

THE LAW OF DISABILITY
DISCRIMINATION
Eighth Edition

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THE LAW OF DISABILITY DISCRIMINATION

EIGHTH EDITION

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MATTHEW  BENDER

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PREFACE

This is an exciting time for students of the law of disability discrimination. The Eighth Edition reflects a dramatic re-write of a book that Ruth first authored in 1993. This is the first edition to comprehensively address the most profound changes in disability discrimination law in twenty years — encompassing a new definition of disability and rules for documentation, new architectural access standards, and a wide variety of new subject area regulations covering topics from service animals to qualified interpreters. In addition, it is evident that the availability, use and impact of technology is rapidly becoming a critically important disability law question. This edition will provide students with the foundation necessary to watch this issue unfold in an informed manner.

Ruth and Paul share the perspective that the law of disability discrimination must be viewed in the greater context of the advancement of race, national origin, and gender discrimination law. To this end, Paul brings his experience as a witness to the origins of disability law, present both as the Section 504 regulations were under development and at the historic 504 sit-in in San Francisco. In his 40 years with the United States Department of Education, Office for Civil Rights, Paul authored thousands of disability compliance determinations. He brings his extensive knowledge of Section 504 and the topic of education to this book. Like Paul, Ruth was first exposed to disability law when she worked for the federal government, although her experience was with the United States Department of Justice, Civil Rights Division in the 1980s. She has done pro bono work on behalf of individuals with disabilities since leaving the Justice Department in 1985. More recently, she has begun to volunteer as an educational advocate for children with disabilities. Ruth and Paul also share decades of experience as teachers of the law of disability discrimination.

The book begins with an introduction that seeks to place the development of the law of disability discrimination in its historical context. We note the ways in which the law of disability discrimination drew on precedent from the areas of race and national origin discrimination but also trace the distinct ways that disability issues have been discussed and understood over time. The introductory chapter ends with discussion of the enactment of the 2008 Amendments to the Americans with Disabilities Act (“ADA”).

Chapter Two discusses the definition of disability that applies to the ADA and the new rules for documentation of disability. This chapter emphasizes the importance of the 2008 Amendments and the EEOC’s regulatory guidance.

Chapter Three reflects discussion of the law of employment discrimination under ADA Title I. As the definition of disability has become less prominent in this case law, there is more emphasis on the importance of the law of reasonable accommodation.

Chapter Four discusses ADA Title II. This chapter contains a full discussion of the new DOJ Title II Regulations. This chapter also has new topical discussion of the right to vote, community access, curb ramps, and prison and jails.

Chapter Five discusses ADA Title III. This chapter extensively covers the new DOJ Title III Regulations. This chapter also has new topical discussions of internet & digital technology as well as service animals.

Chapter Six discusses Primary and Secondary Educational Institutions. With its own

PREFACE

chapter, this material contains extensive discussion of the relationship between Section 504 and the Individuals with Disabilities Education Act. Included in this chapter is consideration of the emerging question of whether the rules pertaining to the provision of a Free Appropriate Public Education are applicable to every aspect of elementary and secondary education. It continues to provide some simulations that students can do in class.

Chapter Seven discusses Postsecondary Education. This material contains additional extensive discussion of the relationship between Section 504 and the ADA. It also reflects recent developments on the use of the “best ensure” standard to assess the adequacy of accommodations for tests and examinations, procedures for resolving fundamental alteration questions, and standards of documentation. Here, too, emerging technology issues are explored.

Chapter Eight discusses Housing. Its citations and discussions reflect a number of recent developments, including the coverage of university housing under the FHA. This chapter is current through the joint DOJ and HUD Guidance that was issued in April 2013.

An electronic version of this casebook will be made available upon request to individuals with disabilities who are unable to utilize the written version. The private roles for the simulations are found in the Teacher’s Manual.

Ruth Colker
Paul Grossman
May 2013

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