INTRODUCTION

Disability law covers several different federal statutes dealing with the rights of people with disabilities. There is no single definition of the terms disability or person with a disability. There are different definitions, depending on the statute being referred to. Likewise, legal responsibilities to persons with disabilities depend on applicable statutes. Words, phrases, and principles defined in this chapter come from the Rehabilitation Act, the Americans with Disabilities Act, the Social Security Act, and the Individuals with Disabilities Education Act.

AMERICANS WITH DISABILITIES ACT

GENERAL PRINCIPLES

The Americans with Disabilities Act of 1990 is referred to as one of the most important pieces of legislation causing positive change for people with disabilities, particularly in the areas of employment, public services, and public transportation.

According to the ADA, a person with a disability is one who has a physical or mental impairment that substantially limits one or more major life activity. The person may have a record of such an impairment, or may be regarded as having such an impairment. For example, Chad, who had cancer but has made a full recovery, is still treated differently because of the fear of cancer; Chad is regarded as having a disability. Lila, who has a history of heart trouble, is currently healthy. However, she could be considered disabled because of her history of heart trouble. See Exhibit 4-1 for excerpts from the ADA.

EXHIBIT 4-1 EXCERPTS FROM THE AMERICANS WITH DISABILITIES ACT

42 U.S.C. § 12101 Purpose

It is the purpose of this chapter -

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

Continued
2) Disability

The term “disability” means, with respect to an individual -

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

42 U.S.C. § 12111

(5) Employer

(A) In general

The term “employer” means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

8) Qualified individual with a disability

The term “qualified individual with a disability” means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

Source: United States Code

Historically, in claims filed by persons under the ADA, the first defense of the defendant was that the plaintiff was not a person with a bona fide disability. In the case of Sutton v. United Air Lines, the U.S. Supreme Court provided additional guidance as to whether a person is disabled or not. According to the Court, in order to determine if a person is covered by the ADA, the use of any auxiliary aids or services—services, devices, medication, or other intervention that serves to lessen the impact of the disability or assists the person with a disability—must be taken into account. In other words, the use of the auxiliary aid or service—the use of corrective measures—must be taken into account before a determination is made as to whether a person is still limited in a major life activity.

The plaintiffs in Sutton v. United Air Lines suffered from severe myopia, or nearsightedness. This condition was treated by the plaintiff’s wearing glasses. Because wearing glasses corrected the myopia, the plaintiff was not disabled under the ADA. However, a person who uses a wheelchair would be considered disabled because even though the wheelchair assists with mobility, the person is still limited in the major life activity of walking. This applies to any medication that is taken to treat an illness; it even extends to subconscious changes a person makes to deal with a disability.

EMPLOYMENT

The ADA applies to employment situations with regard to job advertisements, interviews, selection, performance, and job benefits. All areas of employment must be made accessi-
ble to a person with a disability. According to the ADA, an **employer** is a person engaged in an industry that affects commerce who has 15 or more employees, and any agent of the person. The term **employer** does not include the United States, any corporation of the United States, Indian tribes, or a bona fide private club. An **employee** is the person employed by the employer.

It is unlawful for an employer, when selecting employees, to discriminate against a **qualified person with a disability**, a person with a disability who can perform the essential functions of the job either with or without a reasonable accommodation. This is the heart of the employment law of the ADA: making reasonable accommodations to the work site so a person with a disability can perform the essential functions of the job.

### ESSENTIAL FUNCTIONS OF THE JOB

**Essential functions of the job** have been defined as those job functions that are fundamental as opposed to marginal; they are the reason the job exists. For example, a person is hired by a nursing home to provide personal care to residents. The reason that job exists is to help provide care to the people served. A marginal job duty may be sweeping the floors after the residents have gone to bed. However, this is not an essential function; it is not the reason the job exists. See Exhibit 4-2 for the test that is used to determine if a job duty is an essential function of the job.

#### EXHIBIT 4-2  THE ESSENTIAL FUNCTIONS OF THE JOB

<table>
<thead>
<tr>
<th>To determine if a job function is an essential function, the following factors have to be considered.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The employer’s judgment as to which functions are essential</td>
</tr>
<tr>
<td>2. A written job description that was prepared prior to any advertising or interviewing of the applicants</td>
</tr>
<tr>
<td>3. The amount of time spent performing that function</td>
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<tr>
<td>4. The consequences of not requiring the employee to perform that function</td>
</tr>
<tr>
<td>5. The terms of a collective bargaining agreement</td>
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<tr>
<td>6. The work experience of past employees in that job</td>
</tr>
<tr>
<td>7. The work experience of current employees in that job</td>
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</tbody>
</table>

### REASONABLE ACCOMMODATIONS

An employer is required to make any reasonable accommodation that would allow an employee to apply for a job, to perform the essential functions of the job, and to enjoy all job benefits. A **reasonable accommodation** is a modification or adjustment to the work site that does not impose undue hardship on the business. See Exhibit 4-3 for a list of areas where modifications can take place. Reasonable accommodations may include restructuring how the work is to be performed, modified work schedules, assignments to a vacant position, the purchase of adaptive equipment (provided the equipment is not for personal use and not a business use), and the making of modifications to the work site. An **undue hardship or burden** is an action of significant difficulty or significant expense. See Exhibit 4-4 for the factors used to determine if an undue burden exists.
4C HAPTER 4

EXHIBIT 4-4 FACTORS USED TO DETERMINE UNDUE HARDSHIP

1. The nature and cost of the accommodation
2. The overall financial resources of the employer
3. The type of operations of the employer, where it is located, how spread out it is

EMPLOYMENT DISCRIMINATION

Failure to do any of the preceding can lead to a charge of employment discrimination under the ADA. Employment discrimination is defined by the ADA as:

1. Limiting, segregating, or classifying job applicants in such a way that it adversely affects their opportunities or status because of their disability.
2. Using standards or criteria in the employment situation that have the effect of discriminating because of a disability.
3. Denying equal jobs or benefits to a qualified person because of a disability or because of a relationship the person has with another who is disabled (for example, not hiring someone because he takes care of a sibling who has been diagnosed with AIDS).
4. Not making reasonable accommodations to the known physical and mental limitation of a qualified individual with a disability.
5. Denying employment opportunities to an applicant or an employee who is a qualified person with a disability because the person will need a reasonable accommodation.
6. Using qualification standards or tests that are designed to or have the effect of eliminating people with disabilities from consideration for employment unless the standards are job related and are consistent with business necessity.

DIRECT THREAT

A defense to a charge of employment discrimination is the direct threat defense. A direct threat is a significant risk to the health or safety of other employees that cannot be eliminated by a reasonable accommodation. If a person with a disability poses a direct threat to other employees, then the person does not have to be considered for employment. A direct threat is shown by using objective evidence that indicates this person’s condition poses this threat to the safety and welfare of these people. A direct threat is not shown by using subjective evidence or overall classifications; there must be evidence that this person’s condition poses a threat to other workers.

For example, a person who had a heart attack cannot be banned from returning to work on a production line just because of the possibility that he might have another heart attack in the future. The employer would have to show that the person’s heart was still weak, that the heart doctor has indicated a definite percentage that the person will have another heart attack and that the chances are increased by his working on a production line, and that if he
had a heart attack at work, specific consequences would occur. Such harm cannot be speculative; it must be shown by objective facts.

ILLEGAL DRUG USE

In some employment situations, an employee is either currently using illegal drugs or has used them in the past. According to the ADA, illegal use of drugs is the current use of drugs, the possession or distribution of which is illegal under the Controlled Substances Act. If a person is currently using illegal drugs, he or she is not a person with a disability under the ADA. However, if the individual is undergoing treatment for the use of illegal drugs, or has successfully completed a rehabilitation program, he or she is considered disabled. Employment actions cannot be taken against individuals because of their past use of illegal drugs. However, if these persons start using illegal drugs again, they lose this protection. See Exhibit 4-5.

EXHIBIT 4-5 DRUG USE AND THE ADA

1. A person who is currently using illegal drugs is not considered a person with a disability and is not protected under the ADA.
2. If a person enters into a rehabilitation program, he or she is protected by the ADA because he or she is receiving treatment to break the drug habit.
3. A person who has successfully completed a rehabilitation program is protected under the ADA. However, if that person starts using illegal drugs again, then he or she loses that protection.
4. A person who is an alcoholic is protected by the ADA provided he or she comes to work sober.
5. An alcoholic who comes to work intoxicated is not protected by the ADA.

ACCESS TO PUBLIC SERVICES

The ADA also requires that services offered by a public entity be made available to people who are disabled. It is discrimination if a qualified person with a disability is denied benefits of a program or participation in the activities of a public entity. A public entity is any state or local government, any department, agency, special purpose district, or any other instrumentality of a state or local government. A qualified person with a disability is a person with a disability who, with or without a reasonable modification to the rules, practices, or policies, with or without the removal of architectural, communication, or transportation barriers, or with or without the provision of auxiliary aids and services, meets the essential eligibility requirements to either receive services or participate in the programs or activities of the public entity. See Exhibit 4-6 for a list of auxiliary aids and services. The prohibition against discrimination includes the provision of public transportation and the provision of public services by private individuals.

EXHIBIT 4-6 AUXILIARY AIDS AND SERVICES

1. Qualified interpreters or other effective methods of making orally delivered materials available to people with a hearing impairment.
2. Qualified readers, taped texts, or other effective methods of making visually delivered materials available to people with vision impairments.
3. The acquisition or modification of equipment and devices.
4. Any other similar service and action.
The ADA provisions regarding public transportation apply to demand responsive systems, designated public transportation, and fixed route systems. **Designated public transportation** is transportation by bus, rail, or other conveyance (except aircraft or intercity or commuter rail transportation) that provides the general public with service on a regular and continuing basis. A **fixed route system** is one that provides designated public transportation operated along a prescribed route according to a fixed schedule. A **demand responsive system** provides designated public transportation that does not operate along a prescribed route with a fixed schedule: this system goes where it is needed. The general requirement is that any new vehicle purchased for the transportation system must be accessible and usable by people with disabilities, including people in wheelchairs.

**PUBLIC ACCOMMODATIONS**

It is also discrimination under the ADA if a person with a disability cannot have the full and equal enjoyment of the goods, services, facilities, privileges, or accommodations of any place of public accommodation by any person who owns, leases, or operates a place of public accommodation. In other words, if a person with a disability cannot enjoy a public accommodation to the same extent as a person without a disability, then it is a violation of the ADA. A **public accommodation** is any private facility if the operation of such a private facility affects commerce in any way. See Exhibit 4-7 for examples of public facilities.

<table>
<thead>
<tr>
<th>EXHIBIT 4-7 PUBLIC ACCOMMODATIONS</th>
</tr>
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<tbody>
<tr>
<td>1. Inn, hotel, motel or any other place of lodging</td>
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<tr>
<td>2. Restaurant, bar, or other establishment serving food and drink</td>
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<tr>
<td>3. Motion picture theatre, theater, concert hall, or stadium</td>
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<tr>
<td>4. Auditorium, convention center, lecture hall, or other place of public gathering</td>
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<tr>
<td>5. Bakery, grocery store, clothing or hardware store, shopping center, or other sales establishment</td>
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<tr>
<td>6. Laundromat, dry cleaner, bank, barber shop, beauty shop, travel service, show repair service, funeral home, gas station, offices of a professional, hospital, or other service establishment</td>
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<tr>
<td>7. Terminal, depot, or other station used for public transportation</td>
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<tr>
<td>8. Museum, library, gallery, or other place of public display</td>
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<td>9. Park, zoo, or amusement park</td>
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<td>10. Nursery, elementary, secondary, undergraduate, or post-graduate private school or other place of education</td>
</tr>
<tr>
<td>11. Day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service establishment</td>
</tr>
<tr>
<td>12. Gymnasium, health spa, bowling alley, golf course, or other place of exercise and recreation</td>
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</tbody>
</table>

**Commerce** is defined as travel, trade, traffic, commerce, transportation, or communication among the several states; between any foreign country or territory or possession and any state; or between points in the same state but through another state or foreign country. In other words, the commerce is between two points in the same state, but the route goes through another state or foreign country.

**Discrimination in granting access to public accommodation** happens when one of the following is found to have occurred.
1. The facility imposes eligibility criteria that screens out or tends to screen out an individual or a class of individuals with a disability from being able to fully enjoy the goods, services, or facilities of the public accommodation unless the criteria is necessary for the provision of the services.

2. There is a failure to make modifications policies, practices, or procedures to allow people with disabilities to have full access to the public facility unless the modifications would fundamentally alter the services.

3. There is failure to take steps that are necessary to ensure that no person with a disability is excluded or denied services because of no auxiliary aids and services unless this would create an undue burden.

4. There is failure to remove architectural barriers and communication barriers that are structural in nature in existing facilities unless the removal is not readily achievable.

The term **readily achievable** means that something is easily accomplished—able to be carried out without much difficulty or expense. See Exhibit 4-8 for the factors used to determine if something is readily achievable.

<table>
<thead>
<tr>
<th>EXHIBIT 4-8</th>
<th>FACTORS USED TO DETERMINE IF SOMETHING IS READILY ACHIEVABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>The factors to be considered follow.</td>
<td></td>
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<tr>
<td>1. The nature and cost of the action needed</td>
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<tr>
<td>2. The overall financial resources of the facility</td>
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<tr>
<td>3. The overall financial resources of the covered entity</td>
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<td>4. The type of operation or operations of the covered entity</td>
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</table>

**INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

**GENERAL PRINCIPLES**

The purpose of the Individuals with Disabilities Education Act (IDEA) is to ensure that children with disabilities are receiving an appropriate education. Congress found that such children were either being excluded from the public school system or were not receiving appropriate educational services from the public school system. This act was designed to address those issues.

**Children with disabilities**, according to the Act, are children with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments, serious emotional disturbances, orthopedic impairments, autism, traumatic brain injury, or specific learning disabilities who need special education because of these conditions. The target population also includes children between the ages of three and five who experience developmental delays.

**Special education** is defined as instruction, provided at no cost to parents or guardians, designed to meet the special needs of a child with a disability. It includes instruction conducted in a classroom, at home, in a hospital or institution, or in other settings and can include physical education. Special education includes traditional instruction in academic subjects, as well
as instruction in daily living skills, community living skills, prevocational skills, and whatever else is appropriate for that particular child. In addition to special education, the child is to receive related services. These are defined as transportation and developmental, corrective, and other support services that are designed to assist the child in benefiting from special education.

The intent of the Individuals with Disabilities Education Act is to ensure that all children with a disability—regardless of its severity—receive an appropriate education. This principle is called the zero reject principle: No child will be rejected for special education services regardless of how severe his or her disability is.

**FREE, APPROPRIATE PUBLIC EDUCATION**

The purpose of IDEA is to provide each child with a disability a free, appropriate public education (FAPE). A FAPE is defined as special education and related services provided at public expense that are designed to meet the standards of the state education agency and that are in conformity with the child’s individual education plan or IEP. The state education agency is the state board of education or other public authority responsible for the supervision of public elementary and secondary schools. If there is no such entity, it is the officer or agency that is designated either by the governor or by state law.

**THE IEP**

The individual education plan (IEP) is a written plan for each child with a disability. It is developed in a meeting attended by a representative of the local education agency, the teacher of the child, the parents or guardian of the child, and if appropriate, the child. The IEP is to include a statement about the present level of educational performance of the child, a statement of annual institutional goals, a statement of the specific educational services that will be provided to the child, and a statement regarding the extent the child will be able to participate in the regular educational program. See Exhibit 4-9.

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**EXHIBIT 4-9 REQUIREMENTS OF THE IEP**

**Section 1414. Evaluations, eligibility determinations, individualized education programs, and educational placements**

A) Individualized education program

The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes:

(i) a statement of the child’s present levels of educational performance, including:

(I) how the child’s disability affects the child’s involvement and progress in the general curriculum; or

(II) for preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities;

(ii) a statement of measurable annual goals, including benchmarks or short-term objectives, related to:

(I) meeting the child’s needs that result from the child’s disability to enable the child to be involved in and progress in the general curriculum; and

(II) meeting each of the child’s other educational needs that result from the child’s disability;

(iii) a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child.
(I) to advance appropriately toward attaining the annual goals;
(II) to be involved and progress in the general curriculum in accordance with clause (i) and to participate in extracurricular and other nonacademic activities; and
(III) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;
(iv) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in clause (iii)

Source: United States Code

LEA

The local education agency (LEA) is the public board of education or other public authority that exercises administrative control or direction over public elementary and secondary schools in each political subdivision of the state. For example, an LEA could be the school board responsible for the schools in a particular school district.

The local education agency has the responsibility for providing free access to a public education provided for in the individual education plan unless the LEA cannot afford to pay for the plan or fails to provide the services required by the plan. If the LEA cannot afford the plan or does not provide a FAPE, then the state education agency is responsible for providing education to the child.

If the child does not receive a FAPE, then he or she may be entitled to compensatory educational services. These services are designed to remedy, in whole or in part, the progress lost by a student with a disability because he or she did not receive a free, appropriate public education.

LEAST RESTRICTIVE ENVIRONMENT

Each child with special needs is to be educated in the least restrictive environment. The principle of least restrictive environment declares that, to the maximum extent appropriate, children with disabilities are to be educated with children who are not disabled and that special classes, separate schooling, and other removal of children with disabilities from the regular educational environment should only happen when the disabilities of the child prevent the satisfactory education of the child.

IDEA recognizes that there may be situations where a child’s disabilities prevent him or her from receiving the benefits of an education if he or she is in a classroom with other children. However, to the maximum extent possible, children with disabilities are to be placed in classes with other children who do not have disabilities.

TRANSITION SERVICES

When a child with a disability is sixteen, the IEP must specify transition services. Transition services are defined as services designed to promote movement from school to post school activities. These include postsecondary education, vocational training, integrated employment, continuing education, adult education, adult services, independent living, or community participation. Transition services are based on the individual’s needs, taking into account the student’s preferences and interests, and include instruction, related services, community experiences, the development of employment and other postschool adult living objectives, and when appropriate, the acquisition of daily living skills and functional vocational evaluations. See Exhibit 4-10 for the formal requirements of transition services.
**EXHIBIT 4-10 REQUIREMENT FOR TRANSITION SERVICES**

Section 1414. Evaluations, eligibility determinations, individualized education programs, and educational placements

Transition Services

(vii)(I) beginning at age 14, and updated annually, a statement of the transition service needs of the child under the applicable components of the child’s IEP that focuses on the child’s courses of study (such as participation in advanced-placement courses or a vocational education program);

(II) beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed, transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages.

Source: United States Code

**DUE PROCESS**

If parents are dissatisfied with the evaluation their child has received, the IEP, the placement of their child in a school system, or the FAPE, they can request a hearing. This hearing is referred to in IDEA as the due process hearing.

The hearing is conducted by either the LEA or the state education agency, but the hearing officer must be an impartial hearing officer—someone not employed by the public agency that is involved in the education of the child who does not have any other apparent conflict of interest. All traditional due process requirements apply and all information must be disclosed to the other party at least five days prior to the hearing.

If the parents and the local education agency are in disagreement about a proposed change in the child’s placement (where the child is being educated), the stay put provision applies: the child remains in his or her current educational placement during the administrative and judicial hearings. The present educational placement is the placement where the child was being educated prior to the consideration of the change of placement that forms the basis for the disagreement between the educational agency and the parent. For example, Mr. and Mrs. Smith are happy with the education their child Joey is receiving at Riverside School. The LEA wants to move Joey to Lakeshore School. The Smiths disagree and initiate a due process hearing. During the hearing and any other judicial proceedings, Joey will remain at Riverside School. See Exhibit 4-11.

**EXHIBIT 4-11 PROCEDURAL SAFEGUARDS OF IDEA**

Section 1415. Procedural safeguards

(a) Establishment of procedures

Any State educational agency, State agency, or local educational agency that receives assistance under this subchapter shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies.

(b) Types of procedures

The procedures required by this section shall include:

(1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

(2) procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency,
Sometimes the identity of the parent of a child who is eligible for educational services under IDEA is not known. In such a case, the public educational agency has a responsibility to assign an individual to act as a parent for the child. This person has all the rights of a parent concerning the identification of the child as needing special education, the evaluation process, and the education placement. This person is known as a surrogate parent.

**EARLY INTERVENTION**

Sometimes services need to be provided to children who are under school age but who still need some assistance. Early intervention services (EI) under the Individuals with Disabilities Education Act are developmental services that are designed to meet the child’s needs in physical development, cognitive development, language and speech development, psychosocial development, and adaptive development. These services are provided under Part B of IDEA. Under Part B, children are infants and toddlers, defined as youngsters from birth to age two who require early intervention services because they are developmentally delayed or have a diagnosed physical or mental condition that has a high probability of resulting in developmental delays. If they receive EI services, these children are also entitled to a FAPE once they turn three years old.

If a child receives EI services, an individualized family service plan must be prepared. The plan is designed to provide services to family members so they can continue to work with the child. The IFSP must contain the following.

1. A statement of the child’s present level of development
2. A statement of the family’s resources, priorities, and concerns
3. A statement of the major outcomes expected for the child and for the family
4. A statement of the specific early intervention services needed
5. A statement about the environment the services will be offered in
6. Dates for initiation of services and the anticipated duration of the services
7. The name of the case manager
8. The steps that will be taken to transition the child from the IFSP to the individual education plan

The purpose of IDEA is to ensure that every child with a disability receives as much benefit from education as possible. The Act is designed to ensure that every effort is made to see that every child reaches his or her maximum potential.
SOCIAL SECURITY DISABILITY

One type of Social Security benefit is designed for people who, because of injury or physical condition, are incapable of performing any kind of meaningful work. The purpose of these benefits is to replace the earnings the person has lost because of the disability. Loss of earning capacity is damage to a person’s ability to earn wages.

For Social Security purposes, disability is determined by a two-part test. In order for an individual to be considered disabled, he or she must (1) have a medically determinable physical or mental impairment that can be expected to result in death, or to be of long continued and indefinite duration; and (2) be unable to engage in any substantial gainful employment because of the impairment. A physical disability is an incapacity caused by bodily injury or condition, a physical defect, or infirmity.

A disability can be a general disability, one that incapacitates the person from the performance of all acts of a general classification. If a person has a special disability—a disability that prevents the performance of one specific act—then this is not a disability under the Social Security Act. The disability can be a personal disability, a disability that attaches to a particular person, or an absolute disability, one that originates with one person but is also passed to his or her descendents. In order for an individual to collect benefits, his or her disability must be an absolute or total disability—an inability to perform any substantial part of his or her ordinary duties that will continue throughout the lifetime of the person.

SUMMARY

There are several types of disabilities that are recognized by federal law. A person with a disability may meet the criteria of more than one federal statute. Which statutes and definitions apply depends on the circumstances of each situation.
KEY TERMS AND PHRASES

absolute disability  
auxiliary aids or services  
business necessity  
children with disabilities  
compensatory educational services  
demand responsive system  
designated public transportation  
direct threat  
due process hearing  
education  
early intervention  
esential functions of the job  
fixed route system  
free, appropriate public education (FAPE)  
general disability  
impartial hearing officer  
individual education plan (IEP)  
individualized family service plan  
least restrictive environment  
local education agency (LEA)  
permanent disability  
person with a disability  
personal disability  
present educational placement  
public accommodation  
public entity  
qualified person with a disability  
readily achievable  
reasonable accommodation  
special disability  
special education  
state education agency  
stay put provision  
surrogate parent  
total disability  
undue hardship or burden  
zero reject principle

REVIEW QUESTIONS

SHORT ANSWER
1. What are considered auxiliary aids or services?
2. What is the business necessity rule?
3. What is a demand response system?
4. Who is a person with a disability under the Americans with Disabilities Act?
5. Who is a child with a disability under the Individuals with Disabilities Education Act?
6. What is meant by the phrase *readily achievable*?
7. Who is an employer?
8. What are considered to be the essential functions of a job?
9. What is a public entity under the Americans with Disabilities Act?
10. What is a reasonable accommodation under the Americans with Disabilities Act?
11. Who is a qualified person with a disability?
12. What is a due process hearing?
13. What is meant by *free, appropriate public education*?
14. What is early intervention?
15. What is an IEP?
16. How is it developed?
17. What is an Individual Family Service Plan?
18. How is it developed?

19. What is meant by the phrase least restrictive environment?

20. What is the stay put provision and when does it become effective?

21. What is considered to be special education?

22. What is a surrogate parent? When is one needed?

23. What is the zero reject principle?

24. What is the difference between an absolute disability and a general disability under Social Security law?

25. What is meant by the term special disability?

FILL IN THE BLANK

1. _________________ are any services, devices, medications, or other interventions that serve to lessen the impact of a disability or that assist the person with a disability.

2. _________________ is the damage to a person’s ability to earn wages in the future.

3. Under the Individuals with Disabilities Education Act, _________________ are developmental services that are designed to meet the child’s needs in physical development, cognitive development, language and speech development, psychosocial development, and adaptive development.

4. The _________________ is the placement where the child was being educated prior to the consideration of the change of placement that forms the basis for the disagreement between the educational agency and the parent.

5. _________________ is defined as “to the maximum extent appropriate, children with disabilities are educated with children who are not disabled.”

6. A system of providing designated public transportation that does not operate along a prescribed route with a fixed schedule is a _________________.

7. The _________________ is the public board of education or other public authority that exercises administrative control or direction over public elementary and secondary schools in each political subdivision of the state.

8. _________________ is an action of significant difficulty or significant expense under the ADA.

9. _________________ are job functions that are fundamental, not marginal; they are the reason the job exists.

10. A disability that incapacitates a person from the performance of all acts of a general classification is referred to as a _________________.

FACT SITUATIONS

1. The parents of a child with a disability and the local school are in a dispute as to where the child should attend school. The school district wants the child moved. What provision of IDEA states the child will not be moved pending the dispute?

2. To what sort of hearing are the parents of the child in question 1 entitled?

3. A person with a disability is hired by a factory to work on the line. What must the factory do to ensure that the person can perform the duties of the job?

4. A child who is two years old is showing signs of developmental delays. What sort of services may the child receive from the government?

5. It is determined that the family of a child with a disability also needs services. What will set out those services?
6. A school district is refusing to provide educational services to a child who has severe disabilities. What provisions of IDEA is the school district violating?

7. A child who is receiving special education services is nearing the age of sixteen. What sort of services will the school be required to offer the child once she reaches the age of sixteen?

8. A city has a transportation system that provides public transportation operated along a prescribed route according to a fixed schedule. What is this known as?

9. A person with a disability is using medication to control her disability. The medication lessens the impact of her disability. What is this known as? How does this affect her being covered by the ADA?

10. The parents of a child with a disability have not been identified. Who will be appointed to represent the interests of the child?