



Access

New England

A publication of the New England ADA & Accessible IT Center

A project of Adaptive Environments, Inc. www.AdaptiveEnvironments.org

This Issue Highlights **Voting Access**

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The center is one of ten Regional Disability and Business Technical Assistance Centers funded by the National Institute on Disability and Rehabilitation Research (NIDRR) to provide information, materials and technical assistance to individuals and entities that are covered by the Americans with Disabilities Act (ADA). However, please be aware that NIDRR is not responsible for enforcement of the ADA. The information, materials and/or technical assistance are intended solely as informational guidance and are neither a determination of your legal responsibilities under the Act, nor binding on any agency with enforcement responsibility under the ADA.

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The Regional Advisory Board meets twice a year. The members' input and commitment greatly assists the New England ADA & Accessible IT Center in its mission.

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Most Americans Have Had to Fight for the Right to Vote



Ocie Harrison, Project Director

“If people with disabilities voted at the same rate as people without disabilities did in the last presidential election (50%), wow, this may be a political group to be reckoned with!”

People with disabilities are part of a long, distinguished history of those seeking full and equal rights to participation in the ballot. We are yet another group of people fighting for our right to vote and follow in the footsteps of worthy predecessors. In 1842, Thomas Dorr of Providence, Rhode Island, a Harvard graduate, state legislator and landowner, led the fight for all white males to vote, including the non-landowners and the poor who had previously been denied. In the process, Dorr went to prison for two years and then faded from public life. Finally, during the Civil War, voting became a reality for all men. Rhode Island continues to follow in Dorr's footsteps and is the first state to make all of its voting places mobility accessible. How did they do it? This issue of *Access New England* tells you.

We are all aware of the suffrage battle for both women and African-Americans. Persons such as Alice Paul, a quiet and determined Quaker with a Ph.D., endured imprisonment and placement in a psychiatric ward for her leadership in women's suffrage. Her efforts led to President Wilson's endorsement of the constitutional amendment ensuring women the right to vote in 1920.

Bob Moses, a black high school teacher from New York moved to Mississippi in 1961 and decided to register to vote. When he attempted to register, he received head wounds from a knife and was told the office was closed. This was the beginning of weekly arrests and beatings for Moses and members of the *Student Nonviolent Coordinating Committee* – a committee of people registering voters. According to the law, Blacks in Mississippi had been allowed to vote since 1868 with the passage of the 14th Amendment of the Constitution. But it wasn't until 1965, when the *Voting Rights Act of 1965* passed, that the federal government pledged to enforce equal access to the ballot.

Although people with disabilities are not experiencing what our predecessors went through, there exists the insidious reality of being shut out of the democratic process. This issue of *Access New England* focuses on access to voting for people with disabilities. You will read about federal laws that offer protection and inclusion in the election process starting with the *1984 Voting Accessibility for the Elderly and the Handicapped* and ending with the *Help America Vote Act of 2002 (HAVA)*. HAVA sets new and specific standards for voter registration, accessibility,

voter lists, technology, and training for poll workers. The law authorized Congress to provide \$3.86 billion to states and federal agencies for election reforms. Also, read about our State Affiliates' strides in removing the barriers to voting for people with disabilities and implementing the requirements of HAVA.

Historically, about one-third of people with disabilities vote in presidential elections. In 2000, 41% voted according to an *N.O.D./Harris Poll*. This comprised 16.4 million of a potential 40 million Americans with disabilities of voting age. In 2000, the election was close. In 2004, another close election is likely. Voters with disabilities may play an extremely important role. If people with disabilities voted at the same rate as people without disabilities did in the last presidential election (50%), wow, this may be a political group to be reckoned with!

Voting & Disability: Barriers and Legal Strategies

What if you wanted to vote, but the polling place was locked? For millions of voting age Americans with disabilities, this situation is all too real. Not because election officials are deliberately blocking disabled people from entering, but because many polling places are inaccessible. The Federal Election Commission reports that more than 20,000 polling places across the nation are inaccessible, depriving people with disabilities their fundamental right to vote.

What barriers might people with disabilities find when they vote? Examples include: polling booths set in church basements or in upstairs meeting halls with no ramp or elevator, inadequate parking, narrow doorways, someone with cerebral palsy being perceived as intoxicated, or not having access to a Braille ballot if you are blind. Poll workers may question the right of someone with a cognitive disability to vote. Many states have outmoded statutes disenfranchising people with psychiatric disabilities.

Legal Strategies to Expand Voting Rights

Opportunities exist to challenge barriers that keep people with disabilities from voting. The primary tools are the following federal laws: the ADA, the National Voter

Registration Act (NVRA), the Voting Accessibility for the Elderly and Handicapped Act (VAEHA), and the Help America Vote Act (HAVA).

Americans with Disabilities Act of 1990 (ADA)

Title II of the ADA provides that public entities may not exclude or deny individuals with disabilities the benefits of their programs, services or activities. Four regulations are particularly relevant in the context of voting: reasonable modification, criteria that screen out people with disabilities, program access and site selection.

Reasonable Modifications

Public entities are required to provide reasonable modifications in their programs, services and activities to enable individuals with disabilities to benefit equally from the services. If a voter requires modifications due to a physical or mental disability to enable her to register to vote or cast a ballot, modifications must be provided unless they would create an undue burden or fundamental alteration. For example, a voter may need an explanation of instructions in simpler language, a ballot accessible to individuals with visual impairments, or a friend or family member to accompany him or her into a voting booth.

Criteria that Screen Out People with Disabilities

Public entities are prohibited from using eligibility criteria that tend to screen out individuals with disabilities from its programs unless those criteria are necessary to administer a program. Many states have laws that bar citizens with mental disabilities from voting, regardless of whether they are competent to do so. While a state may limit voting rights to those capable of understanding the nature of an election and what it means to cast a ballot, citizens with mental disabilities are sometimes denied the right to vote even when they do understand these things.

Program Access

People with disabilities are entitled to program access. Under this standard, every polling or registration site does not have to be accessible, as long as the voting program as a whole is accessible. If a voter cannot enter her assigned polling place or use the voting machines because of a disability, the public entity could satisfy the program access requirement by notifying her ahead of time that the site is inaccessible and, at her request, reassign her to an accessible polling place. Because the program access standard permits alternative access methods, it may be difficult to challenge public entities

with inaccessible polling sites if they provide alternative voting methods such as “curbside voting” or absentee ballots to enable citizens with disabilities to vote.

Site Selection

Title II regulations prohibit a public entity, when selecting sites for a program, from making selections excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination in the program. The site selection provision may be used to challenge the inaccessibility of polling or registration sites selected by a public entity after January 26, 1992. Many local governments re-select polling sites every year by sending out a letter and requiring a response indicating that the site will be available as a polling site in the coming year.

National Voter Registration Act of 1993 (NVRA)

The NVRA requires states to designate as voter registration agencies: (1) all offices that are primarily engaged in providing disability services and that receive state funds, and (2) all offices providing public assistance. Such agencies must make available voter registration forms and assistance in completing them, and must accept completed applications and transmit them to state officials. Disability services offices designated as voter registration agencies include state and county offices of mental health and mental retardation, blindness and visual services offices, veterans’ affairs offices, health department offices, labor department offices, aging department offices, and alcohol and substance abuse offices.

Voting Accessibility for the Elderly and Handicapped Act of 1984 (VAEHA)

The VAEHA applies to federal elections and requires each political subdivision responsible for conducting elections to assure that all polling sites for federal elections are accessible to voters with disabilities and voters 65 and older. If the chief election officer determines that no accessible polling place is available and that the political subdivision is unable to make one temporarily accessible, an elderly or disabled voter must be reassigned to an accessible polling place or provided with an alternative means for casting an Election Day ballot.

Help America Vote Act of 2002 (HAVA)

HAVA impacts the entire voting process from voting machines and ballots to registration and poll worker training. State election officials, legislators, and advocates are responsible for making HAVA work properly. States, in order to receive federal funds, must develop a comprehensive election reform plan and enact legislation. HAVA will improve voting access to people with disabilities by:

- Making grants available to states and local government to improve polling place access.
- Creating accessibility standards for voting systems.
- Mandating that states include people with disabilities in their plans for HAVA compliance.
- Providing funding for research on accessible voting technology.



Voter takes advantage of an accessible polling facility

People with disabilities are less likely than non-disabled people to vote. Would it matter if more people with disabilities voted? Of course, it’s the fundamental right of all Americans to vote. But if people with disabilities voted at the same rate as the non-disabled, 10 million more votes would have been cast in the last Presidential election – a major voting bloc. Voting is power and measuring the size of any group’s vote can significantly impact that group’s political muscle.

Sources:

“People with Disabilities and Voting,” The Center for An Accessible Society. www.accessiblesociety.org/topics/voting.

“Legal Strategies to Expand the Voting Rights of Citizens with Disabilities,” Bazelon Center, www.bazelon.org/issues/voting/legalstrategies.htm.

“Advocates’ Guide to the Help America Vote Act of 2002,” AAPD, www.aapd-dc.org/dvpmain/elreform/dvpadvoguideHAVA.html.

Voting Access

Q: What problems do people with disabilities experience voting at the polls?

A: There are a variety of problems people with disabilities may encounter at their local precincts. Some polling places are physically inaccessible, thus preventing many people from even entering the building. These individuals must then rely on curbside voting, which prevents them from voting independently. The voting equipment itself is often inaccessible. Paper ballots do not allow those with visual or certain manual disabilities to vote privately and independently.

Q: Does the Help America Vote Act (HAVA) provide funding to the states?

A: Yes. HAVA allocates \$850 million over 3 years to provide one accessible voting unit per polling place, \$100 to make precincts physically accessible, and \$9.3 to the protection and advocacy system for education and technical assistance.

Q: How can the accessibility and usability of voting equipment be evaluated?

A: First, the question must be asked whether a person with a disability can use the voting equipment as efficiently, accurately, and independently as a person without a disability. Next,

it is essential to understand the functionality of any voting system. The whole voting process (reading ballot, scanning choices, reviewing choices, actually making a selection) needs to be considered when determining the accessibility of a voting system. Third, the focus should be on attributes rather than diagnosis. This will eliminate assumptions about what a person with a specific disability may need and allow the most flexible use of voting technology.

Q: What voting equipment is accessible to people with disabilities and why?

A: DRE (Direct Recording Electronic) voting systems are the most accessible to people with disabilities. These are most often found in touchscreen format, although there are also dial machines. These machines provide increased access to those with visual disabilities by offering an audio presentation of the ballot with the use of headphones. A moveable number pad can also be used with the machine for people with visual, dexterity, and other disabilities. Many machines allow the font size on the screen to be changed, and the height and position of the screen can be adjusted. All these features ensure that individuals with disabilities can vote independently and in secret.

Q: Recent news reports point to problems with security of DRE's. What do I need to know about safety and security of DRE systems?

A: There are some legitimate concerns regarding the security of DRE machines. These include the fact that the source code is not public and worries that the vendors of the machine could manipulate the results in a way that would not be detectable to an outsider. There is disagreement, however, about how probable it is that malicious code could be written in the system without being detected by federal, state, or local authorities. Although these problems are real, they are fixable. Any modifications that are made, though, should not be at the expense of accessibility for all.

Q: What can advocates do at the local level to influence the accessibility of the voting process?

A: The first step is for disability rights advocates to become informed about what kind of voting equipment is available and what is required by both federal and state law. They can contact their local county election officials and encourage them to purchase the most accessible machines possible. They can also request that any system under consideration be tested by people with various disabilities. Advocates

Building Your Rolodex

can urge that counties use funds from the Voting Modernization Board to purchase at least one DRE machine for each polling place. Finally, advocates can request that counties establish an infrastructure that promotes voting accessibility.

Q: In addition to accessible voting equipment, what infrastructure considerations can benefit people with disabilities in the voting process?

A: Accessible voting equipment is clearly important, but it is also essential that county election officials have an ongoing infrastructure that promotes and supports the goal of accessible voting. Some possible ways of implementing this are to establish a community-based voting access committee, perform outreach and education to the disability community about new voting equipment, and establish a system to ensure the concerns of the disability community are heard and addressed.

Source: "Voting FAQs," DREDF, www.dredf.org/voting/voting_faq.html.

National Organization on Disability

www.nod.org/political/index.cfm

The National Organization on Disability provides information to educate the disability community, election officials, and service providers on voting rights. Articles, information, and featured links about the political participation of people with disabilities.

Disability Vote Project

www.aapd-dc.org/dvpmain/newdvpindex.html

The Disability Vote Project pushes for election reform including efforts to get out the disability vote, polling place and voting system access, asking service providers to comply with the provisions of the National Voter Registration Act, and encouraging people with disabilities to run for office and to get involved in the political process for the candidate of their choice.

Help New Hampshire Vote Videos

www.sos.nh.gov/voting%20in%20new%20hampshire%20new.htm

New Hampshire's Secretary of State's office offers two online videos regarding accessible voting. Starring Cheryl Killam, Governor's Commission on Disability, the videos are entitled "How to Vote in NH" and "Polling Place Accessibility."

HAVAInfo.org

www.HAVAInfo.org

Maintained by the Rocky Mountain ADA & IT Center, HAVAInfo.org provides general information about the Help America Vote Act of 2002 (HAVA) including links that provide state specific information and resources.

Federal Election Commission

www.fec.gov/hava/hava.htm

Information regarding the Help America Vote Act of 2002. Includes text of the law, implementation timeframes, and specific federal agency responsibilities.

The Center for an Accessible Society

www.accessiblesociety.org/topics/voting/index.htm

Articles and links to voting accessibility topics including voting machine accessibility, studies on voting participation of people with disabilities, expert sources, and commentary.

Bazon Center for Mental Health Law

www.bazon.org/issues/voting/index.htm

The Bazon Center works to expand access to the polls for people with mental disabilities. Site includes voting news, information about legal strategies and links to additional resources.

Important Title II Victory in Supreme Court



Advocates crawling across the Supreme Court plaza made a strong visual statement about the importance to the disability community of this case calling for equal and accessible entrance to the courts and other public buildings for all Americans.

Photo by Brewster Thackeray, N.O.D.

States that fail to make their courthouses accessible to people with disabilities can be sued for damages under the ADA, the Supreme Court ruled in a significant break from recent decisions giving states broad immunity from suit under various federal laws. The case is *Tennessee v. Lane*, No. 02-1667.

The 5-to-4 decision was narrow in scope. Rather than validate, or even address, Congress's decision in the ADA to open the states to suit for failing to make accessible a broad array of public services and programs, Justice Stevens confined his majority opinion to the specific context presented by the case: access to court systems. Other contexts covered by Title II, which prohibits governments from discriminating on the basis of disability in access to

their "services, programs or activities," must await future rulings. Claims involving access to places where fundamental rights are not usually exercised – publicly owned hockey rinks were one example mentioned – may not fare as well.

The decision affirmed a ruling by the US Court of Appeals for the Sixth Circuit in Cincinnati. Last year that court rejected Tennessee's claim of immunity from a suit brought in 1998 by George Lane, a man who refused to crawl or be carried up to a second-floor courtroom in a county courthouse to answer a criminal traffic complaint, and Beverly Jones, a court stenographer whose reliance on a wheelchair kept her from many Tennessee courtrooms.

Justice Ginsburg said that "legislation calling upon all government actors to respect the dignity of individuals with disabilities is entirely compatible with our Constitution's commitment to federalism, properly conceived." Justice Souter wrote that judges had been part of the history of official mistreatment of people with disabilities, for years enforcing or upholding laws or policies that were flagrantly discriminatory. That history was relevant because the factual dispute within the court centered on whether Congress had sufficient justification for opening the states to suit under the ADA.

As interpreted in recent decisions, the 11th Amendment to the Constitution ordinarily bars private lawsuits against states in federal court unless Congress has acted within its own authority to abrogate that immunity. Further, the court has ruled, Congress can validly take that step only in the exercise of its power to enforce the equal-protection and due-process guarantees of the 14th Amendment, and only then as a "congruent and proportional" response to official failure to enforce those guarantees.

In a 2001 ruling, the court held that Congress had lacked a basis for permitting states to be sued under Title I of the ADA, which applies to state employment. There was an insufficient record of state discrimination against disabled public employees, Chief Justice Rehnquist said for the majority then, while suggesting that the record for Title II might be different. It is different, insisted Justice Stevens. In its years of consideration before passing the ADA, "Congress learned that many individuals, in many states across the country, were being excluded from courthouses and court proceedings by reason of their disabilities," he said.

A copy of the decision can be obtained at: <http://supct.law.cornell.edu/supct/html/02-1667.ZS.html>.

Source: "States Can Be Liable for Not Making Courthouses Accessible," by Linda Greenhouse, *New York Times*, May 18, 2004.

The ADA Center

ADA Distance Learning 2004

ADA Distance Learning 2004 provides continuing education on regulations and trends under the ADA. All you need is a telephone. Participate by yourself or invite colleagues to sit around a speaker phone. The toll free phone number will be sent to registrants prior to each session. Each session is real-time captioned on the host website so that people who are deaf and people who prefer to read the presentation and questions and answers can participate.

Fee

\$40 businesses; \$25 government agencies, non-profit organizations, individuals

To register

email adainfo@NewEnglandADA.org or call (800) 949-4232 (voice/tty) with your name, affiliation, address, phone and email address. We will send you an invoice after the teleconference has occurred.

All sessions are on Tuesdays from 2–3:30 pm Eastern.

We will email you the toll free call-in number a few days before the session.

What Makes A Meeting Accessible? August 17

June Isaacson Kailes, Disability Policy Consultant and Author of “A Guide to Planning Accessible Meetings” and “Accessibility Guidelines for Speakers”

Access by people with disabilities to meeting rooms and all of the amenities associated with conferences, workshops, and seminars is frequently overlooked or misunderstood. Join us for this session where our speaker will outline the major areas where issues of access should be considered during the planning and conduct of a successful meeting. Strategies for addressing space needs, working with hotel and catering staff, written and oral communication and tips for presenters will be discussed.

Is My Business Accessible? September 21

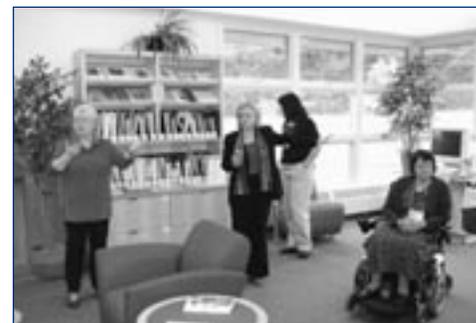
Conducting a Self-Assessment: What Do I Need to Consider?

Mark Derry, Eastlake, Derry & Associates, LLC

Is my business grandfathered? What do I need to do to make it accessible for people with disabilities? What tools are available to assist in this process? Many business owners state that they want to make their business accessible but don't know where to start.

Conducting a review of the physical accessibility of a facility can be an overwhelming task. Determining the scope of the review as well as potential accessibility solutions can stymie even the most seasoned businessperson. Join our speaker as he outlines the steps to be taken when initiating a self-assessment as well as tools and resources that are available.

ADA Center Regional Advisory Board Meeting



The New England ADA & Accessible IT Center's Regional Advisory Board recently met at the New England Assistive Technology Center (NEAT) in Hartford, CT. NEAT was established to provide information and access to equipment and devices that can change the lives of people of all ages and with all types of disabilities. NEAT operates under the auspices of The Connecticut Institute for the Blind/Oak Hill, a 109 year old non-profit organization. The Advisory Board received a tour and demonstration of NEAT's 25,000 sq. feet of space for product demonstrations, expos, classes, computer use, research and equipment restoration.

NEAT is open Monday to Friday 8:30 am–4:30 pm and the first Saturday of every month from 9:00 am–2:00 pm. You can contact them by calling (866) 526-4492 toll free in Connecticut or (860) 243-2869. You can also email NEAT at info@neatmarketplace.org, or visit their website www.neatmarketplace.org.

Around the Region

Court Overturns Maine Voting Ban

In a precedent-setting order in August 2001, a federal court struck down Maine's prohibition on voting by anyone under guardianship by reason of mental illness. The court found that the prohibition violates both the Equal Protection Clause of the US Constitution and Title II of the ADA. The court also held that failing to give people notice before a guardianship hearing that they might lose their right to vote violated their Due Process rights. The case, *Doe v. Rowe*, was brought by the Maine Disability Rights Center on behalf of three women with mental disabilities who claimed they had been unfairly denied the franchise.

While the state has a compelling interest in limiting the right to vote to people who understand the nature and effect of voting, Judge George Singal found a blanket restriction not narrowly tailored to achieve that interest. The state cannot use mental illness as a proxy for mental incapacity with regard to voting. Individuals under guardianship may lack capacity to make some decisions, but have capacity to understand what it means to vote. More than 40 states have statutory or constitutional provisions that disenfranchise people with mental disabilities regardless of their capacity to vote.

Source: "Federal Court Overturns Maine Voting Ban," Bazelon Center, www.bazelon.org/issues/voting/news.htm.

Voting Place Accessibility in Massachusetts

In 1990 and 1995, the Massachusetts Office on Disability (MOD) collaborated with the Office of the Secretary of the Commonwealth (SOC) to ensure that all polling places were architecturally accessible. Teams conducted trainings to advocates and local elections officials on how to survey a polling place in accordance with the Massachusetts regulations 950 CMR 51.00 "Polling Place Accessibility for Elderly and Handicapped Voters." Surveys were conducted by advocates and local elections officials; survey tools were completed, signed, and returned to the SOC. At that time, municipalities reported that all their polling places were accessible.

Even with state regulations in place and the support of the Secretary of State's Office, MOD continued to receive complaints about the lack of access at polling places throughout the Commonwealth. The first step was to try to determine why there were still so many complaints regarding the lack of architectural access even though many polling places had been surveyed more than once. It was concluded that along with limited funding for municipalities to make the changes, there was inconsistent reporting since prior surveys were conducted by volunteers.

In order to ensure consistent survey results, MOD's access specialists, Jeffrey Dougan, Bruce Bruneau, and Ralph Hickey, began in February to meet with local elections officials and had those officials join them while

their polling locations were surveyed. Massachusetts has 351 municipalities and almost 1500 polling places. Surveys will soon be completed and results will be available by August. Municipalities will receive reports listing the specifics of what was found at each location. All local elections officials have been informed by the SOC that their polling places must be brought into compliance or that the polling place must be moved to an accessible location in time for the November election.

Every Vote Counts in Connecticut

The ADA Coalition of Connecticut recently entered into partnership with the State Office of Protection and Advocacy (OPA) to survey 350 polling places across the state. This project is part of OPA's voter access initiative, Every Vote Counts, conducted in collaboration with the Connecticut Secretary of State's Office and the Center for Excellence in Developmental Disabilities at the University of Connecticut.

In 2000, OPA developed voter access materials with the Secretary of State's Office and took on the challenge of evaluating Connecticut's approximately 700 polling places, completing half by the end of 2003. A comprehensive binder on voter access, including the survey form, training packet, OPA publications and publicity material, was produced. OPA also produced voting related giveaways, from rulers to pens to clipboards, emblazoned with the Every Vote Counts logo.

In 2004, OPA plans a series of voting machine focus groups, during which people with disabilities will have an opportunity to try out and evaluate machines of different kinds. An additional project for this year will involve developing protocols that ensure ballot access for people living in psychiatric care facilities.

HAVA Activities in NH

In February 2003, members from the NH Attorney General's office, NH Secretary of State's office, Governor's Commission on Disability, Disabilities Rights Center, Granite State Independent Living, NH Association for the Blind, NH Health & Human Services, election officials, and information technology specialists formed task forces in order to address HAVA requirements. Active task forces include the HAVA State Plan Committee, the Statewide Voter Registration Database Task Force, the Disabilities Access and Voting Systems Task Force, and the Election Officer Training Task Force.

On April 15, 2003, a voting machine vendor fair was held at the NH Legislative Office Building. The following companies participated: AccuPoll, Avante International Technology, Diebold/LHS, Election Systems & Software, Encrypted Voting Machine Systems, Sequoia, and TruVote International. Each manufacturer was interviewed and every machine evaluated by task force members.

The draft NH State Plan for HAVA was released in May 2003 followed

by two public comment hearings held last August. An updated plan was released and submitted to the federal government in February 2004.

On June 13, 2003, 400 election officials attended an election laws training. Bud Fitch, Assistant Attorney General, spoke about changes in election laws and Cheryl Killam, Governor's Commission on Disability, gave a presentation on disability awareness and voter accessibility requirements. Additionally, the Disabilities Access & Voting Systems Task Force and the Election Officer Training Task Force is producing a disability awareness training video for election officials.

Election Day, November 2003, many polling places were evaluated by Bud Fitch, Cheryl Killam, and Thomas Manning, Assistant Secretary of State. This process was video-taped leading to the creation of two videos: "How to Vote in NH" and "Polling Place Accessibility." Primary Day, January 2004, NH Sheriffs evaluated 287 polling places; staff and consumers from Granite State Independent Living and the Disabilities Rights Center evaluated 120; 10 were evaluated by Cheryl Killam and Thomas Manning. Municipalities will receive letters containing information about polling place deficiencies, deadlines for correcting problems, and a grant funding process.

For more information about NH's activities go to: www.sos.nh.gov/HAVA/index.htm.

Rhode Island: First to Make All Voting Places Accessible

How Rhode Island did it:

- The process emphasized collaboration between election administrators and the disability community.
- A team of state and local election officials and representatives from the disability community jointly designed the entire project and all materials including the inspection checklist.
- Over 18 months, a team inspected every polling place. The inspection team consisted of one employee of the city or town election office and an access specialist from the disability community.
- When an inaccessible polling place was identified, the inspection team jointly decided on the solution. If the polling place needed to be moved, the team identified the new site and negotiated with the owner for its use.
- The average cost to make all the polling places accessible was less than \$400.

For additional information contact:

Bob Cooper, Executive Secretary
RI Governor's Commission on
Disabilities

Phone: (401) 462-0100 (voice)
(401) 462-0101 (tty)

Email: bcooper@gcd.state.ri.us

Source: "Rhode Island: First State to Make All of Its Voting Places Mobility Accessible," AAPD, www.aapd-dc.org/dvpmain/pollaccess/Rlvotingmobility.html.

DOJ Update

Justice Department Guide to Polling Place Accessibility

The Department of Justice has announced the release of new guidance to assist local election officials in ensuring that polling places are accessible to voters with disabilities. The new publication, the “ADA Checklist for Polling Places,” is being made available via the Internet.

The Americans with Disabilities Act (ADA) of 1990 requires state and local governments to ensure that people with disabilities have an equal opportunity to participate in all of their programs and activities, including voting. Congress reemphasized the importance of accessible voting in the Help America Vote Act (HAVA) of 2002, the federal election reform law which provides federal funding to help make polling places accessible. All of the 55 states and territories covered by the requirements of HAVA have already received federal funding to improve the voting process, including for disabled voters.

“The right to vote stands at the core of a properly functioning democracy,” said R. Alexander Acosta, Assistant Attorney General for Civil Rights. “No one should be denied the franchise simply because they cannot physically access their polling place. This guide will be an important tool in eliminating unnecessary voting barriers.”

The 33–page “ADA Checklist for Polling Places” covers a wide range of accessibility issues, including parking, passenger drop-off areas, walkways, building entrances and hallways, and use of the voting area. It helps election officials recognize and identify accessibility problems at the schools, churches, and public buildings that serve as polling places throughout the nation. The guideline offers practical, simple, and efficient solutions to remedying and eliminating barriers that prevent individuals with disabilities from voting or make it more difficult for them to exercise their franchise.

Starting on January 1, 2006, local election jurisdictions throughout the United States will also be required by HAVA to provide at least one voting machine per precinct that is accessible by individuals with disabilities, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters. When this requirement becomes effective, voters with disabilities will finally be able to vote in private without assistance, a right that is taken for granted by other American voters.

The “ADA Checklist for Polling Places” is available online through the Department of Justice ADA Home Page at www.ada.gov/votingck.htm and by telephone through the ADA Information Line at (800) 514-0301 (voice) and (800) 514-0383 (tty).

Access Board Update

New Election Commission Holds First Public Meeting

In addition to the ADA, the Help America Vote Act of 2002 also addresses access to polling places. Under the law, every precinct in the country must have at least one voting machine or system used in Federal elections that is accessible to persons with disabilities, including those with vision impairments, by January 1, 2006. Access is required so that persons with disabilities have the same opportunity for participation, including privacy and independence, afforded other voters. The act also establishes requirements that will allow voters to verify and correct their selections before casting a ballot and that will remove language barriers.

The law establishes an independent entity, the Election Assistance Commission, to implement these and other reforms. The new Commission, which held its first meeting on March 23, will oversee the development of standards for voting systems which are to include provisions for accessibility. The Commission will also be responsible for testing and certifying voting equipment, conducting studies on voting system improvements, and administering various grant programs funded by the law. The standards are to be developed through several advisory bodies, including a Board of Advisors and a Technical Guidelines

Development Committee. The Access Board, which has been named to both the advisory board and the guidelines committee, will be represented by public Board members James Elekes and James “J.R.” Harding.

At its recent meeting, the Commission received reports on the status of these entities and the work completed to date on new voting system standards. The commissioners also discussed publication of state plans for complying with the act in the Federal Register the following day and a timetable for distributing grant monies to states. The Commission intends to hold a hearing on electronic voting within 45 days and will complete its organization and relocation and set up a website in coming months. For further information, contact the Election Assistance Commission at (202) 694-1095.

Source: Access Currents, Volume 10, No. 2, March/April 2004.

Employment Update

Working As a Major Life Activity

The 1st US Circuit Court of Appeals in Boston grappled with the difficulty of relying on the “major life activity” of working to support that an employee’s alcoholism is a “disability” under the ADA and ruled that it was not. The case is Sullivan v. The Neiman Marcus Group, Inc.

Suing Neiman Marcus, Sullivan claimed that he had a disability resulting from his alcoholism. He asserted that the retailer had failed to reasonably accommodate his disability and, alternatively, that it had discriminated against him based on his disability. In response, Neiman Marcus alleged that it had terminated Sullivan because of his consumption of alcohol during the workday in violation of company rules. The district court granted summary judgment for Neiman Marcus and Sullivan appealed.

Assuming that working could be a major life activity supporting an ADA claim, the 1st Circuit recognized that an alcoholic’s ADA claim based on such a foundation often would present the claimant with a “catch-22.” That is, to be subject to the ADA’s protections an employee must demonstrate that he or she is a “qualified individual” with a disability. However, by demonstrating that an impairment substantially limits his ability to work, an employee instead may succeed in showing that he is unqualified, thereby losing the ADA’s protection. An employee asserting alcoholism as his disability will find it particularly difficult to surmount this difficulty, because the ADA explicitly allows an employer to hold an employee with alcoholism to the same standards as an unimpaired employee.

Even if Sullivan could overcome these hurdles, he still would have to demonstrate that he was unable to perform either a class of jobs or a broad range of jobs. The court held that Sullivan, likely concerned that evidence demonstrating that he was impaired in the major life activity of working instead would show that he was unqualified for his position, had failed to produce any evidence that his alcoholism had a negative effect on his ability to work. Rather, Sullivan presented evidence that his alcoholism did not interfere with his ability to work, making a finding that he had a disability under the ADA virtually impossible.

Source: “Working Not Substantially Limited by Alcoholism,” by Lawrence Peikes, www.wiggin.com/pubs/articles_abstract.asp?ID=147474162004.

Invite an ADA Specialist for Lunch or Anytime!

ADA Specialist Andy Washburn will come to your office and you’ll...

- Discuss & get answers to your ADA questions
- Learn how to use the ADA Accessibility Guidelines (ADAAG)
- Find out how the ADA relates to model building or local and state accessibility codes

You can reach him at:

The New England ADA & Accessible IT Center: 617-695-1225, ext.31
awashburn@AdaptiveEnvironments.org

Note: Fee \$150 for 60-90 min.
Only available to Greater Boston region

DC Implements Accessible Touchscreen Voting

All citizens of the District of Columbia, including the 22,000 individuals who are blind and disabled, will for the first time, be able to vote secretly and independently. DC is among the first jurisdictions to meet the Help America Vote Act of 2002 (HAVA) requirement for one accessible touchscreen voting unit in every polling place.

American Association of People with Disabilities (AAPD) VP, Jim Dickson, who is blind, has been a leading force nationally to make voting accessible for everyone. As a resident of the District of Columbia, he will be able to cast a ballot for the first time in his life without needing someone to enter the voting booth with him. "I've been voting for 36 years. I've had to trust that others marked my ballot according to my wishes. I am excited and proud to exercise my fundamental right as an American. This is a big step for me and a huge step for democracy."

In another first, the District will be conducting the election on a "blended system." Voters will have the choice of voting on an accessible electronic touchscreen or on a paper optical scan ballot. The accessible system allows the blind voter, using headphones, to hear the ballot and

vote following the prompts. Prior to casting his vote secretly, Jim Dickson demonstrated the audio ballot using electronic speakers.

Disability Access Provisions of HAVA

HAVA allocates \$850 million to provide one accessible voting machine in each polling place. The federal government provides 95% of the cost. HAVA allocates \$100 million to make polling places physically accessible, but there is no national definition of "accessible" or a deadline for implementation. Grants will be awarded by Health and Human Services.

"I've been voting for 36 years. I've had to trust that others marked my ballot according to my wishes. I am excited and proud to exercise my fundamental right as an American."

HAVA impacts every part of the voting process, from voting machines to provisional ballots, from voter registration to poll worker training. Under HAVA, states must meet new federal requirements, including provisional ballots, statewide

computerized voter lists, "second chance" voting, and disability access. States will receive federal funds for these purposes and to improve the administration of elections. To be eligible for grants, each state must design a plan, pass enabling legislation this year, and appropriate a small amount of state funds. Each state must develop its implementation plan through a process that includes citizen participation and a public review. Elements that must be included in the state plan and legislation:

1. The disability community and other stakeholders must be represented on the HAVA planning commission.
2. Electronically including all Medicaid and other disability agencies as voter registration sites in the new statewide voter registration system.
3. Have one accessible voting system in every polling place by January 1, 2006.
4. All voting related materials must be provided in alternative formats.
5. Disability etiquette training for poll workers must be a statewide curriculum.

Source: "Disability Recommendations for State Implementation of the Help America Vote Act," AAPD, www.aapd-dc.org/dvpmain/elreform/dvpstateHAVA.html.

New Publications Available from the ADA Center

ADA Checklist for Polling Places

DOJ provides guidance on making polling places accessible. 33 pp., \$4

Signs of Civic Access



Geared for voting sites, includes the alphabet in sign language, twelve basic signs and tips on communicating with people who are deaf or hard of hearing. 24"x18", \$3

Barrier Free Voting



Includes 8 ideas for increasing access at voting sites. 24"x18", \$3

Accessibility of State and Local Government Websites to People with Disabilities

DOJ provides guidance on making state and local government websites accessible. 5 pp.

Accessible Temporary Events: A Planning Guide

Center for Universal Design's handy guide to making street festivals, fairs, music events, sports tournaments, parades, rallies, marathons and other events more accessible to all. Great illustrations and diagrams. 103 pp., \$7

Access Board's Guides on Recreation Facilities

Helpful diagrams, photographs and text clarify and expand on the US Access Board's Guidelines for Recreation Facilities:

- Amusement Rides. 15 pp., \$1
- Boating Facilities. 16 pp., \$1
- Fishing Piers and Platforms. 12 pp., \$1
- Golf Courses. 11 pp., \$1
- Miniature Golf Courses. 9 pp., \$1
- Sports Facilities. 14 pp., \$1
- Swimming Pools, Wading Pools, and Spas. 20 pp., \$1

All publications are available from our Center by calling (800) 949-4232 (voice/tty) or by ordering online using our shopping cart at www.AdaptiveEnvironments.org/neada/adapublications.php. Many publications can be downloaded.

Voting: A Constitutional Right for All Citizens

A revised and updated version of the National Organization on Disability's publication, "Disabled Citizens at the Polls: A Guide for Election Officials", this detailed guide is published jointly by the National Task Force on Accessible Elections and the Election Center. Covers access to polling places for all disabilities. This guide is available in PDF format at www.nod.org/pdffiles/voteguidebook.pdf or by contacting the National Organization on Disability at (202) 293-5960 (voice), (202) 293-5968 (tty), or email ability@nod.org.

Access Expressed! New England: A Cultural Resources Directory

VSA arts affiliates in all six New England states have formed a partnership with the New England ADA & Accessible IT Center and Adaptive Environments to update Access Expressed! Massachusetts a directory of accessible cultural facilities and programs. The directory features access information for 300+ cultural venues such as museums, theatres, concert halls, zoos, movie theatres, sports facilities and galleries throughout New England. For further details or to purchase a copy, contact Bonnie Kaplan at (617) 350-7713 (voice), (617) 350-6836 (tty), (617) 482-4298 (fax) or Email at bsk@vsamass.org. Each copy retails for \$19.95 plus \$5.00 shipping. The Directory is available in alternative formats.

EVENTS AND ANNOUNCEMENTS



Designing for the 21st Century III Conference

Adaptive Environment's third international conference on universal design, Designing for the 21st Century III, will be held in Rio de Janeiro on December 8-12, 2004. Plans call for over 800 attendees from around the world.

For more information: www.designfor21st.org

Questions: 1 (617) 695-1225 (voice/tty) | info@AdaptiveEnvironments.org



ADA Basic Building Blocks

The ADA Basic Building Blocks is a self-paced web course that explores the legal requirements and the spirit of the ADA. It is organized into 12 topics that cover the basic principles and core concepts contained in the ADA.

For more information: www.adabasics.org