

Disability Rights in the USA: a Legal History



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Highlights of the Legal History of Disability Rights in the U.S.

1776: First pension in this new country

- ❖ From the Continental Congress in August of 1776
- ❖ Provided a pension for every “officer, soldier, or sailor” disabled in the Revolutionary War



1817: First school for children with disabilities in western hemisphere

- ❖ Founded by Thomas Gallaudet in Hartford, CT
- ❖ American School for the Deaf (original name: “Connecticut Asylum for the Education and Instruction of Deaf and Dumb Persons”)
- ❖ Gallaudet Univ. began in 1860s as first college for people with disabilities



1829:

- Louis Braille invents raised point alphabet
- First school for blind education in U.S.

- ❖ Perkins School for the Blind, still operating in Massachusetts
- ❖ Braille education did not come to U.S. until 1860



1880: National Association of the Deaf

1940: National Federation of the Blind

- Disability rights are still understood as being for those perceived as blameless for their disability



National Association of the Deaf



**NATIONAL FEDERATION
OF THE BLIND**

Live the life you want.

1907: Eugenic sterilization begins

- ❖ Began in Indiana for “idiots, imbeciles and rapists”
- ❖ Spreads to most states
- ❖ 1927, U.S. Supreme Court rules compulsory sterilization is constitutional
 - 14th Am. Equal Protection Clause doesn't apply to “feebleminded”



1918: Veterans Rehabilitation Act

1920: Civilian Vocational Rehabilitation Act

- ❖ 1918 Smith-Sears Act
- ❖ 1920 Smith-Fess Act
- ❖ Vocational assistance for people with disabilities

1935: Social Security Act

- Signed by Pres. Franklin Roosevelt (person with a visible disability)



1938: Fair Labor Standards Act

The Fair Labor Standards Act
was signed by President Franklin D. Roosevelt on June 25, 1938.



- ❖ Establishes minimum wage
- ❖ Section 14(c) allows for subminimum wage for PWDs

1946: National Mental Health Act

- ❖ Creates National Institute of Mental Health
- ❖ Still functions within National Institutes of Health



1950: National Barrier-Free Standards

- ❖ For “barrier-free” buildings for PWDs to access, though not required



1963: Community Mental Health Act

- ❖ Signed by Pres. JFK
- ❖ Changes delivery of mental health services



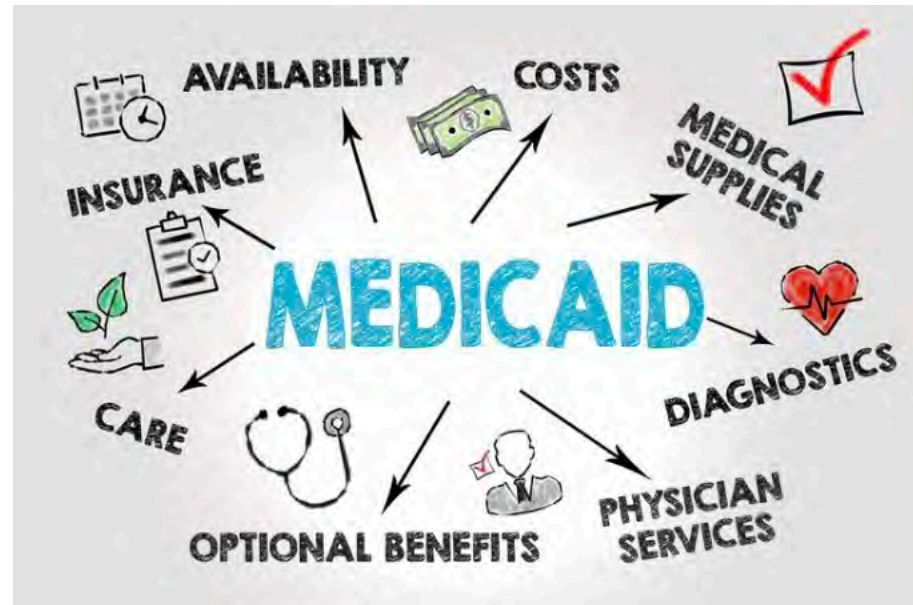
1964: Civil Rights Act fails to include PWDs

- ❖ PWDs not included until 1988



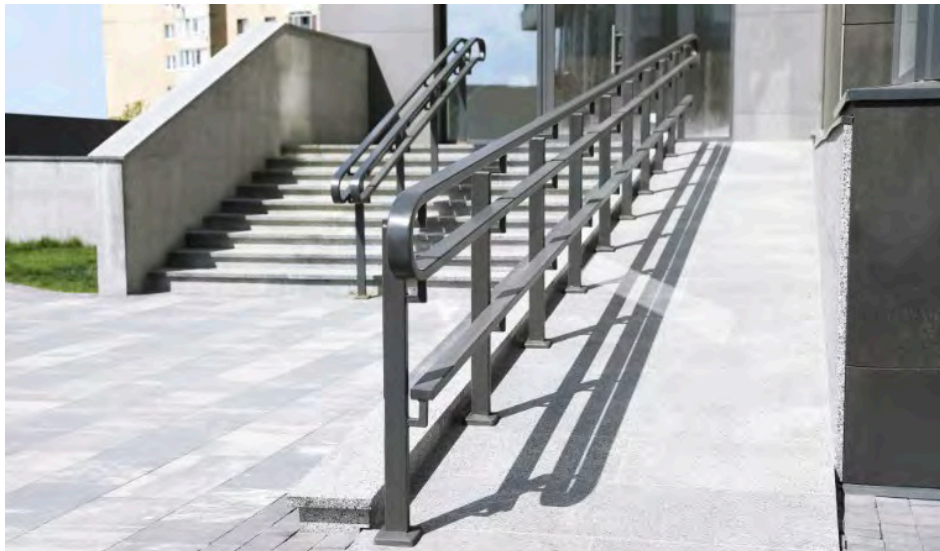
1965: Medicaid Assistance for People with Disabilities and Those with Low Income

- ❖ Allows states to operate a Medicaid program



1968: Architectural Barriers Act

- ❖ First requirements for accessibility



1971: *PARC v. Pennsylvania*

- ❖ First right-to-education case in U.S.
- ❖ Schools had been permitted to deny access to children “who had not attained a mental age of 5 years”



1962: Ed Roberts denied admission to Univ. of Cal.
1970: Judy Heumann denied teaching license (NYC)
1972: First Center for Independent Living

- ❖ Roberts initially denied admission because his iron lung was too big for dorm room
- ❖ Huemann denied teaching license because wheelchair was a “fire hazard”
- ❖ Roberts, Heumann, and others founded Independent Living Movement



1973: Rehabilitation Act of 1973

- ❖ “Section 504” -- prohibits discrimination, if federal government is involved
- ❖ Currently under threat



Section 504 of the Rehabilitation Act

- Any program receiving federal assistance cannot exclude or deny benefits due to disability
- Applicable to health care, education, housing, transportation, and other issues
- Americans with Disabilities Act would expand on these protections, but Section 504 remains critically important in many areas

Section 504 of the Rehabilitation Act of 1973

"No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, **shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination** under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service."

1974: Last of the “Ugly Laws” repealed

- ❖ Allowed for the arrest of people for being “disfigured” in public
- ❖ Allegedly intended to remove unsightly beggars from the streets
- ❖ Had become common in cities after the Civil War



1975: Education for Handicapped Children Act

- ❖ Requires a “free appropriate public education” (FAPE) for students with disabilities
- ❖ In 1990 was amended and renamed Individuals with Disabilities Education Act (IDEA)



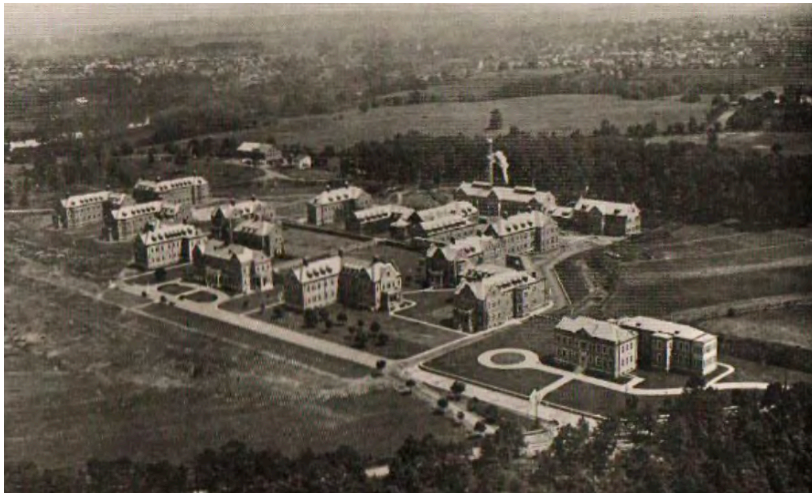
1975: Protection & Advocacy system created

- ❖ After journalist Geraldo Rivera secretly filmed rampant abuse inside the Willowbrook institution in NY
- ❖ Current NM P&A (now DRNM) formed 1979



1977: *Halderman v. Pennhurst*

- ❖ Landmark lawsuit led to closure 10 years later of one of the largest state-run institutions for PWDs



1977: Rehabilitation Act finally gets implementing regulations

- ❖ Only after Judy Heumann led a 25-day occupation of the Health, Education and Welfare (later HHS) office in San Francisco -- still the longest takeover of a federal office by protesters



1985: *City of Cleburne v. Cleburne Living Centers*

- ❖ Program for people with I/DD had been denied a permit
- ❖ U.S. Supreme Court applied the 14th Amendment's Equal Protection Clause



1987: *Jackson v. Los Lunas Hospital*

- ❖ Filed by DRNM and others
- ❖ Led to closure of state institutions for people with I/DD and expansion of community-based DDW system
- ❖ Ended by court in 2022

757 F.Supp. 1243

United States District Court, D. New Mexico.

Walter Stephen JACKSON, by his parents and next friends, Walter and Helen JACKSON, et al.,
Plaintiffs,

v.

FORT STANTON HOSPITAL AND TRAINING SCHOOL, et al., Defendants,

1988: *Honig v. Doe*

- ❖ Prohibits schools from excluding children for conduct related to their disabilities



1988: Fair Housing Act amended to include protections for PWDs

- ❖ Fair Housing Act is in Civil Rights Act
- ❖ Brings PWDs into the Civil Rights Act



1990: Americans with Disabilities Act

- ❖ Modeled after Section 504 of Rehab. Act and the Civil Rights Act
- ❖ Includes access to buildings, government services, and employment opportunities
- ❖ Gives PWDs legal protections similar to protections for race, color, sex, national origin, age, and religion



Americans with Disabilities Act

- General goal is to bring the same access to opportunities to PWDs as everyone else
- Uses a broad definition of “disability”
- Five titles, or coverage areas:
 - I: Employment
 - II: Government services
 - III: Public Accommodations
 - IV: Telecommunications
 - V: Miscellaneous

1996: Mental Health Parity Act

- ❖ Intended to prohibit discrimination in health insurance plans against mental illnesses



1999: *Olmstead v. L.C. and E.W.*

- ❖ U.S. Supreme Court determines that segregation of PWDs violates Title II of the ADA
- ❖ Reinforces the right of PWDs to live in their communities
- ❖ Requires states to provide services in the most integrated settings



Olmstead

- This is a Supreme Court decision, not statute or other legislative act
- People have a right to live, work, and participate in their communities
- Recognition of the inherent limitations that institutions place on residents' ability to engage with family, friends, work, and community life
- Clarification that arbitrary caps on services violate the ADA

2006: United Nations adopts Convention on the Rights of Persons with Disabilities

- ❖ Pres. Obama signed U.S. intention to comply in 2009, but Senate vote to ratify fell six votes short
- ❖ UN embraces slogan “nothing about us without us”



2014: Workforce Innovation and Opportunity Act (WIOA)

- ❖ Expands the rights of PWDs to receive a variety of education and employment services

2014: Achieving a Better Life Experience Act (ABLE)

- ❖ Authorized savings accounts for people on disability-related public benefit programs with low asset limits
- ❖ Improvements in NM passed in 2024, on bill from Rep. Liz Thomson



2022: *M.G. v. Scrase/Armijo*

- ❖ DRNM and others filed lawsuit to get services for medically fragile children
- ❖ Ongoing litigation, with HCA continuing to argue that it has no obligation to provide medically necessary services

Case 1:22-cv-00325-MIS-DLM Document 217 Filed 05/26/23 Page 1 of 45

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

M.G., a minor and through
her mother, Christina Garcia, et al.,

Plaintiffs,

v.

No. 1:22-cv-00325 MIS/DLM

DAVID SCRASE,¹ in his official capacity
as Secretary for the Human Services
Department of New Mexico, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER GRANTING IN PART
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

2024: *Texas v. Becerra*

- ❖ 17 states sue to invalidate Section 504
- ❖ Ongoing litigation, not yet clear if or how the incoming administration will defend the case

THANK YOU!



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Disability Rights New Mexico

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