# CHAPTER 2

# LEGISLATIVE ASPECTS OF REHABILITATION

MADAN M. KUNDU
CHRISANN SCHIRO-GEIST

## Chapter Highlights

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- **The Americans with Disabilities Act**
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# 2

# Legislative Aspects of Rehabilitation

This chapter provides a historical overview of legislation in rehabilitation. The early legislation, designed to establish a foundation for rehabilitation, is summarized briefly, and the later legislative mandates are discussed in detail. Prevailing social attitudes and language describing people with disabilities are kept intact, so that the reader has an opportunity to comprehend the socio-political dynamics that moved the field of rehabilitation. The concept of multiculturalism and issues affecting rehabilitation outcomes of people with disabilities of diverse backgrounds, are also discussed.

The legislation discussed in this chapter is the basis of both the process of vocational rehabilitation and the cornerstone of professionalism in the field. Legislation can only reflect the spirit of the legislators and their constituents at the time. Many of the acts cited in this chapter are mute on issues related to persons of diverse backgrounds. They say nothing about the cultural context of the United States at the time the legislation was passed. The legislation often accurately reflects the spirit of the time. Diversity was not a focus. Multiculturalism was not perceived to be an issue and, therefore, the legislation is barren of language from this perspective. However, that does not mean that there were not multicultural issues underlying the need for rehabilitation legislation during the legislative history. This chapter will look at some of the most critical pieces of legislation that relate to the field of vocational rehabilitation and some of the culturally relevant issues of the time.

The legislative history of vocational rehabilitation begins around 1916, focusing on World War I and the issues of veterans with disabilities who were returning to civilian life in the United States. This early period only occasionally highlights cultural issues, which reflects the country's lack of focus and even denial of diversity during that period. The sections of the chapter beginning in about 1992 to the present reflect a much more culturally rich, diversity-focused legislative period, reflective of the cultural changes taking place in the United States that also reflect the spirit of the times from a cultural perspective.

The **National Defense Act of 1916** provided educational and vocational instruction for soldiers in active military service to increase their military efficiency and return to civil life with better occupational skills.

The **Smith-Hughes Act of 1917** (Public Law 64-347) created the Federal Board for Vocational Education to administer federal monies on a matching basis to the states for vocational education programs. The Act provided for the physical restoration and vocational retraining of disabled veterans of World War I and dislocated industrial workers.

The **Soldier's Rehabilitation Act of 1918** (Public Law 65-178, **The Smith-Sears Act**) expanded the Federal Board of Vocational Education to offer programs of vocational rehabilitation exclusively to disabled veterans. The disabled veteran had to be vocationally handicapped in a gainful occupation to qualify for services.

It is quite obvious that the early legislative focus was on veterans, and especially those whose contributions to our country's war efforts had caused them serious impairment. Job placement was the obvious goal, with soldiers given an alternative to being on welfare rolls after their war-related disability. Due to industrial and farm mechanization, many could not, with their disabilities, return to their former work.

Cost was an issue and return for the tax dollar has always been the goal. Bitter (1979) notes that between 108% and 133% of the tax dollars spent on vocational rehabilitation are returned to the United States coffers from the income taxes of the rehabilitants. This was seen not as a welfare program, but a jobs program. Obviously, no money can be returned to government without successful job placement.

## THE DEPRESSION AND PRE-WORLD WAR II YEARS: 1920-1939

The **Smith-Fess Act of 1920** (Public Law 66-236) established the First Civilian Vocational Rehabilitation Act that provided vocational rehabilitation services to those "physically disabled" due to industrial accidents, or other injuries not related to war injury. It established the state-federal program on a 50-50 matching basis to provide vocational guidance, vocational education, training, occupational adjustment, prostheses, and placement services. The act emphasized services for civilians with physical disabilities and was definitely vocational in nature. Other relevant legislation during this time period included the **Social Security Act of 1935** (Public Law 74-271), the **Randolph--Sheppard Act of 1936** (Public Law 74-732) that authorized the states to license qualified vending machine operators who were blind, in federal buildings, and the **Wagner-O'Day Act of 1938** (Public Law 75-739), later amended by Public Law 92-28 of 1971, that mandated the federal government to purchase items produced in workshops by persons who are blind or visually impaired.

The Great Depression of the 1930s had a severe impact on placement. Even the best placement counseling could not help procure jobs if there were none. Consequently, this was where learning job-seeking skills to sell oneself to the employer became most relevant. "Mr. Employer, you need me because..."

helped keep many off the bread lines. Wilkerson and Penn (1938) found that, in the years leading up to the World War, disabled African Americans received vocational rehabilitation significantly less than White Americans, although as a group, African Americans had a greater need.

## ACCELERATED GROWTH ERA: 1940-1959

As a result of the GI Bill, established by the federal government after World War II to assist veterans financially in their educational endeavors, colleges and universities experienced an increase in enrollment. Retraining and skill development were crucial in this period's unstable job market. In addition to training, the transition from wartime production to peacetime growth increased demand on the educational system. A liberal arts education was now deemed important. An individual needed to possess a general fund of knowledge and "well-rounded" individual. It was believed that this preparation would best serve a peacetime economy. The transition toward long-range goals and individual planning now became reality.

Veterans Administration (VA) physicians made assessments of Black ex-GI's based on racialized concepts of normality, i.e. by assuming that a disability was merely typical of a 'normal' African American. In 1948, for example, chief medical officers told black veterans at a VA hospital in Virginia, "there is nothing wrong with your nose, that's your natural look; nature made all Negroes to look that way." (Jefferson, 2003, pp. 1104-1105)

Officials at VA hospitals and rehabilitation centers in states such as Mississippi, South Carolina, Georgia, Virginia, Missouri, and Alabama enforced racial segregation and often provided blacks with less than adequate health care, personal adjustment counseling, and physical rehabilitation (Jefferson, 2003, p. 1110). African American veterans often found themselves barred from access to the special vocational compensation and rehabilitation allotted to them under Public Law 16 and the GI Bill of Rights (Jefferson, 2003, p. 1119). In addition to the persistence of the racism against which they fought, activist black veterans were hampered by the advent of the Cold War and subsequent anticommunist hysteria that forced the protest politics developed by wounded black World War II servicemen, underground (Jefferson, 2003, p. 1124).

In 1948, J. C. Lee wrote to NAACP Executive Secretary Walter White, "Is this the Democracy that I've spent nearly three years defending in the Pacific? I am a disabled veteran, but the deplorable conditions that exist here in this country makes me wonder if I'm going to survive as a Negro." White physician

Harold Blackwell commented to NAACP Secretary of Veterans Affairs in 1945 about black disabled veterans "The time that Negro disabled GIs spent in the service does not qualify them for royalties from this man's Army. The only legitimate patients in this hospital are free, white and twenty-one."

The **Vocational Rehabilitation Act Amendments of 1943** (Public Law 78-113, **Barden-LaFollette Act**) superseded the original 1920 Act and brought many significant changes. The new law deleted the word "physical" from the earlier definition and, for the first time, made eligible persons with mental retardation and mental illness. In addition, for the first time, separate state agencies for persons who are blind and visually impaired were established. The concept of rehabilitation was widened by broadening the scope of services to include any services necessary for persons with disabilities to engage in remunerative occupations. These services include medical, surgical, and physical restoration; hospitalization; corrective surgery or therapeutic treatment; prosthetic devices to obtain or retain employment; transportation; occupational licenses; occupational tools and equipment; maintenance; and books and training materials (McGowan & Porter, 1967; Oberman, 1965).

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## THE LEGISLATIVE ERA: 1960-1979

The 1960s through the 1970s were a time of great social consciousness in the United States. The Great Society of Lyndon B. Johnson and a tremendous amount of social legislation, from civil rights and women's rights issues to environmental concerns, were approved by Congress.

As the United States became more socially conscious during this period, the legislative activity and the acts began to include themes addressing culturally relevant issues. This was particularly true following the assassination of Dr. Martin Luther King in 1968. Rehabilitation legislation finally began to include language about social disadvantages and eventually becomes honest and bold enough to enumerate the needs of specific populations that had been largely ignored.

The **Vocational Rehabilitation Act Amendments of 1965** (Public Law 89-333) eliminated economic need as a prerequisite for vocational rehabilitation services. Services were expanded to include the socially disadvantage and behavior disorders such as juvenile offenders, adult public offenders, alcoholics, and drug abusers. Six-month evaluation and 18-month extended evaluation services to determine employment potential were established for persons with mental retardation and severe disability. Reader services for the blind and visually impaired and interpreter services for the deaf and hard of

hearing were provided. Funds were provided to construct new centers, workshops, and residential accommodations for the mentally retarded; improve existing workshops and facilities to provide better job training, state-wide planning, and project development; and expand working relationships between public and voluntary agencies for vocational rehabilitation services and return to gainful employment for handicapped citizens. Professional training assistance in vocational rehabilitation was extended from 2 to 4 years. Finally, the Act created the National Commission on Architectural Barriers to enhance employment opportunities (McGowan & Porter, 1967).

Other legislation during this period included the **Social Security Amendments of 1965** (of the original Social Security Act of 1935) that targeted state vocational rehabilitation (VR) agencies to assure that insurance beneficiaries who are disabled receive vocational rehabilitation services. The **Vocational Rehabilitation Act Amendments of 1968** (Public Law 90-391) broadened eligibility criteria to include persons who are "socially disadvantaged" due to environmental deprivation, and provided for vocational evaluation and work adjustment programs.

The **Rehabilitation Act of 1973** (Public Law 93-112), which was a major overhaul of the original Vocational Rehabilitation Act of 1920 and its subsequent amendments, emphasized priority services to persons with severe disabilities, client's rights, the individualized written rehabilitation program (IWRP), annual reviews, accountability, post-employment services, the promotion of consumer involvement, and support for research and the advancement of civil rights for person with disabilities (Rehabilitation Act ********Amendments of 1986, p. 181011).

One of the landmark accomplishments of the 1973 Rehabilitation Act were the title V provisions to advance the *civil rights* of persons with disabilities. Persons with severe disabilities had been barred from *mainstreaming* into society mainly due to discrimination, and inaccessible housing and work sites. Sections 501, 502, 503, and 504 of the title enforced affirmative action, non-discrimination in employment, and accessibility in place of residence and work.

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*SECTION 503: Affirmative Action* requires any contractor or subcontractor for a federal department or agency receiving in excess of $2,500 to take affirmative action to employ and advance the employment of qualified handicapped individuals. In addition, any contractor or subcontractor for the federal government receiving in excess of $50,000 or employing 50 or more people must develop a written affirmative action plan and submit it to the Employment Standards Administration of the Department of Labor. "Affirmative action under this program requires that qualified handicapped

individuals be actively recruited, considered, and employed, and that all qualified handicapped employees not be discriminated against for promotions, training, transfers, and other job opportunities" (Thoben, 1975, p. 243-244). Persons with disabilities may not be discriminated against in employment on the basis of physical or mental handicaps, and may file complaints with the Department of Labor concerning contractors or subcontractors failing or refusing to comply with the provisions of their contracts.

*SECTION 504: Nondiscrimination in programs or institutions receiving federal grants* prohibits discrimination on the basis of physical or mental handicap, against otherwise qualified persons with disabilities, from participation in programs or institutions receiving federal financial assistance. Not only employers, but also educational and social services programs (such as vocational schools, training centers, rehabilitation facilities, work-study centers, work-activity centers, day care centers, hospitals, nursing homes, housing programs, transportation programs, school districts, and colleges and universities that receive grants or financial assistance from the federal government are expected to make "reasonable accommodation." Examples of such accommodations are, but are not limited to, the provision of reader services, Braille reading materials, talking books, talking calculators for the blind; large print material for the partially sighted; interpreter services for the deaf and hearing impaired; alternative test-taking procedures for persons with specific learning disabilities; accessibility to buildings, classrooms, and restrooms; designated parking facilities close to buildings; prevention of architectural barriers in new building construction and renovation of inaccessible buildings and facilities.

Employers' hiring criteria should be based on the actual skills required to perform the job, and refrain from artificial or superfluous requirements unrelated to job performance, designed to discriminate against persons with disabilities. Pre-employment tests unrelated to job tasks are forbidden. The implementation of alternative testing procedures is required for persons with specific learning disabilities, dyslexia, visual impairment, or other conditions that interfere with reading, writing, and taking tests. Physical and medical examinations will be allowed only if they are related to job performance and are required of other non-disabled individuals. Employers are required to make reasonable accommodations to create a receptive work environment by modifying work schedules; revising job descriptions; restructuring jobs; modifying equipment, devices, and the environment; and removing attitudinal barriers. Employers must make reasonable accommodations for employees with physical or mental limitations, unless employers demonstrate that making such accommodations would cause "undue hardship" in conducting the business. In

cases where employment is denied due to disability and the employer failed to make reasonable accommodations, affected persons can file complaints with the nearest office of the employment Standards Administration of the Department of Labor (Department of Labor, 1975).

In summary, Sections 501 though 504 provided civil rights and employment rights for people who have disabilities. The major thrusts of these provisions are integration, mainstreaming, and holistic participation at all levels in society. These sections of the Rehabilitation Act of 1973 provide four major tools for rehabilitation counselors and placement specialists to use in enhancing client employment potential and the education of persons with respect to their civil rights.

A major amendment to the Rehabilitation Act of 1973 was the **Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978** (Public Law 95-602) that strengthened the existing provisions and expanded new services for persons with severe disabilities. *Section 130* of Title I and Part D of the act extended *vocational rehabilitation services to include members of American Indian tribes who are disabled and residing on or around reservations and trust lands*. It authorized the Rehabilitation Services Administration (RSA) to offer competitive grants to the governing bodies of federal and state recognized American Indian tribes for the establishment of vocational rehabilitation programs. These programs were designed to act as a supplement to the state-federal vocational rehabilitation agencies so that American Indian consumers can receive culturally appropriate services (e.g., ceremonial healing) on the reservation. The Navajo Vocational Rehabilitation Program was the first one to be funded (Guy, 1991).

The act also established the National Institute of Handicapped Research (now, the *National Institute on Disability and Rehabilitation Research*) to promote and coordinate research activities that enhance the quality of life for persons with disabilities. It established an *Integrating Committee on Handicapped Research* to avoid duplications and promote coordination and cooperation in Federal departments and agencies conducting rehabilitation research, and established the National Council on the Handicapped (now, *National Council on Disability*) to increase consumer involvement in the rehabilitation movement. Consumer involvement was further strengthened by reconstituting and expanding the Architectural and Transportation Barriers Act.

Persons with disabilities have received attention from the federal government in over 200 pieces of legislation. Past legislation, however, tended to be of intent only and provided for minimal services, often in highly segregated settings. The 1970s, however, saw renewed attention focused on the rights of adults and children with disabilities. The principle that all persons,

even if unequal in abilities, should be granted equal opportunities found implementation in another important piece of legislation, the **Education for All Handicapped Children Act** of 1975 (renamed **Individuals with Disabilities Education Act in** Public Law 94-142). This act, together with the Rehabilitation Act of 1973, provided the mechanism to assure that children and adults with disabilities are given a chance to be integrated into American society in the least restrictive manner possible. The right to a free and appropriate public education was mandated by this act (Jenkins, 1980).

In 1979, for effective management, the Carter administration reorganized the U. S. Department of Health, Education, and Welfare (DHEW) into the Department of Health and Human Resources (DHHR) and the Department of Education (DOE). An **Office of Special Education and Rehabilitative Services** (OSERS) was created under the U. S. Department of Education. The **Rehabilitation Services Administration** (RSA) administers the Rehabilitation Acts, and the **Office of Special Education Programs** (OSEP) administers grants for special services and education for children with disability. Both agencies are now administered by an Assistant Secretary of OSERS, resulting in programs for persons with disabilities becoming more closely linked.

## THE 1980s AND BEYOND

The 1980s began with inflation and recession. While the fully functional worker had more than enough to do to keep up with double-digit inflation and was lucky to keep a job in those times of recession, the person with a disability was at a tremendous disadvantage when trying to work and make a decent living. Many rehabilitationists were concerned about the political conservatism that swept the United States, beginning with California's "Proposition 13," through the presidencies of Ronald Reagan and George H. W. Bush. At this time, Bowe (1985) found disability to be more common in black adults than it is among whites and Hispanics; blacks must confront discrimination on the basis of race as well as disability; and black adults with work disabilities are much less likely to be employed as professional or managerial workers than are other disabled individuals.

The **Rehabilitation Amendments of 1984** (Public Law 98-221) reauthorized the earlier provisions through 1986, reemphasizing the activities of the National Institute of Handicapped Research (NIHR) and the National Council on the Handicapped (NCOH). The NIHR was authorized to establish a program of pediatric rehabilitation research; a research and training center in the Pacific Basin; and demonstration projects for persons with spinal cord

injuries. NIHR was also authorized to conduct projects to provide job training, on-the-job training, job search assistance, job development, work site modification using the latest technology, and follow-up services for youth having disabilities entering the labor force.

The National Council on the Handicapped became an independent agency, and no longer an agency of the Department of Education. The Council was given added responsibility to promote full integration of individuals with disabilities in all walks of life and to study the process of eliminating disincentives in federal programs and increasing incentives, thus allowing persons with disabilities to become more productive members of society.

The 1984 amendment assured that consumers with disabilities would receive rehabilitation services from qualified rehabilitation professionals. The National Council on Rehabilitation Education defines the qualified rehabilitation professional as (Graves, Coffey, Habeck, & Stude, 1987):

> an individual who has received an academic degree from an accredited education program accepted by the rehabilitation profession as denoting professional status; is certified and/or licensed to practice in accordance with the rehabilitation profession's national certification board or commission and/or the state's licensing board; maintains her or his certification and/or licensure by completing continuing education units approved by the certification/licensure boards for renewal of certification/licensure; and has completed the amount of time on the job specified by the profession as denoting achievement of journeyman status. (p.5-6)

The Rehabilitation Act Amendments of 1986 (Public Law 99-506) extended and improved the Rehabilitation Act of 1973 and authorized appropriations for 1986-1991. The amendment used gender-neutral terminology, changing the language to convey a positive attitude and the functional aspects of disability. For example, the phrase "handicapped individual" was replaced with "individual with handicaps," and "a handicapped individual" with "an individual with handicaps." The "National Institute of Handicapped Research" became the **National Institute on Disability and Rehabilitation Research** (NIDRR). In 1988, the "National Council on the Handicapped" was renamed The **National Council on Disability** (NCD), and the "President's Committee on the Employment of the Handicapped" became the **President's Committee on the Employment of People with Disabilities** (PCPED). It is imperative that words reflect positive attitudes, convey functional aspects of the person, and create an image of ability and

independence, which helps placement counselors facilitate placement of their clients.

New provisions were added in the development of IWRP to include statements of determination of employability; long-range rehabilitation goals and intermediate objectives, based on an evaluation of rehabilitation potential; rehabilitation engineering services, when appropriate, to achieve rehabilitation goals and objectives; an evaluation procedure and schedule to determine whether such goals and objectives are met; an assessment of the need for post-employment services prior to case closure; annual review and revision as needed; and description of the availability of Client Assistance Programs.

The same Act added a number of responsibilities to NIDRR, including disseminating information to Indian tribes and conducting studies of the rehabilitation needs of Indians. Other responsibilities included establishing a center for research and training concerning the delivery of rehabilitation services to rural areas; reporting to Congress on the development and distribution of cost-effective technological devices for persons with disabilities; studying health insurance practices and policies affecting persons with disabilities; authorizing grants for studies and analyses related to supported employment; demonstrating and disseminating innovative models for the delivery of cost-effective rehabilitation engineering services to assist in meeting the employment and independent living needs of individuals with severe handicaps in rural and urban areas; establishing two rehabilitation engineering centers, one in Connecticut and one in South Carolina, to demonstrate and disseminate innovative models to assist in meeting the needs of, and addressing the barriers confronted by, individuals with handicaps; and conducting research relating to children with disabilities and individuals 60 and over (55 for Indians) with disabilities. Finally, to carry out joint projects, the National Institute of Mental Health was added to the list of agencies.

The purpose statement of the National Council on Disability was amended to include “promot[ing] the full integration, independence, and productivity of handicapped individuals in the community, schools, the work place and all other aspects of American life" (p. 1828). The duties of the Council were expanded to include review and evaluation of all statutes pertaining to Federal programs that assist individuals with disabilities and to assess the extent to which these policies, programs, and activities provide incentives or disincentives to the establishment of community-based services for individuals with disabilities promoting integration and independence in the community, in schools, and in the work place.

### SERVICES FOR INDEPENDENT LIVING

The act requires each state to establish an Independent Living Council to provide guidance in developing and expanding independent living programs, including recreational services (Jones, 1986), on a statewide basis through state agencies and local entities. Members of the Council are appointed by the state agency director and include representatives of state and local agencies, groups, persons with disabilities, parents, and guardians of individuals with disabilities, directors of independent living centers, private businesses, and other appropriate individuals or organizations. The majority of each Council membership tends to be individuals with disabilities, including parents and guardians of persons with disabilities. Recreational services were added to the list of possible services that may be provided by the Centers for Independent Living (Jones, 1986).

In summary, the changes in the Rehabilitation Act Amendments of 1986 have had significant impact on the delivery of services and outcomes in the rehabilitation of persons with severe handicaps. Previously, the functional aspects of severe handicapping conditions had been overemphasized in language and in the provision of services made for supported employment. Transitional employment and part-time employment are now considered viable outcomes of rehabilitation services.

## THE AMERICANS WITH DISABILITIES ACT

The landmark legislation, the **Americans With Disabilities Act** (ADA), Public Law 101-336 signed by President George H. W. Bush on July 26, 1990, ushered in "another Independence Day" and "a bright new era of equality, independence, and freedom" for 43 million Americans (17% of the U. S. population) with disabilities. The ADA is patterned after Section 504 of the 1973 Rehabilitation Act and the Civil Rights Act of 1964. The ADA is one of the most comprehensive civil rights laws ever enacted and has made sweeping changes in every sphere of life for persons both with and without disabilities. The Act may be viewed as central to achieving equity and equal opportunity for African Americans with disabilities (Alston, Russo, & Miles, 1994). The five major provisions in the ADA prohibit discrimination against people with disabilities in Employment, Public Service and Transportation, Public Accommodations, Telecommunication Relay Services for the Deaf, and Activities of State and Local Governments.

***TITLE I: EMPLOYMENT***—prohibits discrimination in hiring, employing, promoting, and training qualified workers with disabilities and requires

reasonable accommodation, if it does not result in undue hardship to employers. The following terms in the statement require further explanations:

**Qualified** means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the job held or sought. Consideration is given to the employer's judgment about which functions of a job are essential. The employer's written job description prior to advertising and recruiting applicants is considered evidence of the essential functions of the job.

**Medical examination and inquiries:** Pre-employment medical examinations can be required if they apply to all entering new employees to determine the ability to perform job-related functions, and only after an offer of employment has been made to the applicant. The employer should not conduct a medical examination or make inquiries about the type, nature, or severity of disability until after the offer of employment. Results of the medical examinations and disability information must be kept confidential and in separate medical files.

**Reasonable accommodation** may include making existing facilities readily accessible; job restructuring; modifying work schedules; reassignment to a vacant position; acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; providing readers for persons who are visually impaired or interpreters for persons who are hearing impaired.

**Undue hardship** means significant difficulty or expense to the employer in making reasonable accommodation. The following factors are considered in determining undue hardship to employers: the nature and cost of accommodation; the overall size, type, and financial resources of the facility; the overall size of the business, in terms of number of employees and number of facilities; and the employer's type of operation, including composition, structure, and function of its workforce, and geographic separations.

Employers are not obligated to hire employees who pose a direct threat to the health or safety of other individuals in the workplace. Drug testing is permitted and will not be considered a medical examination. The law does not protect current illegal drug users and alcoholics who cannot safely perform their job functions. Protection is provided to those who are, or have been, participating in a supervised rehabilitation program. People who are HIV-positive, have AIDS, or have other infectious and communicable diseases are protected. However, employers may transfer or reassign employees from food-handling jobs if the danger to possible health and safety cannot be eliminated by reasonable accommodation (Gamble, 1990). In 1991, the Secretary of Health

and Human Services published a list of infectious diseases that are transmitted through handling foods.

***TITLE II: PUBLIC SERVICES AND PUBLIC TRANSPORTATION***— prohibits discrimination from participation in services, programs, or activities of any public entity. The majority of the provisions of this title emphasize public transportation systems available to the general public, such as bus, train, taxi, and limousine. This excludes air travel, which is covered by the Air Carriers Act. New buses, rail cars, or other passenger-transporting vehicles purchased or leased by public entities, as well as remanufactured public transport vehicles, must be accessible and useable by people with disabilities, including wheelchair users. A public entity operating a fixed route system must provide para-transit or other special transportation services to individuals with disabilities that are comparable in service level and response time, without imposing an undue financial burden. Existing rail systems must have one accessible car per train. For wheelchair users, there must be space to park and secure wheelchair, transfer to seat, and fold wheelchair. Existing "key stations," and alterations to them, must be accessible. New bus and rail stations in intercity rail and commuter rail systems must be made accessible within two years of the date of enactment. Two-thirds of the key stations must be made accessible within 20 years. If expensive structural changes are required, then extension may be granted up to 30 years. Individuals may file complaints about violations with the Department of Transportation and bring private lawsuits (National Council on Disability, 1990; U. S. Department of Justice, no date).

***TITLE III: PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES*** —the major focus of this title is mainstreaming, integration, and fuller participation in all walks of life in the society. The title prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation and services operated by private entities. Goods, services, facilities, and privileges must be provided in the most integrated settings appropriate to the needs of the individual. Private clubs and religious organizations are exempted, however. Private entities providing transportation services (bus, rail, or any other conveyance excluding aircraft) must be accessible so that people with disabilities receive services equivalent to people without disabilities. All new vehicles purchased or leased must be accessible in fixed route system if they carry more than 16 passengers including the driver. Operators of public accommodation may not impose application of eligibility criteria that screen out, or tend to screen out, individuals with disabilities from full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations. Auxiliary aids, such as

readers, interpreters, taped texts, or similar services, must be provided to individuals who are vision or hearing impaired. Other individuals with disabilities must be given an equal opportunity to participate or benefit as do the non-disabled, unless such would result in an undue burden. All new construction and alterations in public accommodations and commercial facilities must be accessible. It is discriminatory to fail to remove architectural and communication barriers in existing facilities, or transportation barriers in existing vehicles and rail passenger cars, if the modification is readily achievable.

***TITLE IV: TELECOMMUNICATIONS***—This title amended Title II of the Communications Act of 1934 and added requirements that telephone companies must provide telecommunication relay services for hearing impaired and speech impaired individuals who use TDD (Telecommunication Device for the Deaf) or other non-voice terminal devices. Both interstate and intrastate telecommunication relay services must be available 24 hours and charges should not be greater than the charges paid for functionally equivalent voice communication services with regard to the day, time, duration, place, and distance called. The law prohibits the relay operators from keeping records and/or disclosing relayed conversations, altering, refusing, or limiting the length of calls. The title also requires that television public service announcements produced or funded by federal agencies be closed-captioned.

***TITLE V: MISCELLANEOUS PROVISIONS***—This title explains the relationship to other laws; prohibits state immunity; deals with insurance coverage; delineates implementation procedures and enforcement authorities; and provides congressional inclusion and dispute resolution. The ADA does not minimize the standard of the Rehabilitation Act of 1973 and its subsequent amendments, or invalidate any state or local laws in providing equal protection to persons with disabilities. States are not immune from violation of this Act and are subjected to the same remedies as are available to any public or private entity. Insurers may not refuse, continue to underwrite, classify, and administer risks consistent with state laws. Retaliation is prohibited against an individual who has made a charge, testified, assisted, or participated in an investigation, proceeding or hearing under this Act. Interference, coercion, or intimidation against an individual's exercising his/her rights, or encouraging others to exercise his/her rights, is also prohibited. According to the ADA, homosexuality and bisexuality are not impairments, hence not disabilities. The definition of disability does not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders; compulsive gambling, kleptomania, or pyromania; or psychoactive substance use disorders

resulting from current illegal use of drugs. The Senate, the House of Representatives, and the agencies of the legislative branch are prohibited from discrimination in hiring, discharging, promotion, compensation, or privileges of employment on the basis of age, color, race, national origin, sex, religion, or physical handicap. The ADA encourages voluntary/alternative means of dispute resolution, including settlement negotiations, conciliations, facilitation, mediation, fact finding, mini trials, and arbitration.

The **Individuals with Disabilities Education Act** (**IDEA**: Public Law 101-46) reauthorized and renamed the Education for All Handicapped Children Act of 1975 (previously discussed). Although revisions were made in both 1990 and 1991, the first significant changes to IDEA since its inception in 1975 occurred in 1997. Not only was IDEA reauthorized in 1997, but also changes were enacted to strengthen the bill. Parental involvement in eligibility and placement decisions and inclusion of children with disabilities into the general classroom and curriculum, which is to be emphasized in the IEP, were increased; local and state assessments were insured; transition planning for teenagers, starting at the age of 14, became a focus; the use of mediation over litigation for disputes between parents and educators was emphasized; and safety and learning environment conditions were emphasized.

IDEA was reauthorized in 2004 (Public Law 108-446). Under these most recent revisions, IDEA has been closely aligned with the No Child Left Behind Act (NCLB) and now includes new standards to ensure accountability and equity in education. The act addresses the need for clearly defined measurable goals for the IEP, and for progress reports on these goals to be made quarterly to parents; a greater need to focus on establishing educational practices that are based on peer-reviewed research; the manner in which learning disabilities are to be defined, releasing schools from earlier provisions in which the child must demonstrate a significant difference between intellectual ability and achievement in order for a learning disability to be diagnosed; parental rights to initiate requests for evaluation. It strengthened previous provisions that precluded educators from classifying a child as disabled if it was determined that the child's educational difficulties were a result of inappropriate instruction as identified in the NCLB act.

In addition to these changes, one of the most significant revisions to the 2004 IDEA, in terms of minorities, regarded the overrepresentation of minority student in special education classes. By the 2004 revisions, it had become clear that, in some cases, students were being inappropriately assigned to special education classes largely based upon racial or ethnic criteria (Boehner & Castle, 2005). Congress mandated that states and schools take positive action to ensure that this practice is eliminated. States are now required to develop specific

policies that address this issue, and collect and report data on the presence of minority students in special education classes. This revision went so far as to potentially require educators to use early interventions funds to address the overrepresentation of minorities.

**Technology-Related Assistance for Individuals with Disabilities Act Amendments** (**Tech Act**: Public Law 103-218) updated the 1988 Tech Act (Public Law 100-407), authorized the **National Institute on Disability and Rehabilitation Research (NIDRR)** to fund initiatives in each of the 50 states and U.S. territories that would result in the delivery of assistive technology (AT) services and devices to individuals with disabilities. Toward this end, states and territories are provided federal grants to develop programs such as equipment loan libraries and information resources necessary to meet any of the primary goals of the Tech Act (Day & Edwards, 1996). These goals include providing greater access to AT by individuals with disabilities, addressing AT funding, increasing consumer involvement, coordinating activities among the various state agencies, overcoming barriers for timely delivery of services, increasing advocacy for AT services and programs, and reaching out to underrepresented individuals.

In line with this last goal, the 1994 revisions of the Tech Act specifically address the funding and recruitment of minority service providers and institutions. Grant and contract agencies or organizations must now demonstrate that they have a specific strategy to recruit and train individuals with disabilities and/or minority group members who will then provide technology-related assistance. A portion of the grants provided under the Tech Act are reserved for historically Black colleges and other universities whose minority student enrollment is at least 50%. As a criterion for receiving federal grants, state "lead" agencies must demonstrate an ability to implement "effective strategies for capacity building, staff and consumer training, and enhancement of access to funding for assistive technology devices and assistive technology services across agencies" (Public Law 103-218, section 102).

The **Rehabilitation Act Amendments of 1992** (Public Law 102-569) updated and revised the previous Rehabilitation Act of 1973 and made significant changes to the manner in which rehabilitative services are provided (Button, 1993). The impetus for such changes directly developed out of the ADA of 1990 and focused on providing a vehicle for helping individuals with disabilities gain more choice and assistance in finding and maintaining meaningful employment and full integration into the workforce and community.

In line with the ADA, the Rehabilitation Act Amendments of 1992 clearly articulate that disability is a "natural part of the human experience" and should

in no way diminish the rights of disabled individuals in any aspect of their life (Button, 1993). Furthermore, the 1992 amendments highlighted the changing perception of disabilities, from that of un-abled to one of presumed ability. In other words, the bill is predicated on the idea that irrespective of the severity of disability, individuals can achieve meaningful employment and integration, provided the appropriate services and supports are supplied.

The overriding effect of such a change essentially switched the burden of proof from the individual to the rehabilitative system, so that in order to deny services, vocational rehabilitative services had to convincingly demonstrate that an individual is incapable of gaining any benefit from vocational services. In addition, the amendments placed considerable focus on rehabilitative technology and disability representation in the vocational rehabilitative process.

## REHABILITATION CAPACITY BUILDING

In recognition of the disproportionate distribution of disabilities, pattern of inequitable treatment, and quality of vocational rehabilitation outcomes of culturally diverse groups reported by contemporary research (Atkins & Wright, 1980; Danek & Lawrence, 1982; Rivera, 1974; Rehabilitation Services Administration, 1993), Section 21 of the 1992 Amendments was promulgated as one of the most powerful pieces of legislation of the 1990s. This legislation represented the first concerted effort to address *the concept of cultural diversity in rehabilitation*. It set aside 1% of all the funds appropriated for programs authorized under titles II, III, VI, and VII, to conduct minority outreach programs and capacity enhancement. Section 21 provided several modalities for addressing the above exigency: (1) funds were provided to minority entities and American Indian tribes for the conduct of research, training, technical assistance, or related activities geared to improve services to minorities, (2) state-federal vocational rehabilitation must focus on recruiting professionals from diverse backgrounds, (3) the Rehabilitation Services Administration (RSA) must provide scholarships to prepare students in vocational rehabilitation and related service careers at the bachelor's, master's, and doctoral levels at minority institutions of higher education, i.e., Historically Black Colleges and Universities (HBCUs), Hispanic Serving Institutions (HSIs), Tribal Colleges and Universities (TCUs), and other institutions with at least 50% minority enrollment, and (4) the Commissioner of RSA shall develop a plan to provide capacity building and outreach services in order to increase the participation of minority entities in competition for grants, contracts, and cooperative agreements.

Section 21 paved the way for the preparation of qualified rehabilitation counselors of culturally diverse backgrounds, and the enhanced provision of

quality services to minorities leading to long-term employment outcome. As a direct result, the number of bachelor's and master's level programs in minority institutions increased from a mere 9 in the early 1990s (Kundu & Dutta, 1995; Kundu & Dutta, 2000) to about 30 in 2006. Despite significant improvements in the participation of culturally diverse groups in vocational rehabilitation, a study of 4,710 state-federal professionals found that 70% were Caucasians, 16% have documented disabilities, about 34% had degrees in rehabilitation, and only 10% were Certified Rehabilitation Counselors (CRCs) (Kundu, Dutta, & Walker, 2006). It is imperative, therefore, that continued and intensive federal efforts are provided for introducing minorities in the mainstream of vocational rehabilitation.

The **School to Work Opportunities Act of 1994 (STWOA**: Public Law 103-329) was created to assist students in making the transition from school to the workforce. In essence, the goal of STWOA is to increase education and career opportunities by promoting business and education collaboration. Federal venture capital grants are provided to state and local agencies to help restructure educational systems, and to establish school-to-work systems. Although there are a variety of grants available under STWOA, all school-to-work systems must include school-based learning that includes career counseling and career major exploration; work-based learning that includes job training, workplace mentoring, paid work experience, or instruction in workplace competencies; and connecting activities that incorporate both employers and educators, which not only can include matching students to job-based training, but also specialized training for those participating in the program (i.e. educators, counselors, work-place mentors).

The act makes explicit mention of students with disabilities, minority students, and women, with a focus on increasing work place opportunities that would be considered outside of those traditional for gender, race, or disability. STWOA also provides specific funding for technical assistance, capacity building, outreach, and research and evaluation.

The **Health Insurance Portability and Accountability Act of 1996** (HIPAA: Public Law 104-191) was established to increase health care access and security. The most widely recognized components of HIPAA revolve around the privacy and security standards enacted by the bill. HIPAA's privacy rule created more stringent standards for the sharing and release of patient medical records. More specifically, HIPAA addressed the need for client consent before releasing information, the need for separate authorization for non-routine disclosures, the right of the patient to request a disclosure history, client access to their own medical records, limits of how information can be shared, standards that require the sharing of only the minimal amount of

information necessary, and accountability and establishment of penalties for mishandling patient information.

As important as its security and privacy aspects, HIPAA also focused on improving access to health care through its patient protection and portability standards. HIPAA set new rules governing pre-existing conditions, discrimination based on health-status related factors, the creation of special enrollment privileges, and the purchasing clout of individuals and small companies (U.S. Department of Labor, 2004). In an effort to reduce the rising administrative cost of medical care, HIPAA established national standards for electronic health care transactions to process claims and share information (U.S. Department of Health and Human Services, 2003). Combined, HIPAA's standards have been purported to increase the quality of patient care by ensuring increased security and accessibility, while at the same lowering cost by establishing unified processing standards.

The **Workforce Investment Act** (WIA: Public Law 105-220). The Workforce Investment Act of 1998 consolidated a variety of employment and training programs into cooperative statewide systems. WIA supersedes the Job Training Partnership Act and subsumes the Rehabilitation Act. The ultimate aim of WIA is to promote employment, job retention, and increased earning potential (Employment Development Department, no date) by providing a wide range of workforce development activities and services. These services include, but are not limited to, basic skills assessments; advice, counseling, and support that includes access to labor market information, job search tools, and educational resources and guidance; literacy training; skills training; leadership development; job mentoring and workplace exposure; unemployment assistance; and on-the-job training programs.

In addition, WIA aims to connect the community, employers, and the workforce, and provides measures that allow local employers increased influence over local employment policies. In this manner, WIA serves job seekers, the unemployed, youth, incumbent workers, new entrants, veterans, individuals with disabilities, employers, and the community as a whole.

A significant portion of WIA is the Rehabilitation Act Amendments of 1998. These amendments focus on increasing consumer choice by mandating that consumers are provided with information and support services that allow them to make informed decisions throughout the VR process; linking services together under umbrella systems (such as staff training sessions, technical assistance, telephone hotlines), and forming cooperative arrangements between VR agencies and other public agencies to provide more efficient services; providing individuals with disabilities access to electronic and information technologies to the level of access afforded those without disabilities; and

assisting educational institutions in identifying and implementing, including fiscal support, transitional programs and services for those with disabilities.

The Rehabilitation Act also renamed the State Rehabilitation Advisory Council to the State Rehabilitation Council, renamed the Individualized Written Rehabilitation Program to the Individual Plan for Employment, and relabeled individuals with the most severe disabilities.

An important part of WIA, and the subsumed Rehabilitation Act Amendments of 1998, is its focus on minority employees and groups. As outlined in the bill, WIA mandates specific funds for programs that address American Indian and migrant worker needs. In line with the basic tenets of WIA, programs for these minority populations focus on devolving academic, occupational, and literacy skills to make these populations more competitive. WIA established the **Native American Employment and Training Council** and set aside specific money for migrant worker services that provide for English language training, worker safety training, housing, support services, dropout prevention, and follow up services.

WIA also specially addressed the racial inequities found within the vocational rehabilitation system. The Rehabilitative Act Amendments of 1998 states:

> Patterns of inequitable treatment of minorities have been documented in all major junctures of the vocational rehabilitation process. As compared to white Americans, a larger percentage of African-American applicants to the vocational rehabilitation system are denied acceptance. Of applicants accepted for service, a larger percentage of African-Americans' cases are closed without being rehabilitated. Minorities are provided less training than their white counterparts. Consequently, less money is spent on minorities than on their white counterparts.

WIA provisions, therefore, highlight minority recruitment and outreach needs.

Section 121 (changed from Section 130) of Title I and Part C re-authorized RSA to make grants for the establishment of American Indian Vocational Rehabilitation Service projects for the provision of services to American Indians and Alaska Natives with disabilities. With assistance from RSA funded rehabilitation capacity building projects, the number of Section 121 projects has increased from 14 in 1991 (Guy, 1991) to 76 in 2006, located in 23 states. The states of Oklahoma and Alaska have the highest number of Section 121 programs at this time.

The **Ticket to Work and Work Incentives Improvement Act** (TWWIIA: Public Law 106-170). This Act was signed into law by President Bill Clinton in 1999 as a means of removing Social Security and Medicare/Medicaid

disincentives to employment (WorkWorld, 2006). Specifically, TWWIIA expanded Medicare and Medicaid coverage for those with disabilities by extending premium-free coverage for most disability beneficiaries who are employed, by permitting certain working individuals to purchase Medicaid coverage, and facilitating the Medicaid and Medicare reinstatement process.

In addition, TWWIIA established the Ticket to Work and Self-Sufficiency Program. Under this program, individuals with a disability are provided with a "ticket," with which they can obtain vocational rehabilitation services and support services from an employment network of their choice. In this way, TWWIIA, as with previous legislation, focused on consumer empowerment by allowing the beneficiary more choice in the VR services that they obtain.

## IMPLICATIONS

The essence of all rehabilitation efforts is to gain independence, improve quality of life, mainstream into the society, earn a full economic wage, and empower consumers with disabilities to exercise their rights. Therefore, it is imperative that rehabilitation professionals be familiar with all legislation in rehabilitation and related fields. Besides federal laws and state-federal programs, each state may have special state and local laws, enactments, service provisions and facilities for citizens with disabilities. Familiarity with such local provisions will help immensely in the quest to become an effective counselor or placement specialist in directing, guiding, and efficient placing of clients in jobs in greater numbers.

Throughout this chapter, emphasis has been placed on civilian vocational rehabilitation acts and amendments over the last 80 years for individuals with physical and mental impairments in general. However, future rehabilitation counselors, placement specialists, and students need to become familiar with the laws, acts, and amendments related to specialized populations, such as persons who are blind and visually impaired, deaf and hearing impaired, developmentally disabled, veterans, and the aged,

The need to find jobs for individuals with disabilities in the future will increase rather than decrease in importance. Vocational rehabilitation, as has been pointed out, is not a social welfare program. It is a cost-effective program that places or returns people with disabilities to the world of work. When people work, their tax dollars return to the government coffers.

The emphasis in the future will be on each American doing his/her share; contributing and working to overcome inflation and recession. There is a greater necessity for rehabilitation counselors, placement specialists, and other

professionals to help people with disabilities find jobs than in the last century. Only in this way can individuals who are disabled do their share and become fully functional working Americans. This chapter has attempted to identify some of the significant sociopolitical trends and legislative provisions impacting the quality outcomes for people with disabilities. The following chapters will investigate other relevant issues and provide a holistic overview and understanding of the unique field of rehabilitation.

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