

An Overview of the Law

ADA Implications for the Church

The Americans with Disabilities Act (ADA) is the most sweeping civil rights legislation since the Civil Rights Act of 1964. ADA was adopted to ensure that children and adults with disabilities receive equal opportunities to participate in society, free from discrimination.

Though churches are largely exempt from ADA, BCE believes that it is the obligation of every congregation to evaluate and eliminate barriers to active participation of all persons regardless of disability. Portions of the legislation *do* apply to religious institutions.

ADA, P.L. 101-336, signed into law on July 26, 1990, mandates equal access for people with disabilities to employment, state and local government services, transportation, public accommodations and services provided by private entities, and telecommunications.

Disability is defined as follows: a) a physical or mental impairment that substantially limits one

Note: The information in this planning guide must be read in conjunction with any applicable state or local ordinances. State and local nondiscrimination statutes and ordinances regarding individuals with disabilities may have particular provisions which are more stringent than the ADA. In such cases, the more stringent provisions of the state or local law apply in addition to the other ADA requirements.

or more of the major life activities of an individual such as walking, speaking, and breathing; b) a record of such an impairment; or c) being regarded as having such an impairment.

As is true with the general public, 17 percent of congregational members have one or more disabilities. For purposes of the ADA, the definition of disability is very broad-based, and includes, among others, mobility and sensory impairments, mental illness, mental retardation and learning disabilities, as well as disabilities caused by illnesses such as diabetes, cancer, HIV/AIDS, arthritis, respiratory and cardiac conditions, and chronic back pain.

Key provisions of the ADA include the following:

Title I: Employment

- Employers may not discriminate against an individual with a disability in any aspect of the

employment process, including hiring or promotion, if the person is otherwise qualified for the job.

- Before an applicant has been given a job offer, employers may ask about the applicant's ability to perform a job, but cannot inquire if the applicant has a disability or subject the applicant to a medical examination.

- Employers must provide reasonable accommodation to the known disability of qualified individuals. This includes job restructuring and modification of equipment.



Eileen Winters and her pastor, The Rev. Marshall Dunn, join in lighting an advent wreath candle at University Christian Church, Hyattsville, Maryland.

- Employers do not need to provide accommodations that impose an undue hardship on operations. They do, however, need to determine the difficulty or cost of accommodations

before attempting to establish an undue hardship.

- Employers with 15 or more employees must comply with Title I requirements.

Title II: Public Services

Subtitle A: State and Local Governments

- State and local governments may not discriminate against qualified individuals with disabilities.
- All local jurisdictions (cities, counties, towns, townships, hamlets, etc.), regardless of size, are required to undertake a self-evaluation and then develop and implement a transition plan.
- All government facilities, services and communications must be accessible and consistent with the requirement of section 504 of the Rehabilitation Act of 1973, as amended, and with the standards enforced by the Access Board (Architectural and Transportation Barriers Compliance Board).

Subtitle B: Public Transportation

- New public transit buses must be accessible to individuals with disabilities. Transit authorities must provide comparable paratransit or other special transportation services to individuals with disabilities who cannot use fixed route bus service. This service must be provided unless an undue burden would result to the transit authority.

Title III: Public Accommodations

- Title III does not apply to religious organizations or entities controlled by religious organizations, including places of worship.
- Private entities affecting commerce may not discriminate against individuals with disabilities. People with disabilities must be accorded full and

equal enjoyment of the goods and services of a place of public accommodation. The categories of public accommodations provided by private entities are as follows:

1. Place of lodging (inn, hotel)
2. Establishment serving food or drink
3. Place of exhibition or entertainment (theater, concert hall)
4. Place of public gathering (auditorium, convention center)
5. Sales or rental establishment (grocery store, shopping center)
6. Service establishment (hospital, gas station, lawyer, or health care provider)
7. Public transportation depots
8. Place of public display or collection (library, museum)
9. Place of recreation (park, zoo)
10. Place of education (nursery, school, college)
11. Social service center (shelter, food bank)
12. Place of exercise or recreation (health spa, golf course).

- It is discriminatory not to allow people with disabilities to have the full and equal enjoyment of any public accommodation.

- Title III of the ADA covers landlords who own and operate places of public accommodation, as well as tenants who lease or sublease the property.

- Eligibility criteria that screen out, or tend to screen out, people with disabilities are prohibited. This includes, for example, requiring the reporting of the existence of a disability on a credit application or requiring a driver's license for identification where a picture identification is all that is necessary.

- Public accommodations are required to make reasonable modifications in policies, practices, and procedures whenever it is necessary to provide services to a person with a disability, unless the modification would fundamentally alter the nature of the service provided. For example, public accommodations must allow service animals on the premises, even if they prohibit other animals.

- Auxiliary aids and services must be provided to individuals with disabilities, unless an undue burden would result to the public accommodation.

- Physical barriers in existing facilities must be removed, if removal is readily achievable. If not, alternative methods of providing the services must be offered, if they are readily achievable.

- All new construction and alterations of facilities must be accessible.

Title IV: Telecommunications

- Companies offering telephone service to the general public must offer telephone relay services to individuals who use telecommunication devices for the deaf (TDDs) or similar devices.

Title V: Miscellaneous Provisions

- A state is not immune from an action in federal or state court for a violation of the ADA.

- Reasonable attorney's fees, litigation expenses and costs are recoverable by the prevailing party in an action or administrative proceeding. Note: Where applicable, the Civil Rights Act of 1991 provides compensatory and punitive damages and jury trials in ADA proceedings.

Questions for Congregations to Consider

Q Are all employees of religious organizations covered by the employment provisions of the ADA?

A Generally, with the exception of those involved in the religious ministry such as ministers, all employees of a religious organization with 15 or more employees are covered by Title I of the ADA.

Q If a religious social service agency contracts with a state or local agency to provide day care or group home services, is it responsible for compliance under the public services provisions of the ADA?

A The ADA prohibits state and local agencies from discriminating against individuals with disabilities, directly or through contractual arrangements. Thus, the religious social service agency would be required to comply with the applicable provisions of Title II as a part of its contractual obligations.

Q A county operates a senior citizen meal program at various sites, one of which is a church. Is the congregation that contracted with the county to run the meal site obligated to make it wheelchair accessible?

A Possibly. Under Title II, the county's obligation is to ensure that its senior citizen meal program, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. Not all of the county's facilities must be accessible so long as services are accessible at a reasonable number of alternate accessible locations. Thus, in the example given, depending upon the size of the county's meal program and the number of accessible locations, the county may or may not require in its contract with the congregation that the

facility be wheelchair accessible.

Q Is the congregation that allows its property to be used as a polling place obligated under the ADA to ensure that the site is accessible?

A No. Under Title II of the ADA, the burden for ensuring the accessibility of polling sites is placed upon state and local governments. Under the voting accessibility act, polling facilities for federal elections are to be accessible to people who are elderly or who have disabilities. Many congregations are voluntarily complying with accessibility requirements, thus making their properties more welcoming and marketable.

Q Are individual congregations required by the ADA to make their buildings accessible?

A No. Individual congregations are considered religious organizations and, as such, are not subject to the accessibility requirements of Title III. Nonetheless, congregations throughout the country are voluntarily removing barriers of architecture and communications, thus encouraging the full participation of people with disabilities in all aspects of worship, program and service.

Q When a religious organization rents or donates space to a public accommodation, what are the responsibilities of the religious organization for ADA compliance?

A This question is twofold, addressing the responsibilities of the religious organization for ADA compliance when serving as a landlord, as well as the differentiation of responsibilities when space is leased rather than donated.

Technically, the religious organization has no obligations under

Title III of the ADA even when serving as a landlord to a public accommodation.

All public accommodations, unless controlled by a religious organization, remain subject to Title III when they *lease* space. According to the Justice Department's technical assistance manual, space donated by a religious organization to another entity is not subject to the accessibility requirements of the ADA. If a lease exists under which rent or any other consideration is paid, *no matter how minimal*, the tenant would be subject to Title III.

As a practical matter, congregations wishing to lease space and thus enhance their revenues should recognize that a public accommodation must seek space that is accessible because of its obligations under the ADA.

Churches considering renting from nonexempt landlords should also consult with counsel regarding the ADA implications.

Q If multipurpose space is leased to a community theater group for productions, is it exempt from the requirements of the ADA?

A No. Assuming the community theater group is a public accommodation (and not under control of a religious organization), it would be responsible for assuring that the leased space meets the accessibility requirements of Title III.

Q Must a camp run by a judicatory accept campers with disabilities?

A No. A camping program controlled by a religious organization would be exempt from the requirements of Title III. However, inclusive and integrated programs which welcome campers with disabilities have been shown to enhance the experience for all.

Barriers to participation: A personal story

By N. Vernon Blankenship

When I was asked by the Board of Church Extension (BCE) staff to serve as a consultant to their new task force on the Americans with Disabilities Act, I was not sure I had anything that would add to their expertise. After all, I had been retired for four years and had not kept up with the literature on the subject.

I also wondered why this new effort in educating congregations on ministering to people with disabilities was necessary. BCE had been advocating accessible church structures for at least 40 years.

When I joined the staff in 1966, our architects were advising churches to build accessible buildings, predominately single-level structures. They said it was not more expensive to build single-level structures than it was to build multi-level buildings. BCE advised the church I served in its relocation project, and we built a totally new facility, all grade-level structures. We moved from a 50-year-old building which required going up or down steps to get to every place in the building. That was more than 30 years ago.

During the past 30 years, BCE has published articles and materials on eliminating barriers to participation. Included in our study materials was a checklist to survey the architectural barriers in the church building. We at BCE had also printed articles about the ADA of 1990. I asked myself what else needed to be done?

But I reluctantly said I would be glad to help them any way I could.

I received a packet of material including the publication *That All May Worship: An Interfaith Welcome to People with Disabilities*, which was mailed to Disciples congregations in early

1997. I learned that they were working on an accessibility survey document to assist a congregation in the evaluation of its facilities and its ministries.

I saw the program was much broader than making buildings accessible. The emphasis was on helping congregations become more hospitable to persons with disabilities. This included changing the attitudes toward persons with disabilities, developing programs, increasing communication, as well as making the building's facilities accessible. The aim of the current effort is to help congregations become more sensitive to the physical, emotional, and spiritual needs of persons with disabilities.

Since change of attitude often occurs very slowly and it takes time to change the buildings which house our programs, we must repeat our messages many times before they are heard. It is a moral obligation we have, though not required by law, to see that all persons with disabilities receive equal opportunities to participate in the life of the church. It is a matter of justice consistent with the teachings of the Christian faith.

Barriers to participation have occurred throughout the centuries because of race, class, culture, nationality, physical, and mental disabilities. Therefore, the average American congrega-

tion must be a welcome place for all people. It is an urgent need. The publication *Loving Justice: The ADA and the Religious Community*, published by the National Organization on Disabilities, states it this way: "The ADA has been called the most significant civil rights legislation in recent decades. Indeed, by affirming the rights of forty-nine million Americans with disabilities, the ADA challenges the long-standing myths and stereotypes which have locked people into roles of dependency, stagnation, and unfilled potential."

There is another factor that makes this subject very important to me today. In June of 1995 I was told that I would be one of the forty-nine million disabled people in the U.S. At that time, I was diagnosed with Amyotrophic Lateral Sclerosis (ALS)—Lou Gehrig's disease. This is a rather rapidly progressive disease in which all voluntary muscles are ultimately disabled, and the person becomes completely paralyzed. The normal life span is from two to five years after diagnosis. There is no known cure or medication which can help stem the tide of the disease.

Since it had affected me minimally at the time of discovery, my wife and I decided that we would accelerate our scheduled move to a retirement place in central Kentucky. In the next



LoAnn and
Vernon
Blankenship

six months we sold our house and had a barrier-free ranch-style home built in a community where two of our children live. In January of 1996 we joined a Christian Church in our vicinity. We did not shop around but went to the church where our son and his family were members. This became the context for some new adventures and insights into the problems of the disabled.

The importance of the congregation being hospitable and welcoming is a central factor in being able to minister to people with disabilities. Many congregations, while thinking themselves to be friendly and hospitable, have not learned how to greet newcomers and visitors, much less the diversity of people such as physically and mentally disabled.

This was the first church my wife and I had joined in 30 years. We were strangers in a new community and in a congregation in which we knew few people. We expected to be welcomed and acknowledged for our experience and service in the church.

While the people were cordial we were shocked at the lack of genuine welcoming. It was a surprise to us and a lesson for every congregation. Had we not had a reason for joining this church, we would have been tempted to go somewhere else. The morale of the church was low at that time because of some internal difficulties. This partly explains the situation. When you consider the person who is a stranger, or is physically disabled, or has psychological problems, coming for the first time to a congregation where there is no sense of hospitality, it would be easy for them to feel not wanted. First impressions are extremely important.

From my experience, I am certain that persons with physical or mental disabilities come with fear and concern about being accepted. I had no noticeable

physical disability. However, I did have problems with speech and in handling hymn books and communionware which would be noticeable to people sitting nearby. I had emotional problems at unpredictable times of the service and would wipe my eyes. I was concerned about this and was thinking that I would make other people uncomfortable. I was tempted to stay away from the service lest I disturb others and cause some concern. People with disabilities need particular assurance that they are needed and wanted in the life of the church.

Having counseled with churches for 27 years regarding their buildings and being particularly sensitive about physical barriers, I had some problems with the church building. It is a building only 10 years old, a first unit of a master plan, built at two levels. The major problem for people with disabilities is the two-level construction. While a sidewalk does connect the parking lot to the main entrance, it is a long upward incline of approximately 350 feet. In bad weather it would be very difficult to make it to the front door.

The basement entrance has become the main entrance because it is nearest to the parking lot. That makes the flow of traffic go through the basement up a long stairway to the main level. The stairway is long enough that people with problems of mobility would have difficulty getting from the lower level upward to the worship room. While the building has accessible restrooms on both floors, a person in a wheelchair could not participate as a worship leader or choir member. There are steps leading to the chancel and choir areas.

Upon entering the lower level, I found coat racks that were too high for me to use. My arms are very weak and I cannot raise them above the level of my shoulders. The normal height of adult coat racks is too high for

me to use. There was no place for my coat without assistance. Neither was there a place for the children's coats. I installed two coat racks four feet high that I and children could use. Anyone in a wheelchair could not have reached the regular coat racks.

The church provides name tags for all members. However, they were placed on a board at four to seven feet above the floor level and behind a table three feet wide. This made it impossible for me and the children to reach. We moved the table but still have a problem with the height for many people. Again, a person with limited reach or in a wheelchair could not reach the name tag board. Speaking of people in wheelchairs, I have not seen any attending since we have been there. Fortunately, the congregation is now undertaking a capital program to improve the accessibility to the main entrance.

My wife and I have now been members of this congregation for nearly 18 months. We have become active in the church life. We have shared our concerns and have been accepted. It has been said that joining a church is like hurdling a fence. There are always barriers to overcome. I trust that as my disease progresses, my disability will be used to tear down barriers that block participation.

BCE's attempt to educate the public about barrier-free space has covered a span of more than 40 years. A continued push to inform and to lead our congregations to barrier-free buildings and barrier-free attitudes is a task that never ends for the concerned Christian—not because the law requires it but because it is the right thing to do.

N. Vernon Blankenship, a retired Vice President of Board of Church Extension, consulted with hundreds of congregations during his 27-year career with BCE.

Accessibility resources available

- **Accessibility Resource Packet**—This packet includes sketches on how to make your building more accessible and includes various articles on accessibility and architectural barriers.
- **Accessibility Checklist**—This checklist assists congregations in evaluating physical, programmatic and attitudinal barriers.
- **General Consultation Request Form**—A General Consultation outlines and interprets the next step to successfully carry out a building program. There is no charge to the congregation for this service.
- **Video: Opening Hearts, Minds and Doors**—This video highlights some of the congregations that have made their facilities and ministries more accepting and accessible for people with disabilities. One free copy is available per congregation.

To request this material, contact Susan Bennett, Board of Church Extension, 130 East Washington Street, Indianapolis, Indiana 46204; phone 317.635.6500 or E-mail sbennett@churchextension.org

Resources from the National Organization on Disability

- *That All May Worship: An Interfaith Welcome to People with Disabilities*
 - *Loving Justice: The ADA and the Religious Community*
 - *From Barriers to Bridges: A Community Action Guide for Congregations and People with Disabilities*
- Single copy costs are \$10 per book and can be purchased from the Religion and Disability Program, National Organization on Disability, 910 16th Street NW, Washington, DC 20006.

Leasehold Agreements

When a religious organization rents space to a public accommodation such as a community group or a private, independent day care center, the ADA applies to the activities of the local community group or day care center.

Responsibility for compliance with the ADA rests with the tenant, not the religious organization. However, the tenant and the religious organization can mutually agree on the allocation of the cost to make the facility physically accessible.

Even when it is not legally mandated, religious organizations should consider voluntary compliance with the physical accessibility requirements of the ADA, making their space more welcoming and, thus, more marketable.

Additional Planning Guides addressing a variety of facility planning issues are available from:

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