

**IN FOCUS**

**THIS ISSUE**

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A PUBLICATION OF THE DBTAC: MID-ATLANTIC ADA CENTER

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*ADA in Focus* is posted to the web on the "Publications" page at [www.adainfo.org](http://www.adainfo.org). It is also available by request in large print, Braille, audio cassette, and computer disk.

*ada issues*

**DBTAC: MID-ATLANTIC ADA CENTER FUNDED FOR FIVE MORE YEARS!**

TransCen, Inc. is pleased to announce that it has been awarded the National Institute on Disability and Rehabilitation Research (NIDRR) grant to operate the Disability and Business Technical Assistance Center (DBTAC) in the mid-Atlantic region for the coming five years. The project, formerly called the ADA & IT Information Center for the Mid-Atlantic Region, will now be known as the DBTAC: Mid-Atlantic ADA Center. Our mission and core services will remain the same, and we will be launching several exciting new initiatives as well.

We have new partners at the University of Maryland, who will be conducting research on the factors that affect the provision of reasonable accommodations to employees with disabilities.

We will also be launching a "Hospitality Initiative" to provide ADA training and materials to restaurants, hotels, motels, and other places of lodging. Efforts will be designed to promote increased access for customers, as well as opportunities for applicants and employees with disabilities.

We will continue to work with our affiliates in Virginia, West Virginia, Maryland, Pennsylvania, Delaware, and the District of Columbia to educate businesses, people with disabilities, employers, state and local government entities, schools, and others in the region about their rights and responsibilities under the ADA. The ADA Coalition members will be working with us on the Hospitality Initiative, as well as other outreach and training activities in their local communities. The Assistive Technology projects will be working with us to educate employers about the use of assistive technology to accommodate applicants and employees with disabilities.

We will continue, of course, to respond to the hundreds of calls we receive each month via our toll-free telephone line, answering questions, providing customized training programs, and disseminating publications and materials to meet your needs! We'd love to hear from you, so call, write, or e-mail and let us know how we can help you implement the ADA!

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**Richard G. Luecking, Ed.D.**

*President*

**Marian Vessels**

*Project Director*

**Nancy Horton**

*Assistant Director*

**Marissa Johnson**

*Director of Training*

**David Stewart**

*Tech. Assist. Specialist*

**Mark Derry**

*Training Consultant*

**Traci Lemon**

*Office Manager*

TransCen, Inc. is a Rockville, MD-based firm specializing in human resources issues and workplace diversity. TransCen administers the DBTAC: Mid-Atlantic ADA Center, providing technical assistance in DE, DC, MD, PA, VA, and WV.

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DBTAC: Mid-Atlantic  
 ADA Center  
 451 Hungerford Dr., Suite 607  
 Rockville, MD 20850-4151  
 TEL: 301-217-0124 v/TTY  
 FAX: 301-217-0754  
 TOLL-FREE: 1-800-949-4232 v/TTY  
 E-MAIL: [adainfo@transcen.org](mailto:adainfo@transcen.org)  
 URL: [www.adainfo.org](http://www.adainfo.org)  
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## calendar

### TRAINING NEWS & EVENTS

#### 2007 PATHS Conference: Creating Opportunities through AT

■ Charleston, WV.....February 19 – 20, 2007

This conference features exhibits and workshops on assistive technology for all ages.

*For more information, visit [www.cedwvu.org/programs/wvats/2007paths.html](http://www.cedwvu.org/programs/wvats/2007paths.html)*

*or call 1-800-841-8436*

#### ADA AUDIO CONFERENCE PROGRAM

The ADA Audio Conference Series provides in-depth information on the ADA and other disability related topics. A 90 minute session is offered each month in English. The session is delivered via telephone conferencing, as well as real-time streaming text and audio on the Internet. Transcripts and audio recordings of each session are available in the online archive.

For additional information about the ADA Audio Conference Series, including the schedule of sessions, speakers, cost, and registration, visit the ADA Audio Conference Web site at [www.ada-audio.org/](http://www.ada-audio.org/) or call 1-800-949-4232 V/TTY.

#### ADA Audio Conference Series in Spanish

The Great Lakes Disability and Business Technical Assistance Center offers an audio conference series in Spanish. These **free** sessions are presented by experts in their fields. For more information on the Spanish audio conferences, visit the Great Lakes ADA Center's Web site at [www.adagreatlakes.org/Spanish/PnServices/AudioConferencing/](http://www.adagreatlakes.org/Spanish/PnServices/AudioConferencing/)

#### DIVERSITY AND DISABILITY IN THE WORKPLACE: TRAINING COMING THIS SPRING!

“Workforce Discovery: Diversity and Disability in the Workplace,” a two day “train-the-trainer” activity, covers disability awareness, communication and interaction, reasonable accommodations, and legal issues in employment, as well as best practices for trainers. If you are interested in participating in this training, please contact our Director of Training, Marissa Johnson, at 1-800-949-4232 V/TTY (in DC, DE, MD, PA, VA, WV), 301-217-0124 V/TTY (outside the region), or e-mail [mjohnson@transcen.org](mailto:mjohnson@transcen.org). We will plan dates and location to best meet the needs of interested participants.

*For information on these and other ADA and disability-related training events, check the “Training” page at the DBTAC: Mid-Atlantic ADA Center Web site:*

[www.adainfo.org/training/](http://www.adainfo.org/training/)

*coalition / consortium news*

**WEST VIRGINIA: DISABILITY HISTORY WEEK**

Legislation signed into law in West Virginia designates the third week in October as Disability History Week. Students across the state will learn about the history and contributions of people with disabilities. Public elementary and secondary schools are required to provide information on disability history, people with disabilities, and the disability rights movement. Colleges and universities are encouraged to conduct activities that promote awareness of disability history as well.

Teachers, administrators, parents, community members, and students can participate in a variety of activities. Ideas and resources for lessons, reading materials, videos, and games can be found online at <http://wvde.state.wv.us/news/1297/>, or call Regina Scotchie, social studies coordinator for the West Virginia Department of Education, at 304-558-7805 for more information.

This legislation is particularly significant because the bill was originated by the delegates to the 2005 West Virginia Youth Disability Caucus. The West Virginia ADA Coalition was involved in organizing this event, and continues to support youth development activities across the state.

**New Digs in Delaware**

The Freedom Center for Independent Living in Delaware, which administers our affiliate, the Statewide Coalition for the ADA (SCADA), has moved to a new location in Middletown. The Center now occupies “new and improved” offices at 400 North Broad Street.

The Center hosted an open house on October 11 to celebrate and welcome the community, while raising awareness of disability issues with “mini” trainings on the ADA and outreach to the media. Governor Ruth Ann Minner recognized the Center’s efforts by proclaiming October 11th as Freedom Center for Independent Living Day!

Contact Center Director Cathy McKelvey (see box at right) to find out how you can get involved in SCADA activities!

**TO CONTACT OUR AFFILIATES:**

**State ADA Coalitions:**

- MD** 800-949-4232 v/TTY  
EMAIL [ADAINFO@TRANSCEN.ORG](mailto:ADAINFO@TRANSCEN.ORG)
- DC** 202-388-0033 v ■ 202-388-0277 TTY  
EMAIL [HGMALMORE@DCCIL.ORG](mailto:HGMALMORE@DCCIL.ORG)
- DE** 302-376-4399 v ■ 302-376-4397 TTY  
EMAIL [CMCKELVEY@FCILDE.ORG](mailto:CMCKELVEY@FCILDE.ORG)
- WV** 800-946-9471 v/TTY  
EMAIL [ADACoalition@aol.com](mailto:ADACoalition@aol.com)
- VA** 757-461-8007 v ■ 757-461-7527 TTY  
EMAIL [kgonzalez@endependence.org](mailto:kgonzalez@endependence.org)
- PA** 570-327-9070 v ■ 570-327-5254 TTY  
EMAIL [communityorganizer@cilncp.org](mailto:communityorganizer@cilncp.org)

**State Assistive Technology Programs:**

- MD** 800-832-4827 v ■ 866-881-7488 TTY  
WEB [www.mdtpa.org](http://www.mdtpa.org)
- DC** 202-547-0198 v ■ 202-547-2657 TTY  
WEB [www.atpdc.org](http://www.atpdc.org)
- DE** 800-870-3284 v/TTY (IN STATE ONLY)  
WEB [www.dati.org](http://www.dati.org)
- WV** 800-841-8436 v/TTY (IN STATE ONLY)  
WEB [www.cedwvu.org/programs/wvats](http://www.cedwvu.org/programs/wvats)
- VA** 800-552-5019 v/TTY (IN STATE ONLY)  
WEB [www.vats.org](http://www.vats.org)
- PA** 800-204-7428 v/RELAY (IN STATE ONLY)  
WEB <http://disabilities.temple.edu/programs/assistive/index.htm>

**TEENS AND YOUNG ADULTS:**

What does the ADA mean to you?

The Americans with Disabilities Act (ADA), a civil rights law passed in 1990, was designed to address discrimination against people with disabilities in several broad areas: employment (Title I), state and local government programs (Title II), private businesses offering goods and services to the public (Title III), and telecommunications (Title IV).

**The Civil Rights Era**

The development of the ADA, to a great extent, grew out of the civil rights movements of the 1960s, when African Americans, other minorities, and women sought equal opportunities. Several civil rights laws were enacted during this turbulent decade, including the Civil Rights Act, the Voting Rights Act, and the Fair Housing Act. These laws were primarily designed to protect members of racial, ethnic, language, and religious minority groups, as well as women. People with disabilities were not included among the protected groups.

Many people with disabilities were inspired by the struggles and successes of other minority groups, and began to advocate for civil rights protections.

Traditionally, disability laws in the United States had been based on a social service or medical model of disability. Both government and private programs focused on “taking care of” people with disabilities, who were generally assumed to be incapable of living independently or performing truly productive work. Services were often provided in institutions and other segregated environments.

Many people with disabilities were frustrated by these segregationist policies. They wanted the same kinds of opportunities that other citizens had. They wanted to attend the same public schools, ride the same public buses, patronize the same restaurants, and work in the same offices and factories as their family members and neighbors.

The Architectural Barriers Act (ABA) was one of the first federal disability laws that was not based on the traditional segregationist policy models. Although it is not a “civil

rights” law in a strict sense, it does promote integration by requiring that buildings constructed, altered, leased, or funded by the federal government be accessible to people with disabilities. It does not, however, require that older buildings be retrofitted specifically to improve access. (This is why many older federal buildings, such as post offices or social security offices, are still not accessible.)

**Disability Law and Civil Rights**

The 1970s began to see a real shift in the focus of disability legislation. The Rehabilitation Act of 1973 addressed discrimination, not just architectural inaccessibility. The Rehab Act prohibits discrimination by the agencies of the executive branch of the federal government, in employment as well as programs and services provided to the public. Additionally, it prohibits discrimination by any agency,

public or private, that receives federal funds.

The Rehabilitation Act was, and remains, significant not only in relation to federal programs and employment, but also because of the wide range of public and private organizations that receive federal funding. Implementation and compliance continue to present challenges to this day.

The Education for All Handicapped Children Act, or PL 94-142 (later renamed the Individuals with Disabilities Education Act, or IDEA) was enacted in 1975.

This law was also significant because it guarantees not only that children with disabilities be educated, but that they be educated alongside their non-disabled peers to the greatest extent possible. Although the implementation of the “least restrictive environment” requirement also continues to cause conflict, the law has produced a generation more accustomed to the integration of people with disabilities.

The 1980s saw a continued expansion of disability civil rights legislation, with laws that were either designed specifically to protect people with disabilities, or that included them along with other groups.

The Civil Rights of Institutionalized Persons Act, or CRIPA, (1980) authorizes the U.S. Attorney General to investigate conditions at state and local government institutions such

*“... we will not accept, we will not excuse, we will not tolerate discrimination in America. ...”*

*President George Bush  
ADA Signing Ceremony  
July 26, 1990*

as prisons, jails, juvenile detention facilities, nursing homes, and institutions for people with psychiatric or developmental disabilities.

The Voting Accessibility for the Elderly and Handicapped Act of 1984 (enacted nearly twenty years after the Voting Rights Act) requires polling places used for federal elections to be accessible, or alternate means of casting ballots must be provided. The law also requires that registration and voting aids be available for voters with disabilities and elders.

The Air Carrier Access Act (1986) prohibits discrimination in air transportation by domestic as well as foreign air carriers. The law also requires certain accessibility features in newly built aircraft.

Twenty years after the passage of the Fair Housing Act, it was amended to include people with disabilities as a protected class. Under the Fair Housing Amendments Act (1988) it is unlawful for housing providers to discriminate against people with disabilities, refuse to make reasonable accommodations in policies and practices, or to refuse to allow residents with disabilities to make reasonable architectural modifications to the premises. The Act also establishes accessibility requirements for most newly constructed multi-family housing facilities.

The 80s came to a close with the introduction in Congress of the first version of the Americans with Disabilities Act (ADA). When the ADA was enacted in 1990, it was hailed by many as a “sweeping” piece of civil rights legislation. It takes much of its language from the Rehabilitation Act, but reaches entities, particularly many private employers and businesses, that had previously been untouched by federal prohibitions against disability discrimination.

The ADA was passed by an overwhelming majority of the Congress; both Democrats and Republicans supported it. The passage of the ADA represented the combined efforts of people with all types of disabilities, family members, friends, advocates, business leaders, and legislators who worked together to find the common ground on which we could all move forward.

The ADA signing ceremony, witnessed by over 3,000 people, was the largest such ceremony that had ever been held. The enactment of the ADA raised awareness of disability rights for a whole new generation.

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## RESOURCES FOR YOUTH: GET INVOLVED!

### **The National Consortium on Leadership and Disability for Youth (NCLD-Youth)**

Web: [www.nclld-youth.info/](http://www.nclld-youth.info/)  
Toll-free telephone: 877-871-0744 (voice),  
877-871-0665 (TTY)

### **National Youth Leadership Network (NYLN)**

Web: <http://nyln.org/>  
Toll-free telephone: 866-480-6565

### **Junior NAD (National Association of the Deaf)**

Web: [www.nad.org](http://www.nad.org)  
(select “Inside NAD,” then “Youth”)  
Telephone: 301-587-1789 (TTY),  
301-587-1788 (voice)

### **Maryland Youth Leadership Forum**

Web: [www.md-ylf.org/](http://www.md-ylf.org/)  
Telephone: 301-277-2839

### **Virginia Youth Leadership Forum**

Web: [www.vaboard.org/ylf.htm](http://www.vaboard.org/ylf.htm)  
Toll-free telephone: 800-846-4464

### **West Virginia Youth Disability Caucus**

Web: [www.wvsilc.org/WEST\\_VIRGINIA\\_YOUTH\\_](http://www.wvsilc.org/WEST_VIRGINIA_YOUTH_DISABILITY_CAUCUS_2007.htm)  
[DISABILITY\\_CAUCUS\\_2007.htm](http://www.wvsilc.org/WEST_VIRGINIA_YOUTH_DISABILITY_CAUCUS_2007.htm)  
Telephone: 800-642-8207 ext. 4624  
or 304-766-4624

### **Delaware Leadership, Employment, Advocacy Development (LEAD) Project**

Web: [www.udel.edu/cds/lead.html](http://www.udel.edu/cds/lead.html)  
Telephone: 302-831-1705

### **Youth Empowerment Resource Center (DC)**

Web: [http://www.inclusionresearch.org/YERC/](http://www.inclusionresearch.org/YERC/YERC%20HOME.HTML)  
[YERC%20HOME.HTML](http://www.inclusionresearch.org/YERC/YERC%20HOME.HTML)  
Telephone: 202-338-7153

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## decisions in focus

### WORKPLACE HARASSMENT

It has been established by many courts that workplace harassment based on disability is actionable under the ADA. Courts have relied on case law under Title VII of the Civil Rights Act to provide guidance on this issue. Title VII prohibits discrimination against an individual based on race, color, national origin, religion, and gender, with respect to the “... terms, conditions, or privileges” of employment. The Supreme Court ruled that this language addresses harassment or a “hostile work environment.” The ADA has similar language in reference to disability.

The first case that came before a federal appellate court on the issue of disability harassment in the workplace was *Fox v General Motors Corp.*, which arose in West Virginia and was decided by the Fourth Circuit Court in 2001. (The Fourth Circuit covers the Region III states of Maryland, Virginia, and West Virginia, as well as North Carolina and South Carolina.)

General Motors (GM) argued that harassment was not actionable under the ADA, but the court had “little difficulty” dispatching the argument, based on the precedents set under Title VII.

#### What is Harassment?

Since the *Fox* decision, several other federal courts have agreed that harassment can be a viable basis for complaint under the ADA, however, an individual must prove all of the following:

- She is a qualified individual with a disability.
- She was subject to unwelcome harassment.
- The harassment was based on disability.
- The conduct was objectively offensive, and sufficiently severe or pervasive to alter a term, condition, or privilege of employment.
- The employer knew or should have known about the harassment, and failed to take proper action.

If an individual can get past the “disability threshold” (which is often problematic in ADA cases), and prove that he has a disability as defined by the ADA and was qualified at the time of the alleged harassment, he then faces the challenge of addressing the other factors. Cases often turn on whether the offending treatment was severe and pervasive enough to be considered harassment.

There have been several claims alleging disability harassment within the courts in our region in recent years; plaintiffs have been unsuccessful in most of them.

The Fourth Circuit Court, in the case of *Mason v Wyeth* (2006), found that a manager’s teasing and pranks were not motivated by the plaintiff’s hearing impairment, since almost all of the employee’s co-workers were subjected to similar treatment.

Two cases were decided this year in the Eastern District of Virginia, in which the court found that “isolated” comments which were not threatening or humiliating were not enough to create a hostile work environment. The cases were *Rozier-Thompson v Burlington Coat Factory Warehouse* and *Wiggins v DaVita Tidewater LLC*.

A similar case, *Robinson v the Department of Agriculture*, was decided by the District Court for the District of Columbia. This case was brought under the Rehabilitation Act (the ADA’s “older sister”). The court here also found that the offensive comments were too few and far between, did not include threats or humiliation, and did not affect the plaintiff’s ability to perform her job.

One plaintiff in the region was recently successful in a case brought in the District Court in Delaware. The jury in the case of *Spencer v Wal-Mart* awarded \$12,000 in damages for emotional distress to a hard of hearing worker who was subjected to a hostile work environment. The court affirmed the award, finding evidence that the individual’s supervisor and co-workers directed obscene gestures at her, and alternately yelled at her or refused to communicate with her because of her hearing impairment.

*what's new***NEWS AND RESOURCES****Resources for Emergency Preparedness**

New publications are available to help people with disabilities and elders prepare for and cope with the aftermath of disasters.

- *Preparing Makes Sense for People with Disabilities and Special Needs: Get Ready Now*
- *Prepare Yourself: Disaster Readiness Tips for Owners of Pets or Service Animals*

Visit the National Organization on Disability (NOD) at [www.nod.org/emergency](http://www.nod.org/emergency) or call 202-293-5960 (voice) or 202-293-5968 (TTY).

- *Dealing with Disaster*
- *We Can Do Better: Lessons Learned for Protecting Older Persons in Disasters*

Visit AARP at [www.aarp.org/katrina/](http://www.aarp.org/katrina/) or call toll-free 1-888-OUR-AARP (687-2277).

**EEOC: Q&A about Deafness and Hearing Impairments in the Workplace**

The U.S. Equal Employment Opportunity Commission issued the latest publication in its “question-and-answer” series about workplace issues and the ADA. This fact sheet explains how the ADA might apply to job applicants and employees with hearing impairments, and addresses issues such as reasonable accommodations, safety concerns, harassment, and enforcement. Find this document online at [www.eeoc.gov/facts/deafness.html](http://www.eeoc.gov/facts/deafness.html).

**ICC and NFPA Compare 2006 Codes to Access Board’s New Guidelines**

The U.S. Access Board recently issued a side-by-side comparison of its updated accessibility guidelines (not yet enforceable under the ADA), the original ADA standards (currently enforceable), and the International Building Code, or IBC (2003 edition). Additional comparisons have been

prepared by the International Code Council (ICC) and the National Fire Protection Administration (NFPA). These comparisons are based on the 2006 code editions.

To access the 2006 IBC comparison, visit [www.iccsafe.org/safety/accessibility/news-2006comparison.html](http://www.iccsafe.org/safety/accessibility/news-2006comparison.html).

To access the 2006 NFPA comparison, visit [www.nfpa.org/itemDetail.asp?categoryID=823&itemID=29693](http://www.nfpa.org/itemDetail.asp?categoryID=823&itemID=29693).

**IDEA 2004: Final Regulations Issued**

The U.S. Department of Education issued final regulations to implement the Individuals with Disabilities Education Improvement Act of 2004.

The Department also launched a new web site to provide a “one-stop shop” for resources related to IDEA and its implementing regulations. The “Building the Legacy: IDEA 2004” site provides searchable versions of the statute and regulations, as well as access to cross-referenced content from other laws (e.g., No Child Left Behind), topic briefs, and a variety of other information. Visit <http://idea.ed.gov/>.

**Free Web Design Curriculum**

The AccessIT Web Design & Development I course curriculum is a project-based introduction to web design developed for use in grades 9-12. The curriculum emphasizes standards-based and accessible design, is cross-platform and vendor-neutral, and is freely available for teachers to use in their own classrooms.

Students learn about web design standards and how to evaluate, create, and maintain quality web pages. Visit [www.washington.edu/accessit/webdesign/index.htm](http://www.washington.edu/accessit/webdesign/index.htm).

**No Internet access? If you are not able to obtain online publications, call the DBTAC: Mid-Atlantic ADA Center, 1-800-949-4232 (V/TTY). We will be happy to assist you!**

*on the internet*

**COOL WEBSITES: YOUTH WITH DISABILITIES**

**www.ncwd-youth.info/** The National Collaborative on Workforce and Disability for Youth (NCWD-Youth) provides information for youth and family members, employers, and youth service providers.

**www.includingallkids.org** Including All Kids, part of the Beyond Participation project, promotes inclusion of children and youth with disabilities in community-based youth programs and organizations.

**www.nsttac.org/** The National Secondary Transition Technical Assistance Center (NSTTAC) works to improve transition planning, services, and post-school outcomes for youth with disabilities.

**www.heath.gwu.edu/** The HEATH Resource Center is a national clearinghouse on postsecondary education for individuals with disabilities.

**www.edjj.org/** The National Center on Education, Disability and Juvenile Justice (EDJJ) provides technical assistance, conducts research, and disseminates resources related to special education and transition services for detained and incarcerated youth with disabilities, as well as prevention of school failure and delinquency.

**www.adainfo.org/youth** Check out our new “Youth with Disabilities” Web page for more information and resources related to education, transition, and other issues.

*ADA in Focus* is intended for use by individuals, state and local governments, businesses, legal entities, and others interested in the ADA and other disability related issues. This publication is intended solely as informal guidance and should not be construed as legally binding. *ADA in Focus* does not serve as determination of the legal rights or responsibilities of any individual, business, or entity.

TransCen, Inc. / DBTAC: Mid-Atlantic ADA Center  
451 Hungerford Drive, Suite 607 ■ Rockville, MD 20850-4151

**CONTACT US**

*telephone*

1-800-949-4232 toll-free v/tty  
301-217-0124 v/tty

*mail*

451 Hungerford Drive  
Suite 607  
Rockville, MD 20850-4151

*fax*

301-217-0754

*e-mail*

adainfo@transcen.org

*internet*

www.adainfo.org

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Suburban MD  
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