

ADA – TITLE I, EMPLOYMENT & REASONABLE ACCOMMODATIONS IN THE WORKPLACE

PACER Center • Building Program Capacity to Serve Youth with Disabilities • **Session 3**

1) Workshop Preparation Suggestions

When conducting a training workshop, there are several basic planning considerations that need to be made. Most of the trainers who use this curriculum will already have their procedures for workshop planning in place. Information is included in **Session # 1** for those who may need additional suggestions.

2) Introduction of Presenters and Attendees: 12 minutes

To foster an atmosphere where participants are both comfortable talking and have the opportunity to do so, we recommend no more than 35 participants attend the session. Depending on the size of the audience, you will want to limit the amount of time for introductions. We suggest having each attendee state their name, the name of the organization they represent, and if time allows, briefly state their relevant professional or personal experience with people with disabilities. Speakers should role model presenting this information in roughly thirty seconds. (If the size of the group is too large, there will not be enough time to allow for this type of introduction.)

3) Agenda: 2 minutes

**(Refer to the Agenda overhead transparency- slide 1)*

- Welcome & Introductions
- ADA Employment Basics
- Disclosure
- Definitions: Essential Functions, Reasonable Accommodations & Undue Hardship
- Examples of Job Accommodations
- Case Studies
- Exploring the Mediation Process
- Assessing Transportation Options
- Resources

Give brief overview of the agenda and a few sentences about each topic that will be covered. Also talk about housekeeping information, break-time, etc.

-Ask group: Q: Any questions?

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4) Goal of this Session: *1 minute*

The **objective** of this session is for participants to understand Title I employment provisions of the ADA in greater depth, become familiar with key definitions of this provision, and learn more about job accommodations.

5) ADA - Title I: *10 minutes*

The ADA law's main purpose is to end discrimination against people with disabilities. This civil rights law was signed on July 26, 1990, by the elder President Bush.

Many forms of disability discrimination occur in the workplace. Discrimination may be blatant or subtle. It can occur over a wide range of employment practices and activities. Youth with disabilities who you come in contact with may not understand how this law affects them as job candidates or employees. They also may not understand the provisions potential employers must comply with, which can put them at a great disadvantage in "selling themselves" to employers or maintaining a job. For youth to fully utilize their right to accommodations in the workplace they must first understand their disability, be able to discuss it with others if necessary, and be able to identify what limitations the disability may cause on the job. The ability to self-advocate is an important skill for youth with disabilities to learn.

Accommodations are not about "special treatment" but are about leveling the playing field to provide equal access and opportunity. The employment provisions of the Americans with Disabilities Act (ADA) encourage teaming with the employer to determine how employees with disabilities can do the best job they can. This may involve providing job accommodations such as a specific piece of software, a sign language interpreter, or receiving printed instructions from supervisor instead of receiving them verbally.

*(Refer to Title I – Employment overhead transparencies- slides 2 &

Title I provisions apply to:

- Private employers
- State and local governments
- Employment agencies, and
- Labor unions

*(Refer to Title I – Employment Cont- *slide 3.*

The employment provisions of the law do *not* apply to:

- Employers with fewer than 15 workers
- The U.S. government (the federal government is covered under the 1973 Rehabilitation Act)
- Indian tribes, or
- Private membership clubs (e.g. country clubs or fraternal organizations)

Under Title I, a qualified individual with a disability cannot be discriminated against in any aspect of the employment process. This includes:

**(Refer to Employment Practices Covered Under the Law overhead transparency- slide 4)*

- Recruiting and advertising
- Compensation and fringe benefits
- Tenure and leave
- Promotion and advancement
- Hiring
- Training
- Transfers and lay-offs
- Firing

-Ask the group: Q: Can anyone give an example of discriminating against someone in hiring?

In processing participant answers, make sure to reinforce that the employer may ask about the applicants abilities, educational background and previous work history but not specifics about their disability. Explain that this was how employers in the past, before the ADA law, screened out candidates with disabilities.

Other examples may include not hiring based on seeing the disability, (person uses a wheelchair or has communication that is hard to understand) or learning of a child or family member with a disability (thinking they may have to take excessive periods away from work to tend to loved one).

An employer cannot discriminate against any *qualified* individual with a disability.

**(Refer to Title I- Qualified Person with a Disability overhead transparency- slide 5)*

A qualified person is an individual with a disability who can:

- Satisfy the required skills, experience and education for the desired or held position, and
- Perform the “essential functions” of the position *with or without* “reasonable accommodations”.

6) Human Rights Act (add if your state has one): 12 minutes

If your state has a Human Rights Act that prohibits employment discrimination against peoples with disabilities, present some basic information about it. You can use the following questions to identify what can be covered in this portion of the curriculum. Provide an easy to read handout explaining the various aspects of this legislation.

1. *Who is protected under the state’s Human Rights Act? What classes are covered? (e.g. race, gender, disability, etc.)*

2. *What areas does the Human Rights Act cover? (e.g. employment, housing, public accommodations)*

3. What constitutes a violation of the Human Rights Act?

4. What choices does a complainant have if they believe there has been discrimination?

5. How does one contact the appropriate state department?

7) Self-Disclosure: 30 minutes in total; (10 minutes for answering and writing on the flipchart; 20 minutes for processing and writing solutions/approaches on the flipchart; @ 5 minutes for brief content and instructions)

An important factor of the ADA law is that its protections are predicated on the self-disclosure of disability by the person seeking protection. This aspect of the law often causes confusion.

An individual with the disability **is not required to self-identify their disability**, whether the disability is “hidden” or visible.

It is however, *imperative* at some point for the person with disability to self-identify if they know they will need an accommodation, either for the interview or the job they are applying for.

If the individual with a disability *does not* self-identify as having a disability and needs an accommodation but does not inform the employer, the employer cannot be held responsible for not providing one.

The individual with a disability cannot come back later, (after perhaps being fired because they couldn't do the job) and claim discrimination under the ADA, because they did not inform the employer of their needs. *(Refer to handout “The Disclosure Dilemma For Advocates” from GW HEATH Resource Center, by Laverne A. Buchanan, Ed. D.)

A large group discussion can be held about why a youth (or anyone for that matter) might NOT want to self-identify as having a disability. And then to explore why, in some cases it is beneficial, even necessary for someone to self-identify as disabled.

The point of this exercise is to examine the following:

- The various reasons a youth may not want to disclose their disability.
- The various ways a youth could benefit from identifying and addressing their disability.

(Allow 1 minute for participants to write down as many reasons as possible)

Have the participants, individually, on one side of the room, write down the “cons” - reasons a youth with a disability may not want to disclose their disability when looking for or retaining a job.

Have participants on the other side of the room, write down the “pros” - the potential benefits of disclosing their disability.

Then as a large group, write on one flipchart sheet, all of the negatives aspects/reasons for not self-identifying.

Write the positive benefits of self-identifying on one flipchart sheet, the disadvantages on another.

Process this information as a large group, brainstorming ways they, as WIA staff, or parents can address the issues around disclosure from the youth's perspective.

(The following are answers for both categories as well as possible solutions offered by WIA program staff members in Minnesota).

The following **negative aspects** could include:

- *Being labeled*
- *Social stigma*
- *Fear of rejection that creates low self-esteem*
- *Youth is "in denial" or not ready to admit to having a disability*
- *Peer pressure (Not "cool" to admit you have a disability)*
- *Shame (Young person ashamed of having a disability)*
- *Might be subjected to blatant or subtle forms of discrimination*
- *Accommodations may create resentment among co-workers*
- *Employer may have low expectations, be condescending or patronizing*
- *Young person doesn't want to draw attention to self*
- *Young person may be new to the disability experience*
- *Young person may believe that this type of information is private,*
- *Disability is embarrassing*

The following are some benefits or positive reasons for disclosing a disability:

- *Employers can accommodate accordingly*
- *An understanding between employee and employer can be reached and a plan can be made*
- *The employee can accurately identify skills and limitations*
- *Fosters an honest and open relationship with the employer*
- *Creates a level playing field for promotion or advancement*
- *Insures the appropriate protections under the ADA*
- *Can put one on the "fast track", especially in relation to some government jobs*
- *Less frustrations in the workplace*
- *Allows person to own who they are and become comfortable with their disability*
- *It creates opportunity to get satisfaction from the work you do*
- *Is an indicator of and builds upon leadership and self-advocacy skills*

The following are **issues and approaches** regarding disclosure that youth development professionals can consider:

- *Give youth information about their disability and provide them opportunities to talk with successful members of the community who also live with disabilities.*
- *Get the support of and work closely with the parents during this process.*
- *Success in working with youth tends to be a step-by-step process. A youth worker must first establish trust with the youth before beginning to discuss issues of disability.*
- *Be careful not to push the youth away by constantly speaking about their disability.*
- *Build a network of teachers, connect with the school district and other professionals who are familiar with issues related to youth and disability. If you don't know how to help a young person begin to self-identify, find somebody who can assist you.*
- *Accurate assessment of the youth's disability is important. It allows youth to educate themselves on their specific disability and increases the likelihood of a successful accommodation in the workplace.*
- *Youth may benefit from having social opportunities with peers experiencing similar challenges. Organizations such as Wilderness Inquiry (in Minnesota) or athletic programs that include youth with disabilities provide such experiences.*
- *Professionals who work with a wide age range of youth need to decide what age is appropriate to start broaching the subject of disability and self-identification.*
- *If discussing the disability issue with potential employers, the professionals and youth can suggest tax incentives that assist employers with hiring employees with disabilities. *(Refer to handout on "Facts About Disability-Related Tax Provisions")*

Advise professionals that if they think a youth they are working with has a disability, but has not been diagnosed, they should refer them to their state VR agency or appropriate school district's special education program for a disability assessment.

8) Confidentiality Issues: 5 minutes

Individuals or youth with disabilities have a right to **confidentiality** around their disability. For some of the reasons just stated, they may need to inform their immediate supervisor or manager about their disability, but do not want their co-workers and peers to know.

The employee's personnel records containing this information *MUST* be stored in a safe and separate file, away from their regular employee records, to ensure confidentiality.

Enforcing a request for confidentiality is part of the supervisor or manager's job – for each and every employee. It is their responsibility to respect this request. If they experience questioning from other workers, the supervisor should address this issue the same way he or she would if someone was asking about payroll or other confidential matters.

The issue of confidentiality is really NOT about disability per se. It is more about effective management skills. An easy response to inquiring employees could be: "I believe you would want me to respect the confidentiality of your personal information, so you need to trust that I'm handling this situation appropriately. This information is not open for discussion, but if there's anything else I can assist you with, let me know."

If you need help with a confidentiality issue as it relates to the ADA and employment contact your regional Disability and Business Technical Assistance Center (DBTAC) at 800-949-4232.

BREAK: 15 minutes

9) Definitions under the Employment Title: 20 minutes

An important thing to remember about the ADA requirements for accommodations is that they outline a process. This process requires the employer to address each situation case-by-case. It is what makes the law effective. Yet it also makes it frustrating for many employers and businesses. Many prefer a “black & white” solution to every disability-related situation. But disability is a unique experience and differs from one person to the next.

**(Refer to Title I – Definitions: Essential Job Functions overhead transparency- slide 6)*

Essential functions focus on:

- The fundamental and necessary tasks of doing a particular job
- This does not include marginal tasks

For example, a receptionist job is about greeting people and answering phones. These are the major parts of the job. A marginal task could be receiving the company’s paper supply deliveries once every two months. The paper deliveries weigh close to 50 lbs., too much for the receptionist to lift due to her arthritis.

Since this is a marginal task, not a major part of her job description, this element of the job could be exchanged with another co-worker’s filing task.

-Ask participants: *Q: Do you have any questions or comments about Essential Functions?*
Q: Do you know what the essential functions of your job are?

**(Refer to Title I Definitions: Reasonable Accommodations overhead transparencies- slides 7, 8 & 9)*

A reasonable accommodation is any change an employer makes which enables a qualified person with a disability to:

- Have equal opportunity in the selection process,
- Perform the essential functions of the job, and
- Enjoy equal benefits and privileges of employment

These include:

- Providing or modifying equipment
- Making facilities accessible and removing barriers

- Providing readers and sign language interpreters (this does NOT include foreign language interpreters)

-Ask the group: Q: What are some examples of reasonable accommodations that you have either provided or are aware of?

Remember, with reasonable accommodations, the key word is: Reasonable. It requires employers to provide an equal playing field for those who are covered under the law. It does not require employers to make unreasonable accommodations.

**(Refer to What are NOT Reasonable Accommodations overhead transparency- slide10)*

Reasonable accommodations are NOT:

- The creation of a new position
- Transferring to a different supervisor
- The reassignment of essential functions
- Allowing for violent or abusive behaviors

Over the past 10 years the courts have specified even further what issues are not relevant to providing reasonable accommodations in the workplace.

**(Refer to Issues the Courts Say are NOT reasonable accommodations transparency- slide 11)*

They include:

- “The disability made me do it”
- “I’ll be back to work...eventually...”
- “Accommodate me by promoting me”
- “You say this job function is important, but let’s just eliminate it”
- “This is the only accommodation I will accept”

**(Refer to Title I Definitions: Undue Hardship overhead transparencies –slides 12 & 13)*

When deciding whether an accommodation would require “significant difficulty or expense” to the employer, you must consider:

- The size of the business operation
- The financial resources of the employer
- The cost of the accommodation
- The cost of the accommodation in relation to the size of the business and its resources
- The alteration to the employer’s business or the changes in the delivery of services, and
- The disruption to other workers

-Ask the group: Q: Any questions about any of these definitions?

10) Job Accommodations: *15 minutes*

When thinking about providing reasonable accommodations we should approach it as *a process*. One approach is to look at it as a “7 Step process”.

**(Refer to 7 Step Process for Reasonable Accommodations overhead transparencies – slides 14 & 15)*

Determine if the youth has a disability that is covered under the ADA definition of disability.

1. Determine if the youth is a “qualified” individual under the ADA.
2. Determine the disability’s impact or functional limitations as they pertain *to the essential functions of the job*.
3. Determine (with the youth) what accommodation(s) are needed.
4. Determine if the accommodation will *create an undue hardship* if provided.
5. Implement the accommodation.
6. Determine if it is effective – *Follow Up*.

Use this process to educate and assist the youth and employers you work with. This process should be followed each time they must address whether they should ask for or provide a job accommodation due to disability. It should be noted that the vast majority of people with disabilities currently in the workplace do not require any special accommodations to perform their duties.

**(Refer to the “Accommodation Categories Chart” handout)*

This chart can be helpful in illustrating how accommodations can work. Discuss with the large group the types of accommodations that are identified in the ADA and some examples of possible accommodations for various disabilities.

-Ask the participants: *Q. Any questions or comments about this chart?*

Some accommodations work for more than one type of disability. Walk through some of the items identified in the handout and ask the group if they have ever provided any of these accommodations.

Close this portion of the session by asking the group: *Q: Any comments or questions about this handout?*

11) Mediation Process as an Alternative: *5 minutes*

In your work with youth with disabilities you may have encountered reluctance, resistance or even blatant discrimination from employers based on the youth’s disability.

An important process to teach and role-model to youth, is the mediation process. Instead of automatically becoming antagonistic, and threatening a lawsuit for discrimination, mediation is a viable and more successful option.

Mediation can also be approached as a “strategy” to improve employer understanding of the ADA and an effective way of determining accommodations.

**(Refer to “The Mediation Alternative” handout)*

What can an employee who has a disability covered under the ADA do if he or she is denied a reasonable accommodation in the workplace? If that employee feels their rights under civil law have been violated they can choose to file a lawsuit. Another option is to ask that *mediation* be used to solve the conflict. Mediation is often an effective and efficient method of resolving workplace disputes. As opposed to litigation where issues can take several months, or even years to resolve, mediation can occur much closer to the precipitating event. In addition to timeliness, both parties can benefit from meeting face-to-face to discuss their disputes in order to arrive at a mutually satisfying agreement.

It is very important that individuals with a disabilities understand their protections in the workplace. Therefore, in addition to the mediation option, the process by which a formal complaint can be filed under the ADA must also be discussed. Presenters may wish to highlight local ADA related resources, including EEOC contact information at this time.

**(Refer to the “Filing an ADA Complaint” handout)*

12) Group Exercise with Case Studies: *30 minutes in total; 15 minutes for small group brainstorming, 15 minutes for large group processing*

This section is designed to engage the participants in brainstorming and creative thinking by providing actual case studies involving reasonable accommodations.

Break participants up into groups of 3-5 people (Have participants count off between 1 thru 4 to mix up groups.) Assign the nine different case studies of youth with disabilities and specific issues, to small group. Have the small groups refer to the worksheet of Accommodations Case Studies provided within for this session. There is also a worksheet with possible solutions for the presenters.

Facilitate large group discussion of each group’s answers.

**(Refer to the “Accommodations Case Studies Worksheet” for participants and the “Accommodations Case Studies Worksheet with Solutions” for presenters)*

Case Study #1

A youth who has a very mild case of mental retardation and who is applying for a cashier’s position at a neighborhood drugstore, has difficulty making change.

Q: How would you coach her and the potential employer to accommodate this task?

Possible Answer (suggested in pilot discussion groups):

- Provide the youth with a talking calculator and a chart of bills and coins. COST: \$150
- Other?

Case Study #2

A youth with an attention deficit disorder has just been hired to work in a packaging facility, but is having problems staying on task.

Q: How would you assist this youth to keep his job?

Possible Answer (suggested in pilot discussion groups):

- Negotiate with the employer to provide (or allow the youth to bring) a tape recorder with headphones and cassette tapes that contain music and frequent reminders to focus on the current task the youth is performing. This reduces distractions and helps prompt the youth to focus on the job. COST: Under \$100
- Other?

Case Study #3

The youth you're working with has a severe learning disability and has been hired to "dress & package up" burgers at a fast food restaurant. The youth can not read, and can only recognize specific letters on orders for hamburgers.

Q: How can you assist the employer and youth in accommodating this job?

Possible Answer (suggested in pilot discussion groups):

- The employer can code the condiment bins with the first letter of the item so that the youth can match the orders to the appropriate bin. In addition, the youth can be taught three key words ("only," "none," and "plain") through flash card repetition. COST: Under \$25
- Other?

Case Study #4

A youth who is blind has just been hired as a receptionist for a law firm. She cannot see the lights on the phone console which indicate which telephone lines are ringing, are on hold or in use by staff.

Q: What type of accommodation(s) could be made for her to do this job?

Possible Answer (suggested in pilot discussion groups):

- The employer can purchase a light-probe, a pen-like product which detects a lighted button. COST: \$45
- Other?

Cast Study #5

A large grocery store wants to hire, as a bagger/stock person, a youth you've been working with, who happens to have significant hearing loss. The employer's concern is that she will not be able to hear the paging loudspeaker system that is used to call employees to different parts of the store for work assignments.

Q: In what ways could the employer accommodate this youth in this position?

Possible Answer (suggested in pilot discussion groups):

- The employer can purchase for the youth, a personal paging device, which is worn on the wrist or belt which vibrates when activated by an incoming signal. When signaled, the youth immediately goes to the office for specific instructions. This way, the employer can be sure the employee both heard and understood his assigned tasks. COST: \$350
- Other?

Cast Study #6

A youth with severe depression who has been working successfully for the past year as a clerk-typist for a major insurance company, begins to show radical behavior changes. These changes are affecting her work. Her supervisor calls you with concerns about what to do.

Q: What do you suggest to accommodate this youth's disability?

Possible Answer (suggested in pilot discussion groups):

- If confidential talks with the youth and the supervisor are not beneficial, the youth and supervisor can agree that the youth will meet with her psychiatrist. The meeting could result in a change of medication which regulates the problem behaviors. The meeting with the psychiatrist is covered by the company medical plan.
- Other?

Case Study #7

As the result of diabetes, a productive youth working in sales at a clothing store is experiencing fatigue, and needs time during the day to administer medication. She is having difficulty performing her sales duties for a sustained period of time.

Q: How could the employer accommodate her in this position?

Possible Answer (suggested in pilot discussion groups):

- The youth's schedule is altered to allow for a longer meal break and brief time periods during the day to administer medication. She makes up for the time by working a little longer in the evening or on weekends as necessary. COST: \$0
- Other?

Case Study #9

A youth with a traumatic brain injury (TBI) from a motorcycle accident is hired by a small local bank. His job duties include processing checks and other transactions. Items must be numbered and placed in a sorting machine tray in a special manner. The problem lies in periodic confusion due to memory loss and weakness on one side of his body.

Q: What would you suggest the employer do to accommodate this youth in this position?

Possible Answer (suggested in pilot discussion groups):

- A job coach/trainer can be supplied by the rehabilitation agency to assist in special training in task sequencing, and the equipment can be adjusted to accommodate his body's weakness.
COST: \$0
- Other?

Case Study #10

A youth with juvenile arthritis wants to apply for a job at a department store as a retail clerk. She has great people and communication skills. She also has issues with stamina and balance and uses a 3-wheel scooter.

Q: How would you coach the youth and potential employer to accommodate her?

Possible Solution (suggested in pilot discussion groups):

- The youth is assigned to a department on the first floor, provided space for her scooter, given a sit/lean stool to use at the register and is allowed to be scheduled for the first shift only with every third day off. COST: \$200
- Other?

At the end of this group discussion, pass out the handout that includes the solution for each scenario.

(NOTE: These examples have been adapted and excerpted from materials developed by the President's Committee on Employment of People with Disabilities and used in the ICI One-Stop Disability Resource Manual. Used with permission)

13) Transportation Issues for Youth Seeking/Keeping Employment:

**5 minutes*

Providing transportation to employees with a disability is not necessarily considered a job accommodation. If an employer provides transportation to all of its employees, then a person with a disability could ask for an accommodation. Nonetheless, transportation can be a major barrier for any youth in the job seeking process. To help youth with disabilities address some of the transportation issues they face, begin by asking some of these questions:

**(Refer to Transportation Solutions: Questions to Consider overhead transparencies – slide 16& 17)*

1. Does the youth:
 - Own a vehicle?
 - Have access to one?
 - Have a driver's license?
 - If not, could he/she obtain one?
 - Could he/she buy a vehicle? (Using funds from a Social Security work incentive program such as a PASS Plan for instance.)

2. Does the youth have access to and the capability to use mass transit?
 - Is there mass transit that the youth can take to the job site?
 - Could the youth learn how to take mass transit?

NOTE: Some agencies, such as Independent Living Centers (CILS) and others, teach people with disabilities to use mass transit via “travel training”. Orientation and Mobility (O & M) classes can help people who have visual impairments. The state agency for people who are blind and visually impaired should have information on O & M services.
3. Does the youth have access to disability focused transportation services, such as paratransit (special transportation services for people with disabilities)?
4. Is there paratransit available where the youth lives?
 - Are there other transportation services available?
5. Does the youth meet eligibility requirements to receive financial assistance to pay for transportation expenses?
 - Is the youth eligible for reduced fare programs?
 - If the youth receives Social Security benefits, have you investigated using the PASS or IRWE Work Incentives to help cover the costs?
6. Are car-pooling and/or employer resources available for the youth to use?
 - How do co-workers get to work? Could the youth car pool with them?
 - Does the employer have any ideas or resources for transportation?
 - Are there other employers or businesses nearby whose employees take a similar route? Might a car pool or shuttle bus be arranged?
7. Does the youth know someone who could drive them?
 - Who might be available to drive the youth to and from work?
 - family member(s)
 - friends
 - neighbors
 - roommate(s)
 - people the youth lives with
 - residential program staff
 - others?

(NOTE: This portion on Transportation Solutions has been adapted from the ICI “One-Stop Disability Resource Manual. Used with permission.)

-Ask the group: Q: Does anyone have any questions or comments about what we just covered?

14) Resources:

- Handouts:**
- 1) “The Disclosure Dilemma For Advocates”
 - 2) “Facts about Disability Related Tax Provisions”
 - 3) “Accommodations Categories Chart”
 - 4) “The Mediation Alternative”
 - 5) “Filing an ADA Complaint”
 - 6) “Accommodations Case Studies Worksheet”
 - 7) “Accommodations Case Studies Worksheet –with Solutions”

- Resources:** 1) Refer to “Building Program Capacity to Serve Youth with Disabilities: *Resource List*”

Highlight various organizations and websites that deal specifically with providing accommodations, assessing job sites, providing descriptions of accommodation strategies based on disability, and transportation services in your area.

15) Evaluations:

Ask the participants to take the last few minutes and fill out the evaluation form.

16) Close:

Thank them for their presence, involvement and interest in this project.