

LAW MEMO

Accessibility for Persons with Disabilities: A Legal Overview

NEA Releases New Guidebook

Although the Americans with Disabilities Act (ADA) and the National Endowment for the Arts 504 regulations have been in effect for quite some time, arts administrators who operate facilities, offer programs for the public, and interact with job applicants and employees still have questions concerning compliance with disability access regulations.

These confused administrators are not ignorant or insensitive; their lack of certainty stems from the fact that the disability laws are civil rights measures, not detailed building codes or affirmative action plans mandating hiring quotas.

This issue of *Arts Law Memo* discusses some of the key legal requirements and recommends a few practices that can facilitate inclusion.

“The Arts Endowment holds as its guiding principle that the vast richness of America’s culture should be made available to all.”

— Dana Gioia, chair
National Endowment for the Arts

SECTION 504

The National Endowment for the Arts regulations date back to the Rehabilitation Act of 1973. Section 504 of the Act prohibits discrimination on the basis of a disability towards “otherwise qualified” people with disabilities by recipients of federal financial assistance.

The concept is that any program or activity receiving any federal funding, either directly or indirectly, must comply with the regulations. This means that arts

programs supported by NEA funds that are dispensed by a state arts council must comply with Section 504.

Furthermore, Missouri and Illinois arts council funding guidelines specify that grantees must comply with applicable civil rights laws and make every attempt to ensure program accessibility. Both state agencies have designated staff members as ADA/504 coordinators. They are Deborah Edelman at the Missouri Arts Council (314/340-6845) and Ann Ridge at the Illinois Arts Council (312/814-6762).

THE AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act of 1990 (ADA) is the most comprehensive federal civil-rights statute protecting the rights of people with disabilities. It covers a variety of settings.

Title I prohibits discrimination on the basis of disability in all employment practices, including recruitment, hiring, promotion, pay, discipline, and discharge.

Organizations are covered by the employment provisions of the ADA if they have 15 or more full- or part-time employees for 20 or more weeks during the year. However, as noted above, smaller organizations that receive funds from government funding agencies should be aware that they are expected to comply with disability access regulations.

Title III prohibits discrimination against disabled individuals in the full and equal enjoyment of public accommodations. The term public accommodation is defined broadly and includes theatres and other places of entertainment, gathering places such as auditoriums and lecture halls; museums, libraries and galleries; places of recreation such as parks and zoos; and schools.

The ADA is enforced the way all other civil rights laws are enforced. Complaints

Published by the St. Louis Volunteer Lawyers and Accountants for the Arts (VLAA), *Arts Law Memo* is mailed, free of charge, to more than 850 Missouri and Southwestern Illinois arts organizations, VLAA volunteers and corporate sponsors.

VLAA helps artists and arts organizations solve and avoid legal and accounting problems by:

- Making referrals to lawyers and accountants;
- Mediating arts-related disputes;
- Publishing Arts Law Memo and concise how-to guides;
- Sponsoring seminars and public forums;
- Arranging for guest speakers;
- Maintaining a reference library;
- Operating an arts space clearinghouse;
- Supplying model contracts and other arts law and business materials;
- Facilitating meetings;
- Conducting and disseminating research on issues affecting the arts;
- Contributing articles to publications;
- Collaborating on arts advocacy initiatives;
- Matching volunteers with arts organizations seeking board members; and
- Providing access to the national volunteer lawyers for the arts network.

This issue was written by Sue Greenberg, VLAA’s executive director.

This publication is distributed with the understanding that VLAA is not engaged in rendering legal or accounting counsel. We urge you to seek professional services to address your specific needs.

St. Louis Volunteer Lawyers and Accountants for the Arts

6128 Delmar
St. Louis, MO 63112
314/863-6930
FAX 314/863-6932
vlaa@stlrac.org
www.vlaa.org



are filed with the U.S. Justice Department or the Equal Employment Opportunity Commission (EEOC), which investigate to determine whether grounds for a violation exist.

EMPLOYMENT

Under the employment provisions of the ADA, discrimination against “qualified” disabled employees or applicants who are able to perform the “essential functions” of a job is prohibited. A qualified individual is one who satisfies the requisite skill, experience, education and job-related requirements of the position.

The ADA protects those who have a physical or mental impairment that substantially limits one or more major life activity. This could cover a broad range of disabilities such as paralysis, speech impediment, facial scarring, blindness, cancer, heart disease, HIV/AIDS, and most emotional illnesses.

When a person’s disability creates a barrier to employment, the ADA requires employers to consider whether “reasonable accommodation” could remove the barrier. “Reasonable” is defined as change or adjustment to a job or work environment that permits a qualified applicant or employee with a

disability to participate in the job application process and to perform the essential functions of a job.

As noted by Nolo Press, which publishes several easy-to-understand employment law books and posts helpful articles on its web site (www.nolo.com), hiring procedures will not be confusing if you follow one simple rule: “You can ask people about their abilities, but you can’t ask people about their disabilities.”

According to the EEOC, examples of what you can ask include:

- Whether the applicant has the right education, training, and skills for the position.
- Whether the applicant can satisfy the job’s requirements or essential functions (describe the duties);
- How much time off the applicant took in a previous job (but not why), the reason the applicant left a previous job, and any past discipline.

You cannot ask:

- Questions about an applicant’s physical or mental impairment or how the applicant became disabled;
- Questions about an applicant’s treatment by a psychiatrist or psychologist;
- Questions about disabilities or

impairments that might affect the applicant’s ability to do the job.

- Questions about an applicant’s use of medication or treatment for drug addiction or alcoholism; or
- Questions about an applicant’s prior workers’ compensation history.

Where it seems obvious that an applicant has a disability that will require a reasonable accommodation, you may ask whether the applicant will need one. This is an exception to the usual rule that questions regarding disability and reasonable accommodation should come after making a conditional job offer.

For example, during a job interview, you may ask a blind applicant interviewing for a position that requires working with a computer whether s/he will need a reasonable accommodation, such as special software that will read information on the screen.

For more information about hiring and the ADA, visit the EEOC web site (www.eeoc.gov).

Management should make it clear to both employees and volunteers that any discriminatory conduct — whether intentional or unintentional — that results in abuse of another individual’s rights will not be tolerated.

New NEA Book Provides Guidance on Accessibility

In July, the National Endowment for the Arts released a new book, *Design for Accessibility: A Cultural Administrator’s Handbook*. Published in partnership with the National Assembly of State Arts Agencies (NASAA), the National Endowment for the Humanities (NEH), the John F. Kennedy Center for the Performing Arts, and the MetLife Foundation, it provides cultural administrators with guidance on how to produce fully accessible and inclusive programming

The 171-page publication is designed to help administrators make access an integral part of their organization’s planning, mission, programs, outreach, meetings, budget, and staffing. It addresses planning with inclusion as the goal; legal issues; architectural access, including access to historic properties; effective communication and program access; training for staff, board members, volunteers and constituents; and audience development.

“The Arts Endowment holds as its guiding principle

that the vast richness of America’s culture should be made available to all,” said National Endowment for the Arts Chairman Dana Gioia. “This handbook is not only designed to help arts organizations comply with the law, but to create inclusive environments for the arts that are usable by everyone, including people of all ages and individuals with disabilities.”

Design for Accessibility: A Cultural Administrator’s Handbook is an update of the NEA’s *The Arts and 504* handbook, published in 1992, and includes additional information from *Design for Accessibility: An Arts Administrator’s Guide*, produced by the NEA and NASAA in 1994.

This month, *Design for Accessibility* is being mailed to organizations receiving FY04 grants from the Missouri Arts Council. The publication can be downloaded at no charge from the NEA web site (www.arts.gov/partner/Accessibility/DesignAccessibility.html.)

PUBLIC ACCOMMODATION

Title III of the ADA prohibits discrimination against disabled individuals with regard to the full and equal enjoyment of public accommodations.

Complying with the ADA means taking whatever “reasonable” steps are necessary to ensure that no one with a disability is excluded, denied services, segregated, or otherwise treated differently than anyone else because of physical barriers or the absence of auxiliary aids and services.

By now, those who operate facilities understand that “reasonable” architectural actions are not unduly costly, extensive, substantial, or disruptive; nor do they fundamentally alter the nature or operation of the business or facility.

Most arts organizations also have made great strides with program access services such as sign interpreters, infrared assistive listening systems, audio description, braille, large print, and touch tours. However, much more can and should be done. Here are a few suggestions, including helpful resources:

- **Temporary events.** Historic sites, gardens, parks, plazas, and other exterior and temporary spaces sometimes present special challenges to those sponsoring events, such as festivals, art fairs and concerts.

The Center for Universal Design at North Carolina State University recently published *Accessible Temporary Events: A Planning Guide*. It addresses many typical physical and communications access issues, such as temporary parking locations, portable toilets, signage, and sound amplification systems.

Suggestions are offered for successful planning, advertising, and coordination of available community resources. To request a free copy, call the Disability and Business Technical Centers, 800/949-4232.

- **Disability access symbols.** Promoting your organization should include outreach to people with disabilities. Use disability access

Core Principles of Accessibility

Access to cultural programs is a federal law and a legal requirement of Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

Access is an organizational asset and must be integrated into all facets and activities, from day-to-day operations to long-range goals and objectives.

Access accommodations and services must be given a high priority and earmarked in the budget process.

Access has economic benefits because people with disabilities and older adults are a significant part of the population and they constitute a large potential market for the arts and the humanities.

Access is a social issue. People with disabilities are included in the definition of “diversity.” Promoting diversity and inclusion ensures broader access to the arts for all people.

Access is a civil right. Assuring equal opportunity for everyone is a fundamental starting point for all accessible efforts.

Source: National Endowment for the Arts, *Design for Accessibility: A Cultural Administrator's Handbook* (2003)

symbols to highlight auxiliary aids and access services in signage, brochures, ads, and other materials produced by your organization.

The Disabilities Access Symbols Project, developed by the Graphic Artists Guild Foundation with support from the NEA, is a graphics package of major access symbols on computer disk. The symbols can be ordered by mail or downloaded by contacting the Graphic Artists Guild Foundation, 90 John St. #403, New York, NY 10038, 800/500-2672, www.gag.org/resources/das.html.

- **Accessible web sites.** Include access information on your organization’s web site and make the information easy to find.

Making your web site accessible to all users involves keeping it simple. For guidance, consult “Making Your Web

Site Accessible,” which is posted on the national Very Special Arts site (www.vsarts.org).

SEEK ASSISTANCE

Accommodating audiences and employees with disabilities has become a routine practice for most arts organizations. They know that, because of the regulations, increasing numbers of individuals who once faced difficulty in gaining access to their workplaces and programs are now benefiting from and contributing to the creative process in their communities.

But they also know that compliance with the ADA and Section 504 is often determined on a case-by-case basis. When in doubt, VLAA encourages you to consult an attorney, architect, service agency representing the disabled, your state arts council, or the NEA Office for AccessAbility, 202/682-5532.