



Disability Advocacy Seminar Series

Session 3 - Disability Laws: Part 1

Ohio Centers for Independent Living
(CIL)

Disability Rights Ohio (DRO)

Katie Hunt Thomas, The Ability Center of Greater Toledo

Katie Shelley, on behalf of The Ability Center of Greater Toledo

Zoom Housekeeping

- This is a webinar presentation, so attendees are muted and will not have video capabilities.
- The webinar is being recorded for future distribution and will be stored for public re-use and access.
- The chat feature is disabled. Please type questions in the Q&A.
- If you do not wish to have your name recorded when posting questions in the Q&A, set your name to anonymous. You may also send your questions privately to panelists.
- CART Captioning or C-Print can be accessed in a separate browser by using the link found in the Q&A.
- Live captions are also enabled. Go to the subtitle settings to enlarge captions on your individual screen.
- Please pin the ASL interpreter as needed.
- A transcript will be available by request approximately one week after the presentation.

What Disability-Related Laws Will We Cover In this presentation?

A lot!

- U.S. Constitution (14th Amendment)
- Architectural Barriers Act (1968)
- Section 504 of the Rehabilitation Act of 1973
- Individuals with Disabilities Education Act (1975/1990)
- Air Carrier Access Act (1986)
- Fair Housing Act (1988 Amendments)
- Americans with Disabilities Act (1990)
- *Olmstead* Supreme Court Decision (1999)
- Affordable Care Act (2010)



What is the United States Constitution?

A long document written over 200 years ago that created our government and the rules it must follow

The Constitution Does Two Main Things:

1. Creates our system of government and the rules it must follow;
2. Protects your rights by describing:
 - What those rights are, and
 - The limited times the government can do things that affect your rights.

Does the constitution include anything that protects rights of people with disabilities?

- Sort of.....



Amendments to the Constitution

- Amendment = when Congress decides to change or add things to the Constitution
- These amendments often affect the rights you have. For example:
 - 1st Amendment: Freedom of speech, religion, news
 - 4th Amendment: Right against unreasonable police searches

What Amendment affects disability rights?

14th Amendment: Equal Protection

- Amendment = when Congress decides to change or add things to the Constitution
- Constitution has had 27 amendments made to it (so far)
- 14th amendment includes the “equal protection clause”:
 - “No state shall... deny to any person within its jurisdiction **the equal protection of the laws.**”



14th Amendment: Equal Protection Clause – Why Was It Created?

- Originally created because of the 13th amendment, which forbid slavery
- Congress wanted to make clear that laws and government actions could not be made that treated black and white people differently because of their skin color
- Over the years, courts have determined that the clause does not allow laws passed or actions taken that discriminate based on certain characteristics.
 - The clause does not provide 100% equal protection for every type of discrimination
 - Example: Age – children under 16 are not allowed to drive a car
- Unfortunately, disability discrimination is not always protected by the 14th amendment

14th Amendment: Equal Protection Clause

- Courts are very unlikely to allow laws and government actions that discriminate against someone's:
 - Race
 - Gender
 - National Origin/Ethnicity
 - Religion
- Courts do not allow these laws and actions because they say these “classes” of people have had long histories of discrimination against them, and the 14th Amendment’s purpose is to prevent such continued discrimination

Is Disability Discrimination Protected By the 14th Amendment?

- Sort of...
- Courts have not yet admitted that people with disabilities have been historically discriminated against to the degree/severity as someone based on race, gender, religion, etc.
- So, laws that discriminate based on disability are sometimes not allowed, but many state laws continue to discriminate against people with disabilities, limiting rights for:
 - Voting,
 - Marriage,
 - Raising children, and
 - Other personal freedoms.

So How Do We Protect the Rights of People with Disabilities?

- Congress has passed several federal laws over the last 75 years that create protections against discrimination in different areas of life:
 - Architectural Barriers Act
 - Section 504 of the Rehabilitation Act
 - Individuals with Disabilities Education Act
 - Air Carrier Access Act
 - Fair Housing Act
 - Americans with Disabilities Act
 - *Olmstead* U.S. Supreme Court decision
 - The Affordable Care Act

Let's talk about what these laws are and what they do!

Architectural Barriers Act

(1968)



Architectural Barriers Act (1968)

- The Architectural Barriers Act (ABA) was the **first** measure by Congress to ensure access to the built environment for people with disabilities.
- The law requires that buildings or facilities that were designed, built, or altered with federal dollars or leased by federal agencies after August 12, 1968 be accessible.
 - Facilities that predate the law generally are not covered, but alterations or leases undertaken after the law took effect can trigger coverage.

What buildings does the ABA Cover?

- The ABA covers a wide range of facilities, including:
 - U.S. post offices;
 - Veterans Affairs medical facilities;
 - national parks;
 - Social Security Administration offices;
 - federal office buildings;
 - U.S. courthouses;
 - federal prisons.
- It also applies to non-government facilities that have received federal funding, such as certain schools, public housing, and mass transit systems.

How is the ABA Enforced?

- The ABA is enforced through standards for accessible design. Four Federal agencies are responsible for these standards: the Department of Defense, the Department of Housing and Urban Development, the General Services Administration, and the U.S. Postal Service.
- The standards indicate where access is required and provide detailed specifications for ramps, parking, doors, elevators, restrooms, assistive listening systems, fire alarms, signs, and other accessible building elements.

Facilities covered by the ABA must meet these standards.



How has the ABA impacted People with Disabilities?

- As mentioned, the Architectural Barriers Act was the first federal law that ensured access for people with disabilities.
- The ABA has paved the way for future accessibility laws that increased access to people with disabilities beyond federal buildings and buildings constructed using federal dollars.

Section 504 of the Rehabilitation Act (1973)

Section 504 of the Rehabilitation Act (1973)

- Section 504 of the 1973 Rehabilitation Act was the first disability civil rights law to be enacted in the United States.
- It prohibits discrimination against people with disabilities in programs that receive federal financial assistance.



Section 504 of the Rehabilitation Act (1973)

- Section 504 of the Rehabilitation act covers any person who:
 - (1) has a physical or mental impairment that substantially limits one or more major life activities,
 - (2) has a record of such an impairment or
 - (3) is regarded as having such an impairment.

Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks.

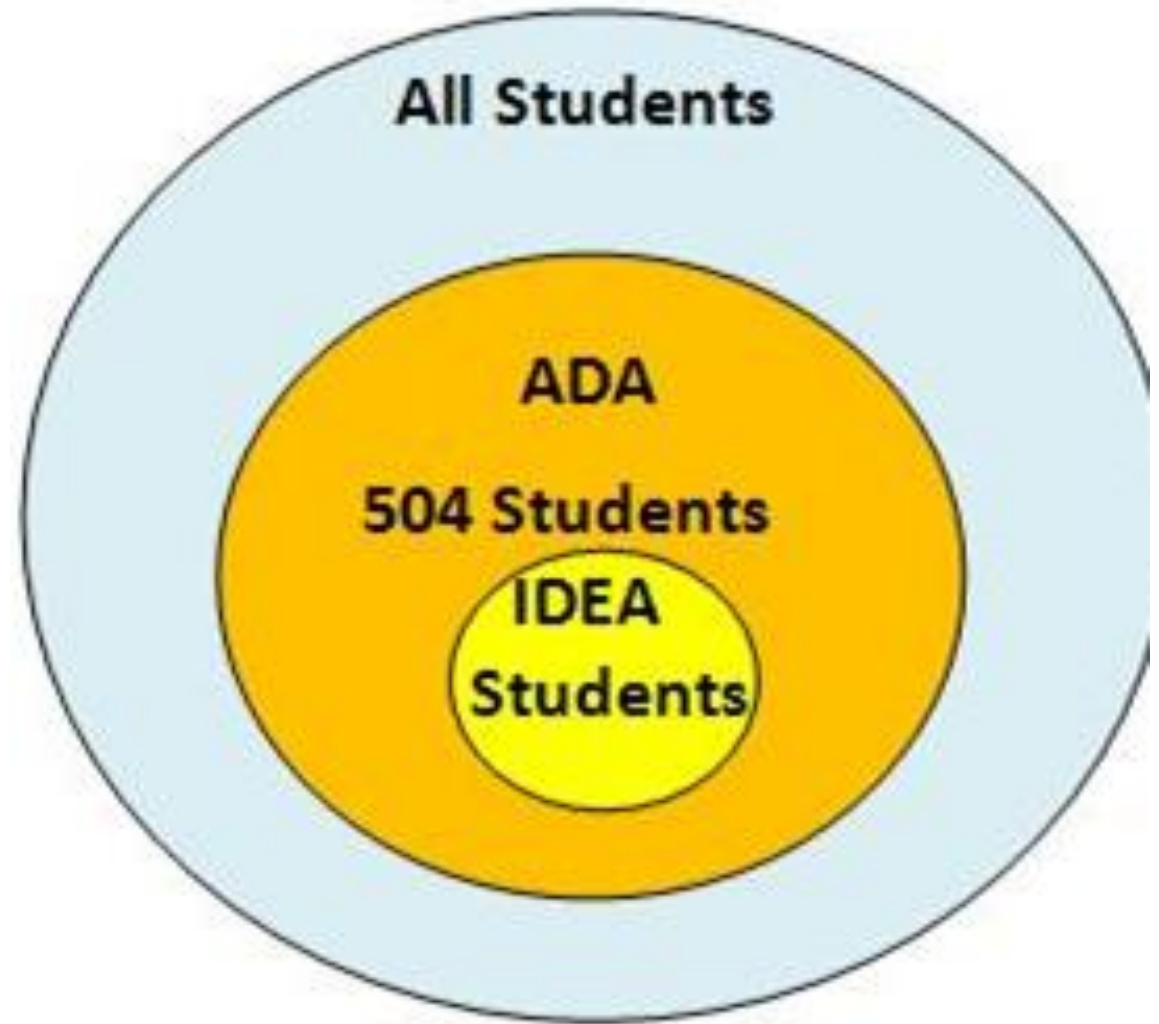
Section 504 of the Rehabilitation Act and Education

- Section 504 allows for a free, appropriate public education for people with disabilities. Students can receive related services under Section 504 even if they are not provided any special education.
- Section 504 does require development of a plan, although this written document is not mandated.
- Many experts recommend that a group of persons knowledgeable about the students convene and specify the agreed-upon services.



Why is Section 504 important?

- Not only did Section 504 of the Rehabilitation Act serve as the first civil rights protection for people with disabilities in the United States, but it set the stage for enactment of the Americans with Disabilities Act.
- Section 504 works together with the ADA and IDEA to protect children and adults with disabilities from exclusion, and unequal treatment in schools, jobs and the community.



Education of All Handicapped Persons Act (EHA) / The Individuals with Disabilities Education Act (IDEA)

(1975 and 1990)

Individuals with Disabilities Education Act (IDEA) (1975 and 1990)

- A federal law that protects the educational rights of students with disabilities and makes rules for providing free, appropriate, and meaningful education to these students
- Originally passed in 1975 as Education for All Handicapped Children Act (EHA)
 - **In 1990**, Congress decided major changes should be made to improve rules and rights for students with disabilities, **re-named the law the Individuals with Disabilities Education Act**
 - Additional changes and improvements were made to IDEA in 2004, and again in 2015

Why Did Congress Create the EHA?

- Before EHA, many children were denied access to education and opportunities to learn.
 - Many were kept in institutions and never given any education
- In 1970, U.S. schools educated only one in five children with disabilities
- Many states had laws that said certain students, including children who were deaf, blind, emotionally disturbed, or had an intellectual disability, could not attend schools
 - Were seen as too difficult for the teachers and staff to educate and took away from the other student's education

Why Did Congress Create the EHA?

- In the early 1970's, a couple Supreme Court cases got the attention of Congress, showing them how millions of children with disabilities were also segregated and given a poor or no education at all.
- Congress decided this needed to change, and passed the EHA in 1975

PRESIDENT GERALD FORD SIGNING A NEW LAW



Parents with handicapped children are optimistic about this change.

On Nov. 29, 1975, then President Gerald Ford signed into law the Education for All Handicapped Children Act (Public Law 94-142). With the adoption of this act, Congress opens public school doors for many children with disabilities and sets the foundation of the country's commitment to ensuring that children with disabilities have opportunities to develop their talents, share their gifts, and contribute to their communities.

Skagen, February 2005

Who and What Does the IDEA Protect?

- Children ages 3 – 22nd birthday
 - Educational rights and rules must begin during the child's pre-school years and can remain until early adulthood
 - Rules for ages 3-5 focus on helping students with disabilities prepare for school ("early interventions")
 - Rules for students ages 14-22 require their education to include planning and instruction for transitioning into adulthood (independent living, job/career readiness)

Who and What Does the IDEA Protect?

Requires public schools to provide **free, appropriate education** for students with disabilities in the **least restrictive setting** possible

- This means most students must be educated in public school with other students without disabilities, not placed in their own separate schools (which would be “more restrictive”)
- Their education must be challenging and based on the student’s needs and abilities (“appropriate”)
- Protects against unfair treatment or discipline because of their disability
- Helps teachers and schools understand how to appropriately provide students with disabilities a quality education

Has the IDEA Helped People with Disabilities?

- The law is not perfect, but it has been very helpful!
- Before 1975 and the original law was passed, almost 2 million people with disabilities were not even allowed in schools
- As of 2018-19, over 7.5 million students with disabilities are in schools
 - Over 64% of students with disabilities spend most of their day in general education classes
 - Over 400,000 children ages 3-5 are given early intervention education each year
- Has also helped identify children with disabilities and connect them and their families with supports and services that extend beyond school

Air Carrier Access Act

(1986)

Air Carrier Access Act (1986)

- The Air Carrier Access Act (ACAA) prohibits discrimination on the basis of disability in air travel.
- Requirements address a wide range of issues including boarding assistance and certain accessibility features in newly built aircraft and new or altered airport facilities.



Requirements under the ACAA

- Airlines may not refuse transportation to people on the basis of disability.
- Airlines may not require advance notice that a person with a disability is traveling.
- Air carriers may require up to 48 hours' advance notice for certain accommodations that require preparation time (e.g., respirator hook-up, transportation of an electric wheelchair on an aircraft with less than 60 seats).
- Airlines may not limit the number of persons with disabilities on a flight.
- Airlines may not keep anyone out of a specific seat on the basis of disability, or require anyone to sit in a particular seat on the basis of disability, except to comply with FAA or foreign-government safety requirements.

Requirements under the ACAA Continued...

- New aircraft with 30 or more seats must have movable aisle armrests on half the aisle seats in the aircraft.
- New twin-aisle aircraft must have accessible lavatories.
- New aircraft with 100 or more seats must have priority space for storing a passenger's folding wheelchair in the cabin.
- Airlines must ensure that airport facilities and services that they own, lease or control are accessible in the manner prescribed in the rule.

Other Services and Accommodations under the ACAA

Airlines are required to provide assistance with boarding, deplaning and making connections. Assistance within the cabin is also required, but not extensive personal services.

Wheelchairs and other assistive devices have priority over other items for storage in the baggage compartment.

Airlines must accept battery-powered wheelchairs, including the batteries, packaging the batteries in hazardous materials packages when necessary. The airline provides the packaging.

Airlines must permit a passenger to use his/her Portable Oxygen Concentrator during the flight if it is labeled as FAA-approved.

Airlines may not charge for providing accommodations required by the rule, such as hazardous materials packaging for batteries. However, they may charge for optional services such as providing oxygen.

The ACAA and Service Animals

- Under the Air Carrier Access Act (ACAA) a service animal means a dog, regardless of breed or type, that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.
 - Animal species other than dogs, emotional support animals, comfort animals, companionship animals, and service animals in training **are not** service animals
- Airlines are required to recognize dogs as service animals and accept them for transport on flights to, within and from the United States. Airlines, though not required, are free to transport other species for passengers if they choose to do so. Airlines are not required to recognize and transport emotional support animals.

The ACAA and Service Animals

- Under the Air Carrier Access Act (ACAA) a service animal means a dog, regardless of breed or type, that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Animal species other than dogs, emotional support animals, comfort animals, companionship animals, and service animals in training are not service animals
- Airlines are required to recognize dogs as service animals and accept them for transport on flights to, within and from the United States. Airlines, though not required, are free to transport other species for passengers if they choose to do so. Airlines are not required to recognize and transport emotional support animals.
- Airlines are permitted to deny transport to a service dog if it:
 - Violates safety requirements - e.g., too large or heavy to be accommodated in the cabin;
 - Poses a direct threat to the health or safety of others;
 - Causes a significant disruption in the cabin or at airport gate areas; or
 - Violates health requirements - e.g., prohibited from entering a U.S. territory or foreign country.
- Airlines may also deny transport to a service dog if the airline requires completed DOT service animal forms and the service animal user does not provide the airline these forms.

The ACAA and Service Animals Continued...

- Airlines can determine whether an animal is a service animal or pet by:
 - Asking an individual with a disability if the animal is required to accompany the passenger because of a disability and what work or task the animal has been trained to perform;
 - Looking for physical indicators such as the presence of a harness or vests;
 - Looking to see if the animal is harnessed, leashed, or otherwise tethered; and
 - Observing the behavior of the animal.
- Airlines may require:
 - (1) a U.S. DOT form attesting to the animal's health, behavior, and training; and
 - (2) a U.S. DOT form attesting that the animal can either not relieve itself or can relieve itself in a sanitary manner, if the animal will be on a flight that is 8 or more hours.
- Airlines are not permitted to require other documentation from service animal users except to comply with requirements on transport of animals by a Federal agency, a U.S. territory, or a foreign jurisdiction.

How has the ACAA Impacted People with Disabilities?

- Prior to the passage of the Air Carrier Access Act, people with disabilities could be discriminated against while travelling by air, and accommodations for people with disabilities travelling by air were not required or expected.

Questions?

Thank You!

Contact Us!

Katie Hunt Thomas, Disability Rights Attorney, The Ability Center: kthomas@abilitycenter.org / (419) 885-5733 x 254

Katie Shelley, Manager of Access Initiatives, Toledo Museum of Art: kshelley@toledomuseum.org / (419) 255-7836

Please join us for our next seminar:

Disability Laws: Part 2

February 23, 2023

2- 4pm EST

- Many thanks to our interpreter and captionist.
- Resources for the information in this presentation are listed on the slides at the end of this presentation.
- Recordings, transcripts, and copies of the presentation will be available after the series is complete. You'll receive more info by email.



Disability Advocacy Seminar Series

Session 3 - Disability Laws: Part 2

Ohio Centers for Independent Living
(CIL)

Disability Rights Ohio (DRO)

Katie Hunt Thomas, The Ability Center of Greater Toledo

Katie Shelley, on behalf of The Ability Center of Greater Toledo

Zoom Housekeeping

- This is a webinar presentation, so attendees are muted and will not have video capabilities.
- The webinar is being recorded for future distribution and will be stored for public re-use and access.
- The chat feature is disabled. Please type questions in the Q&A.
- If you do not wish to have your name recorded when posting questions in the Q&A, set your name to anonymous. You may also send your questions privately to panelists.
- CART Captioning or C-Print can be accessed in a separate browser by using the link found in the Q&A.
- Live captions are also enabled. Go to the subtitle settings to enlarge captions on your individual screen.
- Please pin the ASL interpreter as needed.
- A transcript will be available by request approximately one week after the presentation.

FAIR HOUSING ACT
(42 U.S.C. §§3601-19)
(1968; Amended in 1988)

FAIR HOUSING ACT Amendments of 1988

- On April 11, 1968, President Lyndon Johnson signed the Fair Housing Act (Title VIII of the Civil Rights Act of 1968) into law; the Civil Rights Act of 1968 was meant as a follow up to the Civil Rights Act of 1964. This took place right after the assassination of the Rev. Dr. Martin Luther King, Jr.
- The Fair Housing Act of 1968 prohibited discrimination in the sale, rental, and financing of dwellings and in other housing-related activities on the basis of race, color, religion, and national origin.
 - ✓ 1974: Amended - Sex was added as a protected class
 - ✓ 1988: Amended - Disability and familial status (presence of a child under 18, and pregnant women) were added as protected classes

HOW HAS THE FAIR HOUSING ACT IMPACTED PEOPLE WITH DISABILITIES?

- Prohibits discrimination against applicants or residents because of their disability or the disability of anyone they associate with – and from treating people with disabilities less favorably than others because of their disability.
- Protects people with disabilities from discrimination when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities.
- Increase in accessible housing available to people with disabilities.

FAIR HOUSING ACT

- The Fair Housing Act also established seven design and construction requirements for covered multi-family dwellings built for first time occupancy after March 1991 only to make these dwellings readily accessible to and usable by persons with disabilities.
- **Existing Dwellings:** FHAA does not require alterations, rehabilitation or repair of existing dwellings to be made accessible to people with disabilities.

BUT:

- Housing providers must make **reasonable accommodations** in rules, policies, practices **and services** and allow **reasonable modifications** that may be necessary to allow persons with disabilities to enjoy their housing (at the tenant's expense).
- **Only Exception:** If the owner occupies an apartment in a building with four or less units.

FAIR HOUSING ACT

What types of Housing are covered?

- Most housing.
- In very limited circumstances the Act exempts owner-occupied buildings with no more than four units, single family houses sold or rented by the owner without the use of an agent, and housing operated by religious organizations and private clubs that limit occupancy to members.

Examples: apartments, condominiums, emergency shelters, transitional housing, dorm rooms, manufactured/mobile homes, nursing homes/assisted living facilities, vacant land designated for residential construction

FAIR HOUSING ACT: Definition of Disability

- ☑ Person who has a physical or mental impairment that substantially limits one or more major life activities
- ☑ Person who has a record of having such an impairment
- ☑ Person who is regarded as having such an impairment.

- Includes people associated with or residing with person meeting this definition.
- The Fair Housing Act does not protect current illegal drug users.
- If a tenant does not meet the definition of disability under the FHA, then none of the protections under the FHA will apply.

FAIR HOUSING ACT:

What is a Reasonable Accommodation?

Reasonable Accommodation: A change in policies, rules, policies, practices, or services which allow a person with a disability to have an equal opportunity to use and enjoy the housing available.

- Tenant must ask for the accommodation when applying for housing, during tenancy or to prevent eviction.

Possible Examples:

- Providing an accessible, reserved parking space
- Modifying a “no pets” policy to allow a tenant who is blind or has low vision to keep a guide dog
- Reading the rental application form to someone with a learning disability
- Allowing a live-in aide.
- Permitting a tenant with a mobility disability to move from a third-floor unit to the first floor.
- Relocating a tenant’s meeting from an inaccessible location to an accessible location.
- Oral reminders and/or notices from the landlord to pay rent.

FAIR HOUSING ACT:

What is a Reasonable Modification?

Reasonable Modification: A physical/ structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.

- ✓ Can be to the interior of a tenant's own unit or to the common use areas.
- ✓ May be requested at any time during the tenancy.
- ✓ The housing provider may require the interior (not exterior) of unit be restored to original condition if it affects a subsequent tenant's use or enjoyment of the premises.

Possible Examples:

- Lowering cabinets
- Installing grab bars in bathroom
- Changing door handles (from doorknobs to levers)
- Widening doors
- Installing ramps
- Removing carpet
- Lowering/ raising height of switches, outlets, thermostats
- Installing a doorbell with a visual alert.
- Installing a peephole in the door.

FAIR HOUSING ACT:

Tenant must make the request for the RA or RM

The accommodation or modification requested must be reasonable and

- Not create an undue financial or administrative
- Not cause a fundamental alteration in program (provision of housing)

And the accommodation or modification must be necessary

- Must be essential for the person with a disability to use and enjoy the dwelling unit.
There must be a nexus (link) between the disability and the requested accommodation or modification.

* * * * *

Can a tenant ask for more than one reasonable accommodation? YES

Can a tenant ask for the reasonable accommodation at any point during the application process or the tenancy? YES

FAIR HOUSING ACT:

Who is responsible for the reasonable modifications?

ANSWER: It depends on the type of housing you are renting and the laws that apply to it.

THE TENANT

-in general, is responsible for requesting and paying for modifications to the rental unit and common use areas.

THE HOUSING PROVIDER/ LANDLORD

-May be responsible for the reasonable modification IF the housing is federally funded (Section 504) or IF the common use area (i.e. rental office) is covered by the Americans with Disabilities Act of 1990 (ADA) or IF the building is covered under “new construction” requirements.

FAIR HOUSING ACT: Requesting a Reasonable Accommodation or Modification

- Write a letter informing your landlord that you are a tenant with a disability, and you need a reasonable accommodation or a reasonable modification.
- Be specific. Explain what you need and why. It's not necessary to disclose the diagnosis, nature, or extent of disability.
- Offer to discuss your request.
- Send the letter by certified mail.
- Keep a copy for your records.
- Housing provider's approval is required for reasonable modifications.
- Please note: if the disability is not apparent, the housing provider may ask for verification/documentation.
- Letter from a medical or social service provider only needs to state that the reasonable accommodation or modification is related to the disability and necessary for the equal enjoyment of the housing unit.

FAIR HOUSING ACT: Requesting a Reasonable Accommodation or Modification

If your request for a reasonable accommodation or reasonable modification is denied –

- A) Consider finding an advocate or lawyer
- B) Contact a local fair housing agency
- C) File a discrimination complaint
 - U.S. Department of Housing and Urban Development (HUD) – within one year after denial
 - Ohio Civil Rights Commission
- You have up to one year to file a complaint with HUD from the date the alleged discrimination took place.

FAIR HOUSING ACT: Assistance Animals

- FHA allows for persons with disabilities to have “**assistance animals**”. Assistance animals are sometimes referred to as “service animals,” “assistive animals,” “emotional support animals,” or “therapy animals.”
- An **assistance animal** is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability (service animal), or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability.
 - ✓ An assistance animal is not a pet.
 - ✓ Emotional support animals that do not qualify as service animals under the ADA may qualify as a reasonable accommodation under the FHA.
 - ✓ Not limited to dogs. (Dogs are the most common type of assistance animals – but other animals can also be assistance animals)
 - ✓ Not required to be individually trained or certified.

FAIR HOUSING ACT: Assistance Animals

- The FHA and the ADA define service animals differently.
 - ✓ The ADA regulations changed on March 15, 2011 and are more specific and restrictive than the Fair Housing laws.
 - ✓ The FHA regulations do not have a specific definition of the term “service animal”.
- In order to qualify for a reasonable accommodation under the FHA, the assistance animal must be necessary to afford the individual an equal opportunity to use and enjoy a dwelling or to participate in the housing service or program.
- There needs to be a nexus between the disability and the assistance the animal provides.

FAIR HOUSING ACT: Assistance Animals

Assistance animals perform many disability related functions such as:

- Guiding individuals who are blind or have low vision
- Alerting individuals who are deaf or hard of hearing to sounds
- Providing protection or rescue assistance
- Pulling a wheelchair
- Fetching items
- Alerting persons to impending seizures
- Providing emotional support to persons with disabilities who have a disability-related need for such support.

Example: a person who has depression or PTSD may need the therapeutic nurturing and support of an animal.

FAIR HOUSING ACT: Assistance Animals

- Tenant must notify the housing provider (preferably in writing) that he or she has a disability and requires a service animal to afford equal opportunity to use and enjoy the apartment. Therefore, he or she requires a modification to the housing provider's policies prohibiting or restricting pets as a reasonable accommodation for his or her disability.
 - ✓ Housing provider can request documentation.
- The housing provider can refuse only under certain circumstances - if it would constitute an undue financial or administrative burden or fundamentally alter the nature of the housing animal is disruptive to others or poses a direct threat to the health, safety, or property of others).
- The housing provider cannot charge a fee or pet deposit for the service animal.

FAIR HOUSING ACT

- Modification of “No Pet” Policy: The reasonable accommodation provisions must be considered in situations where people with disabilities use (or seek to use) **assistance animals** that work, perform assistance, or perform tasks that benefit a him or her in housing where the provider has a “no pet” policy or otherwise imposes restrictions or conditions relating to pets and other animals.
- Reasonable accommodations under the FHA applies to tenants and applicants with disabilities, family members with disabilities, and other persons with disabilities associated with tenants and applicants.



AMERICANS WITH DISABILITIES ACT (ADA) (1990)

AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

- Purpose: The ADA was signed into law on July 26, 1990 by President George H.W. Bush to provide a clear and comprehensive national mandate to eliminate discrimination and barriers for people with disabilities in almost all aspects of everyday life – employment, state and local government services, public accommodations, transportation and telecommunications. opportunities as everyone else.
- Modeled after the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1974, the ADA is an “equal opportunity” law for people with disabilities.
- The ADA promotes INCLUSION of people with disabilities. It is the first civil rights law which offers protection to people with disabilities without being tied to federal spending.


WHY WAS THE ADA NEEDED? Congressional Findings:

1. Some 43 million Americans have one or more physical or mental disabilities, and this number is increasing as the population grows older;
1. Historically, society has tended to isolate and segregate individuals with disabilities;
1. Discrimination against individuals with disabilities persisted in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
1. Unlike individuals who have experienced race, color, sex, national origin, religion, or age discrimination, individuals who have experienced disability discrimination have often had no legal recourse to redress such discrimination;

WHY WAS THE ADA NEEDED? Congressional Findings:

- 5. Census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;
- 5. Individuals with disabilities have been faced with restrictions and limitations; subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

WHY WAS THE ADA NEEDED? Congressional Findings

- 
- 8. The Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and
 - 8. The continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.



The ADA Has 5 Titles

Title I: Employment

Title II: State & Local Governments

Title III: Places of Public
Accommodation

Title IV: Telecommunications

Title V: Miscellaneous



TITLE I OF THE ADA

“It is unlawful for a covered entity not to make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business.”

-29.C.F.R.16.30(a)

- Applies to private employers with 15 or more employees and to state and local governments, regardless of the number of employees.
- Forbids employment discrimination against qualified applicants and employees on the basis of disability
- Employers are required to make reasonable accommodations to qualified applicants and employees with disabilities unless doing so would cause significant difficulty or expense for the employer (“undue hardship”).
- Enforced by the U.S. Equal Employment Opportunity Commission (EEOC).

A large orange circle graphic is positioned on the left side of the slide, partially cut off by the edge.

MORE ABOUT TITLE I OF THE ADA

Seeks to ensure access to equal employment opportunities based on merit.

Employment Practices and Activities covered include: Hiring/ Firing/ Promotion/ Demotion/ Compensation/ On the Job Training/ Other Terms, Conditions & Privileges of Employment.

Note: Federal employees and applicants are covered by the Rehabilitation Act of 1973, instead of the ADA. The protections are the same.

ADA: WHO IS PROTECTED

ADA Amendments Act of 2008

- Between 1999 and 2008, several U.S. Supreme Court decisions reduced coverage of employees and applicants with disabilities. The definition of “disability” was interpreted too narrowly and resulted in a denial of protection for many people with impairments.
- On September 25, 2008, President George W. Bush signed the **Americans with Disabilities Act Amendments Act of 2008** ("ADA Amendments Act" or "Act"). The Act makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations.
- In enacting the ADAAA, Congress made it easier for individuals seeking protection under the ADA to establish that he or she has a disability within the meaning of the statute.

ADA: WHO IS PROTECTED

Summary - ADA Amendments Act of 2008

- **Effective on January 1, 2009, the ADAAA:**
 - ✓ Makes important changes to the definition of the term “disability” which has been strictly interpreted and narrowed over the years in various U.S. Supreme Court decisions.
 - ✓ Rejects the holdings in several U.S. Supreme Court decisions and restores the original intent and protections of the ADA.
 - ✓ Provides a broader definition of disability and expands the population eligible for protection under the ADA.

ADA: WHO IS PROTECTED?

(Amended 2008)

The definition of disability has three parts – a person only has to meet one of the three parts to be covered.

The definition applies to a person who:

1. **has a physical or mental impairment that substantially limits one or more major life activities;**
2. has a history or record of a physical or mental impairment that substantially limits one or more major life activities; or
3. is regarded as having an impairment, whether the person has an impairment or not.

Title II regulation, 28 CFR §35.108

- **Major Life Activities** include but are not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
- Under the first part of the definition, the impairment's impact on the major life activity is evaluated without regard to mitigating measures such as hearing aids/cochlear implants, medical treatment, medication, equipment, etc.

ADA: WHO IS PROTECTED??

(Amended 2008)

The definition of disability has three parts – a person only has to meet one of the three parts to be covered.

The definition applies to a person who:

1. has a physical or mental impairment that substantially limits one or more major life activities;
2. has a history or record of a physical or mental impairment that substantially limits one or more major life activities; or
3. is regarded as having an impairment, whether the person has an impairment or not.

Title II regulation, 28 CFR §35.108

- The second part of the definition protects an individual who has a history of disability from discrimination – even though the person no longer has such an impairment. For example: A person who had cancer in the past and who has been cancer free for several years.

ADA: WHO IS PROTECTED??

(Amended 2008)

The definition of disability has three parts – a person only has to meet one of the three parts to be covered.

The definition applies to a person who:

1. has a physical or mental impairment that substantially limits one or more major life activities;
2. has a history or record of a physical or mental impairment that substantially limits one or more major life activities; or
3. is regarded as having an impairment, whether the person has an impairment or not.

Title II regulation, 28 CFR §35.108

- A person is protected under the third part when a covered entity takes an action prohibited by the ADA because of an actual or perceived impairment.

Employers and the ADA: Myths and Facts

U.S. Department of Labor, Office of Disability Employment Policy Fact Sheet

- **Myth:** Providing accommodations for people with disabilities is expensive.
- **Fact:** The majority of workers with disabilities do not need accommodations to perform their jobs, and for those who do, the cost is usually minimal. According to the Job Accommodation Network (JAN), a service from the U.S. Department of Labor's Office of Disability Employment Policy, **58% of accommodations cost absolutely nothing to make, while the rest typically cost only \$500.** Moreover, tax incentives are available to help employers cover the costs of accommodations, as well as modifications required to make their businesses accessible to persons with disabilities.

SOURCE:

<https://www.dol.gov/agencies/odep/publications/fact-sheets/americans-with-disabilities-act>

TITLE II OF THE ADA: Who is Covered?

... No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

-§35.130(a)

- **PUBLIC ENTITIES:** Title II of the ADA applies to any state or local government OR to any department or agency of state or local government.
- Includes: state executive agencies, courts, towns, cities, counties, school districts, universities, community colleges, regional transit authorities, other state and local government instrumentalities and Amtrak.

TITLE II OF THE ADA: Who is Covered?

Examples of Title II Programs, Services & Activities:

- Applying for a business license
 - Taking a CPR class offered by the city
 - Attending a town hall meeting
 - Using a city's playground
 - Attending a public university
-
- **FOCUS IS ON PROGRAM ACCESSIBILITY:** State & local governments must provide equal access to all programs, services, and activities (i.e. town hall meetings, CPR classes) ...
... unless doing so would result in a fundamental alteration in the nature of such programs, activities, or services, or would result in undue financial and administrative burdens.

TITLE II OF THE ADA:

Nondiscrimination Requirements Of Public Entities

- Programs, services and activities must be provided to people with disabilities in an **integrated setting**, unless separate or different measures are necessary to ensure equal opportunity.
- Eliminate **unnecessary eligibility criteria** that deny individuals with disabilities an equal opportunity to enjoy programs, services and activities. (Can establish criteria if necessary for the provision of the program, service, or activity being offered).
- Make **reasonable modifications** in policies, practices, and procedures when necessary to avoid discrimination. (i.e. “No Pets Allowed” Policy).
- Provide **auxiliary aids/ services** when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.
- May not place **surcharges** on individuals with disabilities to cover the costs of any required measures necessary to provide nondiscriminatory treatment. (i.e. interpreters, accessibility costs).

TITLE III OF THE ADA:

Places of Public Accommodation

Public accommodations are private entities that own, lease, lease to, or operate a *place* of public accommodation.

A private business that is open to the public

(US DOJ Title III regulations identify 12 categories of places of public accommodation)

1. Places of Lodging
2. Establishments serving food or drink
3. Places of exhibition or entertainment
4. Places of public gathering
5. Sales or rental establishments
6. Service establishments
7. Public transportation - terminals, depots, or stations
8. Places of public display or collection
9. Places of recreation
10. Places of education
11. Social service center establishments
12. Places of exercise or recreation

TITLE III OF THE ADA:

Some Specific Requirements for Places of Public Accommodation

- Provide goods and services in an **integrated setting**, unless separate or different measures are necessary to ensure equal opportunity.
- Eliminate **unnecessary eligibility standards or rules** that deny individuals with disabilities an equal opportunity to enjoy goods and services.
- Make **reasonable modifications in policies, practices, and procedures** when necessary to ensure equal opportunity.
- Provide **auxiliary aids/ services** when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.
- Maintain **accessible features of facilities and equipment**.
- **Remove architectural and structural communication barriers** in existing facilities where readily achievable.

TITLE III OF THE ADA:

Effective Communication

- People who have vision, hearing or speech disabilities (“communication disabilities”) may use different ways to communicate. The ADA uses the term “auxiliary aids and services” to refer to the ways to communicate with people who have communication disabilities.
- For example, people who are blind may give and receive information audibly rather than in writing and people who are deaf or hard of hearing may give information through writing or sign language rather than speech.
- Title II entities (State and Local Governments) and title III entities (businesses and nonprofit organizations) are required to provide **“auxiliary aids and services”** to individuals with a vision, hearing, or speech disability where necessary to ensure **“EFFECTIVE COMMUNICATION.”**

TITLE III OF THE ADA: Auxiliary Aids & Services

Any device or service that makes **spoken** information accessible for a person who is deaf or hard of hearing, or **visual** information accessible for a person who is blind or who has low vision.

EXAMPLES:

Qualified Interpreters on-site or through video remote interpreting (VRI) * CART (Computer Assisted Real Time Captioning) * Written Materials * Exchange of written notes * Telephone Handset Amplifiers * Assistive Listening Devices/ Systems (Loop, FM, Infrared systems) * TTYs * Videophones and Captioned Telephones * Captioning * Transcriptions * Readers * Taped Texts * Brailled Materials * Large Print Materials * Or other effective methods

LIST IS NOT INCLUSIVE!!!

EXAMPLES OF AUXILIARY AIDS/SERVICES

- Sign Language Interpreters: (ASL/ PSE/ SEE). Used by many Deaf people.
- Oral Interpreters/ Transliterators: The interpreter articulates words clearly without using his/her voice for the person who is deaf or hard of hearing to lipread.
- Cued Speech Interpreter: The interpreter utilizes a series of hand signals (a hand code) to supplement oral communication; hand signals (“cue”) represent speech sounds.
- Tactile/ Deaf-Blind Interpreters: The interpreter signs by touch to the person who is deaf-blind.
- CART/ Real-Time Captioning/ (Communication Access Realtime Translation): A provider (court reporter) “types” the spoken word on a stenographic machine which is connected to a laptop computer, tablet, TV set, large screen monitor, or other monitor at speeds of up to 250 words per minute. The words appear on the screen. (Can be provided onsite or remote)

TITLE III OF THE ADA: FACILITY ACCESS

- The ADA contains requirements for new construction and alterations to buildings and facilities. The 2010 Standards for Accessible Design became effective on March 15, 2012.
- New and newly renovated places of public accommodations must be built to or renovated to comply with the 2010 Standards of Accessible Design.
- Existing places of public accommodation must remove the physical barriers that are “readily achievable” (easy to accomplish and able to be done without much difficulty or expense).

TITLE II & TITLE III FACILITY ACCESS:

TITLE II FACILITIES

(State and Local Government)

- Under Title II, a public entity must ensure that its program as a whole is accessible. This is called “**program accessibility**”.
- This may involve removing architectural barriers or adopting alternative measures, such as relocating activities to accessible locations.

TITLE III FACILITIES

(Places of Public Accommodation)

- All **new construction and alterations** (after March 15, 2012) must be accessible and meet the 2010 Standards of Accessible Design.
- Under Title III, **existing facilities** are required to remove architectural barriers where such removal is “readily achievable” (easy to accomplish and able to be done without much difficulty or expense).

ADA: Service Animals

- Title II and Title III of the ADA define a service animal as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.
- Tasks performed can include, among other things, pulling a wheelchair, retrieving dropped items, alerting a person to a sound, reminding a person to take medication, or pressing an elevator button.

Service Animals vs. Emotional Support Animals

- While Emotional Support Animals or Comfort Animals are often used as part of a medical treatment plan as therapy animals, they are not considered service animals under the ADA.
- These support animals provide companionship, relieve loneliness, and sometimes help with depression, anxiety, and certain phobias, but do not have special training to perform tasks that assist people with disabilities.
- Emotional Support Animals, while not covered under the ADA ARE covered under the Fair Housing Act.

Service Animal FAQs

- I heard that miniature horses are considered to be service animals by the ADA. Is this true?
 - Yes! The miniature horse is not included in the definition of service animal, which is limited to dogs. However, the 2010 ADA regulations contain a specific provision which covers miniature horses as service animals.
- How can I tell if an animal is really a service animal and not just a pet?
 - When a person with a service animal enters a public facility or place of public accommodation, the person cannot be asked about the nature or extent of their disability. Only two questions may be asked:
 1. Is the animal required because of a disability?
 2. What work or task has the animal been trained to perform?

These questions should not be asked, however, if the animal's service tasks are obvious. For example, the questions may not be asked if the dog is observed guiding an individual who is blind or has low vision, is pulling a person's wheelchair, etc.

TITLE IV OF THE ADA: TELECOMMUNICATIONS

- Title IV addresses telephone and television access for people who are deaf or hard of hearing and who have speech disabilities.
- Title IV also requires closed captioning of federally funded public service announcements.
- The Federal Communications Commission (FCC) enforces Title IV of the ADA.

Telecommunications Relay Service:

- All states were required to establish interstate and intrastate telecommunications relay services which allow TTY users to call people who do not have access to TTYs, and vice versa.
- A free public service for communication that is available 24 hours, 7 days a week.
- Effective October 2001, the FCC reserved 7-1-1 for relay services. Dialing 7-1-1 will connect one to a relay service anywhere.

ADA: The *Olmstead* Decision (1999)

- In 1996, Lois Curtis and Elaine Wilson, two women from Georgia were held in a State Hospital despite doctors saying they could live independently in their community with proper supports.
- Elaine Wilson and Lois Curtis filed an ADA lawsuit against the State of Georgia claiming discrimination.
- A lower court agreed that the women could not be forced to stay in the hospital, siding with Curtis and Wilson. While ordinarily, it would have been extremely rare for the United States Supreme Court to take this case, since there was controversy on what this would mean for the States, the Supreme Court heard the case. This case became known as *Olmstead v. LC*.

ADA: The *Olmstead* Decision (1999)

- On June 22, 1999, Justice Ruth Bader Ginsberg announced the decision of the United States Supreme Court: The Supreme Court agreed with Lois and Elaine and found that under the Americans with Disabilities Act it is against the law for the state to discriminate against a person based on his or her disability.
- The Court said that the state discriminated against Lois and Elaine by requiring them to live in a mental health hospital. It should have instead provided services for them in the community; by forcing them to stay in the hospital, the state was segregating the women by requiring them to live with others with disabilities. The Court said that people with disabilities like Lois and Elaine have the right to receive the treatment they needed in an integrated setting
 - If that is what they want;
 - If their doctors or treatment professionals agree; and
 - If living in the community with supports doesn't fundamentally change how the state provides services to people with disabilities.

ADA: The *Olmstead* Decision Continued...

- Although the *Olmstead* decision only involved one type of institution, which was a psychiatric hospital. Courts quickly made clear that *Olmstead* applied to all state and Medicaid funded institutions, including nursing facilities.
- Courts also found that *Olmstead* applied to individuals living in the community who were at risk of institutionalization.

How The *Olmstead* Decision Has Impacted People with Disabilities.

- Thanks to *Olmstead*, people with disabilities cannot be forced to live in segregated settings if they would prefer to live and receive treatment in the community.
- Many individuals have been able to transition from an institution to the community, and many individuals have avoided unnecessary institutionalization.
- Individuals who had previously been institutionalized for decades are now receiving services in their community
- Individuals with disabilities are able to access home and community-based services through Medicaid waiver programs.
- Personal care and assistance are being provided to individuals who require additional services to remain in the community.
- Individuals with disabilities now have greater control over their community-based care and services.
- Individuals' needs are met by providing reasonable accommodations in their communities, and not by moving to a more restrictive setting.

Affordable Care Act (2010)

- For many years, people with disabilities had very hard times finding insurance that was affordable and would even agree to cover them
 - People with disabilities commonly have what insurance companies call “pre-existing conditions”
- Insurance companies are in the business to make money; they make more money if the people that pay them for health insurance rarely use the insurance (i.e., they are “healthy” individuals)
 - People with “pre-existing conditions” are very likely to use their insurance often and be costly for the insurance company;
- In addition, people with disabilities not eligible for Medicaid or Medicare saw challenges in obtaining insurance, including reduced access to employer-provided coverage

Affordable Care Act (2010)

- If you were able to get insurance, many providers would not cover all your conditions or medical needs
 - Many would also not cover things like home and community-based services, or long-term care and supports
- Insurance companies would do things like put limits on how much money they would pay to cover your medical care, forcing you to pay for it all yourself after a certain amount

What Did the ACA Do to Help People with Disabilities?

- Allowed more people to qualify for Medicaid coverage
- Prevented insurance companies from:
 - Denying people with pre-existing conditions insurance coverage;
 - Charging you more money for coverage because you have a certain condition, or
 - Refusing to cover care related to those conditions.
- Expanded the Money Follows the Person (MFP) program that helps people with disabilities transition from institutions to the community
- Provided money and rewards for states to expand home and community-based service (HCBS) opportunities and long-term services and supports (LTSS) for people with disabilities

Has the ACA Helped People with Disabilities?

- Studies have found that YES, healthcare access has improved for people with disabilities
- Millions of people with disabilities and other pre-existing conditions have gained health insurance that were not eligible or able to afford it before
- More states have expanded their funding for HCBS and LTSS
- It expanded the number of doctors, hospitals, and specialists that are covered by someone's insurance plan, making it easier to find health care

Other laws and regulations to be aware of:

- Website accessibility
 - Section 508
 - ADA
 - Website Accessibility Guidelines
- 504 Rehab Act
 - Includes CILS provision
 - Government trying to offer community services and supports for people with disabilities
- Ohio revised code 4112
 - Required notice accessibility changes under Ohio law
 - Fair Housing protection applies to all landlords, not just 4 or more connected units with the exception of design and construction accessibility standards.
 - Covers Ohio employees with 4 or more workers, compared to 15 min in ADA

Questions?

Thank You!

Contact Us!

Katie Hunt Thomas, Disability Rights Attorney, The Ability Center: kthomas@abilitycenter.org / (419) 885-5733 x 254

Katie Shelley, Manager of Access Initiatives, Toledo Museum of Art: kshelley@toledomuseum.org / (419) 255-7836

Please join us for our next seminar:

Legislative Process

March 2, 2023

2- 4pm EST

- Many thanks to our interpreter and captionist.
- Recordings, transcripts, and copies of the presentation will be available after the series is complete. You'll receive more info by email.