

IN FOCUS

THIS ISSUE

2 Training Events**3** Affiliates News:
■ AT in the Workplace**6** Courts Support Juries:
■ “Regarded as” Case
■ Young Student Traumatized
on School Bus
■ Damages Awarded to
Package Handler**7** What’s New:
■ Emergency Preparedness
and People with DD
■ Employment of Veterans
■ NPS: Guidance for Parks
■ E-Course: UD in Parks
■ DC: New Disability Office
■ Housing Modifications**8** Web Sites

ACCESSIBLE

FORMATS

ADA in Focus is posted to the Web on the “Publications” page at www.adainfo.org. It is also available by request in large print, Braille, audio cassette, and computer disk.

Volume 13, Number 2

Spring/Summer 2008

A PUBLICATION OF THE DBTAC: MID-ATLANTIC ADA CENTER

*ada issues***FROM FAMILY PHYSICIAN TO ICU:
ACCESS TO HEALTH CARE IS CRITICAL**

The United States has one of the most advanced and sophisticated health care systems in the world. Extensive networks of highly qualified practitioners provide diagnoses, treatments, and therapies in offices, clinics, and hospitals across the country. A vast array of modern medications, tools, and equipment is available to support their efforts.

Yet patients who are deaf continue to struggle to find providers who will take the steps necessary to communicate effectively with them. People who use wheelchairs find it difficult to locate accessible facilities where they can obtain even the most basic preventative screening services. People with developmental disabilities are routinely excluded from mental health research studies and treatment options.

Although the ADA requires health care programs provided by state and local governments, as well as most private health care businesses, to ensure that people with disabilities have appropriate access to their services, there are some unique challenges related to health care services and facilities.

Communication is Crucial

Effective communication is always essential when people interact with businesses or agencies. When it comes to interactions that involve life and health, though, the communication may be more complex. Additionally, the stakes are simply higher.

Communication, by nature, is a two-way street. It can not be effective unless each party understands and is understood. A patient might understand and follow his doctor’s advice perfectly, but the advice may be flawed if the doctor misunderstood what her patient tried to express. Likewise, the doctor may give her patient the right instructions, but the patient may not be able to follow them if he doesn’t understand them.

Communication with family members or others is often just as essential as communication with a patient. Health care providers routinely engage parents of minor children, spouses,

see page four HEALTH CARE

ADA in Focus
 is published three times
 yearly by the
 DBTAC: Mid-Atlantic
 ADA Center



Richard G. Luecking, Ed.D.

President

Marian Vessels

Project Director

Nancy Horton

Assistant Director

Marissa Johnson

Director of Training

Maynor Guillen

Tech. Assist. Specialist

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.

This is a publication of the DBTAC: Mid-Atlantic ADA Center, funded by the National Institute on Disability and Rehabilitation Research of the U.S. Dept. of Education (Grant # H133A060085). The opinions contained in this publication are those of the grantee and do not necessarily reflect those of the Dept. of Education.

DBTAC: Mid-Atlantic
 ADA Center
 451 Hungerford Dr., Suite 700
 Rockville, MD 20850
 TEL: 301-217-0124 v/TTY
 FAX: 301-217-0754
 TOLL-FREE: 1-800-949-4232 v/TTY
 E-MAIL: adainfo@transcen.org
 URL: www.adainfo.org
 © 2008 by TransCen, Inc.

calendar

TRAINING NEWS & EVENTS

Time for Change: Use Your Power!

■ Washington, DC.....July 21 – 24, 2008

This is the annual conference of the National Council on Independent Living (NCIL).

For more information, visit www.ncil.org/conference/conference2008.html,

call 202-207-0334 (voice), 202-207-0340 (TTY),

or e-mail conference@ncil.org

2008 Leadership Exchange in Arts and Disability

■ Ft. Lauderdale, FL.....August 21 – 24, 2008

This conference is for professionals working in the field of accessibility and the cultural arts.

For more information, visit

www.kennedy-center.org/accessibility/education/lead/conference.html,

call 202-416-8727 (voice), 202-416-8728 (TTY),

or e-mail access@kennedy-center.org

Retrofitting for Accessibility: Parks and Recreation

■ Gatlinburg, TN.....September 8 – 11, 2008

This course, offered by the National Center on Accessibility, will focus on access in outdoor environments and recreation programs. There is a prerequisite for this course.

For more information, visit www.ncaonline.org/,

call 812-856-4429 (voice), 812-856-4421 (TTY),

or e-mail nanasmit@indiana.edu

ANNUAL ADA UPDATE

■ Baltimore, MD.....September 19, 2008

This popular annual event, presented by the DBTAC: Mid-Atlantic ADA Center, features a panel of speakers from federal agencies, as well as afternoon breakout sessions:

- AT in the Workplace: Tools to Accommodate Employees with Disabilities
- Government Programs or Private Businesses:
 Improving Your Service to People with Disabilities
- Architectural Access and Design: Common Problems and Practical Solutions

For more information, visit www.adainfo.org/update/

or contact Marissa Johnson at 1-800-949-4232 or 301-217-0124 V/TTY,

or e-mail mjohnson@transcen.org

For more information on ADA and disability-related training events, check the

“Training” page at the DBTAC: Mid-Atlantic ADA Center Web site:

www.adainfo.org/training/

coalition / consortium news

ASSISTIVE TECHNOLOGY: OPPORTUNITY FOR EMPLOYERS

The U.S. Department of Labor estimates that the labor force participation rate will continue to decline in the next few years, reaching 65.5% by 2016, during which time the 55-years-and-older workforce will grow at a rate more than 5 times that of the aggregate labor force.

Meanwhile, the U.S. Census Bureau reports that approximately 63% of working age adults with disabilities is unemployed. So, for those of you who've been keeping up with the math, that's $65.5 + 55 \times 5 - 63 = opportunity$.

AT Helps Employers Hire, Retain Workers

The Mid-Atlantic Consortium of State Assistive Technology Act Programs is offering an exciting new training program for human resources professionals, business owners, and other employers in the region.

Assistive Technology in the Workplace: Tools to Accommodate Employees with Disabilities is an introductory level training, designed to familiarize employers with assistive technology (AT) services, equipment, and devices that can help remove workplace barriers, enhance productivity, and reduce employee turnover.

These interactive sessions will give employers an opportunity to see and use an assortment of low- and mid-tech devices. A variety of activities, such as the "Doohickeys, Thingamabobs, and Whatchamacallits" exercise, will get participants thinking creatively.

Employers will also learn about resources that are available to help them identify and acquire appropriate technologies and related services, as well as other types of accommodations for workers with disabilities. Sessions can be customized to meet the needs of specific groups. More advanced topics or specific areas of interest can be addressed.

To find out more about the *AT in the Workplace* training program, contact the Assistive Technology Program in your state (information at right).

TO CONTACT OUR AFFILIATES:

State ADA Coalitions:

MD 800-949-4232 v/TTY
EMAIL adainfo@transcen.org

DC 202-388-0033 v ■ 202-388-0277 TTY
EMAIL hgalmore@dccil.org

DE 302-335-5626 v ■ Carpent487@aol.com
OR 302-764-8713 v ■ MTurner1@ucpde.org

WV 800-946-9471 v/TTY
EMAIL WVADACoalition@msn.com

VA 757-461-8007 v ■ 757-461-7527 TTY
EMAIL kgonzalez@endependence.org

PA 570-327-9070 v ■ 570-327-5254 TTY
EMAIL mdion@cilncp.org

State Assistive Technology Programs:

MD 800-832-4827 v ■ 866-881-7488 TTY
WEB www.mdmap.org

DC 202-547-0198 v ■ 202-547-2657 TTY
WEB www.atpdc.org

DE 800-870-3284 v/TTY
WEB www.dati.org

WV 800-841-8436 v ■ 800-518-1448 TTY
WEB www.cedwvu.org/programs/wvats

VA 800-552-5019 v/TTY
WEB www.vats.org

PA 800-204-7428 v ■ 866-268-0579 TTY
WEB <http://disabilities.temple.edu/piat/>

continued from page one HEALTH CARE

or adult children of elderly parents in the treatment of their loved ones. These allies must not be excluded merely because they have disabilities.

Communicating with many people with disabilities will not be any different than communicating with others. Some individuals, however, may need to be given a little more time and consideration. Still others, particularly those who have impairments that specifically affect communication (such as hearing, speech, and vision disabilities), may need to utilize alternative methods or tools to communicate.

Such “auxiliary aids or services” may include written notes and printed materials, materials in alternate formats (e.g., large print, Braille), assistive listening devices, and the use of interpreters.

What’s an “Undue Burden”?

Consider these factors:

- The nature and cost of the action;
- The overall financial resources of the site or sites involved; the number of people employed at the site; the effect on expenses and resources; legitimate safety requirements; or any other impact of the action on the operation of the site;
- The geographic separateness, and the administrative or fiscal relationship of the site to any parent entity;
- If applicable, the overall financial resources of any parent entity; the overall size of the parent entity with respect to the number of its employees; the number, type, and location of its facilities; and
- If applicable, the type of operation or operations of any parent entity, including the composition, structure, and functions of the workforce of the parent entity.

– adapted from *Americans with Disabilities Act: ADA Title III Technical Assistance Manual*
U.S. Department of Justice

Health care providers covered by the ADA must provide auxiliary aids and services when they are necessary for effective communication, as long as the provision of such aids or services does not fundamentally alter the nature of the health care service or impose an undue burden (a significant difficulty or expense) on the provider.

When auxiliary aids or services are requested, providers must first determine if they are needed, based on their knowledge of the nature of the communication that typically takes place within the context of the service to be provided. Providers should consult with the individual making the request to determine the individual’s needs and preferences (state and local government providers must give *primary consideration* to the preference of the individual).

Facilities and Equipment

Inaccessible facilities and equipment also interfere with the provision of quality health care, particularly for people with mobility limitations.

Providers should assess their facilities to identify barriers, removing them wherever possible. Accessible equipment, such as adjustable height exam tables or scales that can weigh individuals who use wheelchairs, is an excellent addition to any medical facility. Not only can it increase the quality of care provided to patients, it can help reduce the risk of injury that can affect both patients and staff when such equipment is not available.

Tax Incentives

Tax incentives are available in some cases to help offset the costs associated with removing barriers or providing auxiliary aids or services.

An “Architectural/Transportation Tax Deduction” of up to \$15,000 can be used for the expenses of removing barriers in existing facilities or vehicles.

The “Disabled Access Tax Credit” is available to small businesses, and can be used to offset a portion of money spent on removing architectural barriers or providing auxiliary aids or services.

Visit the Department of Justice’s “Business Connection” page at www.ada.gov/business.htm, or find the DBTAC “Quick Tips” online at www.adainfo.org/publications/ for more information about tax incentives. ■

HEALTH CARE RESOURCES AND PUBLICATIONS

Western University of Health Sciences, Center for Disability Issues and the Health Professions ■ www.edihp.org/

National Organization on Disability ■ www.nod.org/
(select “Info. For Community Leaders,” then “Access to Independence,” then “Access to Health Care”)

American Association on Health and Disability ■ <http://www.aahd.us>

National Women’s Health Information Center, Women with Disabilities ■ www.4woman.gov/wwd/

Access to Medical Care: Adults with Physical Disabilities (training curriculum with video/DVD)
World Institute on Disability ■ www.wid.org/publications/access-to-medical-care-adults-with-physical-disabilities/

The Americans with Disabilities Act and Hearing Interpreters
American Medical Association ■ www.ama-assn.org/ama/pub/category/10825.html#interpreter

*Access Equals Opportunity: Medical Offices**
Council of Better Business Bureau’s Foundation

*Answer to Questions Commonly Asked by Hospitals and Health Care Providers**
National Rehabilitation Hospital/ADA Compliance Program

*ADAAG Tech Sheet Series: Medical Care Facilities**
Barrier Free Environments, Inc.

Communicating with People Who Are Deaf or Hard of Hearing in Hospital Settings
U.S. Department of Justice ■ www.ada.gov/business.htm



*ADA Questions and Answers for Health Care Providers**
National Center for Law and Deafness/Gallaudet University

ADA Checklist: Health Care Facilities and Service Providers
Ensuring Access to Services and Facilities by Patients Who are Blind, Deaf-Blind, or Visually Impaired
American Foundation for the Blind ■ <http://afb.org/>

Animals in Health Care Facilities (includes a section on service animals)
U.S. Department of Health and Human Services / Office for Civil Rights ■ <http://www.hhs.gov/ocr/cdcanimals.html>

*To obtain copies in print or other formats, contact:
DBTAC: Mid-Atlantic ADA Center
1-800-949-4232 V/TTY (in DC, DE, MD, PA, VA, WV)
301-217-0124 V/TTY
E-mail: adainfo@transcen.org
Web: www.adainfo.org/publications/

decisions in focus

COURTS SUPPORT JURIES' DECISIONS

Manufacturer “Regarded” Employee as Having a Disability

The Fourth Circuit Court of Appeals affirmed a \$197,783 jury verdict against a South Carolina manufacturer for terminating the employment of a shipping supervisor it “regarded as” having a disability.

The Fourth Circuit includes the states of Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

Jimmy Wilson had worked for Phoenix Specialty Manufacturing Company for ten years when he was diagnosed with Parkinson’s disease. His vision and manual dexterity deteriorated over the next few years; additionally, he experienced a “major panic attack” at work in the spring of 2001 and sought medical treatment.

When he returned to work, he alleged that his supervisors and senior management staff treated him differently, impeded his attempts to obtain reasonable accommodations, and contrived a plan to get rid of him through a “reduction in force” which, in fact, eliminated only him from the company’s workforce.

The Court of Appeals affirmed the district court’s opinion that Phoenix harbored exaggerated perceptions of Mr. Wilson’s limitations, discriminated against him, and terminated him on the basis of their fears.

The case is *Wilson v. Phoenix Specialty Manufacturing Company*. The court’s ruling is posted online in PDF at <http://pacer.ca4.uscourts.gov/opinion.pdf/061818.P.pdf>. The majority and dissenting opinions outline an interesting debate about the application of the “regarded as” prong of the ADA’s definition of disability.

Court Supports Jury Verdict and \$400,000 Award to Student

The District Court for the Eastern District of Pennsylvania denied a motion which sought to overturn a jury verdict or order a new trial in a case brought on behalf of a young girl with Asperger’s Syndrome.

The case, *Enright v. Springfield School District*, arose because of an incident that took place on a school bus in 2002, when the seven year old girl was being transported along with two teenaged boys. The three were the only passengers on the bus.

The boys, one of whom had an extensive and well known history of violence and aggression, taunted the girl with sexually suggestive language and behavior, and threatened to hurt or kill her brother if she told anyone.

A video camera on the bus recorded part of the ride that afternoon, revealing the older boy walking around the bus, throwing things, yelling insults, and making sexually suggestive comments. The little girl can be heard screaming at one point. The driver largely ignored all of this activity.

The court found ample reason to support the jury’s findings that the school district, through both its actions and inactions (including inadequate driver training) created and exposed the girl to a dangerous and traumatic situation.

The court’s decision, in PDF, is at www.paed.uscourts.gov/documents/opinions/08D0005P.pdf.

Fourth Circuit Affirms Jury Award of Punitive Damages for Former Employee

The Fourth Circuit Court of Appeals affirmed a \$100,000 punitive damage award to a former FedEx package handler who is deaf.

The award in the case (*EEOC v. Federal Express*) was based on approximately three years of employment, during which the individual, despite repeated requests, was routinely denied interpreter services for employee meetings, training, and safety briefings. The court rejected FedEx’s argument that the award was excessive, finding that FedEx was well aware of its obligations under the ADA and acted with “reckless indifference” to the employee’s rights.

The court’s decision is available in PDF online at <http://caselaw.lp.findlaw.com/data2/circs/4th/061724p.pdf>.

*what's new***NEWS AND RESOURCES****Emergency Preparedness: Is Your State Prepared to Meet the Needs of People with Developmental Disabilities?**

The National Association of State Directors of Developmental Disabilities Services (NASDDDS)

Emergency Response Preparedness Self Assessment Instrument was developed to help evaluate preparedness plans and ensure that they address the unique needs of people with intellectual and developmental disabilities.

Find the instrument, as well as a wealth of related resource material, online at <http://rtc.umn.edu/erp/main/>.

EEOC Addresses Employment of Veterans with Service-Connected Disabilities

The U.S. Equal Employment Opportunity Commission (EEOC) issued two question-and-answer (Q&A) guides providing technical assistance for employers and veterans on workplace issues affecting veterans with service-connected disabilities.

The guide for employers is online at www.eeoc.gov/facts/veterans-disabilities-employers.html and the guide for veterans is at www.eeoc.gov/facts/veterans-disabilities.html.

NPS: Guidance for Parks

The National Park Service's (NPS) Harpers Ferry Center (HFC) published *Programmatic Accessibility Guidelines for National Park Service Interpretive Media*, a comprehensive guide on how to ensure access to publications, exhibits, audiovisual programs, tours, waysides, signage, and web-based media. Although the guide is intended for use by National Park Service employees and contractors, others who work in park or museum settings will find it useful.

The guide is brimming with practical advice on how to make programs accessible to people with mobility, hearing, vision, and cognitive disabilities. Learn more at www.nps.gov/hfc/accessibility/

New E-Course: Introduction to Universal Design for Parks and Recreation

The National Center on Accessibility has developed a one-hour e-course as an introduction to the principles of Universal Design for park and recreation practitioners. The free course is offered through the Eppley Institute for Parks and Public Lands online learning site. Visit www.parktraining.org/ and look for the "Universal Design" course.

DC: New Office on Disability Rights

The Office of Disability Rights (ODR) is up and running in the District of Columbia. ODR is responsible for oversight of the District's compliance with the ADA and other federal and local disability rights laws. The office will provide assistance and training to DC government agencies, and will investigate citizens' complaints. The new office is located at One Judiciary Square in Northwest; call 202-724-5055 (voice), 202-727-3363 (TTY), or visit their web site at <http://odr.dc.gov/odr/>.

HUD and DOJ Issue Guidance on Reasonable Modifications in Housing

The Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ) issued a joint statement on *Reasonable Modifications under the Fair Housing Act*. This publication, which answers common questions about structural changes in residential facilities, serves as a companion to the previously issued joint statement on *Reasonable Accommodations under the Fair Housing Act*, which addresses policy and practice issues.

To find both documents online, look for the link to "Policies and Guidance" at HUD's office of Fair Housing and Equal Opportunity: www.hud.gov/offices/fheo/

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 WEB SITES: DISABILITY HISTORY

www.nepad.org/programs/ The **National Center on Physical Activity and Disability** offers listings of fitness and recreation programs across the country (and a few in other countries as well). The listings are organized by state and city, and include both inclusive and adapted activities for all ages. Listings encompass both public and private programs, such as those operated by county recreation departments, Easter Seals, and the Little League Challenger Division. Activities range from aquatics programs, wheelchair sports, and therapeutic riding to day- and residential summer camps for children.

www.childcareaware.org/ The **Child Care Aware** site, from the National Association of Child Care Resource and Referral Agencies, offers information, tips and tools, videos, and a search feature to help parents find and evaluate child care options in their areas. The site is available in English or Spanish.

www.suitcaseexhibit.org/ “**The Lives They Left Behind: Suitcases from a State Hospital Attic**” is a virtual exhibit that chronicles the lives and experiences of residents of the Willard Psychiatric Center. When the Willard closed, workers discovered hundreds of suitcases filled with the belongings of people who had been committed to the institution in the early years of the 20th century.

Follow the links at the bottom of the screen to find information about the project, view photographs, and read the personal stories of some of the residents.

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 700 ■ Rockville, MD 20850

CONTACT US

telephone

1-800-949-4232 TOLL-FREE v/TTY
301-217-0124 v/TTY

mail

451 Hungerford Drive
Suite 700
Rockville, MD 20850

fax

301-217-0754

e-mail

adainfo@transcen.org

internet

www.adainfo.org

TO:

Non-Profit
Organization
U.S. Postage
PAID
Suburban MD
Permit #7469

The DBTAC: Mid-Atlantic ADA Center provides technical assistance to DE, DC, MD, PA, VA, and WV. Administered by TransCen, Inc. ■ Funded by the National Institute on Disability and Rehabilitation Research (NIDRR), U.S. Dept. of Education