



Key Concepts in Disability Laws

Statutes

Section 504:

The key concepts here are “otherwise qualified,” “disability,” “excluded from the participation in,” “be denied the benefits of,” “be subjected to discrimination,” “program or activity receiving Federal financial assistance,” and “program or activity conducted by any Executive agency or the USPS.”

Students should be able to discuss the statute’s definition of program or activity; an exception allowed to small providers that relieves them of significant structural alterations if they can provide alternative means of providing services; and the fact the standards for determining compliance in employment is the same as used for the ADA.

Public Law 94-142:

The statement of findings and purpose for the act is useful for a discussion of why this law was enacted; it gives context for that discussion by highlighting the problems that necessitated the act in the first place.

Concepts include the following:

1. Free and appropriate public education (FAPE)
2. Individualized education program
3. Special education
4. Local education agency (LEA)
5. State education agency (SEA)
6. Excess costs
7. Related services

The students should be able to discuss the following:

1. The state’s obligation to provide a FAPE
2. Who is covered by the statute
3. The kind of procedural safeguards provided by law
4. The requirement for a state plan and what is involved
5. The obligations of a local education agency
6. The relationship between a LEA and a SEA

The Americans with Disabilities Act:

The findings and purposes section is very helpful in providing context and rationales for a discussion on the law. This section gives people a sense of the scope of the problem and represents the Congress's broad vision for remedying discrimination on the basis of disability.

Concepts for discussion are, as follows (and this is by no means an exhaustive list):

1. Auxiliary aids and services
2. Reasonable accommodations
3. Disability
4. State (who falls within the purview of the law)

Students should be able to look at each title and discuss its elements, as follows:

Title I: Employment

Key concepts:

1. Covered entity
2. Reasonable accommodations
3. Employer
4. Qualified individual with a disability
5. Undue hardship
6. Direct threat

They should list generally and specifically what the law proscribes as discriminatory behavior, and discuss allowed defenses to a charge of discrimination.

Title II: Public Services

Key concepts:

1. Public entity
2. Qualified individual with a disability

The students need to understand the general rule against discrimination by state and local governments. This covers transportation and new facilities as well as alteration of existing facilities.

Title III: Public Accommodations

Key concepts are:

1. Commerce
2. Commercial facilities
3. Public accommodations
4. Readily achievable

The general and specific rules against discrimination need to be fleshed out by students. What is meant by “denial of participation,” participation in unequal benefit,” “separate benefit,” and so on. What does the law specifically single out as discriminatory behavior? What is meant by eligibility criteria that exclude disabled people? What is a failure to make reasonable modification in policies, practices, and procedures? Students should come up with specific examples of when and where discrimination happens.

Title IV: Telecommunications

This is a very technical section of the law, but basically it calls for the establishment of a national relay system. Key concepts are:

1. Common carrier
2. TDD
3. Telecommunications relay system

Students need to understand the rationale for this section and what it does, that is, it establishes in all 50 states of the American union a relay system that enables telephone communication between deaf and hard-of-hearing people, as well as people with speech impairments (not necessarily deaf or hard-of-hearing), and people with hearing. This section also addresses closed captioning of public service announcements.

Title V: Miscellaneous

I think there are several important points to raise in this section:

1. The Jesse Helms exclusion: people who are gay, people who have sexual disorders, and people who like to set fires, steal or gamble, are excluded from the definition of disability, that is, they are not covered by the ADA;
2. Insurers can discriminate against disabled people if their underwriting or classification of risks is consistent with state law;
3. States are specifically NOT immune under the 11th amendment to the U.S. Constitution;
4. Retaliation and coercion are violations of the ADA
5. Attorney’s fees are available.

Prepared by Michael Schwartz, J.D.
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