent had been established. Also in 1943, President Roosevelt established a larger White House committee on fair employment, which focused on the prevention of discrimination in war industries (Zimmer 1981).

The aftermath of World War II gave rise to additional federally funded programs to aid individuals with disabilities. In particular, programs to educate disabled veterans were implemented in the late 1940's and early 1950's. President Harry Truman's Committee on Government Contract Compliance in 1951 renewed the general effort against discrimination in private employment (Zimmer 1981). Also, the 1954 amendments to the Social Security Act, 42 U.S.C.A. § 1206, increased the financing of state programs and expanded the rehabilitation process to include funding for research, demonstrations and training (Ogletree, Deakin, Nash, Smoak & Stewart 1993).

The 1960's marked the turning point in actually requiring equal employment opportunity and affirmative action from federal contractors and subcontractors. In 1961, President John Kennedy issued Executive Order 10925,

which, in addition to creating the President's Committee on Equal Opportunity, imposed specific obligations on government contractors and subcontractors. This committee was the first one with enforcement authority, since it could assess penalties for noncompliance. In 1967, the President amended this executive order to include sex as a protected category. However, there was no mention of the rights of handicapped persons in this executive order (Zimmer 1981).

Starting in the mid-1960's, individuals with disabilities organized into what would become a very active disability rights movement. This grass roots movement took its cue from the civil rights movement. The Civil Rights Act of 1964, 42 U.S.C.A. § 2000, did not include "disability" as a covered rights category. However, it did have a profound effect on the direction that the movement was to take in the future (Ogletree, Deakin, Nash, Smoak & Stewart 1993).

The change in view as to the role of disabled persons in society was reflected in the Architectural Barriers Act of 1968, 42 U.S.C.A. § 4151. This act required society to adapt to individuals with disabilities by mandating that federally funded or leased buildings be made accessible to the disabled. As stated by Professor Stephen L. Percy, the "law... signaled a new awareness of mainstream society of the needs and frustrations of disabled persons."

The Rehabilitation Act of 1973, 29 U.S.C.A. § 701, primarily constituted a reauthorization of existing federal aid programs for persons with disabilities. The Act also sought to promote and expand employment opportunities in the public and private sectors for handicapped individuals. Congress recognized that most adults with disabilities were unemployed but many of them were capable of work, if provided with adequate training and job opportunities. Controversy did arise when President Richard M. Nixon vetoed the original three-year authorization of \$3.5 billion. The Democratic controlled Congress scaled back the program to \$2.6 billion but the President vetoed it again. Finally, a \$1.55 billion two-year package received the President's approval (Ogletree, Deakin, Nash, Smoak & Stewart 1993).

The Bill's sections established protections for individuals with disabilities in federal jobs, federally funded contracts and in any program or activity receiving federal financial assistance. Section 501 prohibits the discrimination on the basis of disability in federal employment, and requires that all federal agencies establish and implement affirmative action programs for hiring, placing and advancing individuals with disabilities. The U.S. Equal Employment Opportunity Commission was assigned to enforce this section of the bill (U.S. EEOC 1992). Although



the specific language of Section 501 is limited to requiring affirmative action, the statute has been interpreted as prohibiting discrimination against individuals with disabilities and requiring reasonable accommodation by federal agencies (Ogletree, Deakin, Nash, Smoak & Stewart 1993).

Section 503 prohibits discrimination on the basis of disability and requires federal contractors and subcontractors with contracts of \$2,500 or more to take affirmative action to employ and advance individuals with disabilities. The U.S. Department of Labor Office of Federal Contract Compliance Programs investigates complaints and provides technical assistance to individuals with disabilities with rights and responsibilities under the act (U.S. EEOC 1992).

Section 504 provides a much broader and more far-reaching guarantee that

"no otherwise qualified handicapped individual ... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (§ 504, 29 U.S.C.A. § 701 (1976))

The 1978 amendments to the 1973 Rehabilitation Act provide that the procedures for enforcement of Section 504 for

federal grantees are to be the same as those adopted for Title VI of the Civil Rights Act of 1964 (Ogletree, Deakin, Nash, Smoak & Stewart 1993).

Section 504 is similar to the ADA, but applies only to federal agencies and entities that receive federal funding, which includes school districts. The ADA expands its coverage to the private sector and to all state and local governments regardless of whether they receive federal funds. The major difference between the two laws is the broad coverage of the ADA, which also defines rights and obligations that were clearly created by the Rehabilitation Act. For school districts, many requirements of the ADA duplicate requirements of the Rehabilitation Act. However, because of publicity surrounding the ADA, because of the new federal rules, and because remedies for violations will be more readily available, there is likely to be more enforcement activity under the ADA than there was under Section 504 (Veir 1994).

As in previous times of military action, provisions were made for disabled Vietnam veterans under the Vietnam-Era Veterans' Readjustment Assistance Act of 1974, 38 U.S.C.A. § 2011. This act required federal contractors and sub-contractors with contracts of \$10,000 or more to take affirmative action to employ and advance veterans with disabilities and veterans of the Vietnam Era. Under its

provisions the U.S. Department of Labor investigates complaints and provides technical assistance to individuals and entities with rights and responsibilities (Ogletree, Deakin, Nash, Smoak & Stewart 1993).

The Education for All Handicapped Children Act of 1975, 20 U.S.C.A. § 1401, which requires a free and appropriate public education for all disabled children and youth; and the Developmentally Disabled Assistance and Bill of Rights Act of 1975, 42 U.S.C.A. § 6000, which coordinates services for individuals who are retarded, have cerebral palsy, are autistic, or have epilepsy, are historic in the protection they offer for disabled persons. A number of court decisions mandating equal educational opportunities for disabled children and youth produced a nation-wide movement toward "mainstreaming" in which disabled children attend the same schools and the same classrooms as do able-bodied children (Bowe 1978).

The Fair Housing Act of 1988, 42 U.S.C.A. § 3601, prohibited discrimination against housing applicants, tenants, and buyers with physical or mental disabilities. It also established accessibility requirements for newly constructed multi-family dwellings (Harkin 1990).

The Individuals with Disabilities Education Act of 1990, 20 U.S.C.A. § 1401, gives funds to state and local school systems to provide special education services to

children and youth with disabilities, and for the removal of architectural barriers. The act also requires that funding recipients make positive efforts to employ and advance individuals with disabilities (Ogletree, Deakin, Nash, Smoak & Stewart 1993). This act guaranteed the rights of the disabled in the educational setting and supported the movement for equal rights and access to the workplace.

#### Americans with Disabilities Act Overview

Passage of the Americans with Disabilities Act (ADA) had its origins in Congress's finding that 43 million Americans have one or more physical or mental disabilities, a number that is increasing as the population as a whole grows older. Despite the fact that some improvements have been made in recent years, Congress concluded that certain forms of discrimination against individuals with disabilities, including isolation and segregation, continue to be a serious and pervasive social problem. Based on its extensive series of hearings on the measure, Congress found that these problems persist in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting and access to

public services (Susser 1990). Despite these widespread difficulties, many disabled Americans had no legal recourse to address such discrimination.

The Americans with Disabilities Act was signed into law by President George Bush on July 26, 1990. Hailed as the emancipation proclamation for people with disabilities, the Act's expressly stated purpose is to provide a "clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" (Susser 1990). The purpose is four-fold: to provide a clear and comprehensive national mandate to eliminate discrimination against individuals with disabilities; to provide clear, strong, consistent enforceable standards for those with disabilities; to ensure that the federal government plays a central role in enforcing the standards; and to invoke congressional authority to address the major areas of discrimination faced by the disabled (Cross 1993). After a two-year waiting period, the ADA became effective on July 26, 1992 for employers who employ 25 or more employees. After two additional years, as of July 26, 1994, the coverage expanded to all employers who employ 15 or more persons.

The ADA is divided into five principle portions dealing with employment (Title I), public services (Title II), public accommodations (Title III), telecommunications relay services (Title IV), and miscellaneous provisions (Title V).

Title I's general prohibition states that no covered entity may discriminate against a "qualified individual with a disability" because of that disability. It requires private and public entities alike to maintain nondiscriminatory hiring practices. Moreover, it compels employers to provide reasonable accommodations that enable otherwise qualified persons with disabilities to perform essential job functions (Rumrill, Gordon, & Roessler 1993). Title I defines a "qualified individual with a disability" as someone who can perform the essential functions of a job with or without reasonable accommodation." The employer should identify the essential functions of a job in a written job description prior to advertising or interviewing applicants. An employer is not required to provide the accommodation, unless it is requested by the employee or applicant. Nor are they required to hire an individual if they cannot perform the essential functions of the job.

The term "reasonable accommodation" may include, but is not limited to, making facilities accessible; restructuring jobs; providing part-time or modified work schedules; reassigning an employee to a vacant position; acquiring or

modifying examinations, training materials, or policies; and providing qualified readers and interpreters as needed.

Title I clearly indicates that providing reasonable accommodations to a job applicant or an employee with a disability may involve "the acquisition or modification of equipment devices." Assistive technology will play an important role in the job accommodations. It also emphasizes that such accommodations may have to be provided during the interview process, as well as once an individual with a disability is hired.

Also required in Title I, facilities must be made accessible to an employee with a disability, unless it would cause undue hardship on the employer. This area emphasizes that areas other than the work area must be made accessible to the disabled worker. This would include restrooms, staff lounges, dining rooms and other places where able-bodied workers have access.

Title I does protect employers from employees who pose a significant risk of substantial harm to the health or safety of the individuals or others that cannot be eliminated by a reasonable accommodation. This determination of whether someone with a disability poses a direct threat must be determined on an individual and objective basis.

Title II of the ADA stipulates that no qualified person with a disability may be discriminated against by a public entity. This refers both to state and local governments and to their departments, regardless of whether they receive federal funds. In addition to a general prohibition against discrimination, Title II includes specific requirements applicable to public transportation provided by public transit authorities, commuter rail authorities, and Amtrak (Harkin 1990). These requirements include accessibility to individuals with disabilities on all new public transit buses. This requirement was effective August 26, 1990 and also covered newly ordered rail cars. Title II also stated that by July 26, 1995, each existing rail system must have one accessible car per train. New bus and rail stations must be constructed so that they are accessible to the disabled. Provisions were also included to make present stations accessible. By July 26, 1993, "key stations" in rapid, light and commuter rail systems must be accessible. Extensions can be given up to 20 years for commuter rail and up to 30 years for rapid and light rail. All existing Amtrak stations must be made accessible by July 26, 2010. Under Title II transit authorities must provide comparable paratransit or other special transportation services to individuals with disabilities who cannot use fixed-route services.



Title III provisions of the ADA, apart from the prohibitions on employment discrimination, are likely to have the greatest impact on businesses (Susser 1990). The rules prohibit discrimination on the basis of disability in all places of public accommodations. These include such places as banks, stores, restaurants, theaters, day care centers, private schools, and doctor and other professional offices (Williams 1992).

Existing facilities must remove physical barriers, if they are readily achievable. If not, alternative methods of providing services must be offered, if they are readily achievable. Also, a prime purpose for a public accommodation to provide needed auxiliary aids and services is to ensure that equally effective communications take place between persons with hearing, speech, vision disabilities, and others (Williams 1990). These auxiliary aids would include voice recognition systems, automatic dialing telephones, infrared systems and other light controlled systems, and devices to promote effective communication.

Under Title III, facilities designed and constructed for first occupancy after January 26, 1993, all new construction and alterations of facilities must be accessible. Government facilities, services and

communications must be accessible consistent with the requirements of Section 504 of the Rehabilitation Act of 1973.

Title IV of the statute requires that interstate and intrastate telecommunication relay services be made available, to the greatest extent possible in the most efficient manner, to hearing-impaired and speech-impaired individuals (Susser 1990). This applies to all companies offering telephone services to the general public. These relay services are services that give individuals with hearing or speech impairments the ability to engage in communication with other individuals who are not hearing or speech impaired. They must be provided within three years of the ADA's enactment. The FCC is required to prescribe regulations within one year of the statute's enactment that establish functional requirements, guidelines, and operations procedures for telecommunications relay services, establish minimum standards to be met by common carriers, require that such services operate every day for twenty-four hours per day, and require that users of such services pay rates no greater than the rates paid for functionally equivalent voice communication services. The FCC is also charged with enforcing the requirements of Title IV (Susser 1990).

The miscellaneous provisions listed in Title V depict the ADA's relationship to other laws, explains insurance issues and, among other things, explains implementation of each title and notes amendments to the Rehabilitation Act of 1973.

Concerning the relationship to other handicap discrimination laws, the Act states that nothing in its text should be construed to apply a lesser standard than those applied under the Rehabilitation Act or regulations issued by federal agencies under the statute (Susser 1990). It also states that the ADA should not limit the jurisdiction of a state law that provides greater or equal protection for the rights of disabled individuals.

With respect to insurance issues, the ADA states that it does not intend to restrict insurers and other entities that administer benefit plans from underwriting risks, classifying risks, or administering such risks that are based on or inconsistent with state law. However, the ADA states that these issues may not be used to exclude an individual from employment and its public accommodations titles.

Title V encourages, where appropriate, the use of alternative means of dispute resolution in cases arising under the act. These methods include settlement

negotiations, conciliation, facilitation, mediation, fact-finding, minitrials and arbitration (Harkin 1990).

The ADA sends a clear message that people with disabilities are now legally entitled to be treated fairly. They are to be judged on the basis of their abilities and not with fear, ignorance, prejudice, or patronization. Segregation and exclusion are illegal.

#### Financial Impact

Like any new legislation, the Americans with Disabilities Act will affect American organizations, but how yet is unclear (Cross 1993). Reasonable accommodation expenses will be the primary costs borne by employers in implementing the ADA (Ogletree, Deakin, Nash, Smoak & Stewart 1993). According to the EEOC, approximately 50 percent of people with disabilities will require no accommodation in order to work. Of the remaining individuals protected by the Act (21.5 million Americans), approximately 20 percent will need accommodations that cost less than \$50. The remaining 80 percent will require accommodations that cost less than \$1000 (Cross 1993). In fact, many companies already have these accommodations in place to comply with local and safety codes (Johnson 1993).

Testimony from Weldon Rougeau, Director, Office of Federal Contract Compliance Programs, U.S. Department of

Labor, in referring to the implementation of Section 503 of the Rehabilitation Act, indicates "there really is not any great cost attached to making accommodations" (Ogletree, Deakin, Nash, Smoak & Stewart 1993). The result of a 1982 survey of federal contractors indicated that half of the charges made to comply with the Rehabilitation Act of 1973 cost nothing, an additional 30 percent cost less than \$500, and only 8 percent cost more than \$2000; the average cost per accommodation was \$304. The EEOC has used this average, along with two others, to estimate an overall mean cost per accommodation of \$261. Many indirect costs, however, were not included; for example, making existing facilities accessible to disabled employees. Another indirect cost would include expenses associated with conducting a job analysis to determine essential functions. In reality, the sum of such indirect costs could possibly exceed the direct costs of reasonable accommodation (Cross 1993).

Workplace modifications have been researched and described for nearly two decades by the Job Accommodation Network. JAN has found that most work accommodations costs are practical in nature and less expensive than most employers assume: 61 percent of all job accommodations cost less than \$500 (see table 1) (Walker 1993).

Table 1

Finding On Accommodation Costs


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<u>Accommodation Costs</u>	<u>Percent of Total Accommodations</u>
No Costs	51.1
\$1 - \$99	18.5
\$100-\$499	11.9
Over \$500	18.5

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More detailed studies of the cost of accommodations under the Rehabilitation Act have been undertaken. One estimate provided by Berkley Planning Associates, surveyed federal contractors subject to Section 503. The Berkley study came to the following conclusions about the various costs of accommodations under Section 503: 51.1 percent of all accommodations were made for no costs; 18.5 percent of accommodations were made for costs between \$1 and \$99; 11.9 percent of accommodations were made for costs of between \$100 and \$499; and 18.5 percent of all accommodations cost more than \$500 (Ogletree, Deakin, Nash, Smoak & Stewart 1993) (see table 1).

The estimates of accommodation expenses are many. However, with the present-day use of technology, accommodations could be costly. Adaptive technology costs money and seeking the least-expensive solution may not be a solution at all. The ADA has made it illegal to

discriminate against a disabled job applicant who is capable of doing the job. At the same time, adaptive technologies are rewriting the book on what disabled people are, in fact, able to do (Filipczak 1993). For the first time people with physical challenges are becoming more productive and versatile members in an office environment (Matthes 1993).

As with computer technology in general, assistive technology prices are dropping fast. The Kursweil reader cost \$50,000 when it was introduced in 1975. The current 6th edition model costs about \$5,000. Dragon Dictate, a voice recognition system, has dropped in price while increasing in power and accuracy over the last three years. That pattern presumably will continue. Nevertheless, the ADA affects almost all employers, including small businesses with very little extra money (Filipczak 1993).

Under the ADA, an employer is not required to make a particular accommodation if it can "demonstrate that the accommodation would impose an undue hardship on the operation of the business..." According to the legislative history, an undue hardship is presented if an accommodation would be "unduly costly, extensive, substantial, disruptive, or would fundamentally deter the nature of the process" (Shaller 1991).

In determining whether an accommodation constitutes an undue hardship, the following factors should be considered: a) the nature and cost of the accommodation; b) the overall financial resources of the facility where the accommodations would take place; c) the number of employees at such facility; d) the effect such accommodation would have on expenses and resources; e) the overall financial resources of the employer; f) the overall size of the employer including the number of facilities and employees and type and location of facilities; g) the type of operations of the employer; and h) the impact of the accommodation on the operations of the facility involved and on the ability of other employees to perform their jobs. (§ 101, 42 U.S.C.A. § 1211)

In one example, a company recently asked for a ruling on undue hardship when an employee filed a complaint asking for a front entrance ramp. The employee was using a rear entrance ramp. The company felt it could not afford this accommodation and that it was an undue hardship. It employed 200 people, of whom only one had a mobility impairment; its profit for fiscal year 1993 was \$50,000; and its largest customer was requiring changes that would cost the business \$28,000. The cost of a new entrance ramp was \$14,000. In addition, the company had a list of corporate needs that were critical to remaining competitive in the



marketplace. The loss of its competitive edge would result in a layoff of fifteen people. Management presented the fiscal needs (to remain competitive) to the employee, who agreed that a front entrance ramp would be an undue hardship (Kearney 1994).

Three cases shed some light on the cost question as it relates to undue hardship. In Nelson v. Thronburgh, 567 F.Supp. 369 (E.D. Pa. 1983); 732 F.2d 146 (3d Cir. 1984); 469 U.S. 1188 (1985), the court ruled that social utility justified the Pennsylvania Department of Public Welfare to provide readers to three blind maintenance workers. With the accommodation the blind workers were able to perform their jobs as well as sighted workers. The court weighed the social costs of refusing the accommodation vs. the economic costs of providing the accommodation and stated:

"When one considers the social costs which would flow from the exclusion of persons such as the plaintiffs from the pursuit of their profession, the modest cost of accommodation - a cost which seems likely to diminish as technology advances and proliferates - seems by comparison, quite small."

The court found it would cost the agency approximately \$6,638 per year to provide a reader for four hours a day. Compared to the agency's \$300 million administrative budget, the cost is reasonable.

Arneson v. Heckler, 879 F.2d 393 (8th Cir. 1989), involved the cost of providing a special assistant as a

means of accommodating a Social Security claims administrator who had a neurological disorder. The court held the accommodation presented an unreasonable financial burden on the employer when viewed in light of the limited utility the accommodation would provide for the plaintiff. This court did not compare the cost of the accommodation to the employer's overall operations budget, or its budget for any particular office.

In Garner v. Morris, 752 F.2d 271 (8th Cir. 1985), the court found the accommodation cost prohibitive. The plaintiff was a manic depressive civil engineer with the Army Corps of Engineers, who wanted a transfer to a construction project in Saudia Arabia. His disorder was controlled with lithium therapy, although there was a slight risk he would suffer a manic episode. He had to have his blood tested every three months for the lithium level. The Corps refused the transfer because Saudi medical facilities were unable to provide adequate care and the nearest physician was a one-hour flight or a 13-hour drive away. The court refused to require the Corps to provide the plaintiff with both a physician and an on-site lab.

Congress chose to have undue hardship determinations made on a case by case basis rather than set forth any hard fast rules. Neither the statute nor the legislative history offers any guidelines in terms of the actual expenditures

that will be regarded as representing a "significant expense." Congress explicitly rejected an amendment that would have established a de facto limit by stating that accommodation costs totaling more than 10 percent of the disabled employee's salary constitute a per se undue hardship (Shaller 1991).

#### Essential Functions

Essential functions are the primary duties of a job rather than the marginal or peripheral duties. It is necessary to identify the essential functions of a job to determine whether a person with a disability is qualified. This is an important nondiscrimination requirement. Many people with disabilities who can perform essential parts of a job are denied employment because they cannot do things that are only marginal to the job (U.S. EEOC 1992). ADA calls upon employers to list the essential functions of a position and allows the job interviewer to ask if the applicant can perform those duties. If the applicant can, fine. If the applicant could, but would need some accommodation in the form of workplace changes to do the job, the employer must make those changes if they are "reasonable" (Hequet 1993). Individuals with disabilities are considered qualified for a job if they can perform the essential functions with or without accommodations.

The ADA itself does not specifically define essential functions. It states that consideration should be given to the employer's judgment as to what functions of the job are essential and to a written job description an employer prepared before advertising the job or interviewing applicants for the job. This description shall be considered evidence of the essential functions of the job. Thus, employers should have written job descriptions that include the physical requirements of the position (Cross 1993).

The regulations provide some guidance in applying the definition of essential functions to the practicalities of the real world. The regulations offer the following three reasons why a job function may be considered essential: 1) the position exists to perform the function, 2) "the limited number" of employees available to perform the function, and 3) the function is so "highly specialized" that the incumbent in the position is hired to perform it (U.S. EEOC 1992). In short, the employer must determine what are the actual duties of a job and consider if removing the function would fundamentally change the job. A job posting may list answering the phone as an essential function of a graphic artist. However, if the person presently in that position seldom answers the phone, then answering the phone would not be an essential function. The regulations in ADA identify

six of the evidence categories that may help determine whether a particular function is essential: 1) the employer's judgement, 2) written job descriptions prepared before advertising or interviews, 3) the amount of time spent on the job performing the functions, 4) the consequences of not requiring the incumbent to perform the function, 5) the work experience of past incumbents in the job, and 6) the current work experience of incumbents in "similar jobs" (Postol & Kadue 1991).

Because courts will look closely at what really are the essential functions of a job, employers will need good industrial engineering backup to justify most job duty requirements. If an employer's job requirements tend to screen out disabled persons, then the ADA requires employers to prove the requirement is "job related for the position in question and is consistent with business necessity" (Postol & Kadue 1991). It is important to note that employers are not expected to lower their standards. If a hotel chain requires a maid to clean 20 rooms a shift, they will not have to explain why they chose the number 20 rather than a lower number. This was illustrated in Johnston v. Morrison, Inc., 849 F. Supp. 777 (N.D. Ala. 1994).

The difference between marginal and essential functions can be examined in Davis v. Frank, 711 F. Supp. 447, 453 (N.D. Ill. 1989). Davis, a deaf postal employee brought

suit when she was denied a job as a time and attendance clerk because she was unable to answer the telephones. As the clerk, she was basically responsible for calculating and documenting the hours that the postal employees worked and the hours that they were absent. The court held that "a handicapped person may only be required to satisfy a job's necessary and legitimate physical requirements and answering the telephones was merely a marginal function of the job.

In an education related case, Pandazides v. Virginia Board of Education, 804 F.Supp. 794, 803 (E.D.Va. 1992), a teacher was discharged from her special education teaching position and sued alleging discrimination on the basis of her learning disability. The court found that she was not qualified to perform the essential functions of the job. It stated:

"the plaintiff is not "otherwise qualified" under section 504 because she cannot perform the essential functions of a public school teacher in Virginia. The ability to read intelligently, to comprehend written and spoken communication accurately, effectively, and quickly, and to respond to written and spoken communication professionally, effectively, and quickly, are essential functions of a special education, public school teacher in Virginia."

An earlier decision under the Rehabilitation Act echoed the decision. In Beauford v. Father Flannagin's Boys' Home, 831 F.2d 768, 771 (8th Cir. 1987), a teacher was held not to be able to perform the essential functions of her job when

she failed to master a myriad of forms and the extensive paperwork associated with the "precision teaching" methods implemented at the school (Veir 1994).

These cases and others will assist the courts as they examine the essential functions of each position on a case by case basis.

#### Reasonable Accommodations

The final regulations for the ADA define reasonable accommodation as: modifications or adjustments to the work environment; or to the manner or circumstances under which the position held or desired is customarily performed; that enable a qualified individual with a disability to perform the essential functions of that position (U.S. EEOC 1992).

The type of accommodations listed in the statute essentially fall into two categories. First, there are the accommodations that entail modifying the physical structure of the workplace, or using or purchasing certain equipment. Second, there are accommodations that entail making changes to the disabled employee's work schedule or job duties.

Decisions regarding whether to make an accommodation in the first category should be relatively easy in that they typically only involve direct cost consideration. The work facility must be physically accessible to the disabled worker. The accommodations may include wheelchair ramps,

specially equipped bathrooms, a closer parking lot, enhanced lighting, wider walkways and others (Shaller 1991). The regulations state that this "duty includes not only the employee's work station, but also other work locations such as a company cafeteria or employee lounge" (U.S. EEOC 1992).

Decisions as to whether to make accommodations in the second category are more problematic in that they may affect other employees and the "cost" of the accommodation may be difficult to calculate (Shaller 1991). Employers seem to be somewhat comfortable and familiar with providing environmental and equipment modifications, they continue to be reluctant to make procedural modifications (Michaels, Nappo, Barrett, Risucci & Harles 1993). In the case of procedural modifications, they must always be negotiated on a case-by-case basis because even if two people have the same disability, they may require different modifications.

These changes in the work environment are intended to help a person with a disability function more productively. The accommodations can include but are not limited to: "Making existing facilities readily accessible to and usable by employees with disabilities; job restructuring, part-time or modified work schedules; reassignment to a vacant position; the acquisition or modification of equipment or devices; appropriate adjustment or modification of



examinations, training materials or policies; the provisions of qualified readers or interpreters; and other reasonable accommodations for people with disabilities" (Williams 1992).

#### 1) Making Facilities Accessible

One of the standard means of accommodating the disabled is to make a facility physically accessible to the worker with a disability. The employer's obligation under Title I is to provide access for an individual applicant to participate in the job application process, and for an individual employee with a disability to perform the essential functions of his/her job, including access to a building, to the work site, to needed equipment, and to all facilities used by employees (EEOC 1992). The accessible areas would include not only work areas but all areas used by all employees, including breakrooms, lunchrooms, training rooms, and restrooms (Arnavas, Marsh, Ortman 1992).

Often a worker can perform the duties of a job, but he cannot get to the work location. Whether the need is for a wheelchair ramp, a specially equipped bathroom, a closer parking spot, or possibly even the installation of an elevator, an employer must install such facilities if they are reasonable and not an undue hardship (Postol & Kadue 1991). However, under Title I, an employer is not required

to make its existing facilities accessible until a particular applicant or employee with a particular disability needs an accommodation, and then the modifications should meet the individual's work needs (U.S. EEOC 1992). This is not to be confused with the accessibility of public facilities covered under Title III of the ADA. Under Title III, existing buildings and facilities of public accommodation must make their goods and services accessible to people with disabilities. The provisions under Title I focus on the individual worker.

## 2) Job Restructuring

Job restructuring or job modification is a form of reasonable accommodation which enables many qualified individuals with disabilities to perform jobs effectively. Job restructuring as a reasonable accommodation may involve reallocating or redistributing the marginal functions of a job. However, an employer is not required to reallocate essential functions of a job as a reasonable accommodation (EEOC 1992). If the functions are nonessential, the employer is presumably required to at least consider restructuring the job (Shaller 1991). Barriers to performance may be eliminated by eliminating nonessential

elements; redelegating assignments; exchanging assignments with another employee; and redesigning procedures for task accomplishment (Postol & Kadue 1993).

The case of Wallace v. Veterans Administration, 683 F.Supp. 758 (D. Kan. 1988), which arose under the Rehabilitation Act, serves as a good example of a case in which the employer was found liable because it failed to even consider restructuring a job so as to delete what were deemed nonessential functions.

In Wallace, the plaintiff, a rehabilitated drug addict, applied for a job as an intensive care unit nurse. Her physician advised the employer that she was fully ready to return to work, with the limitation that she should be restricted to access to injectable narcotics. But the Veterans Administration declined to hire the plaintiff, stating that because of this limitation she would not be able to administer narcotics and therefore could not perform the full range of job duties normally expected of an intensive care unit nurse.

At trial, the VA was unable to demonstrate how the limitation would have any significant impact on operations. It contended that it was unable to accommodate the plaintiff because it would have been required to hire additional staff, staff morale would have been affected, and the plaintiff's restriction would have resulted in compromised

patient care. But the VA had no evidence to support this contention, while the plaintiff had ample evidence supporting her argument that the proposed accommodation would not present a hardship.

According to the plaintiff's evidence, the average nurse only spent about 2 percent of his or her time administering narcotics at all. The plaintiff also presented an expert witness who worked with employers in integrating impaired nurses into the workforce. The expert testified that because the injection of narcotics was not a major part of the duties of an intensive care nurse, accommodations for a nurse unable to administer narcotics are easily made. In light of this evidence, the court found that "the Veterans Administration's refusal to accommodate was based on conclusionary statements that are being used to justify reflexive reactions grounded in ignorance and capitulation to public prejudice" (Shaller 1991).

### 3) Part-time or Modified Work Schedules

An employer should consider modification of a regular work schedule as a reasonable accommodation unless this would cause undue hardship. Modified work schedules may include flexibility in work hours, the work week, or part-time work (U.S. EEOC 1992). Such accommodations may have to be extended to disabled individuals who need medical

treatment at times that would interfere with the standard work schedule and individuals whose disabilities require or depend on transportation systems that may be inaccessible during peak traffic periods (Shaller 1991). People with cancer, AIDS, diabetes, and mobility impairments are among the employees who would need such an accommodation.

What many employers will find most troubling is the way the ADA can affect how the employer actually performs its work. It is one thing to require an employer to remove unnecessary barriers to the employment of persons with disabilities. It is another matter to tell employers how they must operate their business. For many employers, particularly in manufacturing industries, it will be difficult for them to understand that the ADA can actually require them to revise their manufacturing process or method of operation as an accommodation (Postol & Kadue 1991). Inflexible policies of not permitting any employee to work part-time regardless of the particular facts and circumstances may constitute an unlawful failure to provide a reasonable accommodation.

#### 4) Reassignment to Vacant Positions

Reassignment to a vacant position may arise where a current employee no longer can perform the essential functions of the job and that inability cannot be overcome

by another reasonable accommodation. In such a circumstance, the employer has an obligation to offer a transfer to a vacant position for which the employee is qualified. Reassignment is not a preferred accommodation but viewed as a last resort (Ogletree, Deakin, Nash, Smoak & Stewart 1993). An employer must first try to accommodate a worker in his/her current job, before transferring him/her to a vacant position.

Reassignment should be made to a position equivalent to the one presently held in terms of pay and other job status, if the individual is qualified for the position and if such a position is vacant or will be vacant within a reasonable amount of time. An employer may reassign an individual to a lower graded position if there are no accommodations that would enable the employee to remain in the current position and there are no positions vacant or soon to be vacant for which the employee is qualified (U.S. EEOC 1992).

Most courts construing the Rehabilitation Act and state anti-discrimination laws have taken an approach similar to that required under the Disabilities Act. In one of the leading cases construing the Rehabilitation Act, School Board of Nassau County v. Arline, 480 U.S. 273, 107 S. Ct. 1123, 94 L.Ed.2d 307 (1987), the Supreme Court stated that while employers

"are not required to find another job for an employee who is not qualified for the job he or she was doing, they cannot deny an employee alternative employment opportunities reasonably available under the employer's existing policies."

Lower courts have taken a similar position. In Coley v. Secretary of Army, 689 F.Supp 519, 45 FEP735, 45EPD (D.Md. 1987), the district court recognized that reasonable accommodation of a disabled employee would include reassignment to another position. According to the court, in determining whether a disabled individual is qualified for the "position in question", that position is deemed to include all positions to which the disabled person might be assigned (Ogletree, Deakin, Nash, Smoak & Stewart 1993).

An employer is not required to create a new job or to bump another employee from a job in order to provide reassignment as a reasonable accommodation. Nor is an employer required to promote an individual with a disability to make such an accommodation (U.S. EEOC 1992).

#### 5) Acquisition or Modification of Equipment and Devices

The purchase of equipment or modifications to existing equipment may be effective accommodations for people with many types of disabilities. There are many devices that make it possible for people to overcome existing barriers to performing functions of a job. These devices range from very simple solutions, such as an elastic band that can

enable a person with cerebral palsy to hold a pencil and write, to high tech electronic equipment that can be operated with eye movements by people who cannot use their hands. There are also many ways to modify standard equipment so as to enable people with different functional limitations to perform jobs effectively and safely (U.S. EEOC 1992).

The ADA provides no specifics as to the extent of an employer's obligation to make physical modifications to the workplace or purchase or provide certain equipment to its employees. Nor does it provide any guidance as to the dollar amounts that would be regarded as either reasonable or as imposing an undue hardship. In fact, the House Judiciary Committee expressly rejected a proposed amendment providing that accommodation costs totaling more than ten percent of the disabled employee's annual salary would be presumed to constitute a hardship. It is therefore impossible to articulate any specific cost standards upon which employers may safely rely (Shaller 1991). Although some of this equipment is expensive, federal tax credits, tax deductions, and other sources of financing are available to help pay for higher cost equipment.



#### 6) Appropriate Adjustment or Modification of Examinations

An employer may be required to modify, adjust, or make other reasonable accommodations in the ways that tests and training are administered in order to provide equal employment opportunities for qualified individuals with disabilities (U.S. EEOC 1992). In order to accommodate these individuals, application forms, pre-employment tests and other job application material should be offered in accessible formats such as audio recordings, large type, or braille material (Ogletree, Deakin, Nash, Smoak & Stewart 1993). Employers may also need to provide extra time to complete screening examinations, provide specially trained examiners for the task, or provide readers for blind applicants or interpreters for deaf applicants. In addition, it may be necessary for employers to modify exam content, provided such modifications do not change the basic intent of the examination (Shaller 1993). These accommodations may also apply to training opportunities. There is a duty to attempt to eliminate exclusionary examinations, training materials and policies as a reasonable accommodation (Postol & Kadue 1991).

#### 7) Provisions of Qualified Readers and Interpreters

The ADA, like the regulations interpreting the Rehabilitation Act, lists provisions of readers and

interpreters as an example of an appropriate accommodation. Generally speaking, dependent on the costs of doing so and the financial resources of the employer, the courts have required employers to accommodate disabled employees by hiring readers and interpreters on a part-time basis, but have declined to require that full-time assistants be hired (Shaller 1991).

Readers and interpreters can be expensive. Some businesses have objected to this accommodation because they feel they are effectively required to hire two persons to perform one job. Yet, under ADA, reasonable accommodations may include qualified readers, interpreters and as in the Senate Report at 33, even the provision of an attendant during the workday or travel.

#### 8) Other Accommodations

The list of reasonable accommodations in the ADA is expressly non-exhaustive. Anything that provides assistance for a disabled worker to be able to perform the essential functions of a job must be considered. The examples of accommodations in the EEOC regulations and manuals are not the only types of accommodations required.

When an accommodation is offered, it should be documented, along with the individual's response to it. The

report should note the projected or actual cost of the accommodation offered to the individual and what portion of the cost the employer will pay. If no accommodation is offered, that too should be documented, noting the reasons. The report should spell out the specific problems that would be caused by the accommodation, the impact on other employees or the public consequences (e.g., efficiency loss) the accommodation would cause, and the cost of this and other accommodations made during the year in relation to the overall budget.

Records of all accommodations made must be kept to establish the reasonableness of the employer's actions, support claims of undue hardships based on cumulative expense and foster consistency. (Past actions may establish a standard for future cases.) The legitimate, nondiscriminatory basis for adverse decisions affecting an individual with a disability and applicable defense must be noted as well. Any documents that prove the facts on which the determination is based, must be kept.

## Chapter 3

### RESEARCH DESIGN

The purpose of this research was to examine how 20 large school districts in the United States with enrollments over 100,000 students have been impacted by Title I of the Americans with Disabilities Act requirement that school districts make reasonable accommodations to classroom teachers with disabilities.

#### Selection of Subjects

The subjects of this study included the ADA compliance directors of twenty large school districts in the United States with enrollments over 100,000 students. These compliance directors were identified by their school districts to oversee the implementation of the ADA. Large school districts were selected because it was felt that they would have the appropriate resources, access to legal representation and a large employment base, which would enable them to be forerunners in establishing procedures for ADA requirements. The school districts which were included in the survey are listed in table 2.

Table 2

Enrollment of the 20 Largest School Districts: Fall 1992


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<u>Name of School District</u>	<u>State</u>	<u>Rank</u>	<u>Enrollment</u>
*New York City	NY	1	983,791
Los Angeles Unified	CA	2	639,781
*City of Chicago	IL	3	411,582
Dade County	FL	4	303,346
Philadelphia	PA	5	201,496
Houston	TX	6	198,013
Broward County	FL	7	178,060
Hawaii Public Schools	HI	8	177,448
Detroit Public Schools	MI	9	172,330
Dallas ISD	TX	10	139,711
Clark County	NV	11	136,188
Fairfax County	VA	12	133,425
*Hillsborough County	FL	13	132,224
San Diego City Unified	CA	14	125,116
Duval County	FL	15	117,663
Palm Beach County	FL	16	116,466
*Prince George's County	MD	17	113,132
Baltimore City	MD	18	110,662
Orange County	FL	19	110,136
*Montgomery County	MD	20	110,037

\* Did not respond

Source: Digest of Educational Statistics 1994  
U.S. Department of Education

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### Construction of the Data Collection Instrument

#### Design of the Instrumentation

A questionnaire was developed based on the Americans with Disabilities Act and related readings. It was mailed to the compliance directors of the 20 largest school districts. The items on the questionnaire were constructed to assess how these school districts have been impacted by

Title I of the Americans with Disabilities Act requirement that school districts make reasonable accommodations to classroom teachers with disabilities.

The questionnaire was divided into four categories: demographics, essential functions, reasonable accommodations, and costs. The demographics category verified the respondent's position with the school district, the amount of time they spent on ADA issues and if the school district designated other ADA compliance directors.

The essential functions of a position must be identified prior to making reasonable accommodations. This category of the questionnaire surveyed the progress of each school district in the identification of essential functions for a classroom teaching position through the development of a job description. Though ADA does not require a job description be developed for each position, its technical assistance guide strongly recommends that a job description be developed for each position prior to advertising each vacancy. This allows applicants to indicate if they are able to perform the essential functions of a job, with or without accommodations.

The reasonable accommodations category of the questionnaire requested information about the number and types of accommodations made to classroom teachers.

Information was collected about the various categories of accommodations, which are outlined in the ADA Technical Assistance Manual (U.S. EEOC 1992). These categories included modification of the work station, purchasing of equipment or adaptive devices, restructuring of the job, modification of work schedule, the providing of an aide, interpreter or reader, modification of an examination or training program, and any miscellaneous accommodations.

The costs involved in the accommodations and other related activities may be a major factor in the impact of the ADA's Title I requirement that school districts make reasonable accommodations to classroom teachers. The questionnaire requested information about such costs. The cost categories for accommodation were selected because of their use in early estimates of the accommodation costs associated with ADA.

The construction of the items were developed from information obtained in the Americans with Disabilities Act and related readings. The questionnaire included forced choice and open-ended responses.

Five members of the Oshkosh Area School District's Americans with Disability Committee, Oshkosh, WI, acted as judges to determine the content validity of the questionnaire items. The members include the committee

chairperson, the school district's personnel/ADA compliance director, the school district's attorney, an ADA advocate and the local director of the Cerebral Palsy Association. Each member studied a selected pool of items and independently ranked each item on a Likert scale. The rankings ranged from 1 to 5, with one indicating that the ADA committee member strongly disagreed with the inclusion of the item on the questionnaire and five indicating that they strongly agreed with the inclusion of the item on the questionnaire. An item was included on the questionnaire if it received a combined ranking, from the five ADA committee members, of 20, and did not receive a ranking of 2 or less from an individual committee member.

#### Field-Testing of the Instrument

A pilot study was conducted using five additional central Wisconsin compliance directors. Each director was mailed a copy of the survey. After previewing it and collecting any needed data, they independently completed the questionnaire. Their feedback was sought in evaluating the questionnaire. They were invited to mark any changes or comments on the copy of the survey. This assisted in estimating the administration time and allowed for fine tuning of the questionnaire.



### Revision of the Instrument

Input from the field testing was examined carefully and needed revisions were made to the questionnaire. The revised items were discussed with the five ADA compliance directors involved in the field testing. If 80 percent of the ADA compliance directors approved of the revision, the revision was finalized on the questionnaire.

### Administration of the Instrument

In June, 1995, the twenty school districts were contacted by telephone for the purpose of identifying the ADA compliance directors of each district. The directors were then contacted by telephone to explain the purpose of the study, confirm their responsibilities with ADA and gain correct mailing addresses. A packet containing a letter of explanation, the questionnaire and a self-addressed, stamped envelope was sent to each director. A reminder notice and another copy of the survey was sent three weeks after the initial mailing. Followup phone calls proceeded to encourage the return of the survey and to offer assistance.

### Analysis of the Data

Data analysis was performed on the main problem and the two sub-problems. For the main problem statement, showing the impact ADA has had on school districts, an analysis was performed on the demographic data, the development of a job description, the number of accommodation requests and the number of accommodations granted.

In analyzing the first sub-problem, the focus was on the accommodations made to classroom teachers through modifications in the following areas: physical structure of the work station; purchasing of adaptive devices; restructuring of the job; adjustment of a work schedule; an aide or interpreter; restructuring of examination and training programs and other miscellaneous categories.

The analysis of the second sub-problem focused on the costs which have been incurred by the districts in providing the ADA accommodation requests, inservices and other related expenses.

Frequencies were used for all forced choice items, which are primarily "yes" and "no" responses. Measures of central tendency were utilized to describe continuous data, such as those item responses dealing with tenure as an ADA director. Tables were constructed to show frequencies and measures of central tendency.

Responses to open-ended items were listed by the analysis of the corresponding forced choice item. These responses were categorized and then grouped into sub-categories as they emerged from the data. A narrative summary was also used to present information. This description of various accommodations and related facts may be particularly useful information for school district compliance directors, as they assess their own district's future accommodation requests.

## CHAPTER 4

### RESULTS

The purpose of this research was to examine how the largest twenty school districts in the United States have been impacted by the American's with Disabilities Act requirement that they make reasonable accommodations to classroom teachers with a disability. A questionnaire surveying the impact was sent to the twenty school districts. The 15 completed surveys represented a 75% return.

The completed data for the main problem and the two sub-problems are contained in this chapter. Data for the main problem statement, showing the impact ADA has had on school districts, analyzes the demographic data, the development of a job description, the number of accommodation requests and the number of accommodations granted.

Data for the first sub-problem focuses on the accommodations made to classroom teachers through modifications in the following areas: physical structure of the work station; purchasing of adaptive devices; restructuring of the job; adjustment of a work schedule; an aide or interpreter; restructuring of examination and training programs and miscellaneous categories. The data for

the second sub-problem focuses on the costs which have been incurred by the districts in providing the ADA accommodations and other related expenses. These included the cost of the accommodations, the inservicing costs and legal fees.

#### Findings--Main Problem Statement

The purpose of the main problem was to determine how the twenty largest school districts have been impacted by the Americans with Disabilities Act requirement that they make reasonable accommodations to classroom teachers with a disability. Surveys were sent to personnel in the nation's twenty largest school districts. Eleven (73%) of the 15 respondents were designated by their school district as the Americans with Disability Act Compliance Director. The school districts for the remaining four respondents did not designate an ADA compliance director. However, one (7%) respondent stated that there are three individuals in their school district who deal with issues related to the Americans with Disabilities Act, though no one is specifically designated as the compliance director.

Demographics of ADA compliance Directors

Professional Demographics--The mean tenure for responding ADA compliance directors was 2.7 years. The range for their tenure was 8 months to 4 years. The median tenure was 3 years and the mode for the respondents was 4 years.

The primary positions of the ADA compliance directors varied. Five (45%) of the directors worked primarily in the personnel/human resource department, three (27%) worked in the equal employment office, two (18%) were affirmative action officers and one (9%) was an assistant superintendent of educational services (see table 3).

Table 3

Findings on Professional Demographics


---

		Total	
		N	%
		<hr/>	
Primary	Personnel Department	5	45
Job Position	Equal Employment Office	3	27
	Affirmative Action Officer	2	18
	Asst. Supt. Educational Services	1	9

---

"Primary Job Title Responses"

## Personnel Department

- Coordinator of Employee Relations
- Director of Human Relations
- Staff Specialist - Labor Relation
- Executive Director of Employment
- EAP Supervisor

## Equal Employment Office

- Coordinator of Equal Opportunity
- Equal Employment Opportunity Director
- Equal Opportunity Compliance Director

## Affirmative Action Office

- Affirmative Action Officer
- Affirmative Action Officer

## Education Services Division

- Assistant Superintendent of Educational Services
-

The percentage of work time compliance directors estimated that they spent with ADA issues ranged from 1% to 40%. The responses indicate that the time each compliance director spends on ADA varies greatly and that the majority of their work time is spent on other designated duties (see table 4).

Table 4

Findings on Professional Demographics

	Estimate	N	%
Amount of Work Time	1%	2	17
Dealing with ADA Issues	2-3%	1	8
	10%	2	17
	15%	1	8
	15-20%	1	8
	20%	3	25
	20-30%	1	8
	20-40%	1	8

Classroom Teacher Job Description

Development of Job Descriptions--Ten (67%) of the responding school districts had developed job descriptions for a classroom teacher. Of the ten school districts with job descriptions developed, 7 (70%) had a job description in place prior to the enactment of ADA in July of 1992.



Of the ten school districts that developed job descriptions, 8 (80%) listed the essential function of a classroom teacher in the description, 4 (40%) listed the physical requirements of the position, and 7 (70%) of the districts listed the mental requirements of the position, such as reading, writing, ability to learn technical material, education, etc.

Four (40%) of the ten school districts, who developed a job description for a classroom teacher, supplied a copy of the job description to all applicants prior to an interview. Three (30%), of the same districts, supplied a copy of the job description to all employees who held the position of classroom teacher (see table 5).

Table 5

Findings of Job Description Development

		N	%
Developed Job Description	Yes	10	67
	No	5	33
Description Developed Prior to ADA	Yes	7	70
	No	3	30
Description Lists Essential Functions	Yes	8	80
	No	2	20
Description Lists Physical Requirements	Yes	4	40
	No	6	60
Description Lists Mental Requirements	Yes	7	70
	No	3	30
Job Description Supplied Prior to Interview	Yes	4	40
	No	6	60
Job Description Supplied to Present Teachers	Yes	3	30
	No	7	70

Accommodations

Accommodations Requests--The survey data collected on the number of accommodation requests by classroom teachers and the number of requests accommodated varies greatly between districts. Some districts surveyed kept records of these data, while in most cases the data are estimates. The collected survey data does illustrate the varied degree of involvement in ADA among the responding districts. One

school district had not dealt with ADA issues and therefore had not received or granted any accommodation requests. However, other responding school districts received and granted hundreds of accommodation requests (see table 6).

Table 6

Findings on Accommodation Requests

	Accommodations Requested	Accommodations Granted
District 1	221	75-100
District 2	10	1
District 3	300	200
District 4	200-300	150
District 5	42	42
District 6	10	10
District 7	Very Few	1
District 8	55	55
District 9	57	43
District 10	5	4
District 11	100	60
District 12	100	Most
District 13	Don't Know	All
District 14	13	6
District 15	0	0

## Finding--Subproblem #1

The purpose of subproblem one was to determine what type of accommodations have been made to classroom teachers with disabilities, in order for them to perform the essential functions of the job. These changes in the work environment can include but are not limited to: modifying the physical structure of a work station; purchasing equipment or adaptive devices; restructuring a job; modifying a work schedule; providing an aide, interpreter or reader; modifying examinations and training programs; or any other type of accommodation designed to assist an employee.

Ten (67%) of the responding school districts had modified the physical structure of a work station; 11 (73%) had purchased equipment or adaptive devices for teachers; 11 (73%) restructured a job to accommodate a teacher, 9 (60%) modified a work schedule by adjusting hours or allowing a teacher to work part-time; 10 (67%) provided aides, interpreters or readers as accommodations; 7 (47%) had made modifications to examinations or training procedures to accommodate requests; and 10 (67%) of the school districts cited other areas in which they had made other accommodations (see table 7).

Table 7

Findings on Accommodation

		N	%
Modified the Physical Structure of a Work Station	Yes	10	67
	No	5	33
Purchased Equipment or Adaptive Devices	Yes	11	73
	No	4	27
Modified Work Schedules	Yes	9	60
	No	6	40
Restructure Jobs	Yes	11	73
	No	4	27
Provided an Aide, Interpreter or Reader	Yes	10	67
	No	5	33
Modified Examination or Training Programs	Yes	7	47
	No	8	53
Granted Other Types of Accommodations	Yes	10	67
	No	5	33

Granted Accommodations -- The survey requested that the ADA compliance directors list examples of accommodations granted in each category. These examples assist in defining the range of accommodations made to teachers and will aid ADA compliance directors when considering accommodation requests in the future. Following is a list of accommodations by category, as delineated in the Americans

with Disabilities Act. The major categories were further divided into sub-categories based on a content analysis of the compliance directors' responses.

Modifications to the Work Station-- The examples listed in the modifications to the work station category were separated into three sub-categories: equipment modifications; modifications to make the work station and work place accessible, and building modifications. The examples ranged from inexpensive modifications such as; raising desks and lowering equipment, to expensive modifications such as; purchasing computer equipment, installing an elevator and modifying restrooms (see table 8).

Table 8

Findings on Modifications to Work Station

---

Equipment Modifications to Work Station

- Ergonomically correct desk and cubicle arrangements
- Lowered saws, drills etc. for industrial arts teacher
- Created a special computer classroom for a teacher with retinitis pigmentosa. (wired to show students off task)
- Raised desk in classroom and auxiliary rooms for teacher on scooter
- Provided lower tables
- Tailored phones
- Chair with lumbar support provided
- Computer lab installed in classroom

## Modifications to make Work Station and Work Place Accessible

- Added ramp for a drama teacher
- Widened doorway for a wheel chair
- Installed an elevator
- Ramp build for employee on crutches
- Accessible parking stall for orthopedically disabled person
- Entrance ramp to classroom and auxiliary rooms for teacher on scooter
- Ergonomic buses
- Constructed ramps
- Installed an elevator
- Curb cut installed near front door

## Building Modifications to Work Place

- Adapted specific restrooms
  - Replaced carpet
  - Modified Ventilation systems
  - Modified several restrooms
  - Installed special toilets
  - Modified drinking fountains
  - Added restroom to portable classroom
  - ADA door handles installed
  - Enlarged handicapped restroom stall
-

Equipment and Adaptive Devices--The examples for accommodations utilizing equipment and adaptive devices were divided into three sub-categories; voice and hearing devices, visual aids, and miscellaneous equipment. The list included several technology items, which enable an increasing number of disabled workers to join the work force (see table 9).

Table 9

Findings on Equipment and Adaptive Devices

---

Voice and Hearing Devices

- Hearing devices for phone
- Microphone
- Telephone headset
- Phonic Ear
- Amplifier system for classroom
- Voice amplifier

Visual Aids

- Computer scanner for visually impaired
- Close circuit TV
- Print amplification television camera and screen
- Hand held close circuit TV systems
- Braille typewriter
- Large computer monitor

Miscellaneous Equipment

- Chair and stool
  - Special typewriter for an employee who does not have full use of hands
  - Special library cart for orthopedically disabled
  - Computers
  - Chairs
  - Book cases
  - Grip devices
  - File cabinets
  - Special mountings for computers
  - Motorized scooter
-



Job Restructuring-- The examples listed for job restructuring accommodations were divided into two sub-categories; elimination of nonessential functions and adjustments to the job assignment (see table 10).

Table 10

Findings on Job Restructuring

---

Nonessential Functions Eliminated

- Eliminated lifting
- Eliminated low filing
- Relieved certain job duties in exchange of other duties
- Trading of nonessential duties
- No outside duties assigned for teacher with emphasis
- No lunch duty assigned

Adjustments to Job Assignment

- Departmentalized primary grades reading so a paralyzed teacher would not have to move around so much
  - Classroom teacher reassigned to a nonteaching job for one school year as an accommodation for post traumatic stress disorder and depression following a physical assault by an intruder on campus.
  - Relocation (more cost effective)
  - Assigned teacher to school which had no small children because they may trip over her oxygen tank.
  - Transfer because teacher was allergic to paint fumes
  - Transfer closer to home due to seizures
-

Work Schedule Modifications--The accommodations which were made by modifying the work schedule were divided into two subcategories; reduced work hours and altered work schedules. In the examples listed by the ADA compliance directors, most modifications made to a teacher's work schedule did not reduce the number of hours they worked (see table 11).

Table 11

Findings on Work Schedule Modifications

---

Reduced Work Hours

- Teacher needed 50% assignment
- Assigned to part time teaching position

Altered Work Schedule

- Switched hours reducing lunch from 1 hr. to 1/2 hr. (started work 1/2 hour later)
  - Allowed an employee with narcioplexy to work on a flexible schedule and still get her hours
  - Adjusted teachers schedule who had arthritis
  - Flexible schedules
  - Reduced a teachers class load from 5 daily preps to 3
  - Rearranged travel schedule for itinerant teacher
  - Schedule changes and flexible schedules for doctors appointments, etc.
  - Adjusted teachers schedule to have first period prep
  - Adjusted schedule to afternoon/evening to accommodate Epstein-Barr.
  - Granted more paid time to complete the end of year paper work.
  - Schedule adjusted to eliminate travel of an itinerant teacher
-

Aides, Interpreters and Readers--Classroom teachers were granted accommodations which included the assistance of aides, interpreters and readers. The examples in this area are listed by the different job title; aide, interpreter and reader. The assistance of these individuals was granted to classroom teachers who had muscular dystrophy, blindness, paralysis, arthritis and other impairments (see table 12).

Table 12

## Findings on Aides, Interpreters and Readers

---

Aides

- Teacher aides for teachers with muscular dystrophy or paralyzed
- Common accommodation
- Instructional assistants
- Aide for a wheel chair bound person
- Many aides for teachers with muscular dystrophy, blindness, paralysis, arthritis, etc.
- Aide to teacher who does not have full use of hands
- Aide for quadriplegic
- Aide for a legally blind teacher
- Assistant for a teacher with a spinal injury
- Aide for a teacher with multiple sclerosis

## Readers

- Readers
- Legally blind teacher assigned a full time aide
- Readers
- Readers for blind
- Vocational rehabilitation adult student who is visually impaired is the eyes for a blind media specialist

## Interpreters

- Sign language interpreters
  - Interpreter for hearing impaired teacher
-

Modifications to Examinations and Training Programs--

The accommodation examples for this area were divided into three sub-categories; modified procedures, additional assistance and other comments. The examples listed by the ADA compliance directors do indicate that some efforts are being made to accommodate applicants and employees with a disability in examination and training programs (see table 13).

Table 13

Findings on Modifications to Examination and Training Programs

---

Modified Procedure

- Permitted applicant with dyslexia to use word processor and extended time limits
- Given oral tests

Additional Assistance

- Provided reader
- Supplied reader to dyslexic applicant
- Have utilized sign language interpreters
- Aides used to write answers for teachers
- Used assistive devices, including readers and interpreters

Other Comments

- Applicants must provide documentation to support reasonable accommodations
  - Noted in the examination process is a place to request an accommodation to mitigate the disabling condition
-

Other Types of Granted Accommodations--The ADA

Compliance Directors listed examples of accommodations that were granted but were not included in one of the previous categories. These were divided into two sub-categories; transfers and relocations, and miscellaneous. In most of these examples the teacher was transferred or relocated to another work location (see table 14).

Table 14

Findings on Other Types of Granted Accommodations

---

Transfers and Relocations

- Change in work site
- Transfer
- Changed room, moved closer to restroom and from upstairs to downstairs
- Short term relocations while painting and construction is occurring
- Teacher diagnosed with AIDS assigned to off campus duty for last six weeks of school year due to medical condition
- Transferred employee
- Transfer to other jobs
- Transferred employee to a physically accessible school
- Exchanged classrooms
- Relocated classroom from upper level to first floor

Miscellaneous

- Additional accessible parking
  - Provided assistance for doctors' visits
  - Provided TDDs
  - Retrofitted restrooms
  - Allowed teacher to teach with legs above head (phlebitis)
  - Bathroom facilities modified
-

### Findings--Subproblem 2

The purpose of subproblem two was to study what costs have been incurred by the school districts in providing accommodations to disabled teachers.

Costs of Accommodations--The survey data collected categorizing the cost of accommodations was based on estimates from the responding school districts. The categories were established after reviewing previous cost studies for the Rehabilitation Act and articles estimating the cost impact of ADA.

The data collected illustrates a wide range of accommodation costs. The largest number of accommodation estimates are over \$2000., one district alone reported 150, and a large quantity of estimates are under \$99. The data suggests that accommodations are either accomplished with little expense or are often expensive ventures for the school district (see table 15).

Table 15

Findings on Accommodation Costs


---

	\$0-99	\$100-499	\$500-999	\$1000-2000	Over \$2000
<hr/>					
District 1	[..almost all..]				
District 2	1	1	0	0	0
District 3	0	0	0	0	150
District 5	0	1	5	3	33
District 6	7	0	0	1	2
District 7	1	0	0	0	0
District 8	0	0	1	1	6
District 9	0	30	5	0	8
District 10	2	1	0	1	2
District 11	most	0	0	1	1
District 12	75	5	0	1	1
District 14	3	0	0	2	1
<hr/>					
Totals	89+	38+	11	14	213

---

Least and Most Expensive Accommodations--The respondents listed an example of the least expensive accommodation and most expensive accommodation granted. The responses are listed (see table 16).

Table 16

Findings on Least and Most Expensive Accommodations


---

Least Expensive Accommodation	Most Expensive
Reacher (\$20)	Electric Wheel Chair
Transfer to an accessible school	Special Ramp (\$50,000)
Donated Items for Blind Equipment	Computer and Vision
Change of Work Hours	Reduced Class Load (hired sub for additional load)
Assigned Student Help Aides	Hired Several Teacher
Telephone Amp. (\$20) Magnification	Closed circuit TV System (\$2695)
Changing Minor Duties	Full Time Interpreter
Job Restructuring for Paralyzed Teacher	Computer Lab with 12 Stations, Special Wiring and Aide (\$100,000)
Shift of Teacher Prep	Aide - several years (\$200,000)
Request by Teacher and Doctor to Move from teaching position to Custodian	Sign Language Interpreter
Move Teacher to Different Site	
Relieve Employee of Heavy Lifting	
Schedule Changes	
Transfer	

---



Undue Hardships--Five (33%) of the responding school districts had denied accommodation requests because the costs associated with the accommodation would place an "undue hardship" on the school district. The accommodation requests, which were denied, included full time aides and interpreters (see table 17).

Table 17

Findings on Undue Hardships

---

		N	%
Accommodation Denied Because "Undue Hardship" On District	Yes	5	33
	No	10	67

---

"Undue Hardship Responses"

- Full time interpreters denied
  - All requests for full time teacher aides have been denied.
  - Did not install an elevator (moved teacher to another building)
  - Denied a restructuring change of duties to eliminate in county travel.
  - Denied an epileptic teacher freedom from evaluation visits.
  - Have not provided new jobs for which employees were not qualified for.
-

Inservicing Costs--In order to effectively comply with ADA, school districts must inservice school personnel. Of the responding school districts 13 (87%) have inserviced their school administrators on ADA issues. Only five (33%) of the school districts had inserviced their teachers and six (40%) had inserviced the school board members. In estimating the costs of the inservices, most school districts utilized in-house presenters. Therefore, very few districts designated money for the inservices but many employee hours were used by the presenter and staff attending the inservice (see table 18).

Table 18

Findings on Staff Inservicing


---

		N	%
<hr/>			
Administrators Inserviced	Yes	13	87
	No	2	13
Teachers Inserviced	Yes	5	33
	No	10	67
School Board Inserviced	Yes	6	40
	No	9	60

---

"Inservice Cost Responses"

## Administrative Inservices

- District staff presenter \$1000., 600 employees x 2hrs.
- 2 employee hours per person
- 20 employee hrs.
- Conducted by staff \$0
- \$0
- In-house, many employee hours
- Employee hours to attend
- Presenter \$1500., 24 employee hours
- Presenter \$2000., employee hours \$50,000.
- Thousands of dollars
- 4 hrs x 500 administrators

## Teacher Inservices

- \$0, Done by principals
- Employee hours
- 2 hrs per employee
- Some costs

## School Board Inservices

- Legal staff did it.
  - Staff and 2 employee hrs.
  - In-house
-

Legal Fees-- The compliance with ADA may result in legal fees for school districts as they deal with many ADA related issues. If school districts do not comply with the law, they may be subject to court awards. Five (33%) of the responding school districts stated that they had incurred legal expenses when dealing with ADA. Only 1 (7%) school district indicated that they had to pay a court award. In responding to the survey, the district's ADA compliance director indicated that a teacher was awarded \$95,000 by the court after her accommodation request for a lower level room was denied. (see table 19).

Table 19

Findings on Legal Fees

		N	%
Incurred Legal Expenses	Yes	5	33
	No	10	67
Paid Court Awards	Yes	1	7
	No	14	93

## Legal Expense Comments:

- At least \$100,000
- Thousands of dollars
- Five to Ten Thousand Dollars
- Legal work done by in-house attorneys (approx. 10% of their time)
- Use in-house attorneys
- We have in-house law Dept.

The data gathered from this survey indicates that the twenty largest school districts in the United States are working towards compliance with the Americans with Disabilities Act. The school districts are at varied stages of development of their ADA procedures and policies. Though this law was enacted in 1990 and went into effect in July of 1992, it's mandates are still being interpreted and debated in the courts. ADA will continue to be defined in the future and will surely impact school districts. The results of this study will be useful to ADA compliance directors as they resolve ADA employment issues in their school districts.

## CHAPTER 5

### SUMMARY, CONCLUSION, AND RECOMMENDATIONS

#### SUMMARY

Passage of the Americans with Disabilities Act had its origins in Congress's finding that 43 million Americans have one or more physical or mental disabilities, a number that is increasing as the population as a whole grows older. Congress concluded that certain forms of discrimination against Americans with Disabilities existed.

The American with Disabilities Act went into effect on July 26, 1992. It was proclaimed the emancipation proclamation for people with disabilities. It's stated purpose is to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.

The Americans with Disabilites Act was expected to change how employers treated applicants and employees with disabilites but it was uncertain how the employers would be impacted by these changes. Title I of the Act states that reasonable accommodations must be granted to qualified disabled employees. Many predicted that these accommodations would be the primary costs borne by employers under the ADA regulations.

The purpose of this study was to examine how the twenty largest school districts have been impacted by Title I of the Americans with Disabilities Act requirement that employers make reasonable accommodations to employees with a disability. The study focused on the types of accommodations made to qualified disabled classroom teachers and the costs incurred by school districts in making the accommodations.

A survey was sent to the twenty largest school districts in the United States. The survey was constructed after reviewing the literature on the Americans with Disabilities Act. It had four major categories; demographics, essential functions, reasonable accommodations and costs. The total number of surveys returned was 15, representing a 75% return rate.

### Conclusions

Findings of the study generated the following conclusions:

1. The findings on professional demographics showed that most school districts had designated an ADA compliance director, as directed by law, and most had been assigned to the position for over two years. However, 4 districts (27%) had not designated an ADA director which means they were not complying with the law.

## 2. Other findings on professional demographics

indicated the ADA compliance directors position is not designated as a full time job. No respondent in the study listed it as their primary job title. Also, no respondent indicated that they spent the majority of their time dealing with ADA issues.

3. Findings on essential functions indicated a majority of school districts have developed a job description for a classroom teacher. However, the findings also indicated that a majority of these school districts need to revise the job descriptions, listing the positions essential functions, physical requirements, and mental requirements to correspond with ADA.

4. Other findings on essential functions indicated that most school districts do not supply a copy of a job description to applicants prior to interviewing them, nor do they provide a copy of the job description to present employees, who hold the position of classroom teacher.

5. The findings on accommodations indicated that most accommodation requests are granted. However, it is difficult to collect data in this area since many respondents indicated that their school districts did not keep records of the accommodations requested and those granted. The responses did indicate that the number of accommodation requests by teachers varied greatly between districts, which



suggests that the districts ADA compliance procedures and framework are also at varied stages. The absence of written records also indicated that many districts need to formalize their ADA accommodation request procedures and documentation.

6. In listing examples of granted accommodations, the ADA compliance directors indicated that accommodations were being granted to accommodate a wide range of disabilities. A majority of school districts indicated that they had supplied accommodations in the following areas: modifications to the physical structure of the work station; purchases of equipment or adaptive devices; modifications of work schedules; job restructuring; or assistance of an aide, interpreter or reader.

7. The findings on accommodations also showed that a majority of school dsitriacts have not made adjustments to examination and training procedures. This information suggested that school districts need to examine their practices in this area to ensure that they are meeting the needs of disabled applicants and employees.

8. The findings on costs indicated that the accomodations provided tended to be either inexpensive modifications, which cost under \$100, or expensive modifications, which cost over \$2000. This data does not support early predictions of ADA costs, based on costs

associated with the Rehabilitation Act of 1973, which estimated that less than 20% of the accommodations would cost over \$500. The data also suggests that accommodation costs appear higher than the \$261 average cost estimated by the EEOC.

In addition, the data suggested that the expense of the accommodations were greater due to the costs and frequency of utilizing aides, interpreters and readers. The salaries for these individuals are reoccurring costs.

9. The findings on cost also indicated that most school districts have not denied an accommodation request because of the "undue hardship" it would place on the school district. However, two school districts indicated that they had denied requests, citing undue hardship, for full time aides and interpreters. This contradicts the practice of most of the responding school districts.

10. The great majority of school districts had provided inservicing on ADA to their administrators. However, the majority of them did not provide ADA inservicing to their teachers and school board members. The data indicated that the costs associated with these inservices were primarily in-kind costs, as most school districts utilized in-house legal staff and employees to conduct the inservices as part of the work day.

11. The findings on cost indicated that the majority of school districts have not been required to pay any court awards. This data and the data indicating that a high percentage of accommodation requests are granted, may indicate that at least large school districts are meeting the needs of their disabled employees.

#### Recommendations for Further Research

1. A similar study could be done with smaller school districts to see if there are similar results. The fact that the smaller school districts have fewer resources and are without the benefit of an in-house legal departments, may hinder their ability to accommodate and effectively deal with ADA issues.

2. A similar study could be repeated in the future to see if school districts are impacted differently, after ADA issues have been better defined.

3. Since the cost estimates indicated that accommodations seemed to cost more than previously estimated, an indepth study focusing specifically on accommodation costs could better measure the financial impact of ADA on school districts.

4. A study investigating the development of job descriptions after the enactment of ADA would help determine how employers are defining the essential functions of a job.

5. A study analyzing the perceptions of parents whose children were in classrooms of disabled employees would offer another perspective of attitudes toward disabled employees.

6. Since a qualified classroom teacher is one who can perform the essential functions of the teaching position with or without reasonable accommodations, a study that would define the essential functions of a classroom teacher would assist in clarifying issues for school districts, applicants and employees.

7. Case studies examining school districts with exemplary ADA procedures would be beneficial to other school districts as they continue to develop and define ADA procedures.

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## APPENDICES



## APPENDIX I

### THE SURVEY

Section A  
DEMOGRAPHICS

1. How long have you been designated as the ADA compliance director?  
\_\_\_\_\_
2. What is considered to be your primary position/job title with the school district?  
\_\_\_\_\_
3. What percentage of your work time do you spend with Americans with Disabilities Act issues?  
\_\_\_\_\_
4. Are there other designated ADA compliance directors in your district?  
1-YES  
2-NO

(If Yes) How many other directors are there? \_\_\_\_\_

Section B  
ESSENTIAL FUNCTIONS

ADA defines the essential function of a job as those primary duties a person must be capable of performing with or without reasonable accommodations. Please answer Yes or No to the following questions about job descriptions and their essential functions. (Circle number)

1. Does your school district have a job description for a classroom teacher?  
1-YES  
2-NO - If NO, please skip from here to section C

If YES, please continue to complete the questions in this section.

2. Did you have a job description developed prior to the enactment of ADA in July of 1992?  
1-YES  
2-NO

3. Does the job description list the essential functions of a classroom teacher?  
1-YES  
2-NO
4. Does the job description list the physical requirements of the position?  
1-YES  
2-NO
5. Does the job description list the mental requirements (reading, writing, ability to learn technical material, education, etc.) of the position?  
1-YES  
2-NO
6. Do you supply a copy of the job description to all applicants prior to an interview?  
1-YES  
2-NO
7. Did you supply a copy of the job description to all employees who presently hold the position of classroom teacher?  
1-YES  
2-NO

Please return a copy of the job description for a classroom teacher with this survey. Your assistance would be appreciated.

Section C  
REASONABLE ACCOMMODATIONS

Reasonable accommodations are defined as modifications to a job or the work environment that enable a qualified applicant or employee with a disability to perform the essential functions of a job. Please respond to the appropriate category for each question. Examples of accommodations can be listed in the space provided.

1. How many people have requested accommodations under the Americans with Disabilities Act since its enactment on July 26, 1992?

---

2. What percentage of requests have been accommodated?

---

Please indicate by replying yes or no (circle number) indicating if you have supplied each accommodation. If you reply yes, that an accommodation of this type was granted in your district, please cite an example and feel free to elaborate on the details of the accommodation. If necessary, you may attach additional sheets of paper.

3. Have you modified the physical structure of a work station?  
1-YES  
2-NO

(If YES) Please cite an example(s).

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4. Have you purchased equipment or adaptive devices for an employee?  
1-YES  
2-NO

(If YES) Please cite an example(s).

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5. Have you restructured a job to accommodate an employee?  
1-YES  
2-NO

(If YES) Please cite an example(s).

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6. Have you modified a work schedule by adjusting hours in any fashion or allowing an employee work on a part-time status due to an accommodation request?  
1-YES  
2-NO

(If YES) Please cite an example(s).

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7. Have you provided an employee with an aide, interpreter or reader?  
1-YES  
2-NO

(If YES) Please cite an example(s).

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8. Have you made any modifications in your examination or training programs as a result of an accommodation request?

1-YES  
2-NO

(If YES) Please cite an example(s).

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9. Can you cite any other accommodations which have been granted to an employee?

1-YES  
2-NO

(If YES) What would they be?

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#### Section D COSTS

Cost is an important factor when measuring the impact of ADA. The following section is related to the costs of accommodations and related expenses. Please respond to the following questions about associated ADA costs. (Circle number)

1. Have you inserviced administrators in your school district on ADA?

1-YES  
2-NO

(If YES) What would be an estimated cost, including presenter fees and employee work hours?

---

2. Have you inserviced the teachers in your school district on ADA?  
1-YES  
2-NO

(If YES) What would be the estimated cost, including presenter fees and employee work hours?

---

3. Have you inserviced school board members in your school district on ADA?  
1-YES  
2-NO

(If YES) What would be the estimated cost, including presenter fees and employee work hours?

---

4. Has your district incurred expenses for legal fees dealing with ADA requirements?  
1-YES  
2-NO

(If YES) What would be the estimated amount?

---

5. Has your district had to pay any court awards?  
1-YES  
2-NO

(If YES) What would be the estimated amount?

---

6. Can you cite any other costs incurred which have not been previously mentioned?  
1-YES  
2-NO

(If YES) What would these be?

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7. Of the total accommodations your school district has made,  
    how many cost between zero and \$99. \_\_\_\_\_  
    how many cost between \$100 & \$499. \_\_\_\_\_  
    how many cost between \$500 & \$1000. \_\_\_\_\_  
    how many cost between \$1000 & \$2000. \_\_\_\_\_  
    how many cost over \$2000. \_\_\_\_\_
8. What was the least expensive accommodation which was granted to an employee? \_\_\_\_\_  
  
Please describe that accommodation  
\_\_\_\_\_  
\_\_\_\_\_
9. What was the most expensive accommodation which was granted to an employee? \_\_\_\_\_  
  
Please describe that accommodation  
\_\_\_\_\_  
\_\_\_\_\_
10. Has any accommodation been denied to an employee because of the "undue hardship" it placed on the school district? (Circle number)  
    1-YES  
    2-NO  
  
(If YES) Please describe the accommodation request.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
11. Since ADA went into effect in 1992, the number of disabled teachers in your school district has ...  
    1-INCREASED  
    2-DECREASED  
    3-REMAINED THE SAME



APPENDIX II

CORRESPONDENCE

May, 1995

Name  
Position  
School District  
Address  
City, State, Zip Code

Name:

Thank you for agreeing to participate in my survey's field testing. I know your time is valuable and I appreciate your assistance. Please complete the enclosed questionnaire. You may need to access some information in order to fully and accurately complete the questionnaire. You should be able to complete the survey in less than 25 minutes.

Answer the questions as they relate to your present school district. The actual survey will involve the ADA compliance directors of twenty large school districts in the United States with enrollments over 100,000 students. Your input on the survey will be greatly appreciated. Please mark any suggestions or changes on the enclosed questionnaire and return it to me by mail; an addressed envelope is enclosed.

Once again, thank you so very much for your assistance. If you have any questions, feel free to call me at 414/231-5278 (home) or 414/424-0152 (work).

Sincerely,

Jim LaBuda  
Oshkosh Area School District Principal

June 7, 1995

Name  
Title  
School District  
Address  
City, State ZIP Code

Name:

I recently contacted you about a study I am conducting. The purpose of this study is to measure the impact of Title I of the Americans with Disabilities Act requirement that school districts make reasonable accommodations to teachers with a disability. This information, once compiled, will provide guidance and support to ADA compliance directors in school districts across the country.

Your response is important to my study. Please take the time to complete the questionnaire; it should take you no more than 20 minutes of your time. I realize that some responses may require you to review some data. I appreciate your efforts as your knowledge and experience with ADA cannot be substituted.

The information requested will be treated in a professional manner. It is not my intention to gain information about individual employees but to examine, in general, work accommodations made to employees under the Americans with Disabilities Act.

The results of this research will be made available to all interested parties. You can receive a summary of the results simply by listing your name and address in the designated space on the back cover of the questionnaire.

Thank you for your anticipated cooperation. Should you have any questions, or if I might be of assistance, please feel free to contact me at 414/231-5278.

Sincerely,

Jim LaBuda  
Project Manager

## REMINDER

Name  
Title  
School District  
Address  
City, State ZIP Code

Name:

This is a reminder to those ADA compliance directors and designees who have not completed the questionnaire which was mailed to you earlier. Your assistance with this matter is greatly appreciated. If you have already completed and returned it to us, please accept our sincere thanks.

If you have not completed the questionnaire, we would appreciate your cooperation. A copy of the original questionnaire is enclosed. If you have any questions, feel free to call me at 414/231/5278.

Sincerely,

Jim LaBuda  
Project Manager

APPENDIX III

TITLE I COURT CASES

**Effective Date of ADA**

Graehling v. Village of Lombard, Illinois 58 F.3d 295 ( 7th Cir.1995)

Graehling was a police officer in Lombard, Illinois. He twice pulled away from a gas tank with his police car before removing the gas nozzle from the cars tank. The gas tanks were demolished and the village assumed the liability. After the second incident, Graehling's hands were shaking violently and he was suffering blackouts. A short time later a psychiatrist concluded he suffered from bipolar manic depression, alcoholism, and post traumatic stress syndrome.

On January 10, 1991, the deputy chief of police concluded he was no longer fit for duty. He offered Graehling two options: resign immediately, but with an effective date far enough ahead for his pension to vest, or be sent home on leave. Graehling chose to resign with an effective date of September 4, 1993. His resignation was accepted.

Graehling's complaint sought relief under ADA. The court sided with the employer because his resignation was tenured before the effective date of ADA. With this, the court affirmed an earlier decision.

**Effective Date of ADA**

Conlin v. Mission Foods Corp. 850 F.Supp. 856 ( N.D. Cal.1994)

John Conlin was employed by Mission Foods Corp. as a warehouseman. Conlin suffered from cerebral palsy. He claimed that his supervisor harassed him and denied him work. He was terminated by this supervisor on September 4, 1991.

In response to a charge of discrimination with the California Department of Fair Housing, he was reinstated in July of 1992. He filed judicial complaint on September 22, 1992 in Contra Costa County Superior Court and a second charge of discrimination with the EEOC on February 9, 1993, which amended his earlier complaint to include allegations concerning events which occurred after his reinstatement.

As part of this complaint he alleged his employer violated the ADA. Conlin did not dispute that Title I should not be applied retroactively. Instead, he argues

that Title V, which lacks an explicit effective date, became effective on the enactment of the ADA, July 26, 1990. The court disagreed on the grounds that Title V hinges on a violation of Title I of the ADA.

Summary judgement was granted to the defendant. The plaintiff was allowed to file within 10 days of issuance of the order an amended complaint enumerating the actions of Mission Foods occurring on or after July 26, 1992, that allegedly violated ADA.

#### **Effective Date of ADA**

Smith v. United Parcel Service of America 1995 WL 530287  
(2nd Cir. (N.Y.))

Smith was a supervisor at United Parcel service. After 24 years of employment he suffered from two disabilities, coronary artery disease, which was diagnosed after he suffered a heart attack in 1988, and diabetes. He required certain accommodations from his employer, e.g., limitations on lifting, regular meal breaks, and the ability to test his blood sugar levels at work. The accommodations were never provided but that was before the effective date of ADA.

In the spring of 1992 his performance report was rated unsatisfactory. At his second appraisal, he was told his performance was unacceptable and that he should go home and think about his future with the company. He did not return to work.

Another meeting was held in June of 1992. Mr. Smith had been paid during this time even though he had not been at work. He was told, "there comes a time when you have to move in new directions." He was also given papers relating to termination, though he did not sign them. In September of 1993, Smith was sent a letter saying he would be paid through September of 1993 and his benefits would be effective through October.

Smith contends that his termination date was after the effective date of ADA and therefore was terminated in violation of ADA. UPS contends that Smith was actually terminated prior to the effective date of ADA. The key issue in this case being, when was he terminated ?

The case on appeal from a summary judgement in district court, which dismissed the claim of unlawful discharge under ADA. The court of appeals vacated the summary judgement on appeal and remanded it to the district court for a jury trial.

**Effective Date of ADA**

Raya v. Maryatt Industries, 1993 WL 313499 (N.D.Cal. 1993)

Ms. Raya filed a disability discrimination claim in 1988 in California state court. In 1992 she filed a motion for leave to amend the complaint. The amended complaint requested a trial by jury and the use of the ADA. The court ruled the claim under the ADA should be denied because the ADA does not apply retroactively.

**Disability**

Aucutt v. Six Flags Over Mid-America, Inc. 869 F.Supp. 736 (E.D. Mo. 1994)

Aucutt, a former security guard at the Six Flags Amusement Park who was terminated during a reduction in force, filed suit alleging that he was terminated because of his disability and age. In 1991, Aucutt had become ill at work. He was taken to the hospital and treated for high blood pressure. He submitted a doctor's statement releasing him for work, which listed a 25 pound lifting restriction as the only limitation.

The employer presented evidence to show that the reduction in force was implemented across the board. They also concluded that Aucutt ranked the lowest in terms of attitude, work style and productiveness. Though he was consistently ranked as performing his job satisfactorily, he was repeatedly counseled regarding his negative attitude towards management and his "militaristic" manner in which he dealt with the public.

The court found that Aucutt did not offer evidence which supported that he was disabled, as defined under ADA. He failed to produce a single piece of evidence that his alleged high blood pressure and unspecified angina and coronary artery disease substantially limits one or more of ADA's recognized major life activities.

Summary judgement was granted to the defendants, Six Flags Over Mid-America.



**Disability**

Smaw v. Commonwealth of Virginia Department of State Police  
1994 WL 487555 (E.D. Va.)

Smaw was hired as a Virginia State Trooper in 1982. At the time of her hiring, she exceeded the maximum weight allowable under the personnel guidelines. She was hired with the understanding that she would reduce her weight. During her nine year tenure, she received numerous warnings and worked with a VSP doctor on a weight loss program. After several attempts proved unsuccessful, she was terminated as a trooper in 1991 and reassigned to a dispatcher's position. Both parties in this case agree that Smaw was removed from trooper status due to her weight. Smaw claimed that her weight was a handicap covered under Title I of ADA. The VSP gave specific evidence that being a trooper requires the physical skills of being able to protect oneself from assault, and to pursue, confront, and capture offenders. The transfer to a dispatcher position was based on reasons rationally related to her ability to perform her duties.

The court concluded that Smaw's obesity was not a physical impairment which substantially limits her ability to pursue employment, and there is no indication that her employer perceived it as such.

The court granted the defendant motion for summary judgement and ordered the clerk to enter judgement in favor of the defendant.

**Disability Under ADA**

Dutcher v. Ingalls Shipbuilding 53 F.3d 723 (5th Cir.1995)

Dutcher had previously injured her arm in a gun accident. After extensive repair, she began training as a welder. After completing welding school, she was hired by Ingalls. She was initially placed in the "bay area", which required her to climb 40 ft. to her work. She requested a transfer on the second day but was denied.

A month later she was allowed to transfer to the fab shop, an area which involved no climbing. She worked there until being laid off as part of a large-scale reduction in

force in May 1992. She was recalled in September and told to report for a pre-employment physical. The doctor gave her the job restrictions she had requested.

At that time she was told that she could not be employed because of the job restrictions. They asked for a current medial report on her arm. Five weeks later she returned with the report. However, in the mean time all the welders in her job classification were laid off.

Dutcher claimed that she was not accommodated for her disability under ADA. Her employer claimed that her impairment was not covered by ADA. Infact by her own admission, her arm did not substantially limit a major life function. She was able to perform all normal activities of daily living.

The court affirmed an earlier decision and found that Dutcher's impairment was not covered by ADA. The evidence did not support her as having an impairment that substantially limited a major life activity.

#### **Disability Under ADA**

McDonald v. Commonwealth of Pennsylvania, Department of Public Welfare, Polk Center 62 F.3d92 (3rd Cir.1995)

McDonald was hired as a charge nurse at Polk Center. She had severe abdominal pain and was admitted to the hospital and underwent surgery. After the surgery, she requested to be placed on unpaid sick leave. The leave was denied because she was still on probation and she was not eligible for sick leave. Since, she was unable to attend to her duties, she was terminated.

She felt, because of her disability, she was discriminated against and that her employer was in violation of ADA. Her employer felt that she was not "otherwise qualified" to work during the period in question.

The court concluded that McDonald was terminated because she was a probationary employee. Also because her inability to work was not permanent, she was not covered by ADA. The judgement of the district court was affirmed.

**Disability Under ADA**

Bolton v. Shrivner, Inc. 1994 WL 511752 (10th Cir. Okl.)

Bolton was employed by Shrivner, Inc. as an order selector in its grocery warehouse. He suffered a work-related injury and was given a medical leave of absence. He could not return to work until the company doctor approved his return. After an examination the company doctor concluded Bolton was unable to perform the job of order selector. In return, Bolton filed suit alleging he had been discriminated against on the basis of his disability and age.

The court found that the evidence did not support Bolton in his claim that he was an "individual with a disability" under ADA. They concluded that his inability to perform a singular particular job, rather than a class of jobs, did not constitute a substantial limitation in the major life activity of working. As to his age discrimination claim, the comments by Bolton's supervisor that Bolton was an "old fart" do not show pretext because Bolton failed to demonstrate a nexus between those comments and Shrivner's decision not to hire him.

Summary judgement granted to Shrivner.

**Employer Discrimination of Disabled**

Newman v. GHS Osteopathic, Inc., Parkview Hospital Division  
60 F.3d 153 (3rd Cir. 1995)

Newman worked as a physical therapy aide in Parkview's rehabilitation department. He suffered from a form of nocturnal epilepsy, and he takes medication several times a day to prevent the onset of seizures. Because the medication causes drowsiness, he sought to combine his lunch period and breaks together so he could use the time to nap and negate the medications side effects. Even though the combining breaks was against policy, he was granted this accommodation.

As a result of financial problems at Parkview, Newmans hours were cut. About one year later Newman and six other employees had their positions eliminated in a layoff. Newman claimed his position was eliminated because he had a disability and that his employer was irritated in having to allow him to combine his breaks.

The court affirmed the judgement of the district court. It found that Newman's dismissal was a bonafide hospital-wide reduction in force. His dismissal was not due to any discrimination because of his disability.

#### **Employer Discrimination of Disabled**

Hearing Aide Institute v. Rasmussen 852 P.2d 628 (Mont. 1993)

Rasmussen was born with cerebral palsy, which affected the muscles in her legs. She applied for a telemarketing position with the Hearing Aide Institute, a position in which she had prior experience. The telemarketing manager did not have her complete an application, did not ask for a writing sample, and did not ask for references. In court, Ms. Rasmussen proved that she was qualified for the job and the position remained open and that the manager's actions were pretext to discrimination. The Hearing Institute did not prove that their reasons for not hiring Ms. Rasmussen were not nondiscriminatory. The court ruled in favor of Ms. Rasmussen due to her protection under Title I of ADA.

#### **Perceived Disability**

Wooten v. Farmland Foods 58 F.3d. 382 (8th Cir.1995)

Wooten was diagnosed with bilateral carpal tunnel syndrome and generalized inflammation, including tendinitis of the left hand and left shoulder. He was off work from his meat cutting position for two weeks and returned for light duty. Four months later a medical examiner determined he could return to full duty with no restrictions. After approximately two more months, Wooten gave Farmland Foods a doctor's note stipulating that he be restricted to light duty, no work with meat products, no work in cold environment and lifting restrictions.

Farmland foods tried to gain a better understanding of his restrictions but was unable to. He was then terminated. Wooten felt he was fired because of the restriction stemming from his disability.

Farmland later filmed Wooten outside his house shoveling snow. Despite this evidence that he was not disabled as his restrictions indicated, Farmland Foods did not perceive him as being disabled. Due to the fact that they did not perceive him as disabled, the doctor's note did not indicate any limitations to a major life function and no jobs were

currently available that adhered to the restrictions, the court affirmed a district court decision in favor of Farmland Foods.

**Perceived Disability**

Sanchez v. Lagoudakis 440 Mich. 496, 486 N.W. 2d 657 (1992)

Sanchez, a waitress at a restaurant, was told by Lagoudakis, her employer, that she could no longer work at the restaurant until she had secured medical evidence that she did not have AIDS. Sanchez obtained a blood test which showed she tested negative for AIDS. Since AIDS qualifies as a disability under ADA and she was perceived as having AIDS, her being discharged was a violation of Title I of ADA.

**Perceived Disability**

Cassita v. Community Foods 13 Cal.App. 4th 308, 10 Cal.Rptr2d 98 (1992)

Ms. Cassita was an unsuccessful applicant for employment at Community Foods. She brought an employment discrimination suit against the grocery store which perceived her weight as a disability. An earlier court entered a jury verdict in favor of the grocery store but the plaintiff appealed. The Court of Appeal held that the jury had been given erroneous instructions and that evidence established the grocery store did consider the plaintiff's weight a disability.

**Notification of a Disability**

Miller v. National Casualty 61 F.3rd 627 (8th Cir.1995)

Miller was a benefit analyst for National Casualty from 1983 until her termination in 1992. During the time of her employment she indicated twice through employee questionnaires that she did not suffer from any physical or mental condition which would limit her capacity to do her job. Therefore, she did not disclose the fact that between 1982 and 1986 she was treated for a mental impairment.

In October of 1992, she asked for a few days off to deal with family stress. The days were granted. However, she did not return to work and extended her time off. A doctor's medical excuse requested the additional time due to "situational stress." After sporadic communication with

Miller and her family, National Casualty advised her she would face termination if she did not report to work or provide a medical excuse. She was terminated.

She claimed that she was not provided with a reasonable accommodation due to her mental impairment. National Casualty claimed it was unaware of the impairment and was not given notice until more than two weeks after the termination of Miller.

The court sided with National Casualty. They can not provide an accommodation if they do not know about the disability and they can not terminate anyone because of a disability if they do not know of it.

#### **Alcoholism as a Disability**

Despears v. Milwaukee County 1995 WL 497543 (7th Cir. (Wis.))

Despears was a maintenance worker for a public medical facility. He lost his driver's license after his fourth conviction of drunk driving. He was demoted at work because his employer required workers of his classification to have a valid driver's license.

He contended that he was demoted due to his disability of alcoholism. He also contended that driving was not an essential part of his job as a maintenance worker. Neither side denied that alcoholism was a disability under ADA. Though his employer contended that his disability of alcoholism contributed to but did not compel the action that resulted in the demotion.

The court agreed with the employer. The judge held that the employee failed to establish that his alcoholism was the sole cause of his demotion and, therefore, failed to establish disability discrimination.

#### **Drug Use as a Disability**

Collins v. Longview Fibre Company Breamer v. Longview Fibre Company 1995 WL 476016 (9th Cir. (Wash.))

Seventeen employees of Long Fibre Company, including the eight plaintiffs in this case, were terminated for alleged drug-related misconduct at the workplace. The

evidence against them included information from an undercover investigator and signed statements by other employees.

Seven of them claimed that although they had had a drug problem in the past, they had either completed a drug rehab program or were in the process of being rehabilitated.

The court held that the employees were dismissed do to their misconduct at work and not on the basis of their alleged drug addition disabilities.

#### **Alcohol Use in the Workplace**

Flynn v. Raytheon Co. 868 F.Supp. 383 (D. Mass. 1994)

Flynn, a custodian for Raytheon Co., reported to work under the influence of alcohol. He was terminated for this action. He claims he was discriminated against because of his disability, alcoholism, and should be protected under ADA.

He alleges Raytheon failed to make reasonable accommodations for his alcoholism and should have offered him the opportunity to seek treatment. He also stated that other employees were allowed to report to work under the influence of alcohol and were allowed to retain employment and/or seek treatment.

ADA expressly states that an employer "may require that employees shall not be under the influence of alcohol or be engaging in the use of illegal drugs at the workplace." The language could hardly be more direct. Though ADA provides Raytheon with a lawful basis for terminating Flynn for his misconduct, the statute does not provide an absolute defense against claims by alcoholics who report to work intoxicated where the plaintiff alleges selective enforcement. Raytheon's motion to dismiss the case was denied.

#### **AIDS Covered by ADA**

Downtown Hospital (Booth House) v. Sarris & Ramon Ramos 154 Misc.2d 798, 588 N.Y.S.2d 748 (1992)

The plaintiffs claimed their lease on employee housing was terminated "without cause" because the tenants/employees had AIDS. The defendant claimed the plaintiffs were terminated from the hospital and, therefore, a 30-day notice was sufficient. The lease allowed for the tenancy to be

terminated automatically on the date the tenant ceased to be employed by the hospital.

The court stated that the Booth House Lease Agreements allow termination of a lease at the time of termination of employment. However, it did state that if the "real" reason for termination was AIDS, it would be covered under ADA.

The petitioner's current motions were dismissed against the defendant.

#### **Qualifying AIDS Under ADA**

Doe v. Kohn, Nast & Graf, P.C. and Asher 1994 WL 454813  
(E.D.Pa.)

John Doe was hired to work for the Kohn firm as an attorney in July of 1991. He received praise for his work and was given an additional bonus at the end of 1991. 1992 also went well for Mr. Doe and the firm. During the fall of 1992 Mr. Doe learned that he had AIDS. On January 13, 1993 he was told he was not meeting expectations and would not have his contract renewed in 1994. He was given no written notice.

Doe claimed he was fired only four days after a letter was sent to him at the firm from a doctor who was consulting him about his AIDS. He also points out that he was the victim of many office rumors. His employer claimed that he had become disruptive, out of control and that he did not meet their standards. They also argued that being diagnosed with AIDS was not a disabling condition. Therefore, they felt he should not be covered by ADA.

On the ADA issue, the court stated that the HIV infection and AIDS are covered under the first prong of the definition of disability in the ADA. The defendant's motion was denied.

#### **Dependent with Aids**

Ennis v. National Association of Business and Educational Radio, Incorporated 53 F3d 55 (4th Cir.1995)

Ennis was a bookkeeping clerk at NABERS's. She was cited repeatedly for her performance. At one point she was told that any future violations of her job duty would result in termination. After another violation, she was terminated.



She felt she was terminated because her son was HIV positive and the company fired her to avoid the impact on their insurance. However, since NABER was not satisfied with her performance and Ennis could not adequately support her claim, the court found that NABER had legitimate circumstances to discharge her.

#### **Qualified Individual**

Parker v. Metropolitan Life, Insurance v. Scheming-Plough Corporation 1995 WL 48471 (W.D. Tenn.)

Parker was an employee of the Shering-Plough Corporation who was diagnosed as having major depression. She alleged discrimination because their long term disability plan distinguished between mental and physical disabilities. This claim arose from MetLife discontinuing her long term disability benefit payment. Scheming-Plough asserted that the claims should be dismissed because Parker was not a "qualified individual with a disability", as defined by ADA. They stated that by the defendant's own admission she was no longer able to perform her job.

The court stated that totally disabled individuals are not entitled to relief under Title I of the ADA. The act was designed to afford relief only to those individuals with disabilities who could perform the essential functions of the job that they hold or seek.

Therefore, the defendant's motions to dismiss the plaintiff's claim under Title I of the ADA were granted. The denial of long term benefits was allowed, as MetLife's motion for summary judgement was granted.

#### **Qualified Individual with a Disability**

Doe v. University of Maryland Medical System Corporation  
50 F.3d 1261 (4th Cir. 1995)

Doe was a neurological resident at UMMSC. He acquired the HIV virus and was suspended from surgery pending a recommendation from a panel of experts on bloodborne pathogens. The panel recommended that he be allowed to perform surgery but be restricted from performing surgery that involved the use of exposed wires. The administrators at UMMSC rejected this recommendation and permanently suspended him. After Doe refused alternative placements, he was terminated from his residency.

Doe claimed that he was an otherwise qualified individual with a disability. UMMSC argued, among other things, that he could not be accommodated and that he posed a significant risk to his patients.

The court affirmed an earlier decision and agreed that Doe posed a significant risk to the health and safety of his patients and that this cannot be eliminated by accommodations. Therefore he is not otherwise qualified under the definition in ADA.

**Qualified Individual with a Disability**

Abbasi v. Herzfeld & Rubin, P.C. 1994 WL 531335 (S.D.N.Y.)

Abbasi was employed as a paralegal by the defendant. During his employment he alleges that he was commended for his work and received two annual raises. On February 20, 1993, he suffered a minor stroke. He was absent from work for two weeks; upon his return he was laid off. He maintained the defendant told him he was terminated because his health would not permit him to take the stress of his job functions. The defendant claimed he was terminated due to his unsatisfactory performance throughout his employment.

The court dismissed the plaintiff's complaint because it was deficient in that it failed to state facts sufficient to apprise the defendant or the court of the plaintiff's complaints. Under ADA a plaintiff must at least allege that he is a qualified individual who suffers from a disability and that he was terminated from his position due to this disability. In this case, the plaintiff failed to allege that he was a "qualified individual with a disability" and, by his own admission, stated that he "became sick and disabled for a temporary duration."

The court granted the defendant's motion for dismissal but gave the plaintiff until October 7, 1994 to file an amended complaint.

**Qualified Individual with a Disability**

Johnston v. Morrison, Inc., 849 F.Supp. 777 (N.D. Ala. 1994)

Johnston was a food server whose employment at Morrison's restaurant was terminated after she was unable to handle the pressure of work on a particularly busy evening. She claimed a panic attack disorder causes her to have a "melt down". Morrison had previously accommodated Johnston by assigning her to the least busy work station, where she was responsible for the fewest customers. This

accommodation was unsuccessful as Johnston, among other things, claimed she could not handle the menu changes and crowded conditions.

The court stated that Morrison had the right to change the menu to stay competitive, was not required to provide another employee to handle Johnston's duties, did not have to remove her from her duty when her station became crowded and was not required to reallocate essential duties. The court found that Johnston was not a "qualified individual with a disability" because she could not perform the essential functions of the job with or without an accommodation. Therefore, she was not entitled to protection under the ADA.

The defendant's motion for a summary judgement was granted.

**Effective Date/Qualified Individual with a Disability**  
Larkins v. Ciba Vision Corporation 1994 WL 370138 (N.D.Ga)

Lisa Larkins was a customer service representative for Ciba Vision Corp. In December of 1990 she was involved in an automobile accident and suffered a head injury. She was diagnosed with an anxiety disorder and prescribed Xanax and Prozac. Because of this injury she suffered from seizures.

She was referred to the Employee Assistance Program. Over a two-year period, several accommodations were made for Larkins at work. Her position as a customer service representative involved answering telephones, while clerical work was given some employees. The accommodations made over this period included health services, disability leave, part-time schedule, additional breaks, unscheduled breaks, allowed to come to work late and leave early, have the bible read to her by other employees and allowing other employees to leave their positions to assist her.

Larkins argued that all the evidence prior to the enactment of ADA should be allowed as evidence and be considered when making an accommodation for her. She felt that Ciba Vision did not offer her the accommodation of being assigned to nonphone duties. Ciba Vision argued that it did make several accommodations but felt Larkins was not a "qualified individual with disabilities" as defined in ADA. They felt Larkins could not perform the essential functions of the job with or without reasonable accommodations.

The court agreed with Ciba Vision and found that Larkins was not able to attend work with any regularity or predictability. The court also stated that the employer is not required to remove any essential functions of the job as part of a reasonable accommodation.

Defendant's motion of a summary judgement was granted.

#### **Essential Funtion**

Benson v. Northwest Airlines 1995 WL 478286 (8th Cir. (Minn.))

Benson was an employee with Northwest Airlines for six years. He worked his way up from mechanic to Senior Engineer. In October of 1992 he was performing a job which required the use of insulation. He suffered severe chest pains and was taken to the hospital. Doctors determined that he had experienced a relapse of brachial plexopathy, a neurological disorder which can cause pain, weakness or numbness in the arm and shoulder.

His doctor recommended that he not be involved in work that involved extensive use of his left arm or repetitive motion of his left shoulder. He worked in one position but was soon disqualified for that position due to his medical limitations. He was told to find a position which fell within his physical abilities or face termination. He refused a transfer and was unsuccessful in obtaining an engineering position he sought. He was then terminated.

Benson claimed that Northwest did not reasonably accommodate his disability when he did not receive the engineering position. Northwest claimed he was not a "qualified individual with a disability." The burden of proof fell on Benson to show that he could perform the essential functions of the position at issue.

Benson was unable to prove that he was qualified for or could perform the essential functions of the engineering position. The court also stated that, "for reassignment to be a reasonable accommodation, a position must exist and be vacant."

**Essential Function**

Ethridge v. State of Alabama 860 F.Supp. 808 (M.D. Ala. 1994)

Ethridge has restricted use of his right hand and arm. He is unable to straighten his right arm or rotate the palm of his right hand in an upward motion. He was provisionally employed as a police officer. This provisional employment was contingent on the completion of at least 240 hours of formal police training.

His chief observed he had trouble on the firing range. However, he was sent to the required training course. During his required pistol training, Ethridge was required to shoot from the "Weaver Stance." This was a difficult task for Ethridge and his score were below the passing scores. His actions on the range were determined to be dangerous. Ethridge was terminated from his position. He claimed he should have been accommodated and not required to shoot from the Weaver stance.

The court concluded that Ethridge was unable to shoot from the Weaver stance in a satisfactory manner and therefore could not perform the essential functions of a police officer in Alabama even with reasonable accommodations.

The state of Alabama therefore, was entitled to summary judgement on this aspect of Ethridge's claim.

**Reasonable Accommodation**

Siefken v. The Village of Arlington Heights 1995 WL 544794 (7th Cir.(Ill.))

Seifken was a probationary police officer with the Village of Arlington Heights. He experienced a diabetic reaction which resulted in disorientation and memory loss. This occurred while he was on duty. During this reaction he drove his squad car at high speeds, erratically through residential areas over forty miles outside his jurisdiction. He was stopped by another department's officers and did not remember anything about his driving trip. He was fired a week later.

The Village had hired Siefkin knowing that he was a diabetic. He was expected to monitor his medical condition, in which case there was little chance of a reaction occurring.

In discussing the accommodations for Siefkin under ADA, his counsel requested, "A second chance." However, the court agreed with the Village in that the request was not an "accommodation." In fact he had not asked for an accommodation before or after the incident. In fact he was asking for nothing to be changed.

The judgement of the district court was AFFIRMED in favor of the defendant.

**Reasonable Accommodation**

Feliberty, M.D. v. Kemper Corporation (1995 WL 35398 [N.D.Ill.] )

Dr. Feliberty was a Medical Director for Kemper Insurance. His job duties included reviewing applications for life insurance policies and assisting underwriters in their determinations. He spent at least six hours of each day using a keyboard and video display. He was diagnosed as having carpal tunnel syndrome, a condition which causes numbness in the fingers and pain throughout the hand and fingers. Surgery was performed on both hands.

Though Kemper did make some accommodations for Feliberty and he was employed for nine months during his absence from work, he argues that other reasonable accommodations should be made. Despite the fact that extensive medical knowledge is required, Kemper argues that keyboarding is an essential function of the job, which Feliberty is unable to do.

The court agreed that keyboarding was an essential function of the job. Under these circumstances, the elimination of all keyboard work, the only accommodation which would have adequately suited the plaintiff, would not have been a reasonable accommodation.

Summary judgement was granted for the defendant.

**Reasonable Accommodation**

Daugherty v. City of El Paso 56 F.3d 695 (3rd Cir.1995)

Daugherty was hired as part-time permanent city bus driver. He was later diagnosed as an insulin-dependent diabetic. He was terminated. Daugherty claimed this was in violation of ADA and asked that 1) he be reinstated, 2) the

city file a waiver application and 3) as last resort, he be assigned to another position at no loss of pay, hours or seniority.

The city claims that he was not a "qualified individual" with a disability and that he does not have a disability under ADA. Specifically, that an insulin-dependent driver is not a qualified driver. Therefore, applying for a waiver for him to return to his job would jeopardize the safety of his passengers and would not be an appropriate accommodation. They also argued that being a part-time employee, he would not have the right to another position.

The court reversed an earlier decision and sided with the city.

#### **Reasonable Accommodation**

Milton v. Shriver Inc., Massey v. Shriver Inc. 53 F.3d 1118 (10th Cir. 1995)

Milton and Massey were discharged from their grocery selector jobs after standards for performance were raised for all employees in that job category. They alleged they were wrongfully terminated because they could not meet the performance standards due to their alleged disabilities. They suggested they be transferred to another job category, which would have effectively been a promotion. Shriver claimed they could not be reasonably accommodated.

The court affirmed an earlier decision pointing out that ADA does not require an accommodation which would in effect be a promotion.

#### **Reasonable Accommodation/Retaliation Under ADA**

Hunt-Golliday v. Metropolitan Water Reclamation District of Greater Chicago 1994 WL 684756 (N.D.Ill)

Hunt-Golliday is an African-American who was employed by the MWRD as a fireman oiler. She expressed interest in obtaining a classification of Operating Engineer I. She was advised to obtain certification and licensing from the National Institute for the Uniform Licensing of Power Engineers. After completing this she was to receive a letter of verification, which would allow her to take the examination for an operating engineer position.

However, after completing these required steps, Hunt-Golliday was told she lacked the required experience as a high pressure boiler operator. She filed a complaint, which resulted in an internal investigation. Shortly after this she alleged she was subjected to sexual and nonsexual harassment.

During this time she also sustained a back injury on the job. She was placed on disability leave and returned to work months later with lifting restrictions. Upon returning she was placed in a position which required 60 percent lifting. She expressed concern about lifting but was asked if she was refusing to do her work. She reaggravated her injury and developed other complications. The supervisor recommended that she be suspended, without pay, pending termination.

Thereafter, she filed a seven count complaint in federal court. Two of these counts related to the ADA. One dealt with the failure to make reasonable accommodations and the other alleges retaliation against someone for requesting reasonable accommodation.

The first count did not dispute that Hunt-Golliday qualified as a disabled person under ADA. It did challenge the transfer to a position which required so much lifting. Her previous position of fireman oiler only entailed about 5 percent lifting, compared to the 60 percent lifting time of her new position.

The second count alleges that the movement to the position, which required additional lifting, was in retaliation for the request of accommodations. The recommendation to be suspended pending termination was also a factor in this complaint.

The court denied MWRD's motion to dismiss the counts.

#### **Reasonable Accommodation**

Harmer v. Virginia Electric and Power 831 F.Supp. 1300  
(E.D. Vir. 1993)

Harmer was employed by Virginia Electric and Power Co. as a purchaser. He alleged his employer failed to create a smoke-free environment as an accommodation to his pulmonary disability. His doctor asserted that this disability "substantially limits his ability to care for himself, his



ability to breathe, his ability to walk and his life expectancy." Harmer also alleged there were other discriminatory practices against him at the workplace such as a change in work authority and being passed over for promotion.

Virginia Electric did take action concerning his request for a smoke-free environment. Various precautions were implemented to purify the air including fans, smokeless ash trays, air purifiers and smoke-free areas. However, Harmer insisted on a complete smoke-free environment.

The court stated that the purpose of reasonable accommodations under ADA are to allow a disabled employee to perform the essential functions of his job or to enable him to enjoy equal privileges of nondisabled employees. In Harmer's case he was not entitled to an accommodation because he was already able to perform the essential functions of his job, as documented by his evaluations. The court also found his other claims lacked sufficient evidence.

The court holds that the defendant did not violate ADA and that summary judgement must be in favor of the defendant.

#### **Direct Threat**

Scoles, M.D. v. Mercy Health Corporation (1994 WL 686623 [E.D. Pa.] )

Dr. Scoles was an orthopedic surgeon at a hospital operated by the Mercy Health Corporation. He became infected with the HIV virus that causes AIDS. After disclosing this information to his employer, his past patients were notified of the situation and his privileges to perform diagnostic or therapeutic invasive procedures were suspended.

Dr. Scoles argued that he should be reinstated on the condition that he inform his patients of his HIV status prior to any invasive procedure. The Mercy Health Corporation argued that prohibiting Dr. Scoles from performing surgery was well within the law because he was not "otherwise qualified" to perform his duties as an orthopedic surgeon and present a "direct threat" to his patients.

The court found that a risk will exist as long as Dr. Scoles performs surgery and that the harm is a fatal disease. Therefore this constitutes a "direct threat" to the patients.

Defendant's motion for summary judgement was granted.

#### **Punitive Damages**

Braverman v. Penobscot Shoe Company 1994 WL 419829 (D.Me.)

Melvin Braverman returned to work at the Penobscot Shoe Company following a leave in which he received radiation treatment for prostate cancer, and four days shy of his 65th birthday. Upon his return on August 3, 1992, he was told he would be terminated on September 23rd. He worked until September 23rd and the company paid his salary for the rest of the year.

In July of 1993, Braverman filed action against the company alleging they discriminated against him on the basis of age and disability, and intentionally and negligently caused him emotional stress. He claimed he was repeatedly pressured about retirement prior to his leave. He also felt that his condition at the time rendered him disabled and he was viewed by his employer as disabled. His employer argued that he did not perform his job sufficiently.

Braverman attempted to recover punitive damages under the ADA. In doing so, he must demonstrate that the employer engaged in discriminatory behavior with "malice" or "reckless indifference" to his federally protected rights. The court found that Braverman did not generate sufficient evidence to support this claim.

The court granted summary judgement for the employer on the issue of punitive damages under ADA.

#### **Covered Entities**

Pappas v. Bethesda Hospital Association and Benefit Services Agency, Inc. 1994 WL 460141 (S.D. Ohio)

Pappas was a registered nurse at Bethesda Hospital. She applied for a family health plan but was denied coverage because her husband and son had existing medical conditions. She claimed that under Title I of ADA she had protected rights.

The court found that the health plan administrator was not the employer of Pappas and, therefore, was not a covered entity to which Title I is applicable.

The defendant's motion to dismiss the case was granted.

#### **Administrative Remedies**

Peterson v. University of Wisconsin Board of Regents 818 F.Supp. 1276 (W.D. Wisc. 1993)

Peterson claimed the defendant refused to renew his employment contract, refused to give him a merit raise, refused to restore certain employment duties and created a hostile work environment because of his physical disability, which required an accommodation of an 80 percent appointment. He was informed on August 31, 1992, that his employment contract would not be renewed because his "personal needs" resulting from his disability did not mesh with the employer's needs. The plaintiff argued that his case be dismissed because he did not exhaust administrative remedies to settle the case prior to bringing it to federal court. This is a requirement of Title I of ADA. However, Peterson brought his case to court under the provisions of Title II of ADA.

The court found that ADA does not require exhaustion of administrative remedies; therefore, Peterson could proceed with his private suit at any time.

Defendant's motion to dismiss the case was denied.

#### **Arbitration**

Singer v. Salomon Brothers, Inc. 593 N.Y.S.2d 927 (1992)

Singer was the managing director in the investment banking division of Salomon Brothers, Inc. He was diagnosed as having a malignant tumor in his leg, which doctors advised him it was likely to be terminal. Singer was transferred to another unit and his compensation was decreased. No complaints were made of his performance in the workplace. He was later terminated.

The issue before the court was whether this case should go to arbitration. The legislative history of the ADA clearly shows that, "this section encourages alternative dispute resolution mechanisms..including...arbitration."

Arbitration is not only authorized by law, but also fulfills the strong public policy favoring a decrease in the courts' caseload.

The defendant's option to compel arbitration was granted.

**Right-To-Sue Letter Requirement**

Kent v. Director, Missouri Department of Elementary and Secondary Education and Division of Vocational Rehabilitation 792 F. Supp. 59 (E.D. Mo. 1992)

Kent claimed that because of his religion the defendant failed to provide him with a service through the Division of Vocational Rehabilitation which would help him obtain employment. He argued that a required psychological exam violated his religious beliefs. The defendant argued that a letter on file from Kent's pastor indicated that the refusal to take the exam was an individual belief rather than a belief of the church. Kent claimed that this violated his rights under the employment discrimination clauses of Title I of the ADA.

The court dismissed the case as frivolous but also stated the court should dismiss the case because Kent had not obtained a right-to-sue letter in compliance with Title I of the ADA.

Decision for the defendant.

**Right to Sue an Individual**

U.S. Equal Employment Opportunity Commission v. AIC Security Investigation, LTD. 55 F.3d 1276 (7th Cir. 1995)

The plaintiff's executive director, Charles Wessel, claimed his discharge was a result of his disability, which was terminal cancer. Wessel was the Chief Executive Director of the security division. An essential function of the job was the overall management and direction of the 300 plus employees. Wessel received treatment for lung cancer starting in July of 1991. The defendant argued that, due to the treatments and other medical complications, Wessel missed many days of work. Wessel disputed these claims. The defendant also claimed Wessel's mental capabilities were deteriorating and were the source of some mistakes on the job. Prior to his termination in July of 1992, Wessel was

never subject to any warnings relating to his performance, his attendance or any disciplinary action.

The issue that remained for the court was to determine whether Wessel was a "qualified individual with a disability", as the term is defined. Medical evidence declared that Wessel's tumors in the brain were located in an area that did not affect his mental capacity. It was also noted that driving was not an essential function of the job. Even if it had, an accommodation could be made. Therefore, Wessel was qualified and could perform the job's essential functions.

The decision was in favor of the plaintiff. The court of appeals also addressed the issue of the right to sue an individual. The court sided with the EEOC in affirming the right to sue an individual but stated that to be liable the individual must meet ADA's definition of an employer.

#### **Handicap Discrimination**

Nicely v. Rice, Secretary, Department of the Air Force 1992  
WL 403091 (D. Kan.)

Nicely brought suit claiming that the defendant refused to hire him for an open position due to the impairment of his right arm. Due to a computer problem Rice's name was omitted from an eligibility list. He was informed and his name was placed at the top of the list for future selections. At a later date, his name was considered for another position but the position vacancy was withdrawn because of funding.

A hearing was held with the EEOC. They found that Rice met the definition of handicapped but that the defendant presented legitimate nondiscriminatory reasons for not selecting Rice.

The court agreed that Rice did not prove that the defendant's failure to hire him, at any time, was motivated by reasons of his handicap. Testimony validated the computer error and no other person was hired for the position which was withdrawn.

Decision was for the defendant.

APPENDIX IV

ADA DIRECTORY

## DIRECTORY

## FEDERAL AGENCIES

**U.S. Equal Employment Opportunity Commission**

1801 L St., NW

Washington D.C. 20507

ADA Helpline (800) 669-EEOC (voice) or (800) 800-3302 TDD

Enforces ADA Title I provisions, which prohibit discrimination in employment against qualified individuals with disabilities. Provides publications, speakers, technical assistance, training and referrals to employers and individuals with disabilities.

**ADA Regional Disability and Business Technical Assistance Centers**

Mandated by congress to provide information, training and technical assistance to employers, people with disabilities and other entities with responsibilities under ADA.

**New England Disability and Business Technical Assistance Center**

(Region 1 - Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont)

145 Newberry St.

Portland, ME 04101

(207) 874-6535 voice/TDD

**Northeast Disability and Business Technical Assistance Center**

(Region 2 - New Jersey, New York, Puerto Rico and Virgin Islands)

354 South Broad St.

Trenton, NJ 08608

(609) 392-4004 (voice) or (609) 392-7044 TDD

**Mid-Atlantic Disability and Business Center**

(Region 3 - Delaware, D.C., Maryland, Pennsylvania, Virginia and West Virginia)

2111 Wilson Bld., Suite 400

Arlington, VA 22201

(703) 525-3268 voice/TDD

**Southeast Disability and Business Center**

(Region 4 - Alabama, Florida, Georgia, Kentucky,  
Mississippi, North Carolina, South Carolina and Tennessee)  
1776 Peachtree St., Suite 310 North  
Atlanta, GA 30309  
(404) 888-0022 (voice) or (404) 888-9007 TDD

**Great Lakes Disability and Business Technical Assistance Center**

(Region 5 - Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin)  
1640 West Roosevelt Rd. (M/C 627)  
Chicago, IL 60608  
(312) 413-1407 (voice) or (312) 413-0453 TDD

**Southwest Disability and Business Technical Assistance Center**

(Region 6 - Arkansas, Louisiana, New Mexico, Oklahoma, and Texas)  
2323 South Shepherd Blvd., Suite 1000  
Houston, TX 77019  
(713) 520-0232 (voice) or (713) 520-5136 (TDD)

**Great Plains Disability and Business Technical Assistance Center**

(Region 7 - Iowa, Kansas, Nebraska, and Missouri)  
4816 Santana Dr.  
Columbia, MO 65203  
(314) 882-3600 voice/TDD

**Rocky Mountain Disability and Business Technical Assistance Center**

(Region 8 - Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming)  
3630 Sinton Rd., Suite 103  
Colorado Springs, CO 80907-5072  
(719) 444-0252 voice or (719) 444-0268 TDD



**Pacific Coast Disability and Business Technical Assistance Center**

(Region 9 - Arizona, California, Hawaii and Nevada)  
440 Grand Ave., Suite 500  
Oakland, CA 94610  
(510) 465-7884 voice or (510) 456-3172 TDD

**Northwest Disability and Business Technical Assistance Center**

(Region 10 - Alaska, Idaho, Oregon, and Washington)  
605 Woodview Dr.  
Lacey, WA 98503  
(206) 438-3168 voice or (206) 438-3167 TDD

**Job Accommodation Network**

P.O. Box 6123, 809 Allen Hall  
Morgantown, WV 26506-6123  
(800) 526-7234 (Accommodation Information - out of state)  
(800) 526-4698 (Accommodation Information - in state)  
(800) 232-9675 (ADA Information)  
(800) 342-5526 (ADA Information - computer modem)  
A free consultant service funded by the President's  
Committee on Employment of People with Disabilities.  
It performs individualized searches for accommodations  
and other pertinent information

**The President's Committee on Employment of People with Disabilities**

1331 F St., N.W.  
Washington, DC 20004  
(202) 376-6200 voice or (202) 376-6205 TDD  
Provides information, advice, training, technical  
assistance, funds the Job Accommodations Network and  
provides free publications to employers and individuals  
with disabilities.

**Foundation on Employment and Disability**

3820 Del Amo Bld. #201  
Torrance, CA 90503  
(213) 214-3430  
Provides multilingual toll-free information lines,  
pamphlets, articles and presentations to community  
groups, who provide services to minority communities in  
various California locations.

**Centers for Independent Living Program**  
Rehabilitation Services Administration  
**U.S. Department of Education**  
Mary E. Switzer Building  
330 C St., SW  
Washington, DC 20202

Approximately 400 Independent Living Centers provide local service programs to individual with severe disabilities so that they may live and function independently. They will provide employee assistance, advice on job accommodations, job placement services and other pertinent assistance to employers and individuals with disabilities.

**Clearinghouse on Disability Information**  
Office of Special Education and Rehabilitation Services  
U.S. Department of Education  
Switzer Bldg., Room 3132  
Washington, DC 20202  
(202) 732-1241 or (202) 732-1723 voice/TDD  
Provides information and publications on federally disability legislation, programs and services.

**Developmental Disability Councils**  
Administration on Developmental Disabilities  
U.S. Department of Health and Human Services  
200 Independence Ave., SW, Rm. 349-F  
Washington, DC 20201  
(202) 245-2890 voice/TDD

Each state council provides training, technical assistance and ADA information to local agencies, employers and the public in an effort to improve services to individuals with disabilities.

**Project with Industry**  
Inter-National Association of Business, Industry and Rehabilitation  
P.O. Box 15242  
Washington, DC 20003  
(202) 543-6353

More than 125 local Projects with Industry provide training and supportive services to individuals with disabilities in the work setting. They work with businesses and other agencies to expand the job opportunities for the disabled.

**State Technology Assistance Projects**

National Institute on Disability and Rehabilitation Research  
330 C St. SW

Washington, DC 20202

(202) 732-5066 voice or (202) 732-5079 TDD

Projects funded in 31 states to provide information and technical assistance, related services and devices for individuals with disabilities.

**State Vocational Rehabilitation Services Program**

Rehabilitation Services Administration

Office of Special Education and Rehabilitation Services

U.S. Department of Education

Switzer Bldg., 330 C St., SW, Room 3127

Washington, DC 20202

(202) 732-1282

Provides comprehensive services to employers and individuals with disabilities in employment related matters. These would include; training, job assistance, job placement, accessibility services, advice on accommodations, vocational counseling and others.

**NONGOVERMENTAL SERVICES****Ability Magazine - Jobs Information Business Service**

1682 Langley

Irvine, CA 92714

(714) 845-8700 or (800) 435-JOBS

Provides an electronic classified system which employers can recruit and locate qualified individuals with disabilities. The magazine also provides information on accommodations.

**ABLEDATA - Adaptive Equipment Center Newington Children's Hospital**

181 East Cedar St.

Newington, CT 06111

(203) 667-5405 or (800) 344-5405 (voice/TDD)

Maintains a database on more than 17,000 commercially available disability related products. Provides custom searches and information on accommodations.

**Accent on Information**

PO Box 700

Bloomington, IL 61702

(309) 378-2961

Maintains a database and provides information on disability related products.

**American Amputee Foundation, Inc.**

PO Box 250218

Little Rock, AR 72225

(501) 666-2523

Assists employers in job accommodations for amputees.

**American Bar Association**

Commission on Mental and Physical Disability Law

1800 M St., NW

Washington, DC 20036

(202) 331-2240

Provides information, technical assistance and training to employers and individuals with disabilities on all aspects of disability law.

**American Foundation for Technology Assistance**

Rt. 14 Box 230

Morganton, NC

(704) 438-9697

Maintains a database of assistive technology and sources of financial aid. Offers training and case by case evaluations.

**The American Occupational Therapy Association**

1383 Piccard Dr. PO Box 1725

Rockville, MD 20849

(301) 948-9626

Refers employers and individuals with disabilities to occupational therapist for job analyses and the development of accommodations.

**The Association for Persons in Supported Employment**

5001 West Broad St., Suite 34

Richmond, VA 23230

(804) 282-3655 (voice) or (804) 282-5313 (fax)

Matches individuals with severe disabilities with employers based on the needs of both. They provide support for the workers through job coaches, job development and other assistance.

**Association on Handicapped Student Service Programs**

In Post Secondary Education

PO Box 21192

Columbus, OH 43221

(614) 488-4972 (voice/TDD) or (614) 488-1174 (fax)

Provides a database offering resumes of over 5000 students with disabilities. Information on readers, interpreters and assistive devices is also provided.

**The Caption Center**

125 Western Ave.

Boston, MA 02134

(617) 492-9225 (voice/TDD) or (617) 562-0590 (fax)

Provides closed captioning videos for training and educational purposes.

**Direct Link for the Disabled**

PO Box 1036

Solvang, CA 93464

(805) 688-1603

Provides technical assistance for accommodations, maintains a database of information and does custom information services. A free video on removing employment barriers to people with disabilities.

**Disability Rights Education and Defense Fund, Inc.**

2212 6th St.

Berkeley, CA 94710

(510) 644-2555 (voice/TDD)

Offers training to businesses on ADA provisions and provides technical assistance and information on disability rights legislation and policies. Legal representation is provided to individuals with disabilities.

**Foundation for Technology Access**

1307 Solano Ave.  
Albany, CA 94706  
(415) 528-0747

Provides information, consultation and technical assistance on assistive technology. Also makes referrals to agencies who can assist with accommodations.

**Goodwill Industries of America Inc.**

9200 Wisconsin Ave.  
Bethesda, MD 20814

(301) 530-6500 (voice) or (301) 530-0836 (TDD)

Provides ADA sensitivity training to employers, assists in accommodations, and works with employers to place qualified individuals with disabilities.

**IBM National Support Center for Persons with Disabilities**

PO Box 2150  
Atlanta, GA 30301  
(800) 426-2133

**Industry-Labor Council**

National Center for Disability Services  
201 I.U. Willets Rd.  
Albertson, NY 11507

(516) 747-5400 (voice) or (516) 747-5355 (TDD)

Assists people with disabilities into the workplace, responds to inquiries about specialized equipment, and consults on accommodations.

**Institute for Human Resource Development, Inc.**

Connecticut Rehabilitation Engineering Center  
78 Eastern Blvd.  
Glastonbury, CT 06033

(203) 659-1166 and (203) 657-9954 (voice) or (203) 657-8418 (TDD)

Provides information database on assistive technology, and referrals to vendors, repair sites, consultants and rehabilitation technology services. Offers various publications.

**Mainstream, INC.**

3 Bethesda Metro Center, Suit 830

Bethesda, MD 20814

(301) 654-2400 (voice/TDD) or (301) 654-2401 (voice/TDD)

Provides job analysis and offers advice on cost effective accommodations. They also conduct sensitivity training, provide career and job counseling and offer publications.

**Mental Health Law Project**

1101 15th St. NW, Suite 1212

Washington, DC 20005

(202) 467-5720 (voice) or (202) 467-4232 (TDD)

Trains employers on rights and responsibilities under ADA, identifies accommodations and provides technical assistance.

**National Alliance of Business**

1201 New York Ave., N.W.

Washington, DC 20005

(202) 289-2905 (voice) or (202) 289-2977 (TDD)

Assists employers in the establishment of employment policies and procedures that comply with ADA. They also assist in accommodations and provide information on other workforce strategies.

**National Clearinghouse of Rehabilitation Training Materials**

Oklahoma State University

816 West 6th St.

Stillwater, OK 74078

(405) 624-7650

Provides referrals to publications addressing all areas of ADA.

**National Industrial Rehabilitation Corporation**

6797 North High St., Suite 210

Worthington, OH 43085

(614) 785-1664

Assists employers with various accommodations and works to increase the understanding and awareness of disability issues among employers.

**National Rehabilitation Association**

1910 Association Dr., Suite 205  
Reston, VA 22091

(703) 715-9090 (voice) and (703) 715-9209 (TDD)

Provides referral services to more than 400 trained accessibility surveyors, who can assist employers in meeting ADA accessibility guidelines. Also public accessibility guidelines.

**People with Disabilities Explain it all to You**

The Avocado Press

1962 Roanoke

Louisville, KY 40205

(502) 459-5343

**REHABDATA**

National Rehabilitation Information Center

8455 Colesville Rd., Suite 935

Silver Spring, MD 20910

(800) 346-2742 or (301) 588-9284 (voice/TDD)

Maintains a database of over 20,000 entries covering disability and rehabilitation research literature.

**RESNA**

1101 Connecticut Ave., N.W., Suite 700

Washington, DC 20036

(202) 857-1199

Makes referrals to local rehabilitation experts and offers information on rehab engineering, including designing new devices for individuals with disabilities.

**Trace Research and Development Center**

S-151 Waisman Center

1500 Highland Ave.

Madison, WI 53705

(608) 262-6966 (voice) and (608) 263-5408 (TDD)

Provides information on assistive technology, offers consultation on making computer equipment accessible, maintains a database, and distributes publications.



**ADA INFORMATION AVAILABLE ON ELECTRONIC BULLETIN BOARDS**

Documents can be down loaded using your computer and modem. Some of these bulletin boards can be used by subscribers only.

**CompuServe - Disability Forum** (800) 635-6225  
Call for local access number

**Disabled Individuals' Movement for Equality** (508) 880-5412  
(508) 880-7340

**Genie - Disabled Round Table** (800) 638-9636  
Call for local access number

**Job Accommodations Network** (800) 342-5526

**National Federation for the Blind** (410) 752-5011

**Project Enable** (304) 766-7842

**Washington's Access to Self Help** (206) 767-7681

**World Institute on Disability** (510) 763-4100  
Call for Subscriber Information