

# **Legal Implications of the Americans with Disabilities Act on Recreation Services: Changing Guidelines, Structures, and Attitudes in Accommodating Guests with Disabilities**

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## INTRODUCTION

Full participation and equal opportunity in recreation services have historically been a challenge for people with disabilities (Fay & Wolff, 2000). However, with the enactment of the Americans with Disabilities Act (ADA), more effort is being made to include people with disabilities in recreation activities. Given the legal mandate to provide equal opportunity and access to participation, recreation providers have had to re-conceptualize how they provide recreation opportunities to guests with disabilities. Considering the growing interest in recreation by youth, families, and the elderly, it is not surprising that people with disabilities want equal access to these same recreation opportunities (McGovern, n.d.) Recreation aids in the acquisition of social skills and leisure skills while building self esteem, reducing stress, and improving quality of life (McGovern, n.d.).

Recreation service providers recognize the importance and value of participation by guests with disabilities. The inclusive recreation concept has become commonplace among practitioners and academics alike and it is now (or should be) an integral part of any discussion when making programming decisions or facility renovations. However, despite the ADA's presence since 1990, recreation providers have faced obstacles in implementing the provisions of the ADA into their facilities.

The purpose of this paper is to provide a comprehensive review of the Americans with Disabilities Act as it applies to the provision of recreation services. Key legal concepts and cases related to providing reasonable

accommodation will be explained. The legal and practical success that has been achieved in access to recreation by people with disabilities will be highlighted. Obstacles faced by recreation facilities in providing inclusive recreation opportunities will be examined. And finally, a discussion of the catalytic potential of staff training and attitude enhancement as part of a comprehensive strategy for ADA compliance will be discussed.

### PARTICIPATION BY PEOPLE WITH DISABILITIES IN RECREATION

According to a recent National Survey on Recreation and the Environment (McCormick, n.d.), people with disabilities participated in recreation activities at rates equal to, or somewhat lower than people without disabilities. Specifically, in most outdoor recreation activities, people with disabilities in middle age groups reported less frequent participation than people without disabilities. However, in the youngest and oldest age groups, people with disabilities participated at rates equal to, or greater than, people without disabilities. The reasons cited for the low participation of athletes with disabilities in sport are (a) the lack of organized sports programs, (b) the lack of informal early experiences, (c) the lack of athletic role models, (d) the lack of access to coaches and other training programs, (e) difficult economic conditions, (f) the lack of accessible sports facilities, and (g) the lack of accessible transportation (DePauw & Gavron, 1995).

### STATUS OF THE ADA FOR RECREATION PROVIDERS

The Americans with Disabilities Act (42 U.S.C. §12101 et seq., 1990) was enacted to provide a national mandate to eliminate discrimination faced by individuals with disabilities on a day-to-day basis (42 U.S.C. §12101(b)). Discrimination includes "denial of services, aids, or benefits, provision of different service or in a different manner, and segregation or separate treatment" based on disability status (U.S. Department of the Interior, n.d.). The ADA prohibits discrimination in employment, public services, and places of public accommodations operated by private entities (Wong, 2002).

The key provisions applicable to recreation services are Title II and Title III. Title II mandates that public entities, including state and local governments, give people with disabilities<sup>1</sup> an equal opportunity to benefit

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1. The term "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment" 42 U.S.C. §12102(2).

from all of their programs, services, and activities (42 U.S.C. §12132).<sup>2</sup> To seek protection under Title II of the ADA, a person must establish four elements. The individual must: (a) be a qualified individual with a disability,<sup>3</sup> (b) show that he/she is otherwise qualified to participate in the activity, (c) show that he/she is being excluded from participation solely by reason of the disability, and (d) show discrimination by the public entity (Wong, 2002).

Title III provides protection for individuals with disabilities seeking access to places of public accommodation (42 U.S.C. §1282).<sup>4</sup> "Title III of the ADA outlaws not just intentional discrimination but also certain practices that have a disparate impact upon persons with disabilities even in the absence of any conscious intent to discriminate," also known as de facto discrimination (*Indep. Living Res. v. Oregon Arena Corp.*, 1998, p. 1169). This includes the discriminatory effects of "benign neglect, apathy, and indifference" (*Helen L. v. DiDario*, 1995, p. 335). With respect to de facto violations, places of public accommodation under Title III are only required to "take remedial measures that are (a) effective, (b) practical, and (c) fiscally manageable" (*Ass'n for Disabled Am., Inc. v. Concorde Gaming Corp.*, 2001, p. 1362).

## DEFENSES TO DISABILITY DISCRIMINATION

Once a plaintiff has met his/her burden in providing the required elements, the recreation provider may assert several defenses, including "undue hardship," "fundamental alteration," and "direct threat" (Wong, 2002). Under Title II, a public entity is not required to take actions that would result in undue hardship, including undue financial and administrative burdens (U.S. Department of Justice, 2002). Undue hardship refers to "an action requiring significant difficulty or expense," when considered in light of several factors (42 U.S.C. §12111(10)(A)). Factors to be considered in the undue hardship analysis include the nature and costs of the accommodation needed, the overall financial resources of the facility providing reasonable accommodation, the number of employees at the facility, the effect on expenses and resources due resulting from providing the accommodation, the overall financial resources of

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2. Regulations implementing Title II of the ADA are codified at 28 C.F.R. Part 35 (2000).

3. "Qualified individual with a disability" is defined as one "who, with or without reasonable modification to rules, policies, or practices," the removal of barriers, or the provision of auxiliary aids, "meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the public entity." 42 U.S.C. §12131(2).

4. Regulations implementing Title III of the ADA are codified at, Regulations on Nondiscrimination On The Basis Of Disability By Public Accommodations And In Commercial Facilities, 28 C.F.R. Part 36 (2000). Title III applies to any person who owns, leases, (or leases to), or operates a place of public accommodation. 42 U.S.C. §12182(a).

the covered entity, and the type of operation of the covered entity (42 U.S.C. §12111(10)(A)).

The public entity is, however, "required to make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, unless the recreation provider can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity being provided" (U.S. Department of Justice, 2002). Title III "requires without exception that any policies, practices, or procedures of a public accommodation be reasonably modified for disabled individuals as necessary to afford access unless doing so would fundamentally alter what is offered" (*PGA Tour, Inc., v. Martin*, 2001, p. 668). In scrutinizing the PGA's walking-only rule, the Supreme Court held that allowing Casey Martin to use a golf cart during PGA tournaments would not fundamentally alter the nature of the golf tournaments (*PGA Tour, Inc.* p. 690).<sup>5</sup>

Title III also requires the removal of architectural or structural barriers that prevent access to public accommodations, when their removal is readily achievable (42 U.S.C. §12182(b)(2)(iv)). If barrier removal is not readily achievable, the public accommodation must make its goods or services available to the disabled through alternative methods, if such alternative methods are readily achievable (42 U.S.C. §12182(b)(2)(v)). While Title III does not allow for an undue hardship defense for the failure to construct new facilities in accordance with the implementing regulations and ADA Accessibility Guidelines (ADAAG) (28 C.F.R. §36.406, Appendix A), an undue hardship defense can be raised using an administrative burden theory. In *Martin*, the PGA asserted that if their organization had to review numerous appeals by other disabled golfers, the administrative process would constitute an undue hardship (*Martin v. PGA Tour*, 2000, p. 1002). The Court referred to *Washington v. Indiana High Sch. Athletic Ass'n* (1999, p. 852) where the Seventh Circuit was analyzing the individualized assessment requirement for a learning disabled student athlete waiver from an eight semester limit on competition. The *Washington* court stated that the few case-by-case analyses that the athletic association "would need to conduct hardly can be described as an excessive burden" (p. 852). Citing the rationale, the Ninth Circuit in *Martin* rejected the undue burden argument stating that an individualized determination would not impose an intolerable burden on the PGA (*Martin v. PGA Tour*, 2000, p. 1002).

The direct threat exception can be raised where participation by the individual with a disability will pose "a significant risk to the health or safety

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5. The "fundamental alteration" language is codified at 42 U.S.C. §12182(b)(2)(A)(ii).

of others that cannot be eliminated by modification of policies, practices, or procedures, or by the provision of auxiliary aids or services"(42 U.S.C. §12111(3)). "Direct threat" is typically raised when there is concern about health or safety given the nature of the disability or due to the auxiliary aid that the person uses, such as a wheelchair. The recreation provider must conduct an individual assessment of the risk to the health and safety of others (McGovern, n.d.). "The assessment must include a consideration of how reasonable accommodations such as rule changes or adaptive equipment would eliminate or minimize the risk and enable participation in the activity" (McGovern).

Illustrating this individualized assessment, if a college student with a mobility impairment wants to participate in an intramural basketball game with able-bodied students, the recreation provider must determine whether the presence of a wheelchair on the basketball court poses a safety risk to the other participants as well as the student with the disability, such as the risk of colliding with the wheelchair. If a significant risk is found, the provider must next determine whether there are any reasonable policy modifications that can be made to reduce the risk to an insignificant level. If it is determined that the significance of the risk cannot be eliminated by policy modification or other means, the provider can assert the direct threat exception to deny participation in the group setting. However, the recreation provider must still attempt to provide the student with an equal recreation opportunity using an alternative method if possible.

### FACILITIES AND THE ADA

The ADA applies to existing buildings, newly constructed buildings, and altered buildings (*Disabled in Action of Metro. New York, et al. v. Trump Int'l Hotel & Tower*, 2003).<sup>6</sup> Facilities constructed prior to January 26, 1993 are considered existing facilities while facilities designed and constructed for first occupancy after January 26, 1993 are viewed as new construction (28 C.F.R. §36.401). Existing facilities must remove architectural barriers where such removal is "readily achievable" (42 U.S.C. §12182(b)(2)(A)(iv)). New buildings, however, must comply with the more strict accessibility standard (28 C.F.R. §36, Subpart D) as well as comply with the ADAAG (28 C.F.R. §36.406, Appendix A). Failure to abide by the ADAAG in new construction is evidence of intentional discrimination against disabled persons (*Access Now*

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6. 42 U.S.C. §§12182(b)(2)(A)(iv) & 12183.

*et al. v. S. Florida Stadium Corp. et al.*, 2001).<sup>7</sup> For altered facilities, the facility must make the altered portions accessible to the maximum extent feasible (42 U.S.C. §12183(a)(2)).

A plaintiff alleging discrimination resulting from an architectural barrier must show that "the existing facility presents an architectural barrier that is prohibited under the ADA, the removal of which is readily achievable" in addition to meeting his/her prima facie case (*Access Now et al. v. South Florida Stadium Corp. et al.*, 2001, p. 1362). The prima facie case under Title III includes being able to show that the plaintiff is disabled, that the challenged facility is a place of public accommodation, and that the disabled individual was denied full and equal treatment because of the disability (*Access Now et al.*, 2001). The defense can rebut the plaintiff's case by showing that removing the barrier could not be accomplished without much difficulty or expense. The barrier removal would constitute an undue hardship for the recreation provider that is not required by the ADA.

The issue of which standard is applicable to the place of public accommodation was pivotal in the Pro Player Stadium case (*Access Now et al. v. South Florida Stadium Corp. et al.*, 2001). Resnick,<sup>8</sup> a quadriplegic man restricted to a wheelchair, challenged the accessibility features of Pro Player Stadium, home of the Miami Dolphins and Florida Marlins. Pro Player Stadium was constructed in 1987, prior to the enactment of the ADA. Therefore, the stadium must comply with the "readily achievable" standard applicable to existing facilities. Given this fact, the Court determined that Pro Player Stadium had no legal obligation to make the facility modifications that Resnick suggested (p. 1371). Thus, the plaintiffs were unable to demonstrate a violation of the ADA entitling them to injunctive relief.

### RECENT ADA CASES

Major ADA cases with application to recreation decided in the last five years were analyzed to determine how provisions of the ADA are being interpreted by the courts. *Montalvo v. Radcliffe* (1999) explains the process that the recreation provider must undertake when considering a denial of participation to an individual with a disability. The opinion also details the steps the court must take in analyzing whether the provider's actions constitute an ADA violation.

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7. See also *Ass'n for Disabled Am., Inc. v. Concorde Gaming Corp.*, 158 F. Supp. 2d 1353 (S.D. Fla. 2001).

8. Resnick is the president of Access Now, Inc., a not-for-profit corporation associated for the purpose of bringing businesses into ADA compliance.

Michael Montalvo, a 12-year old boy with AIDS, was denied admission to a traditional Japanese style (combat style) martial arts school because of his HIV-positive status. The martial arts school, a place of public accommodation subject to Title III, admitted it denied the boy participation in group karate classes on the basis of his HIV-positive status. However, the school asserted that the "exclusion of Michael was legally justified because Michael posed a 'direct threat'<sup>9</sup> to other members of the karate class" (*Montalvo v. Radcliffe*, 1999, p. 877). The issues before the Court of Appeals for the Fourth Circuit were "whether Michael's condition posed a significant risk to the health or safety of others" and "whether reasonable modifications of policies, practices, or procedures were available to eliminate the risk as a significant one" (*Montalvo*, p. 877).

In evaluating the significance of the risk posed by the boy's participation in the group karate class, the Court evaluated the nature, duration, and severity of the risk and the probability of transmission of HIV (*Montalvo*, 1999, p. 878). The Court concluded Montalvo's participation in group karate classes would pose a significant risk to the health and safety of others (*Montalvo*, p. 878).

In the second step of the analysis, the Court had to determine whether a reasonable modification could eliminate the significance of the risk. The karate school would still be required to admit him to group karate classes if a reasonable modification could have eliminated the significance of the risk.<sup>10</sup> The karate school proposed private karate lessons as a reasonable modification. However, the boy's parents rejected the offer, asserting that the primary reason their son wanted to take karate lessons was to be with his friends, further demonstrating the role of the ADA in ensuring an equal opportunity to participate (Kozlowski, 2000).

The Court determined that offering private lessons was the only modification which was both effective in reducing the risk to an insignificant level and in maintaining the fundamental essence of the karate school's program (*Montalvo*, 1999, p. 879). If the Court were to require the school "to make its program a less combat-oriented, interactive, contact intensive version of karate," this would fundamentally alter the nature of the program (*Montalvo*, p. 879). The ADA does not require the school "to abandon its essential mission and to offer a fundamentally different program of instruction" (p. 879). Affirming the District Court's decision, the Appellate Court held that the karate school did not violate Title III because the boy

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9. 42 U.S.C. §12182(b)(3).

10. *Id.*

posed a significant risk that could not be eliminated by a reasonable modification (p. 879).

A recent case challenging the accessibility of Trump Tower in New York City explains the procedural hurdles and possible challenges that are common in an ADA suit. Two individuals with disabilities, along with a disability advocacy group, filed suit against Trump Tower and the restaurant in the building claiming that various features of the facility are not sufficiently accessible to the disabled, in violation of Title III (*Disabled in Action of Metro. New York, et al. v. Trump Int'l Hotel & Tower et al.*, 2003). Ruling on the defendant's motion for summary judgment and a motion to dismiss plaintiff's claim, the Court first addressed which parties are subject to the ADA, and found that the ADA applies to both the landlord and the tenant who owns or operates a place of public accommodation (*Disabled in Action of Metro. New York, et al.*, p. \*13-14). In discussing the plaintiff's standing, the court noted that disabled individuals have standing if they show a plausible intention or desire to return to the inaccessible place but for the barriers to access (p. \*32). The Court found that the Plaintiffs' desire to return to the restaurant was plausible "given the fact that they live in New York and have been to the restaurant in the past" (p. \*26).

The defense next argued that the disabled advocacy group lacked standing to sue on behalf of its members (*Disabled in Action of Metro. New York, et al.*, 2003, p. \*32). In discussing the associational standing challenge, the Court stated that the advocacy group merely repeated the plaintiff's claims and sought the same injunctive relief (*Disabled in Action of Metro. New York, et al.*, p. \*33). In dismissing the advocacy group from the suit, the court stated that the individuals were the better plaintiffs and there was no reason for an organization to assert their rights for them (p. \*33). The Court also addressed defense challenges to the pre-suit notice requirements. The Court stated that plaintiffs were not required to notify state or local authorities prior to bringing their Title III claim (p. \*33).

Recent cases have also challenged the scope of the ADA. *Access Now, Inc. v. Southwest Airlines, Co.* (2002) is a case alleging disability discrimination because the "virtual ticket counters" on the Southwest Airlines Internet website are inaccessible to people who are blind. Southwest argued that the website is not a place of public accommodation and, therefore, does not fall within the scope of Title III. The Court determined that an Internet website does not encompass a physical structure and, as a result, is not a place of public accommodation (*Access Now, Inc.*, p. 1319). This legal issue will continue to evolve as future Web accessibility cases examine whether Congress intended the ADA to afford protection in cyberspace.



People with disabilities have also challenged the accessibility of riverboat casinos. In *Ass'n for Disabled Am., Inc. et al. v. Concorde Gaming* (2001), individual plaintiffs and an advocacy group challenged the accessibility of the *Casino Princesa* riverboat casino. The Eleventh Circuit had previously held that "although Title III does not identify commercial passenger vessels as covered public accommodations, . . . those parts of a cruise ship which fall within the statutory enumeration of public accommodations are themselves public accommodations for purposes of Title III" (*Stevens v. Premier Cruises, Inc.*, 2000, p. 1241). Therefore, the areas of the casino boat that serve the public must comply with Title III, while other parts of a ship might not constitute public accommodations.

The *Concorde Gaming* court acknowledged that there are no applicable regulations for the construction or alteration of commercial passenger vessels (*Ass'n for Disabled Am., Inc. v. Concorde Gaming Corp.*, 2001, p. 1362). Given the absence of applicable guidelines, there are no minimum requirements for the casino vessel to meet. Consequently, the more demanding requirements for the design of new construction (i.e., no undue burden defense) imposed by Title III's implementing regulations may not be applied to vessels constructed after January 26, 1993, as it cannot be required that a vessel be designed and constructed in accordance with guidelines that do not exist (*Ass'n for Disabled Am., Inc. et al.*, 2001). In attempting to apply Title III's reasonable modification and readily achievable barrier removal provisions to the places of public accommodation on the casino boat subject to Title III (i.e. the restaurant, pool, casino), the Court ordered modifications to improve access for individuals with disabilities (p. 1369).

## ENFORCING THE LEGAL RIGHTS OF PEOPLE WITH DISABILITIES

McGovern (n.d.) has identified several rights that people with disabilities may assert in order to gain equal and full access to recreation services. These rights include the right to; (a) participate in the most integrated setting, (b) request a reasonable accommodation in order to meet essential eligibility requirements, (c) request adaptive equipment, and (d) seek an individual assessment of potential risk of participation (McGovern). ADA claims most applicable to recreation and sport include challenges to participant eligibility, rule or policy modification, and facility accessibility/ accommodation issues (Clement, 1998).

Procedures for enforcing the rights guaranteed by disability laws include filing an internal complaint with the recreation provider, filing an administrative complaint, or filing a lawsuit (McGovern, n.d.). Complaints of

Title II violations seeking injunctive relief may be filed with the Department of Justice Office of Civil Rights within 180 days of the date of discrimination (U.S. Department of Justice, 2002). Cases may be also referred to a mediation program sponsored by the Department of Justice. The use of alternative means of dispute resolution is encouraged to settle ADA complaints (42 U.S.C. §12212). The Department of Justice may bring a lawsuit after investigating the matter and being unable to resolve violations (U.S. Department of Justice, 2002). Title II claims may also be enforced through private lawsuits in federal court.

The Department of Justice is authorized to bring a lawsuit under Title III where there is a pattern or practice of discrimination in violation of Title III, or where an act of discrimination raises an issue of general public importance (U.S. Department of Justice, 2002). Title III may also be enforced through private lawsuits. Injunctive and declaratory relief is available to private parties who bring suit under Title III (42 U.S.C. §12188). Monetary damages are available, in some instances, when an enforcement action is brought by the United States Attorney General (42 U.S.C. §12188(b)(2)(B)).

### OTHER DISABILITY LAWS

In addition to the ADA, there are other federal and state disability laws and guidelines that protect the rights of individuals with disabilities. Section 504 of the Rehabilitation Act of 1973 complements the ADA in providing protection from discrimination by any program receiving federal financial assistance (29 U.S.C. §794). While non-discrimination and providing a reasonable accommodation are required, fundamental alteration is not required, and undue burden can be raised as a defense (Moorman, Hums, & Wolf, 2003).

The Architectural Barriers Act (42 U.S.C. §4151 et seq.) applies federal standards for physical accessibility to buildings and facilities that are designed, constructed, or altered with federal funds (U.S. Department of Justice, 2002).

The Individuals with Disabilities Education Act (20 U.S.C. §§1400 et seq., 2003) directs public schools to provide all eligible children with disabilities a free appropriate public education in the least restrictive environment given their individual needs (U.S. Department of Justice, 2002).

Several federal agencies aggressively work to implement federal disability laws. The Department of the Interior, which oversees the United States National Parks, has made it explicitly clear that discrimination in recreation services against the disabled, among others, will not be tolerated (U.S. Department of the Interior, n.d.). The Department has been proactive in

meeting the needs of people with disabilities by establishing a Coordinating Committee on Accessibility for People with Disabilities in order to address accessibility issues and "to develop a comprehensive strategy to provide access to all programs, activities, services and facilities" (U.S. Department of the Interior, n.d.).

The Access Board, formerly the Architectural and Transportation Barriers Compliance Board, also plays a critical role in shaping accessibility legislation. The Access Board is the federal agency "responsible for developing minimum accessibility guidelines for facilities and areas covered by the ADA" (McGovern, 2002, p. 44). The Access Board addresses only the built environment, not the programs at facilities covered by the ADA (McGovern, 2002).

The Access Board published the final accessibility guidelines for recreation facilities effective October, 2002 (Access Board, n.d.). Recreation facilities covered by the new provisions include amusement rides, boating facilities, fishing piers, golf courses, play areas, and swimming pools, among others. These guidelines "serve as the basis for standards to be adopted by the Department of Justice for new construction and alteration of recreation facilities covered by the Americans with Disabilities Act" (Access Board). While the guidelines are not enforceable by the Department of Justice at this time, they should be consulted given that the current standard does not address the types of recreation facilities covered by the new guidelines. Under the current standard, there is no specific level of access delineated.

In addition to federal law and guidelines, state law protection can be utilized to assert the legal rights of individuals with disabilities. For example, Florida Statutes, Chapter 760 addresses discrimination based on disability, in addition to race, color, religion, sex, national origin, age, marital and familial status (FLA. STAT. ch. 760, 2003). The Florida Commission on Human Relations is charged with eliminating discrimination and has a detailed complaint procedure for reporting discrimination. After filing a complaint, the Commission will determine if it has jurisdiction over the allegations of discrimination and "whether an unlawful employment, housing or public accommodations practice may have occurred" (Florida Commission on Human Relations, n.d.). After investigating the complaint, a memorandum or final investigative report is prepared and a recommendation is made as to whether a discriminatory act occurred. The Commission's Executive Director issues a determination indicating whether there is reasonable cause to believe that a discriminatory act has taken place. The complainant may then seek remedies, including a hearing before the Division of Administrative Hearings or filing a civil action.

### UNIQUE PROBLEMS IN PROVIDING ACCESS TO RECREATION

Given the nature of recreation, especially outdoor recreation, regulations covering physical accessibility of indoor facilities may need to be adapted or modified to meet the needs of participants with disabilities. These environments could include beaches, pools, nature areas, or parks. While it is critical that the facility's physical structures, such as entrances, parking lots, or restrooms, be accessible, it is also important to focus attention on program access. Research indicates that program directors should devote greater attention to inclusive practices for persons with disabilities (Austin, 1997; Farbman & Ellis, 1987; Fazio & Fralish, 1988; Germ & Schlein, 1997; Herbert, 2000). Recreation administrators should plan for the inclusion of people with disabilities in all programs and services to a feasible extent. Recreation providers should also consider offering specific activities for people with disabilities, such as wheelchair basketball.

Promis, Erevelles, and Matthews (2001) argued that a truly inclusive sports and recreation program would not be satisfied with mere inclusion, but seek to transform the very notion of sport that is committed to idealized bodily perfection, physical prowess, and sexual appeal that serves in many ways to exclude not only persons with disabilities, but also those oppressively marked by race, class, and gender. The major problems in implementing inclusive leisure programs are lack of financial resources and constraints on staff, including lack of accessible participant transportation, adaptive equipment, appropriate program placement, accessible facilities, and resistance to inclusion by community members without disabilities (Devine & Kotowski, 1999). One of the solutions to overcoming these barriers is proper training for staff members and the community-at-large. Indeed, proper staff training has resulted in positive experiences for the service providers (LaMaster, Gall, Kinchin, & Siedentop, 1998) and individuals with disabilities (Huston-Wilson, Dunn, van der Mars, & McCubbin, 1997). Despite the obvious benefits of staff training, Devine and McGovern (2001) found that 42% of 369 responding park and recreation departments provided no training at all.

### CHANGING ATTITUDES ABOUT INCLUSIVE RECREATION

Attitudinal barriers, especially with respect to staff attitudes, have been cited as problematic among administrators, supervisors, and program instructors (Germ & Schlein, 1997). Furthermore, lack of staff training and negative staff attitudes are the third and fourth ranked limitations experienced by administrators, respectively (Devine & Kotowski, 1999). Therefore, it

seems intuitive that staff training should include attitude awareness and enhancement, if necessary.

In formal terms, an attitude is a psychological tendency that is expressed by evaluating a particular entity with some degree of favor or disfavor (Eagly & Chaiken, 1998). In essence, the term attitude is used to refer to a person's overall evaluation of persons (including oneself), objects, and issues (Petty & Wegener, 1998). According to Antonak and Livneh (1988), attitudes: (a) are formed by interactions with people, objects, and events, (b) are multi-component, complex structures, (c) are relatively stable, (d) are reflected when making social decisions toward people, objects, and events, (e) vary depending on the situation at hand, and (f) influence behavior toward people, objects, or events.

Attitudes form the basis of behavior, and, as a result, are the root of our actions. Indeed, attitudes are featured as a central component in Carol Stensrud's *Training Manual for ADA Compliance* (1993), which underscores the importance of attitudes for those service providers who work with the disabled. Attitudes develop from evaluative responding to an attitude object, which represents anything that is discriminated or held in mind by the individual (Eagly & Chaiken, 1998). Attitudes can be classified as cognitive (thoughts), affective (feelings or emotions), or behavioral (actions or intentions to act) in nature. Individuals with disabilities are wrongfully perceived as being unfriendly, impolite, dishonest, unhappy, aggressive, unable to relate to others, in great need of help, angry, hostile, and frustrated (Hannah, 1988). Furthermore, research has also shown that many people hold negative attitudes toward disabled people (Daily & Halpin, 1981; Evans, 1976; Richardson, 1970; Safran & Safran, 1986; Siller, 1976).

## RECOMMENDATIONS FOR STAFF TRAINING

Since the success or failure of staff training regarding the proper treatment of individuals with disabilities is highly dependent on employee attitude change, appropriate training should be based on a theory of attitude change. Several theories have been proposed to explain how attitudes are formed and changed (for summaries see Fishbein & Ajzen, 1975; Greenwald, Brock, & Ostrom, 1968; Insko, 1967; and Kiesler, Collings, & Miller, 1969). Hovland, Janis, and Kelley's (1953) behavioral approach is particularly adaptable to staff training. This approach posits that the degree to which a person is persuaded to change his/her opinion depends on his/her: (a) attending to the communication, (b) understanding the content, (c) accepting the message, (d) retaining the new opinion, and (e) acting in accordance with the new opinion

(Hovland, Janis, & Kelley, 1953). Furthermore, several variables that may influence whether or not a person develops a new attitudinal response were indicated including; (a) the source of the communication (credibility), (b) the setting in which the person receives the communication, including, for example, the response of other listeners of the communication, (c) the nature of the content of the communication such as its strength or appeal, and (d) individual factors such as personality factors, initial attitudes, and amount of ego involvement in the topic (Horne, 1985). Recreational professionals should take into account the above factors when formulating an approach to staff training regarding individuals with disabilities.

Several attitude properties such as importance, knowledge, extremity, certainty, intensity, accessibility, personal relevance, and affective cognitive consistency are more salient when an individual's attitude and subsequent behavior is consistent (Funk, Haugtvedt, & Howard, 2000). Therefore, staff training can be utilized to provide attitude awareness and models of appropriate on-the-job behavior for the employee. These facets of staff training can be presented to the employee in a variety of different ways. Several pedagogical methods such as lectures, audio-visual presentations, simulations, role playing, and group discussions are recommended for inclusion in staff training programs (Lian, Bowen, & Egger, 1985). Research has shown that audio-visual presentations have been an effective method to invoke positive attitude modification in sport environments (Bett, 1991; Knudson, 1990). A more recent study has shown role playing and group discussion to be an effective training methodology, albeit in a non-sporting context (Timms, James, O'Carroll, & O'Dowd, 1998). In addition, brief exposure to persons with disabilities in an active sport camp setting has been shown to promote positive attitude changes for students with less positive attitudes initially, while not further changing the attitudes of students which were already positive (Bergman & Hanson, 2000).

#### MEASURING ATTITUDINAL CHANGE TOWARD INDIVIDUALS WITH DISABILITIES

Appropriate staff training programs should incorporate a method to determine effectiveness of the intervention. The most popular instrument to measure attitudes toward disabled people is Yuker, Block, and Campbell's Attitude Toward Disabled Persons (ATDP) Scale (1960). The ATDP Scale, Form O, consists of twenty items that utilize a Likert scale ranging from -3 to +3 to indicate the respondent's agreement or disagreement with each statement. A score of -3 indicates "I disagree very much," while a score of +3

indicates "I agree very much." The test-retest reliability coefficients for the ATDP when repeated within five weeks range from .70 to .95 with a median value of .83 (Yuker & Block, 1986). Validity was evaluated by comparing ATDP scores with measures of attitudes toward other groups. Yuker and Block (1986) claimed that there "should be evidence of relationships consistent with theories of prejudice," and they concluded that the ATDP does indeed reflect prejudicial attitudes based on median correlations with several measures of prejudice and other negative attitudes. The ATDP scale has been used extensively to evaluate changes in attitudes toward individuals with disabilities (Yuker, 1988). Staff training program directors can administer the ATDP before and after the training intervention to measure the impact of the training.

### STRATEGIES FOR LEGAL AND PRACTICAL SUCCESS

In addition to staff training as a solution to providing enhanced service, Moorman, Hums and Wolff (2003) offer the following strategic tips to allow the sport or recreation provider to comply with the law while providing participants disabilities with a positive experience. The recreation provider should devise written policies and procedures to be utilized when an individual requests an accommodation. When a request for accommodation is made, an individualized inquiry of the participant should be conducted. This individual inquiry should include notifying participants of their rights, encouraging the individual to explore the facility's accommodations, assuring the participant of prompt and fair review if there is a question about eligibility or safety risk, and requesting verification of eligibility if necessary. The recreation facility should provide a welcome statement and a statement of the facility's non-discrimination policy for persons with disabilities. This statement will make people with disabilities aware of the commitment of the facility to providing an accessible environment for all recreation participants. The recreation provider should also designate an employee as the ADA Coordinator. This position is becoming more frequent in large stadiums and other recreation facilities.

The recreation provider should also establish an internal complaint procedure for settling disputes over accommodation or policy modification requests. The complaint procedure should include requiring all complaints or inquiries to be made in writing, establishing a timeline for resolution, retaining copies of all complaints, and tracking complaints, resolution, and modifications or accommodations made (Moorman et al., 2003).

Hronek and Spengler (2002) offer several valuable risk management strategies to reduce potential liability for injuries involving recreation participants with disabilities. Recreation management and staff must be familiar with different types of disability so they can evaluate the potential for injury given the nature of the disability (i.e. mobility or visual impairment). Furthermore, communication between the recreation facility management and any properly trained staff member that may interact with the participant with a known disability is critical. "Where persons with disabilities are involved in sports with a degree of risk, a comprehensive plan should be implemented to provide greater care for their safety" (Hronek & Spengler, 2002, p. 291). Recreation providers may receive requests from individuals with disabilities that want to participate in active sports with able-bodied individuals. These requests should be considered on an individual basis, including an evaluation of any safety or health risks to the individual with the disability or the other participants. In evaluating the safety risks, the recreation provider should consider "the individual characteristics of the participant the nature of the sport, and the device used to assist the disabled individual" (Hronek & Spengler, p. 292).

## CONCLUSION

Just as Title IX opened the doors of opportunity to women and girls in sport, the Americans with Disabilities Act has and will continue to create greater opportunities for people with disabilities to achieve equal participation in recreation and sport. Practically speaking, the ADA has "changed the way in which public and private agencies provide recreation opportunities" (McGovern, n.d.) While many legal issues have been resolved in providing accessible facilities and reasonable accommodations, novel legal issues continue to emerge as this relatively recent law is interpreted by courts, federal and state agencies, and recreation providers. Recreation service administrators can utilize appropriate staff training to enhance attitudes toward individuals with disabilities while also meeting the ADA requirements by ensuring full program access. A comprehensive strategy can support the ADA's mission of equal participation while also controlling the potential for legal and practical risk.



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