

ED 377 600

EC 303 523

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 TITLE To Disclose or Not To Disclose: That Is the Question.
 INSTITUTION Missouri Univ., Columbia. Missouri LINC.
 SPONS AGENCY Missouri State Dept. of Elementary and Secondary Education, Jefferson City. Div. of Special Education.
 PUB DATE 94
 NOTE 10p.
 PUB TYPE Guides - Non-Classroom Use (055) -- Collected Works - Serials (022)
 JOURNAL CIT Transition linc; n2 1994
 EDRS PRICE MF01/PC01 Plus Postage.
 DESCRIPTORS Assertiveness; *Civil Rights; Civil Rights Legislation; *Disabilities; *Employment; Employment Interviews; Employment Qualifications; *Equal Opportunities (Jobs); Federal Legislation; Job Applicants; Job Application; *Self Disclosure (Individuals)
 IDENTIFIERS *Americans with Disabilities Act 1990

ABSTRACT

This paper focuses on the issue of whether the individual with a disability should disclose this information to a current or potential employer. It notes that, under the Americans with Disabilities Act (ADA), it is the individual's responsibility to disclose his/her disability and initiate a request for accommodation. The employer cannot inquire if there is a disability. Explanations of the following key terms of the ADA are given in the context of the disclosure issue: "essential functions" of a job; "reasonable accommodation"; "undue hardship"; "disability"; "major life activities"; and "substantial limits." Specific suggestions are given concerning the decision to disclose, when to disclose, and how to disclose. A table gives advantages and disadvantages of disclosure at various times in the employment process. Suggestions are also given to teachers preparing students with disabilities to assert their rights under the ADA and assume responsibility in the job-seeking process. Twelve organizational resources are listed. (DB)

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Transition linc
Number 2-1994

Missouri LINC
University of Missouri-Columbia
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EC 303523

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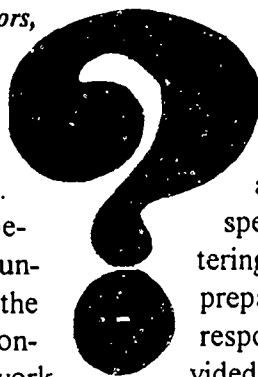
To Disclose or Not To Disclose: That Is The Question

by Cathy Hughes and Jill Williams Graham, Instructors,
Missouri LINC

It is well documented that youth with disabilities face many challenges as they make the transition from high school to employment. Follow-up studies have shown these youth experience significant rates of unemployment and underemployment. For those who do get a job, the quality of the work experience is often questionable. As Satcher (1994) points out, "quality of work life may involve a number of factors including appropriate job match, the provision of job accommodations, wages paid, available benefits, and opportunities for advancement" (p.208).

The Americans with Disabilities Act (ADA) has the potential for enhancing the quality of work life for youth with disabilities through its provisions prohibiting discrimination in employment. While providing increased opportunities for youth with disabilities, this legislation also presents significant changes in the level of self-awareness and self-advocacy required to realize its benefits.

The Individuals with Disabilities Education Act (IDEA) specifies that the school is responsible for identifying, assessing, and serving students with disabilities through age 21 or high school graduation. As youth with disabilities leave high school and seek employment, their legal rights become subsumed under the Americans with Disabilities Act (ADA). Under the ADA it becomes the individual's responsibility to identify one's needs, disclose one's disability, and initiate a request for accommodation. This level of educated self-advocacy may be critical for success in obtaining and maintaining a quality work life. Educators must help youth with disabilities acquire the knowledge and skills needed to assert their rights and assume these new responsibilities.



Awareness of the principles and terms of the Americans with Disabilities Act (ADA) is essential as we prepare youth with disabilities for the world of work. This monograph will address those provisions of the ADA which have specific implications for youth with disabilities entering the workforce. In addition, suggestions for preparing students to assume the new roles and responsibilities conferred by the ADA will be provided.

The Americans With Disabilities Act: Provisions for Employment

The ADA mandates equal opportunities for persons with disabilities in the areas of employment, public accommodations, transportation, state and local government services, and telecommunications. Title I of the ADA addresses employment. The provisions in this title became effective on July 26, 1992 for employers having more than 25 employees and became effective on July 26, 1994 for employers of more than 15 employees.

This legislation prohibits employment discrimination against individuals with disabilities. This protection is provided during the application and interview process, after an employment offer has been made, and continues after the individual with a disability is on the job. Highlights of the Act which are pertinent for this discussion include the following: (National Organization on Disability, cited in Learning Disabilities Association, 1990; Thompson, Bethea, and Satcher, no date):

Employers may not discriminate against an individual with a disability in hiring or promotion if the person is otherwise qualified for the job.

Employers can ask about one's ability to perform the essential functions of a job, but cannot inquire if someone has a disability, or subject a person to tests that tend to screen out people with disabilities.

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- A job duty may be considered an *essential function* when:
 - the position exists to perform the function;
 - there are only a limited number of employees to whom the function could be distributed;
 - the function is so highly specialized that the individual would be hired for his or her ability to perform the function (it could not be distributed to other employees).

Employers may ask if any accommodations would be needed to enable the applicant to perform these functions and employers are required to provide reasonable accommodations.

- A *reasonable accommodation* may be defined as a modification in the job or the interview/evaluation process that allows an *otherwise qualified* person with a disability to perform the *essential functions* of the job and be fairly evaluated.
- Accommodations that may be required to realize an individual's work potential include:
 - altering existing facilities to make them accessible;
 - restructuring the job;
 - modifying work schedules;
 - reassigning to a vacant position;
 - modifying examinations, training materials, or policies;
 - acquiring or modifying equipment or other devices;
 - providing qualified readers or interpreters.

It is the right of the individual with a disability to choose whether or not to disclose the need for accommodation.

Employers are not required to provide accommodations that impose undue hardship on business operations or reduce performance standards below that of other employees.

- When defining *undue hardship*, employers must consider such issues as:
 - the nature and net cost of the accommodation;
 - the overall financial resources of the employer;

- the impact of the accommodation on the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business (Pimentel, Bissonnette, and Lotito, 1992, p.19).

The ADA provides a number of definitions to clarify who is covered under the legislation and the extent of that coverage. For example, the ADA defines the term *disability* broadly to include:

- a. someone having a physical or mental impairment which *substantially limits* one or more of the *major life activities* of the individual;
 - b. an individual having a record of such an impairment; or
 - c. an individual regarded as having such an impairment.
- *Major life activities* include activities such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
 - *Substantial limits* occur if the individual is unable to perform a major life activity or the individual is significantly restricted in a major life activity when compared to the average person in the general population. This determination is made by considering the nature and severity of the impairment, the duration or expected duration of the impairment and the permanent or long-term impact, of or resulting from, the impairment.
 - Whether or not a person has a disability is to be assessed without regard to the availability of accommodations, such as reasonable modifications auxiliary aids and services and devices of a personal nature, or medication. For example, a person with a severe hearing loss is substantially limited in the major life activity of hearing, even though the loss may be improved through the use of a hearing aid (Backer-Thompson, 1993).

Implications

The ADA has important implications for youth with disabilities entering the workforce. While the ADA protects individuals with disabilities, it also places new responsibilities on them as they pursue employment

options. It is imperative that young people with disabilities be prepared to exert their rights and assume the responsibilities conferred by the ADA. A key area of focus for such preparation is the development of the knowledge and skills required to make informed decisions about disclosure of one's disability and to request reasonable accommodations. Teachers can assist with this preparation by increasing their own understanding of the ADA and by addressing the implications of the act with students directly through discussion, instruction and the provision of hands on experiences.

Deciding to Disclose

Once individuals have identified realistic employment options and the type of job preferred, consideration must be given to whether, when, and how to disclose the disability in the job seeking process. Self-understanding and self-acceptance are key for such decision-making. Youth with disabilities must be able to determine their strengths and limitations relative to the specific requirements of a job and evaluate what, if any, accommodations may be needed to perform the job successfully. Each individual must consider what to say to an employer and co-workers about the disability and how to respond to what may seem to be insensitive questions.

The issue of disclosure hinges on whether or not the disability is visible and if the disability will impact job performance. The following guidelines may be helpful to share with students as they prepare to seek employment.

1. If the disability will require the employer to provide a reasonable accommodation, the applicant should bring it up, explaining the nature of the accommodation needed and how it will enable the person's ability to perform.
2. If the disability will not require an accommodation but is obvious (visible) and the average employer would have reasonable concerns as to how someone with the disability would perform the job functions, the applicant should bring it up, explaining how the functions in question will be performed.
3. If the disability is not obvious and will not impact job performance, then the applicant should not bring it up, as it has no bearing on the job at all (Pimentel, Bell, and Lotito, 1993, p.48).

When To Disclose

If it is determined that disclosure is appropriate, consideration must be given to when and how to disclose. Advantages and disadvantages of various options concerning when to disclose are presented on Page 4.

How To Disclose

If the decision has been made to disclose prior to or during the job interview, it is important for individuals to first emphasize their job-related strengths, qualifications for the job, and ability to fulfill the essential functions of the job. Discussion of any needed accommodations should follow. It is helpful to focus on the relevant information and minimize the initial discussion of the disability. Taking the initiative to discuss the disability presents the image of a worker willing to tackle issues and problems related to one's disability on the job.

Other tips for disclosure based on an employer survey are provided below.

Tips to People with Disabilities on How to Disclose Your Disability

1. Be honest, straight-forward, and factual about your disability.
2. Some employers are knowledgeable about disabilities, but many are not. Be prepared to give employers information on your disability, or let them know where they can find out more.
3. Be brief - don't dwell on the disability. Try not to build it into a major point of discussion.
4. Be knowledgeable about your disability. Inform employers about how you do things and how they can provide help if necessary.
5. Be enthusiastic and assertive in emphasizing your skills, abilities, ideas, assets, etc.
6. Talk with assurance.
7. Be positive, honest, and specific. Don't complain or apologize about your disability.
8. If possible, describe how your disability did not affect previous job performance, attendance, safety, etc.
9. At the end of the interview, ask if there is anything else they need to know about you.

Source: Adapted from handout developed by Training and Placement Service, Epilepsy Foundation of Minnesota

Disclosure Options

Time of Disclosure	Advantages	Disadvantages
1. On a job application	<ul style="list-style-type: none"> • Honesty/peace of mind. • Easy/lets employer decide if disability is an issue. 	<ul style="list-style-type: none"> • Might disqualify you with no opportunity to present yourself and your qualifications and no recourse.
2. During an interview	<ul style="list-style-type: none"> • Honesty/peace of mind. • Opportunity to respond briefly and positively, in person, to specific disability issues. • Discrimination less likely face-to-face. 	<ul style="list-style-type: none"> • Puts responsibility on you to handle disability issues in a clear, non-threatening way. • Too much emphasis on issue indicates possible problem, you are not being evaluated on your abilities.
3. After the interview (when a job is offered but before you begin to work)	<ul style="list-style-type: none"> • Honesty/peace of mind. • If the disability information changes the hiring decision, and you are sure that your disability will not interfere with your ability to perform job, there is legal recourse. 	<ul style="list-style-type: none"> • Employer might feel you should have told him before hiring decision was made. • Might lead to distrust with Personnel Department.
4. After you start work	<ul style="list-style-type: none"> • Opportunity to prove yourself on job before disclosure. • Allows you to respond to disability questions with peers at work. • If disclosure affects employment status and the condition doesn't affect ability to perform job or job safety, you may be protected by law. 	<ul style="list-style-type: none"> • Nervousness on the job. • Possible employer accusation of falsifying your application. • Possibility of problems. • Could change interaction with peers.
5. After problem on the job	<ul style="list-style-type: none"> • Opportunity to prove yourself on job before disclosure. 	<ul style="list-style-type: none"> • Possible employer accusation of falsifying your application. • Can perpetuate disability myths and misunderstandings.
6. Never	<ul style="list-style-type: none"> • Employer can't respond to your disability unless you have a problem. 	<ul style="list-style-type: none"> • If disability is discovered, you run the risk of being fired. • Can perpetuate disability myths and misunderstandings.

Source: ^oAase and Smith, University of Minnesota, Office for Students with Disabilities - Career Development Course Sequence.

For some individuals with disabilities it may be best for a third party (e.g. teacher, counselor, job coach) to reveal the individual's disability. If the young person is not able to convey his strengths, describe the disability, or effectively communicate his accommodation needs, an advocate may be in a better position to "sell" the benefits of hiring the person to the employer.

Request For Reasonable Accommodations

Disclosure informs the employer of the need for accommodation and starts the obligation to consider provision of this accommodation. A request for accommodation not only assumes an understanding of one's limitations and how one may compensate through accommodation, but also an understanding of what constitutes a *reasonable* accommodation. Further, the provision of a requested accommodation is determined through a process of negotiation between the employer and the applicant. Young people with disabilities must be equipped with the skills and self-assurance to assert themselves in a positive and effective way in this process. They also need to know who to contact if they feel discrimination has occurred. In addition to using the employer's internal grievance procedures, there are a number of organizations that can provide information and assistance regarding discrimination. A listing of some of these groups is provided in the resource section of this monograph.

Preparing Students

Teachers can prepare students with disabilities to assert their rights and assume responsibility in the job-seeking process by helping them:

- a. be aware of their right to equal employment opportunity under the ADA;
- b. identify the entry-level criteria for jobs of interest and obtain, or plan to obtain, the appropriate education, skills, experience, licensure, etc.;
- c. increase self-knowledge and self-acceptance;
- d. prepare an excellent resume which emphasizes their strengths and clearly describes their qualifications;
- e. know how to identify exactly what each job they apply for involves so they can determine and articulate their accommodation needs;
- f. become comfortable describing their disability and accommodation needs;

- g. develop skills in monitoring job performance and recognizing when help is needed;
- h. become an educated, effective self-advocate. (Adapted from: Thompson, Bethea, and Satcher, no date, p.7)

Preparing students to discuss their disability and request accommodations is a critical, yet often neglected, part of student preparation for the job-seeking process. Teachers can begin by becoming knowledgeable about the legal rights conferred by the ADA and ensuring their students become knowledgeable as well. Providing repeated opportunities to practice exerting these rights will help students weigh the advantages, disadvantages, and timing of disclosure. Practice will also increase students' comfort with discussion of their disability and their needs.

Role playing activities with constructive feedback can be used to provide this practice. Videotaping this role playing for later viewing can assist students in evaluating their own performance and targeting needed improvements. Arranging for volunteer employers to conduct mock interviews can provide students the opportunity to practice disclosure. Inviting community members who have disabilities to speak to students about their job seeking experiences can provide many insights into potential issues and how they may be addressed.

Experiences in actual work settings are also invaluable. Job shadowing allows students to observe someone performing the type of job they wish to have. This may give students a more accurate perspective of their strengths and limitations relative to the job and help them identify the types of accommodations they would need to perform that job successfully. Work experiences through cooperative school-work programs, community-based vocational training, apprenticeships, and/or paid employment can also help students develop realistic employment goals and a clearer understanding of the *essential functions* of various jobs. Such experiences provide an opportunity for students to identify accommodation needs, evaluate the effectiveness of the accommodation, and recognize when additional or different forms of accommodation may be needed. Actual work experiences can be invaluable in helping students recognize personal indicators of when an accommodation is needed (e.g. feeling overstressed or unproductive). Further, these experiences give opportunities to discuss their disability with coworkers and develop informal support networks within work environments.

Conclusion

The Americans with Disabilities Act provides individuals with disabilities new opportunities for finding a satisfying job. ADA protects these individuals from discrimination and requires the provision of reasonable accommodations. Taking advantage of these opportunities requires individuals to be informed about the law and prepared to address issues related to their disability.

Preparing youth to realize the benefits of the ADA is a challenge presented to educators in the 1990's. Integrating information about the law into existing curriculum can help students become informed about their rights and responsibilities. Providing them with opportunities to understand and accept themselves and the requirements of a variety of employment options can assist them in preparing to find a job. Discussion about such issues as whether, when, and how to disclose their disability during the job seeking process is critical. Finally, providing students opportunities to practice a variety of techniques and skills will enhance their ability to apply what they know and better ensure success in obtaining quality employment.

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A NEW CENTER IS CREATED!!

Missouri LINC and the Special Education Dissemination Center (SEDC) have come together to create a new resource and training center, *The Center for Innovations in Special Education*. The Center will continue to provide the services you have come to expect from Missouri LINC and SEDC and will expand professional development activities to realize our mission.

The mission of the Center is to expand opportunities and improve outcomes for students with disabilities and other diverse learning needs. We are committed to providing high quality services and materials to support those striving to help those learners achieve their potential. Research and consumer input will guide our efforts and are vital components of our success. April, 1994

The Center for Innovations in Special Education is funded by the Missouri Department of Elementary and Secondary Education.

You can call the Center at: Missouri LINC (314) 882-2733 or (800) 392-0533 (Missouri only)
SEDC (314) 882-3594 or (800) 729-7332 (Missouri only)

Resources

The following list of organizations can be helpful to job seekers with disabilities. These organizations can provide information about job accommodations, the latest developments in technology, legal expertise, technical assistance, support groups, resume referral services, and job opportunities. Contacting these organizations may save the job applicant time and money.

ABLEDATA

National Institute on Disability and Rehabilitation
Research
Department of Education
Newington Children's Hospital
181 East Cedar St.
Newington, CT 06111
Voice/TT: 203-667-5405

Office for Civil Rights

10220 N. Executive
Hills Blvd. 8th Floor
Kansas City, MO 64153-1367

Architectural and Transportation Barriers Compliance Board

1111 18th St. NW #501
Washington, D.C. 20036
Voice/TT: 800-872-2253
Fax: 202-272-5447

Job Accommodation Network (JAN)

(President's Committee on Employment of People with Disabilities)
West Virginia University
P.O. Box 6122
Morgantown, WV 26506
Voice/TT: 800-526-7234 (outside West Virginia)
Voice/TT: 800-526-4689 (inside West Virginia)
Fax: 304-293-6661

Clearinghouse on Computer Accommodation

General Services Administration
18th and F Streets NW KGDO #2022
Washington, D.C. 20405
Voice: 202-501-4906
Fax: 202-501-3855

Medicare/Medicaid Programs

Health Care Financing Administration
Department of Health and Human Services
200 Independence Ave. SW
Washington, D.C. 20201
Voice: 202-245-6113

Clearinghouse on Disability Information

Department of Education, OSERS
Switzer Building #3132
Washington, D.C. 20202
Voice: 202-732-1241
Fax: 202-732-1252

Governor's Committee on Employment of People with Disabilities

P. O. Box 1668
3315 W. Truman Blvd. Rm. 132
Jefferson City, MO 65102-1668
800-877-8249
Fax: 314-526-4109

Department of Justice

Office on the Americans with Disabilities Act
P.O. Box 66118
Washington, D.C. 20035
ADA Hotline
Voice: 202-514-0301
TT: 202-514-0383
Fax: 202-307-0595

Great Plains ADA Project

Chuck Graham
4816 Santana
Columbia, MO 65203
314-882-3600
Fax: 314-884-4925

Equal Employment Opportunity Commission

1801 L St. NW
Washington, D.C. 20507
Voice: 800-669-3362

Assistive Technology Project

UMKC School of Education
4731 S. Cochise, Suite 114
Independence, MO 64055-6975
816-235-5337
800-647-8557
Fax: 816-373-9314

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Dr. Cheryl Hanley-Maxwell

Dr. Hanley-Maxwell is a Professor in the Department of Special Education at the University of Wisconsin-Madison. She has extensive expertise and credentials in the field of transition for students with disabilities having been a teacher of students with severe disabilities, a rehabilitation specialist, a National Transition Project staff member, an author of numerous professional articles on transition, and a special education teacher trainer.

Dr. Jeanne Repetto

Dr. Repetto is the President Elect of the International Division on Career Development and Transition. She is the Director of the Florida Network: Information and Services for Adolescents and Adults with Disabilities, a statewide resource dissemination center, housed at the University of Florida. Her research is in areas of transition of at risk students and leadership development.

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For more information contact: Jim Heiden CESA #1 2930 South Root River Parkway, West Allis, WI 53227 (414) 546-3000

Linda Bradley, Missouri LINC Interim Director

Transition linc is published by Missouri LINC, University of Missouri-Columbia. Funding is provided through the Missouri Department of Elementary and Secondary Education, Division of Special Education. If you need special accommodations as addressed by the Americans with Disabilities Act and require this publication in an alternate format, reasonable efforts will be made to meet your needs. For further information, contact:
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