

Understanding the Legal Framework: Federal Laws and Case Law Impacting DV and SA Organizations

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The Laws That Apply

- The Americans with Disabilities Act
 - The Rehabilitation Act
 - The Fair Housing Act
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- A Note: These are *MINIMUM* requirements only!

The Americans with Disabilities Act

- Passed in 1990 to “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; and to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities”
- Integration and access!
- Federal funding does not matter
- Five titles:
 - Employment
 - Government services
 - Places of public accommodation and services provided by private entities
 - Telecommunications
 - Protection from retaliation

Who is Protected Under the ADA?

- An individual with a disability - a physical or mental impairment that substantially limits one or more major life activity
- A person who has a history or record of the disability
- A person who is regarded by others as having such a disability (has a disability but doesn't substantially limit a major life activity, OR does not have a disability and someone erroneously thinks s/he does)
- Drug addiction

ADA Definitions

- Impairment: Any physiological disorder or condition affecting one or more of the body systems
- Major life activity: Caring for oneself, eating, walking, standing, seeing, hearing, breathing, learning, working, etc. No "list"
- Reasonable accommodation: A modification or adjustment to the typical way in which things are done. "Reasonable" is subjective and case specific oftentimes.

Title 2: State and Local Gov't Entities

- DV and SA programs, unless operated by a state or local government entity, are not covered by Title 2
- Good to know based on advocacy services for clients
- Undue financial and administrative burdens – not required to make changes
- Required – to make reasonable modifications to policies, practices and procedures where necessary to avoid discrimination – UNLESS they fundamentally alter the nature of the service, program, or activity being provided

Title 3: Public Accommodations

- Full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered by a place of public accommodation
- YOU are a place of public accommodation!
- ALL of your services – main office, satellite offices, support groups, hotlines, legal advocacy, shelter, etc.
 - Support groups – specialized group (i.e. survivors with cognitive disabilities) – OK to offer, but not to mandate – they must be allowed to attend general support group as well
 - This includes your website, if you have one
 - Includes events, such as fundraisers

What Does This Mean?

- Reasonable modification to policies, practices and procedures
- Requirements for architectural modifications for new and altered buildings
- Effective communication
- Barrier removal in existing buildings when “readily achievable”
 - Easy to do, without much difficulty or expense
 - Your entire budget for your umbrella organization is considered, not just your center/shelter/program
 - Tip: always include a line item for ADA modifications in your annual budget

Polling Question

You have a new resident in your shelter program and you are reviewing the rules for keeping the shelter clean. The resident, as disclosed during your intake and orientation process, has a disability that makes it difficult for her to stand for very long periods of time. The last resident who vacated was signed up for the vacuuming chore, and your policy is that the new residents simply take over the most recent vacated resident's chore. You have this policy because it avoids negotiations and disagreements over "more" or "less" desirable chores. It has worked well for many years, as all disagreements have ceased.

What may be a reasonable accommodation for this resident?

- Nothing. This is an easy policy to enforce and it's worked well for many years, with reasonable justification for its existence.
- Ask another resident to switch with her.
- Give her a pass until the next resident vacates, or until a chore comes up that she is able to do.
- B and C

Policy Modifications: Examples

- Animals
 - Emotional Support Animals and trained Service Animals
 - Minimal inquiry of disability and need for animal's presence allowed
- Medicine
 - Accommodations due to medication needs or side effects of medication
- Chores
- "Mandatory participation" in support programs
- Job search requirement
- Personal care attendants

Effective Communication

- Auxiliary aids
 - TTY
 - Interpreters
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- Practice tip: Ask the person with the need what their preferred method of communication is and use that
 - Ask yourself: What are the consequences of miscommunication or misunderstood communication in the work that you do?

Polling Question

You are doing an intake for a new shelter resident, Miranda, and are using your standard guide of questions to move you through the intake process. You are obtaining a history of the violence that she has experienced and asked her "When was the last time you experienced violence by Dave?"

You are unsure if she understands the time element, as you suspect she may have a cognitive disability but don't know for sure. You want to make sure she understands you, so you ask her "Do you understand my question?" She said she understands, so you move on.

Is this a good example of effective communication?

- Yes, you sought clarity when needed
- No, you still have no indication if she understands
- I'm not sure

Effective Communication: Examples

- Are your program materials written in plain language?
- During intake, do you make accommodations for people with cognitive disabilities or developmental disabilities?
 - Does your intake include such questions as – “when did this happen?” or “what was the most recent incident that you can remember?”
 - Do you ask “do you understand?” after certain questions?
 - Consider instead:
 - Rather: “was it light outside? Was the television on? What was on the tv?”
 - “Can you explain to me what we just talked about?”

Architectural Issues

- ADA requires removal of architectural barriers and structural communications barriers when “readily achievable”
- Priorities for barrier removal
 - Access from parking areas, public sidewalks, public transportation
 - Access to areas where services are provided
 - Access to restroom facilities
 - Any measures necessary to provide access
- When altering or remodeling – in order of priority
 - Accessible entrance
 - Accessible route to altered area
 - At least one accessible restroom
 - Accessible telephones
 - Accessible drinking fountains
 - Additional accessible elements

How Do You Know if Someone Has a Disability?

- What do you need to know? That they have a disability or that they need an accommodation?
 - You can routinely ask whether an accommodation is needed, but ask everyone!
- Can request information necessary to verify that the person meets the ADA's definition of disability, describes the needed accommodation, and shows the relationship between the person's disability and the need for requested accommodation

The Rehabilitation Act

- Some overlap with the ADA, but applies only to those agencies receiving federal funding (i.e. Office on Violence Against Women grant funding)
- Section 504 – “no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subject to discrimination under” any federally funded program.”

Physical Access Differences from ADA

- All federally funded programs and activities must be readily accessible to and usable by people with disabilities, even if major structural alterations are needed to achieve accessibility
- This is different than the ADA's "readily achievable" standard

What If You're Covered by Sec. 504 and the ADA?

- Must meet the Section 504 requirements but wouldn't face ADA violation (unless a modification was readily achievable and was not done)
- If covered by the ADA, must make "readily achievable" modifications, even if the program can be made accessible without any architectural modifications
- BOTTOM LINE: Must meet program accessibility and readily achievable requirement if covered by both Sec. 504 and the ADA

The Fair Housing Act (FHA)

- Applies to shelter-based or transitional housing residential programs
- Amended in 1988 to protect people with disabilities from discrimination - People with disabilities can't be denied access to housing
- People currently engaging in the use of illegal drugs do not get protection

Disabilities Covered Under the FHA

- Disabilities:
 - Developmental disabilities (cerebral palsy, Down syndrome)
 - Physical disabilities (spinal cord injury, loss of movement)
 - Long-term systemic conditions (i.e. diabetes, heart disease)
 - Mental and emotional disabilities (depression, anxiety)
 - Cognitive disabilities (stroke, brain injury)
 - Sensory disabilities (blindness, deafness)

What is a Dwelling?

- Dwelling = any building or portion designed or intended for occupancy as a residence by one or more families
- Consider:
 - Length of stay
 - Intent to return each night to a particular abode
 - Amenities included
 - Whether the individual has another current residence that he or she intends to return to
 - domestic violence shelter residents may have residences but unlikely they expect to return to it based on safety
 - Rent payment or terms of occupancy agreement
 - How the housing is marketed
 - If primary purpose is treatment (i.e. drug treatment facility), and the housing is incidental to the program, it may not be a dwelling.

Requests for Accommodation

- A duty arises when the housing provider has knowledge that a disability exists and that an accommodation or modification may be required
- Request may be verbal but must be made by the resident
- Request should describe the need for the modification or accommodation
- Requests are evaluated on a case-by-case basis
 - Undue delay in responding can be failure to provide accommodation

Polling Question

A resident comes to your shelter with severe PTSD, readily disclosed to you at the orientation. As her stay continues with you, she comes to you and says her PTSD is being aggravated by the “closed in” and “locked in” feeling she has at the shelter. She asks as an accommodation that she be permitted to keep the door opened off the back living room, where the residents tend to congregate and watch TV. She explains that this will alleviate her fear of being locked in.

Is this a reasonable accommodation?

-- yes

-- no

Verification Permitted

- Only minimal verification is permitted
- If the disability is obvious or otherwise known and the need for accommodation is clear – do not request verification of disability or accommodation
- If disability is known but need for accommodation is not clear – request only information necessary to evaluate the disability-related need for the accommodation
- If neither disability nor accommodation is clear – ask for information on both
- Remember: the spirit of the law is to remove barriers, not create them with paperwork

Reasonable Accommodations

- Change made to policy, program, or service that allows a person with a disability to use and enjoy a dwelling
- Physical change to the person's living space or common living area
 - Must allow people living in your housing to make reasonable modifications (cost usually borne by the person with the disability)
 - Examples: grab bars, railings

Reasonable Exceptions to Policies, Practices and Procedures for People with Disabilities

- Animals
- General policy example under FHA
 - Rule that children may not run in the facility
 - Requirement that child sitters be at least 18 years of age
 - Curfew just for children
 - Not permitting homeschooling or school of choice

Don't Forget – Accommodation is Reasonable if...

- It is related to the disability
- The accommodation is not undue an undue administrative and financial burden
- It does not fundamentally alter the nature of the provider's operations
- It does not pose a direct threat to the health or safety of others and would not result in substantial physical damage to the property of others

Examples of Discriminatory Practices

- Harassment by other residents
- Termination from housing
 - "Discomfort" regarding somebody's behavior versus threatening, harassing, or intimidating behavior
 - Based on failure to do chores when disability prevents them from doing so

Resources

“Accessibility Guide For Domestic Violence and Sexual Assault Service Providers”, available at: <http://www.disabilityrightswi.org/wp-content/uploads/2007/05/vawaguide.pdf>

“Domestic Violence Shelters and the ADA”, available at <http://www.ncdsv.org/images/DVSheltersADA.pdf>

“Federal Anti-Discrimination Laws and Survivors of Domestic Violence Who Have Mental Health Disabilities”, available at http://www.ncdsv.org/images/NCDVTMH_FedAntiDiscrimLawsSurvivorsDVwithMHDisabilities_Part2.pdf

“Know Your Rights: Disabled Victims of Domestic and Sexual Violence”, available at <https://www.legalmomentum.org/sites/default/files/reports/disabilities-accomodations.pdf>

“A Guide to Fair Housing for Nonprofit Housing and Shelter Providers”, available at <http://www.kingcounty.gov/~media/exec/civilrights/documents/NPHO-Shelter.ashx>

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1. click the hyperlink above, or
2. go to the "Survey" pod, click "Survey" and then click "Browse to."

Please don't forget to tune into the next *End Abuse of People with Disabilities* webinar, "A Growing Epidemic: Students with Disabilities and Campus Sexual Assault," on April 18, 2017 at 2 pm ET.