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UNDERSTANDING DISABILITY LAW

Second Edition

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MATTHEW  BENDER

DEDICATION

This book is dedicated to the students who assisted me on the project:
Kim Brown, Curtis Gonzalez, Ben Johnson, Elizabeth Powell, and Rachel Milos.

PREFACE

People with disabilities are the largest minority in the United States. In the past forty years, American law has responded vigorously to the problem of discrimination against this group of people. The Rehabilitation Act of 1973 forbade disability discrimination in federally funded activities, and the Americans with Disabilities Act of 1990 outlawed disability discrimination in employment, government services, public accommodations, and telecommunications. In the 1970s, Congress established enforceable rights to special education for children with disabilities. Disability discrimination cases are now an important part of the dockets of the courts, and law schools offer courses on Disability Law and similar topics.

This book discusses the major statutory and constitutional issues relating to disability discrimination. It is designed to help students in Disability Law courses synthesize and apply the materials they are learning. It is also designed to function as a compact treatise for practicing lawyers and others looking for an analysis of the Fourteenth Amendment, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, the Individuals with Disabilities Education Act, the Fair Housing Act Amendments, and other laws, as they relate to legal controversies over disability rights. The book discusses leading cases on the major topics of disability law, and suggests ways of thinking about unresolved questions and debates over legal policy.

The book covers a range of disability discrimination issues: (1) constitutional law bearing on disability discrimination; (2) the controversy over who is a person with a disability for purposes of federal statutes; (3) employment discrimination rights and remedies; (4) educational discrimination, including special education law and higher education for students with disabilities; (5) discrimination in public accommodations; (6) discrimination by federal, state, and local governments; and (7) other topics, including disability discrimination related to housing, transportation, and telecommunications.

Throughout the book, “people-first” terminology is used. That is, the book uses the term “person with disabilities” or “child with disabilities,” rather than “disabled person” or “disabled child.” This usage follows that of the Americans with Disabilities Act and other recent statutes and is employed to emphasize that a person who has a disability is a human being first, rather than a manifestation of some disabling condition. The book also uses the word “disability” rather than “handicap” because many people consider the latter term stigmatizing. This usage also follows that of recent federal statutes.

Many thanks to those who assisted in this project, notably Kim Brown, Curtis Gonzalez, and Ben Johnson, who provided outstanding research assistance for the original edition and Rachel Milos and Elizabeth Powell for the second edition, and DePaul University College of Law Deans Glen Weissenberger and Gregory Mark, who enthusiastically supported the effort. The project received support from the research fund of the College of Law. Thanks to Keith Moore for his thoughtful editorial work and to Lexis-Nexis for its dedication to the project.

The author would be grateful to readers for advice about how to improve the book. Please direct comments to mweber@depaul.edu.

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