CARR CENTER FOR HUMAN RIGHTS POLICY
HARVARD KENNEDY SCHOOL

Disability Rights

Reimagining Rights & Responsibilities in the U.S.
Reimagining Rights & Responsibilities in the United States:
Disability Rights

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Overview

Nearly 61 million Americans have a disability, making the group the country’s largest minority.1 Individuals with disabilities cut across race, gender, and sexual orientation. Since people with disabilities are disproportionately older, they have also made up an expanding share of the general population as the U.S. population has aged.2 Unlike other more fixed identities, any person can become disabled at any time, due to severe injury, illness, trauma, pregnancy, or simply aging. In fact, while only 11% of people under ages 18 to 64 reported having a disability in 2017, 35% of people ages 65 and over reported having one, illustrating the fluid nature of disability status.3

Despite the prevalence of disabilities with disabilities in our culture, both government and American society in general have mistreated them for much of our nation’s history, sometimes regarding them as “incapable,” “inferior,” or “shameful,” and subjecting them to institutionalization and neglect. Starting in the 1970s, a new movement for disability rights led to increased awareness and legislative action, starting with the Rehabilitation Act of 1973. That movement culminated in 1990 with the enactment of the landmark Americans with Disabilities Act (ADA), which protects people with disabilities as a civil right, and prevents discrimination based on disabilities in all aspects of public life.

Despite this progress, however, individuals with disabilities continue to face challenges, and oftentimes lack meaningful accommodations to allow them equal access to opportunity across many facets of life. According to the most recent statistics, approximately 75% of people with disabilities are unemployed,4 and even those who are employed earn, on average, less than 70% of the earnings of people without disabilities. People with disabilities are also two and a half times more likely to live in poverty, and more likely to experience obesity and higher healthcare costs.5,6

Disabilities include a range of conditions, both visible and invisible, and including physical, mental, and cognitive impairments—all of which require different types of protection against different types of discrimination. These complexities make understanding and advancing disability rights more challenging. Moreover, people with disabilities continue to face challenges as a result of policies that affect them both directly and indirectly. For example, policies that make the provision of public assistance contingent on employment disproportionately burden people with disabilities, who are less likely to be employed. Additionally, recent policies enacted under the Trump administration have eroded past protections and exacerbated barriers to the wellbeing of this population across a range of issue areas, from healthcare to immigration. Renewing rights for people with disabilities requires both reinstating these protections and extending beyond providing equal protections to affirmatively expanding accommodations to better allow them to participate meaningfully in all aspects of society.

SETTING THE LANDSCAPE

According to the ADA, a disability is any “physical or mental impairment that substantially limits one or more major life activity.”2 Those activities include “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communication, and working.”2 While the ADA doesn’t name specific disabilities, they include physical disabilities such as motor impairment, blindness, and deafness; mental impairments, psychological disorders, and learning disabilities; and chronic illnesses and certain medical conditions such as HIV.8

People covered under the Act include those with a “record of such an impairment,” even if they no longer have it—such as someone with cancer which is now in remission. They also include those

3. Ibid.
by relaxing the requirements around 20.

municipalities banned people with physical disabilities from 9.

for example, allowed involuntary sterilization of people 10.

Supreme Court decisions have historically affirmed mistreatment 11.

people with disabilities for centuries, through a combination 12.

The federal government and American public mistreated 13.

from being able to walk for seven months. 14.

Another category of disability is a temporary impairment, such 15.

as an accident that substantially limits mobility, which may be 16.

covered under the ADA Amendments Act (ADAAA)—an expanded 17.

version passed in 2008. 18.

Coverage of a temporary disability depends on the length of time and severity of the impairment. For example, the ADAAA would not cover a short-term illness like the flu, but it would cover a severe injury that prevented an individual from being able to walk for seven months. 19.

HISTORICAL CONTEXT

The federal government and American public mistreated people with disabilities for centuries, through a combination of misinformation, ignorance, fear, and stigma. Legislation and Supreme Court decisions have historically affirmed mistreatment of people considered to have disabilities. Laws in many states, for example, allowed involuntary sterilization of people with intellectual impairments and mental disorders. Many municipalities banned people with physical disabilities from public spaces due to their appearance. Federal law, meanwhile, lacked legal protections for individuals with disabilities, allowing employers, schools, landlords, government agencies, and private businesses to deny them accommodations and access to services. Shockingly, many forms of discrimination against people remained legal until the passage of the ADA in 1990; and even after its passage, many barriers have remained. The lack of federal protections meant very few cases on disability rights came before the Supreme Court before the 1970s. In the limited cases the Court judged, however, it upheld mistreatment. In 20 Buck v. 21

Bell (1927), the Court upheld a Virginia law legalizing sterilization for individuals “afflicted with an hereditary form of insanity or imbecility.” 22

Following that decision, institutions across the United States sterilized 70,000 Americans over the rest of that century. The disability rights movement first emerged following World War II, when returning veterans insisted on government rehabilitation services and vocational training. Starting in the 1960s, parents and advocates sought deinstitutionalization and educational opportunities for children with disabilities. Finally, in the 1970s, disability rights activists, inspired by the civil rights movement, pushed for more broad-reaching legislation to end discrimination. The first of these laws was the 1973 Rehabilitation Act, which prohibited “discrimination on the basis of disability” by federal agencies and contractors. Despite this success, school boards and local transit authorities pushed back on the legislation with claims of increased costs and reduced efficiency—arguments that would become common in attacks on disability protections. In 1979, the Supreme Court undermined the Act in 23

Southeastern Community College v. Davis by relaxing the requirements around what it meant to provide accommodations for people with disabilities.


15. Ibid.


In the 1980s, Congress increased protections for institutionalized persons, granting the Justice Department broader powers to investigate allegations of abuse and mistreatment. The first major piece of civil rights legislation for people with disabilities, however, was the ADA, passed in 1990—only 30 years ago. Similar to civil rights legislation which had passed decades earlier for other groups, the Act “guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications.”

The ADA passed with broad bi-partisan support, indicative of the broad-ranging impact of disabilities across society. Over time, however, the Supreme Court continued to chip away at its protections by narrowing the definitions of which conditions were considered disabilities, and how severe and pervasive a disability was across an individual’s life activities. A rare departure from this trend occurred in 1999 with the Court’s decision in Olmstead v. L.C., a case in which Lois Curtis and Elaine Wilson sued the State of Georgia for unnecessary institutionalization despite psychiatric clearance to receive mental-health treatment in a community-based program. This major court victory established a standard for community-based services, increasing independence for people with disabilities as they transitioned out of institutions.

In 2008, Congress addressed the many Supreme Court decisions narrowing disability protections by passing the ADAAA—a rare instance in which Congress expanded rights limited by the courts. Similar to the ADA, the ADAAA also passed with bi-partisan support, uniting lawmakers across party lines. Among other changes, the law expanded the list of major life activities subject to impairment under the law, establishing that such impairment be interpreted broadly and inclusively, without considering mitigating measures such as medication.

However, bi-partisan support for disability rights faltered in 2012 when the Senate voted on whether to ratify the United Nations Convention on the Rights of Persons with Disabilities, an international treaty establishing worldwide standards for disability protections. Despite a dramatic visit by former United States Senator Bob Dole to the Senate floor to encourage ratification, the vote fell short of the two thirds majority, failing on a vote of 61-38. All of the no votes came from Republican Senators, who argued that the treaty would undermine U.S. sovereignty, particularly when it came to parents choosing to home school disabled children.

Despite landmark pieces of legislation in the past few decades, people with disabilities continue to face marginalization today. Those sentiments have been exacerbated by harmful rhetoric by President Trump about people with disabilities. During the 2016 presidential campaign, then-candidate Trump physically mocked Serge Kovaleski, a reporter with disabilities, during a political rally. In 2018, he described the Paralympics as “a

30. Ibid.
little tough to watch too much,” and in 2019, he derided Greta Thunberg, a 16-year-old climate change activist with Asperger syndrome, stating on Twitter that she needed to “work on her anger management problem.” While each of these comments sparked public backlash in defense of people with disabilities, they nevertheless reveal a concerning disregard for people with disabilities by the president.

**Current Policies**

Current government policies affect people with disabilities across a wide range of areas, including healthcare, employment, education, poverty, housing, transportation, immigration, and voting. In each of these areas, legislation, court decisions, and public opinion have alternately served to establish, reinforce, or undermine disability rights.

**PEOPLE WITH DISABILITIES AND HEALTHCARE**

**GENERAL OVERVIEW OF DISABILITIES AND HEALTH**

People with disabilities face both higher healthcare needs and higher healthcare costs. In 2006, disability-associated health care expenditures accounted for 26.7% of all health care expenditures for U.S. adults, while only accounting for 18.2% of the population. Higher costs are due to both direct care for disabilities, as well as other factors people with disabilities experience that negatively affect their health—including unemployment, smoking, and lack of physical activity. As a result, 38% of people with disabilities have 10 or more doctor’s visits in a year, compared to only 6% for those without disabilities. They are also more likely to have been admitted to the hospital over the last year, at 19% compared to 5% for people without disabilities.

Despite their higher risks and needs, people with disabilities are also less likely to have access to medical care, due to factors including mobility issues, lack of knowledge of healthcare providers, and higher costs. At $13,492, the average annual cost of healthcare for a person with a disability is over six times that of a person without a disability, $2,835. Average out-of-pocket costs are twice as high, $1,053 compared to $486. As a result, people with disabilities are more than twice as likely to delay needed medical care, and three times as likely not to seek care, due to cost. In 2018, for example, just over a quarter of U.S. adults with disabilities were unable to see a doctor in the past 12 months for financial reasons.

**FEDERAL AND STATE DECISIONS RELATING TO DISABILITY RIGHTS**

While most federal and state decisions related to healthcare in recent years have not explicitly targeted people with disabilities, they have nonetheless disproportionately affected them in both positive and negative ways. The Affordable Care Act, passed in 2010, significantly increased healthcare coverage through subsidized health insurance exchanges and expansions in Medicaid, which alone covers 30% of all adults with disabilities.

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38. Ibid.


40. Ibid.


43. “Barriers & Costs of Health Care.” Disability and Health Data System, Centers for Disease Control and Prevention, 2018, https://dhhs.cdc.gov/LP?CategoryId=BARRIER&IndicatorId=CBARRIER&ShowFootnotes=true&View=Map&yearId=YR3&stratCatId=DISSTAT&stratId=DISABL&stratCatId2=&stratId2=&responseId=YESNO01&dataValueTypeId=AGEADJPREV&MapClassifierId=quantile&MapClassifierCount=5.

Medicare/Medicaid rally in front of U.S. Capitol, showing protesters holding signs, disability activist Justin Dart and others, around a “trojan horse” figure representing the Democrats’ interpretation of the Republican Medicare plan.
and 60% of all children with disabilities.\textsuperscript{45-46} Medicaid is the only type of health insurance that funds services and supports including personal care assistants, lifts in homes, and durable medical equipment like wheelchairs,\textsuperscript{6} and also pays for more than half of in-home services.\textsuperscript{44} In 2017, Republican legislators sought to repeal parts of the Affordable Care Act and make cuts to Medicaid, but were unsuccessful in their efforts.\textsuperscript{49}

In 2012, however, the Supreme Court limited the ACA’s Medicaid expansion,\textsuperscript{50} with a majority of the Court concluding it was “unconstitutionally coercive of states because states did not have adequate notice to voluntarily consent to this change in the Medicaid program.”\textsuperscript{51} The decision in effect allowed for states to choose whether or not to expand Medicaid on an individual basis;\textsuperscript{52} to-date, 14 states have decided against it.\textsuperscript{53} This disparity in healthcare coverage between states has particular implications for Medicaid recipients with disabilities.\textsuperscript{54}

In addition, in 2018, the Trump administration allowed states to enact work requirements for adult Medicaid enrollees,\textsuperscript{55} a requirement that disproportionately harms people with disabilities, according to a study by the Center on Budget and Policy Priorities,\textsuperscript{56} since individuals with disabilities are less likely to be employed. While people with disabilities may be exempt from the work requirements if they receive Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI),\textsuperscript{57} eligibility for those benefits requires them to meet the Social Security Administration’s (SSA) definition of disability, which requires an “inability to engage in any substantial gainful activity” for at least 12 months. This more-stringent definition excludes many people with disabilities who otherwise qualify for Medicaid.\textsuperscript{58} In fact, nearly 60% of all non-elderly adult Medicaid enrollees with disabilities do not receive SSI.\textsuperscript{59}

Applying for SSI or SSDI is a lengthy and uncertain process, with long delays and an approval rate of only 4 in 10 applications.\textsuperscript{60} In 2017, 10,000 people died while waiting for their appeal to process.

51. Ibid.
56. Ibid.
58. Ibid.
Applying for SSI or SSDI is a lengthy and uncertain process, with long delays and an approval rate of only 4 in 10 applications. In 2017, 10,000 people died while waiting for their appeal to process.

Overall, both applications for and recipients of SSDI have fallen by roughly a third since 2010. Notably, several studies have found that employment among individuals with disabilities is higher in states that have expanded Medicaid. Furthermore, Medicaid cuts result in a diminished capacity for individuals with disabilities to have in-home services, which are key to their self-sufficiency. While 20 states have attempted to enact work requirements, several have been challenged in court. In 2019, for example, U.S. District Judge James Boasberg heard testimony on Kentucky’s and Arizona’s proposed requirements, a year after blocking a previous plan from Kentucky. In the hearings, a lawyer from the Justice Department argued that work requirements would give people incentives to find work and improve their lives. In the ruling, the judge commented that “that is not the purpose of Medicaid.”

On a more positive note, the U.S. Department of Justice has actively promoted disability rights during the COVID-19 pandemic through its Barrier-Free Health Care Initiative, which has worked to ensure that people with disabilities have equal access to healthcare. The department has worked through US Attorney’s Offices to increase accessibility in doctor’s offices and hospital systems, and obtain relief for individuals denied healthcare due to stigma.

PEOPLE WITH DISABILITIES AND THE WORKPLACE

In 2012, William Pierce applied for a police job in Iberia Parish, Louisiana. After receiving a job offer, “he noted his HIV status while undergoing a medical examination, but he noted that it didn’t affect his ability to perform his duties.” Following his disclosure of having HIV, the sheriff rescinded his job offer. Pierce sued the sheriff’s office and filed a claim with the Equal Employment Opportunity Commission (EEOC) for discrimination on the basis of disability, as HIV is a medical condition that is covered under the ADA. The EEOC found that Pierce had probable cause, and he and the sheriff’s office settled out of court for $90,000.

Pierce’s case illustrates how the ADA’s employment protections prohibit both public and private employers for discriminating against people with disabilities “in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment” for organizations with at least 15 employees. Pierce’s experience also illustrates the importance of the increased protections under the ADAAA, which made it easier for him to demonstrate that he had a disability. However, a review of recent workplace-related data and decisions shows that these disability protections are not always successful, pointing to a need to continue furthering equal protections in this domain.

66. Ibid.
69. Ibid
WORKPLACE-RELATED DATA AND TRENDS

Overall, people with disabilities are much less likely to be employed than those without disabilities. An analysis of data from the American Community Surveys for adults ages 18-64 found that the gap in the employment to population ratio is about 38% to 78%--a 40-point gap. That number has been relatively consistent since 2008. This employment gap is due to a number of factors, including lower educational attainment, according to research by Bureau of Labor Statistics. Even for individuals with a higher degree, however, people with disabilities were almost twice as likely to hold part-time work, the report found, and more likely to work in lower-wage occupations such as service and transportation. That, in turn, contributes to a wage gap, with median full-year earnings for people with disabilities of $40,454, compared to $46,250, a 12.5% difference in earnings.

Discrimination also remains a major barrier to employment. An experiment by Rutgers University found that fictional cover letters citing a disability were much less likely to receive a response from an employer. Even when those disabilities “wouldn’t interfere with the accounting work and the applicants were otherwise equally qualified, the applicants with disabilities received 26 percent fewer responses from employers,” the study revealed.

One trend that could mitigate barriers for some people with disabilities is increased telework, which can remove issues with difficult commutes and office settings lacking sufficient accommodations. While the ADA includes working remotely as a reasonable accommodation, employers are not required to provide this accommodation if it poses undue hardship for the employer or gets in the way of the job’s essential functions. The courts have generally supported employers resistant to having their employees work remotely as part of a disability accommodation. A Bloomberg law analysis found that court decisions relating to remote work as a disability accommodation over a 2-year period favored employers 70% of the time. However, significant increases in telework resulting from the coronavirus pandemic may help employers to realize that more work can be done from home than initially assumed. One analysis by the Pew Research Center, for example, found that 40% of jobs at the start of the coronavirus pandemic could be performed via telework, including 62% of jobs requiring a bachelor’s degree or higher. Other studies have shown that telework can actually boost productivity for companies, and predict that telework will continue for a long time after the coronavirus pandemic.

Not all people with disabilities would benefit from remote work, however; and such practices may also unintentionally lead to segregation between workers with disabilities at home, and workers without disabilities at the office. Furthermore, the trend creates challenges in terms of digital accessibility as, for example,

75. Ibid.
77. Ibid.
78. Ibid.
81. Ibid.
certain websites and apps are not accessible for people with visual impairments, which could restrict some people's ability to work. This issue has become the center of recent lawsuits, as technological inaccessibility is a violation of the Rehabilitation Act of 1973 and Title III of the ADA. Additionally, rates of technology adoption are lower among people with disabilities, with a Pew Research poll finding that 67% of disabled Americans ages 18 to 64 say they own a desktop or laptop computer, compared with 84% of those in the same group who don’t have a disability. This disparity similarly limits people with disabilities from partaking in remote work.

FEDERAL DECISIONS RELATING TO DISABILITY RIGHTS

In recent years, states have done far more to create initiatives to increase employment for people with disabilities than the federal government. The Trump administration has continued to follow guidance from a 2010 executive order that encourages hiring workers with disabilities in federal agencies through increased recruitment, hiring, and retention. However, in its first year, the administration also saw a 20% increase in disability discrimination complaints filed by employees of cabinet-level agencies, as well as a 24% increase in full-time workers with disabilities fired from the federal government, more than twice the rate for those without disabilities.

In 2017, U.S. Attorney General Jeff Sessions rescinded several guidance documents clarifying implications of the ADA, including one preventing unnecessary segregation of those with and without disabilities in workplaces and vocational programs. The administration justified these changes as necessary to preserve the traditional regulatory process over the possible abuse of power by regulating through presidential authority. (It has hardly had such qualms, however, in regulating by executive order in immigration and other areas.)

In 2018, members of the US House of Representatives moved to reform federal laws that make it legal to pay a subminimum wage to people with disabilities in certain employment settings. Originally designed to motivate employers to increase hiring of people with disabilities, it resulted in unfair wage disparities, and led to perceptions that work performed by those with disabilities is less valuable. Only three states—Alaska, New Hampshire and Maryland—have since outlawed the practice, which affects the wages of an estimated 420,000 workers nationwide. The Raise the Wage bill passed by the House, however, was not taken up in the Senate.

STATE DECISIONS RELATING TO DISABILITY RIGHTS

A number of state governments have created initiatives designed to improve workplace recruitment, accommodations, and retention. The State of Maryland, for example, provides a slight benefit to people with disabilities seeking public-sector employment by increasing their selection test score by 5 points. Massachusetts established a statewide fund designed to finance accommodations for employees with disabilities. Vermont and Minnesota offer employment trial periods to incentivize managers from public agencies to recruit and hire people with disabilities. While these trial periods might be perceived as an additional barrier to employment, they also challenge employer perceptions.

93. Ibid.
about people with disabilities by allowing them to demonstrate that they can effectively handle the work. In Minnesota, this program has contributed to a 40% increase in their employment since 2015. 99

PEOPLE WITH DISABILITIES AND EDUCATIONAL INSTITUTIONS

According to a Department of Education Report, in 1970, only 1 in 5 children with disabilities were educated in U.S. schools. Many states explicitly excluded children who were deaf or blind, or who had emotional issues or cognitive disabilities. 100 The decision not to educate these children impacted many aspects of their lives, including limiting their future work opportunities and incomes. While the United States has come a long way in improving equity for children with disabilities since that time, more must be done.

HISTORICAL LEGISLATIVE CONTEXT

The first major piece of legislation establishing equal protections for people with disabilities in educational settings was Section 504 of the Rehabilitation Act (1973), which restricted discrimination, the denial of benefits, and exclusion of people with disabilities from federally funded programs and activities. 101 The equal protections established by Section 504 were strengthened in 1975 by the Education for All Handicapped Children Act (EHA), which required public schools accepting federal funds to “provide equal access to education for children with physical and mental disabilities.” The government required schools to evaluate students and craft a plan with parental input to allow children with disabilities to learn in the “least restrictive environment.” 102 That meant that children with disabilities should be able to learn with their peers as much as possible, aiming to combat a history of segregating children with disabilities into separate learning environments.

Congress reauthorized and renamed the EHA in 1990 as the Individuals with Disabilities Education Act (IDEA) and has since reauthorized it and expanded it multiple times. Today, according to the Department of Education, IDEA “makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children.” 103 It also provides grants to states to improve special education, 104 and grants to institutions of higher education for research, technology development, and training. 105

The Rehabilitation Act and IDEA established 2 types of educational plans for students with disabilities. A 504 plan under the Rehabilitation Act provides services and accommodations for students with disabilities to learn in regular classrooms, and does not result in additional federal funding for that child’s education. 106 While the process for obtaining a 504 plan varies by school district, 107 generally there are fewer administrative hurdles to getting a 504 plan established for a child, and parents often have less involvement. The other type of educational plan established under IDEA is the individualized education plan (IEP), a written plan that assesses the student’s academic achievement and functional performance, establishes annual goals, describes how progress will be measured, lists the special education and additional services the child will receive, clarifies any learning activities the child will not partake in, and describes the location, frequency and duration of any services being received. 108 The IEP requires a more formal administrative process relative to a 504 plan, 109 and the federal government provides funding to states for educating students with IEPs. 110

While 504 plans and IEPs are designed to help students with disabilities, parents and their children can face barriers with these educational plans. Many parents “do not know their rights under

104. Ibid.
According to the National Center for Education Statistics, IDEA served approximately 7.1 million students, making up 14% of the enrolled public school population during the 2018-2019 school year. This percentage is fairly consistent with data from the past decade where the proportion of students served under IDEA has varied between 12.9 and 14.1%. The most commonly reported type of disability was a specific learning disability (33%), followed by a speech or language impairment (19%), other health impairment (15%), autism (11%), and developmental delay (7%).

While students with disabilities have varying classroom experiences, they are disproportionately subject to punitive disciplinary measures. According to a 2014 report by Disability Rights Education & Defense Fund, “85 percent of children in juvenile detention facilities have disabilities that make them eligible for special education, yet only 37 percent receive services while in school.” One of the factors correlated with the school-to-prison pipeline is a high rate of out-of-school suspensions. The Department of Education has also found those rates to be twice as high for students with disabilities—and even higher for students who are also male or a student of color. These statistics illustrate some of the important challenges facing students with disabilities—and also highlight the ways in which schools are failing to meet their needs.

These challenges also affect the outcomes for students with disabilities, including high school diploma attainment and college graduation rates. In 2018, students with disabilities were 9% less likely to attain a high school diploma, 83% compared to 92%. The gap in attaining a Bachelor’s degree or higher was even larger, at 62% and 84% respectively, a 22-point difference. These gaps in educational attainment carry serious implications for the future employment and economic security of people with disabilities—and illustrate the importance of investing in initiatives that improve their educational outcomes.

On the other hand, 504 plans have also been abused by wealthier families to leverage additional testing time or other accommodations to improve college admissions tests such as the ACTs and SATs. On the other hand, 504 plans have also been abused by wealthier families to leverage additional testing time or other accommodations to improve college admissions tests such as the ACTs and SATs. In the 2019 college admissions scandal, wealthy parents paid consultant William Singer for help getting into elite universities; one of his strategies involved having children purport learning disabilities in order to obtain medical documentation.

85% of children in juvenile detention facilities have disabilities that make them eligible for special education, yet only 37 percent receive services while in school.

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116. Ibid.


120. Ibid.
they could use to achieve accommodations. After news of the college admissions scandal broke, a New York Times analysis found that at the richest 1% of high schools by census income data, nearly 6% of students had 504 plans, double the national average, and some had up to 18%. While wealthier families are more able to afford psychological evaluations for legitimate disabilities, the possible misuse of the system to unfairly advantage students without disabilities is a disturbing trend, which only heightens existing wealth inequalities.

FEDERAL DECISIONS RELATING TO DISABILITY RIGHTS AND EDUCATION

The current administration has not taken many measures to increase equal protections for students with disabilities. On the contrary, in February 2017, Trump signed an executive order intended “to alleviate unnecessary regulatory burdens,” which led the Department of Education under Betsy DeVos to rescind 72 guidance documents that protected students with disabilities by clarifying how schools should apply federal laws. Beforehand, the Department solicited comments from the public on changes to the special education guidance and held a hearing, “during which many disability rights groups and other education advocates pressed officials to keep all of the guidance documents in place.” The administration argued that the documents were “outdated, unnecessary, or ineffective.”

In 2018, the administration attempted to place a 2-year delay on implementing the Equity in IDEA rule which was established in 2016. Equity in IDEA seeks to identify schools in which students are disproportionately under- or over-represented in special education, and determine route causes and recommend changes in procedures. In COPAA v. DeVos, district court Judge Tanya S. Chutkan ruled against this delay, making the rule effective as of 2019.

In more positive news for students with disabilities, the Department of Education decided against waiving key provisions of IDEA under the CARES Act, a 2020 coronavirus relief package, despite Congress giving it the authority to do so. Instead, Devos kept IDEA largely intact, only changing a few administrative requirements, such as the timelines for assessing toddlers for special education. Disability advocated lauded the decision, in


122. Ibid.


126. Ibid.

light of the major educational challenges facing some students with disabilities forced to learn remotely during the pandemic, including a lack of digital accessibility, loss of individualized attention and certain school-provided therapies, as well as the general loss of routine. The impact of these challenges vary for students depending on the nature of their disability, their socioeconomic status, and where they live. Rural students overwhelmingly lack internet access, making it nearly impossible for these students to engage in online learning.

Figuring out how to effectively meet the needs of students with disabilities poses a new challenge to school districts and educational institutions forced to use remote learning during the pandemic. DeVos also announced a “microgrants” program for parents for a variety of remote educational services, including special education. However, while the program appeared to benefit students with disabilities, the funding is also open to other students, blunting its effect as a program specifically dedicated to this population that could improve educational outcomes for students with disabilities. DeVos released additional guidelines allowing the emergency federal aid to be redirected from public to private schools, an action criticized by both Republican and Democrat lawmakers.

PEOPLE WITH DISABILITIES AND IMMIGRATION

While immigration to the U.S. is arduous and restrictive process under any circumstances, people with disabilities and their families face additional barriers in entering, settling, staying, and applying for naturalization in the U.S. as immigrants. At the same time, evidence suggests that recent immigrants to the U.S. from all regions of the world are less likely to report disabilities and take advantage of services and benefits. According to one study, immigrants are much less likely than native-born Americans to report work disability, to receive benefits for work disability, and to apply for those benefits. Among those who do receive benefits, their benefit awards are lower than that of native-born Americans.

FEDERAL DECISIONS RELATING TO DISABILITY RIGHTS

A number of recent policy and legal changes have increased barriers to immigration for people with disabilities. In 2019, the Department of Homeland Security (DHS) changed its regulations on rejecting applications for admission or change in immigration status based on whether a person was likely at any time to become a “public charge,” or dependent on government assistance. The rule included Medicaid, the main source of health insurance for people with disabilities, affecting both their ability to enter the country and receive a green card. A study conducted by the Kaiser Family Foundation concluded that the regulation would lead to decreases in participation in Medicaid and other programs among immigrant families and their primarily U.S.-born children beyond those directly affected by the new policy. In response to these concerns, DHS admitted that the regulations could have an “outsized impact” on applicants with disabilities but noted that “it did not codify this final rule to discriminate,” but rather “to better ensure that aliens subject to this rule are self-sufficient.” Despite legal challenges to the rule, the new regulations went into effect in February 2020.

For those immigrants with disabilities who are detained at the border, conditions and access to adequate health care have deteriorated. An internal report by Immigration and Customs Enforcement (ICE)’s Civil Rights and Civil Liberties Office found that the agency “systematically provided inadequate medical

128. Ibid.


and mental health care and oversight to immigration detainees in facilities throughout the U.S. In lawsuits filed later that year, detained immigrants described experiencing placement in isolation as punishment and the denial of recommended medical treatment, surgery, and needed accommodations like wheelchairs and interpreters for American Sign Language, hardships that fall disproportionately on people with disabilities. New standards released in January 2020 loosened accreditation requirements for medical services for detained immigrants, and weakened oversight, bearing striking similarities to now-banned institutionalization of people with disabilities.

The Trump administration also increased restrictions on the ability of immigrants with disabilities to stay in the country. In August 2019, it eliminated a longstanding “medical deferred action” program, which allowed immigrant families to remain in the U.S. if at least one member of the family had a serious or life-threatening health condition, including a disability, and was receiving medical treatment. The program did not grant immigration status but protected families from deportation. With the ending of the program, immigrants and their families began receiving written notifications that they were required to leave the country within 33 days of receipt. The people affected by this policy include children with disabilities who were born in the U.S. but whose parents, whom they rely on to access needed healthcare, are immigrants. For these and other immigrants, deportation to a country with inadequate medical services represents a death sentence.

Lastly, adequate services are lacking even for immigrants with disabilities in a position to apply for citizenship. An internal report published in 2018 found persistent, “systemic” gaps in accommodations provided by U.S. Citizenship and Immigration Services (USCIS) for people with disabilities in taking the required citizenship test, including multiple issues related to sign language interpreters. Despite its recognition of these issues, USCIS did not record any progress on improving these accommodations the following year. Until November 2019, USCIS didn’t even provide the section of the citizenship test requiring reading in a Braille format readable by people who are blind. For these individuals to pass the test without completing the reading section, the agency required they visit an ophthalmologist to certify that they are fully blind, an onerous task for immigrants who are disproportionately lower income and lack access to health insurance.

PEOPLE WITH DISABILITIES AND POVERTY, HOUSING, AND TRANSPORTATION

Disabilities are both a cause and consequence of poverty. At 30%, the poverty rate for working-age Americans with disabilities is nearly 2.5 times higher than that for people without disabilities, and exceeds rates for women and African American and Latinx adults. Half of all working-age adults experiencing at least 1 year of poverty have a disability, and nearly two thirds of those experiencing longer-term poverty have a disability.

These high rates are due to a confluence of factors, including higher rates of unemployment and workplace discrimination, educational barriers, and higher healthcare costs. The experience of poverty is exacerbated by barriers to housing and transportation. Only about 5% of housing in the U.S. is accessible to people with moderate mobility-related disabilities, and less than 1% is accessible to people who use a wheelchair full-time. Moreover, people with disabilities struggle to secure housing due to costs, with 41% of all households with at least 1 person with a disability unable to afford housing, an estimated 14.4 million households. These challenges often lead to homelessness; at least 43% of U.S. adults who have stayed in a shelter for individuals experiencing homelessness had a self-reported disability.149

Transportation challenges also burden people with disabilities. Adults with disabilities are twice as likely as those without disabilities to report having inadequate transportation (31% compared to 13%). Strikingly, of the almost 2 million people with disabilities in the U.S. who never leave their homes, over a quarter (560,000) do not leave their households due to transportation difficulties. Similar to housing, affordability and access represent primary barriers to transportation; in one study, only about a quarter of surveyed adults with disabilities indicated that they had excellent options for public transportation.150

FEDERAL DECISIONS RELATING TO DISABILITY RIGHTS

People with disabilities may qualify for a number of public assistance programs to alleviate their financial distress. The largest are the SSDI and SSI programs, which cover healthcare costs;151 however, as previously noted, the process for qualifying for these programs is burdensome, and the majority of people with disabilities do not qualify. In addition, individuals with disabilities may be eligible for public assistance programs including the Supplemental Nutrition Assistance Program (SNAP). A study conducted in 2015 found that over one quarter of SNAP participants had a “functional or work limitation or receive[d] federal government disability benefits,” a proportion that has remained relatively consistent for more than a decade.152 Requirements for SNAP are less stringent than those for SSDI and SSI, allowing it to serve a broader subset of people with disabilities. A study by the Center on Budget and Policy Priorities estimated that of the non-elderly adult SNAP participants with disabilities, more than 40% did not receive SSI or SSDI benefits.153 Therefore, SNAP serves a broader subset of the population of individuals with disabilities (broadly defined) than SSI and SSDI.154

On the other hand, SNAP provides lower benefits for people with impairments who do not meet the program’s definitions for having a disability, which are often people who do not receive SSDI or SSI as well, creating a higher financial burden for them overall.155 Moreover, in December 2019, the USDA enacted stricter work requirements for these individuals in order to be eligible to receive SNAP benefits. SNAP recipients who do not have a child at home are unable to receive benefits for more than 3 months in a 3-year period unless they work at least 80 hours per month. However, states are allowed to request a temporary waiver of this limit in areas with unemployment rates of over 10% or with a “lack of sufficient jobs.” Among other changes, the new rule set a lower threshold for unemployment and limited other allowable data to approve waivers, and limited their duration to 1 year.156 The USDA estimated that the changes could cause as many as 688,000 SNAP participants to lose their benefits. Most of the individuals who fall into this group are particularly vulnerable to such loss of benefits because they are ineligible for other forms of government financial assistance due in part to not having a severe disability.157 Though the rule was set to go into effect on April 1, enactment was suspended due to the COVID-19 crisis.

The effects of these changes, however, have been mitigated by passage of the Families First Coronavirus Response Act, which temporarily eased these barriers. Many states have used the legislation to ensure continued benefits for SNAP recipients, including by providing emergency allotments and benefits for house


154. Ibid.

155. Ibid.


holds with children who are missing school meals. In addition, the Act suspended the 3-month time limit for many SNAP participants who are unemployed and do not have a child at home.

In addition, Section 504 of the Rehabilitation Act of 1973 established the requirement that 5% of public housing units must be accessible for individuals with mobility impairments and 2% for hearing and visual disabilities. However, according to the National Council on Disability, it is likely that many of these units are located in housing developments restricted to older individuals and therefore do not serve non-elderly people with disabilities.

Also, the federal Section 811 program subsidizes rental housing with access to supportive services for people with disabilities. The program provides interest-free capital advances and subsidies for operations to nonprofit developers of affordable housing for persons with disabilities and offers project rental


161. Ibid.

162. Ibid.

assistance to state housing agencies.\textsuperscript{164} As of 2010, the program had produced about 27,000 housing units specifically for people with disabilities. It is important to note that most of these units were segregated, though more recent projects have been more integrated.\textsuperscript{165} Moreover, in every year since assuming office, the Trump administration has proposed budget cuts to this program and several other federal housing programs.\textsuperscript{166}

The current administration has also rescinded guidance intended to combat segregation and discrimination in housing. Notably, the previous federal administration had instituted a rule for state and local governments and public housing agencies to collect data on patterns of integration and segregation and leverage those data to address disparities and segregation in housing. However, in January 2020, the Department of Housing and Urban Development (HUD) proposed a rule to rescind those guidelines, arguing that “fair housing choice” involved allowing individuals the opportunity and ability to live “where they choose, within their means, without unlawful discrimination related to race, color, religion, sex, familial status, national origin, or disability.”\textsuperscript{167} HUD also proposed a separate rule increasing the standard of proof for housing discrimination.\textsuperscript{168}

Finally, in terms of transportation, Title II of the ADA prohibits discrimination on the basis of disability in public transportation services. In accordance with the ADA, “all new vehicles used in public transit must be accessible; key existing rail stations and all new rail stations and facilities must be accessible; and transit operators must provide paratransit (on-demand, door-to-door) services for those who cannot use available mass transit.”\textsuperscript{169} However, rather than promoting increased accessibility in mass transit, the Department of Transportation has “effectively maintained a separate-but-equal vision of public transportation,” funding programs that provide accessible alternatives to mass transit rather than enabling people with disabilities to use existing and more robust transportation networks.\textsuperscript{170}

\textbf{PEOPLE WITH DISABILITIES AND VOTING}

People with disabilities represent an increasingly large proportion of the voting population; in the last presidential election, an estimated 35.4 million Americans with disabilities were eligible to vote, comprising approximately one fifth of the electorate. People with disabilities are also, on average, more likely to show interest in an election, such as following a campaign and being concerned about who wins. They are also only slightly less likely than people without disabilities to be registered to vote—80\% compared to 84\%. To some degree, these trends are influenced by the fact that people with disabilities are disproportionately older in age than the general population, and in turn, older individuals are on average more politically engaged.\textsuperscript{171}

Despite their political engagement and similar rates of voter registration to the rest of the population, people with disabilities face barriers to voting and are therefore less likely to vote, particularly in person.\textsuperscript{172} Experiences and barriers to voting vary widely, depending on the type of disability a person has and the methods for voting available to them. In 2018, just over one fourth of people with disabilities indicated that they were not registered to vote due to “permanent illness or disability.” Among individuals with disabilities who were registered to vote but did not do so in the 2018 midterm elections, 41\% responded that “illness or disability” was the reason for not voting.\textsuperscript{173} This difficulty appears more prevalent than it did in the 2016 election, when one fifth of the individuals with disabilities who did not vote indicated that an illness or disability “made it too difficult to vote,” while only 4\% of individuals without disabilities responded with the same reason for not voting.\textsuperscript{174}

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\item 172. Ibid.
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These statistics demonstrate an inadequacy of voting infrastructure to meet the needs of those with disabilities. Research published in 2013 found that the most common issues experienced by people with disabilities in voting were difficulty with reading or seeing the ballot or understanding how to vote or use voting equipment. These difficulties have persisted even as voter turnout among people with disabilities has increased, from 42.8% in 2010 to 49.3% in 2018.

As suggested by surveys of individuals with disabilities, the accessibility of polling places is a principal barrier. In the last presidential election, the Government Accountability Office (GAO) evaluated the accessibility of 178 polling places, finding that 60% of the polling places had at least 1 potential impediment for individuals with physical disabilities alone. The most common impediments were “steep ramps located outside buildings, lack of signs indicating accessible paths, and poor parking or path surfaces.”

Of the 137 polling places where GAO was able to examine voting stations inside the voting area, just under two thirds failed to provide a voting station with an accessible voting system that ensured the casting of a “private and independent vote.” GAO noted that for example, some of these voting stations could not accommodate wheelchairs, forcing wheelchair users to require the assistance of another person to cast their vote. However, in a 2013 study, individuals with disabilities were just as likely as individuals without disabilities to indicate that they are treated respectfully by election officials.

While physical accessibility is a longstanding and well documented barrier to voting, further research and action is needed to address the barriers to voting for individuals with non-physical disabilities. As mentioned previously, challenges include understanding how to vote or use voting equipment. In 1 study of voting by people with mental illnesses, barriers included “a lack of awareness of... laws and obligations that health care facilities have to assist patients who are unable to get to the polls” and “election officials who were equally uninformed or provided incorrect information about proxy voting for hospitalized patients.”

Research suggests that the need for accommodations among voters across types of disability will only continue to increase. According to a 2016 study, an estimated 30 to 35% of all voters in the next 25 years will require some form of accommodation to vote. In addition, people with disabilities are more likely to experience more general barriers to voting, including transportation. In the 2018 midterm elections, despite being less likely to report that they were not interested in the election, people with disabilities were more likely than the general voting population to cite transportation problems as a reason for not voting.

**FEDERAL AND STATE DECISIONS RELATING TO DISABILITY RIGHTS**

Federal law generally requires all polling places for federal elections to be accessible to all voters, and each polling place to have a system for casting ballots that is accessible for people with disabilities. Title II of the ADA requires state and local governments, as public entities, to ensure that people with disabilities have “a full and equal opportunity to vote” and covers “all aspects of voting, including voter registration, site selection, and the casting of ballots, whether on Election Day or during an early voting process.” In addition, the Voting Rights Act of 1965 sets forth that “any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the

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178. Ibid.

179. Ibid.


The increase in voting restrictions and requirements in recent years have placed a disproportionate burden on people with disabilities.

voter’s employer or agent of the employer or office or agent of the voter’s union.” The Voting Rights Act also prohibits standards including “being able to read or write, attaining a particular level of education, or passing an interpretation test” as requirements that a citizen must fulfill in order to vote.

The National Voter Registration Act of 1993 (NVRA) aims, among other things, to increase the historically low registration rates of persons with disabilities. The NVRA requires all offices that provide public assistance or state-funded programs that primarily serve persons with disabilities to also provide the opportunity to register to vote in federal elections.

Several pieces of legislation have related to accessibility in particular. The Voting Accessibility for the Elderly and Handicapped Act of 1984 requires that each state and local government responsible for conducting elections ensure that all polling places for federal elections are accessible to “handicapped” and elderly voters. In addition, the Help America Vote Act of 2002 requires “jurisdictions responsible for conducting federal elections to provide at least one accessible voting system for persons with disabilities at each polling place in federal elections.” The voting system “must be accessible for individuals with disabilities in a manner that provides the same opportunity for access and participation as for other voters.”

States have also gradually increased their accessibility requirements to protect the right to vote for people with disabilities. In 2000, only 23 states required accessibility standards for polling places. By 2008, the number of states with required standards had increased to 43. In 2016, 44 states reported having standards, and 48 reported conducting at least one activity to ensure oversight, for example analyzing accessibility complaints. However, over half of states (31) reported experiencing challenges in ensuring accessibility in polling places. Moreover, the increase in voting restrictions and requirements in recent years (see “Voting Rights”) have placed a disproportionate burden on people with disabilities. State laws surrounding voter competence, identification, and incarceration have limited the electoral participation of people with disabilities, including those with severe mental illnesses. Because people with disabilities are less likely to drive and therefore have a license, laws that require identification to vote are more burdensome for these individuals. In addition, due to the challenges experienced by people with disabilities related to mobility and transportation, the significant closure of polling places over the last 12 years has been particularly decisive in shaping to what extent this population is able to vote in person. Lastly, while there has been some progress on expanding voting rights


192. Ibid.

193. Ibid.


among individuals with criminal convictions, the vast majority of states bar people from voting while incarcerated or after release.¹⁹⁹ Because people with severe mental disabilities are disproportionately likely to be incarcerated, they are also more likely to have their voting rights restricted due to these laws.²⁰⁰

Policy Recommendations

While equal protections for people with disabilities have markedly advanced since the establishment of the ADA in 1990, significant areas for progress remain across the policy areas examined in this report. In addition to specific policy changes, society as a whole needs to adopt a more positive view of people with disabilities as incapable or flawed. With that in mind, the following recommendations seek to advance the rights of people with disabilities.

**HOW TO REIMAGINE RIGHTS AND RESPONSIBILITIES:**

- **End Employment and Workplace Discrimination.** Eliminate subminimum wage for people with disabilities, provide additional incentives for employers to hire people with disabilities, require employers to report data on hiring of people with disabilities, increase workplace protections for people with disabilities during times of national emergency (e.g. COVID-19 pandemic), address complaints of workplace discrimination at federal agencies, and evaluate the representation of people with disabilities throughout federal and state agencies.

- **Improve Supports for Students with Disabilities in Schools.** Increase educational support for remote and in-school learning by students with disabilities during times of national emergency (e.g. COVID-19 pandemic), expand educational support for mental health-related and cognitive disabilities, prohibit seclusion of students with disabilities, and increase the supply of special education teachers.

- **Improve Meaningful Access to Health Care.** Expand Medicaid and remove work requirements for persons with disabilities, streamline the application process for Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI), remove the mandatory waiting period for Medicare benefits for persons with disabilities who are approved for SSDI, and reinstate the “medical deferred action” program for immigrant families with persons with disabilities residing in the U.S.

- **Increase Assistance to Address Poverty, Housing, and Transportation Needs of People with Disabilities.** Remove work requirements for anti-poverty programs for people with disabilities, provide equal access to housing support programs to persons with disabilities, increase funding to replace public transportation systems that remain inaccessible, and expand transportation access.

- **Protect Voting Rights.** Increase funding and make necessary upgrades for accessibility of polling places, and provide accessible absentee ballots for persons with disabilities.

- **Ratify Convention on the Rights of Persons with Disabilities.** The international convention has been signed but not yet ratified by the United States.

