State ADA Coordinator’s Office: 2023 Virtual ADA Conference for State & Local Governments Session 3C

 Georgia Finance and Investment Commission

 03:00 PM – 04:30 PM Eastern Time

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JOHAN: This is Johan Rempel from CIDI at Georgia Tech. Thank you for joining us for the last session of this three-day virtual conference. Hopefully you will not have to hear my voice again after this. I am going to be providing a few accessibility considerations here for this last session as well. Then cover some household items also. We are providing close captioning. Live captioning services, C.A.R.T. services.

There are 2 ways to abscess access to captioning through the Streamtext link that has been put into the chat. That opened the third-party application with additional options for individuals who prefer that. On the toolbar which is fully accessible, if you are a screen reader or keyboard user for instance, the closed caption control. That allows you to activate the Closed Captions within Zoom as well.

For this ask the expert session, we have 2 ASL interpreters who will be switching back-and-forth. They have both been spotlighted so they will be interview for individuals who benefit from ASL interpretation.

All of our panel here will have their cameras on. So you will be able to see their faces and see the responses. There is one other feature within Zoom I want to briefly talk about. It has a new feature called sign language interpretation view. It works very well when one ASL interpreter is providing ASL interpretation for a specific webinar.

In this case, we have way because we have 2 and they will be switching back-and-forth, we choose the spotlight option for them as well. A few other household items. The Zoom chat feature is disabled for participants. We ask you to submit your questions using the Q&A feature found on the Zoom toolbar. There will be a brief Q&A following the presentation.

All questions submitted by registrant during the registration process have also been provided to presenters ahead of time. The Virtual ADA Conference team will also monitor the Q&A throughout the presentation. As time allows the team will address as many questions as possible, and if the team is unable to get to your questions during the session, they will make every effort to follow up after the conference. As a reminder, please do not place any private or confidential information in the Q&A.

All of the sessions are being recorded. They will be held on the State ADA Coordinator office website in the weeks following the conference. For any technical issues related to Zoom you will have access to the Zoom support link in the chat which should appear if not right now momentarily.

We invite the panelists to keep their cameras on. The moderator will be doing a lot of juggling so we have asked that the speaker keep their camera on during the introduction and then he has the option to turn the camera off as well. I will now start recording.

I have the privilege of introducing the moderator. Doug Crandell serves as the director advancing employment Institute on Human Development & Disability at the University of Georgia. Senior Consultant with Griffin-Hammis. Doug Crandell has worked and supported employment for 30 years.

He has been the project director for several demonstration grants funded through the US Department of Labor Justice assistance and the Social Security Administration. He directed George's Medicaid infrastructure grant funded by the centers for Medicare and Medicaid services.

Doug is on the faculty of the Institute of human development and disability at the University of Georgia. A Senior Consultant with the Griffin-Hammis organization. For the last seven years he has provided training and technical assistance to Georges DBHDD's support employment providers and a subject matter expert with several states to restructure employment support including evidence-based supported employment. Customized employment, and self-employment.

He is the project director for torque George's training and technical assistance Center for employment funded by the Georgia Council on Developmental Disabilities. Advancing employment. Without further ado, I will pass it on to our moderator Doug. Thank you.

MODERATOR: Thank you Johan. Welcome everybody. I will go ahead and take that option of reducing the video. What an exciting time! I will get us right into it. Let me say this before I get into introducing our esteemed panelists. Any mispronunciations of acronyms or names is entirely my fault. Please forgive me.

Last year we started the session with 2 quotes and I went looking for quotes and could not find two better ones. So we are using the same ones! The first is very short and it comes from Supreme Court Justice William O Douglas serving Supreme Court justice:

*I do not know of any salvation or society except through eccentrics, misfits, dissenters, and people who protest.*

I think that is a beautiful sentence. The other one comes from a wonderful writer named Jan Willis. If you have not read her, you are missing out. It is a little bit longer but it really gets at what we are doing today. She says:

*In order to engage in meaningful dialogue, we must come to the table respecting all participants equally. Then we must do something that is quite difficult indeed. We must ourselves become as empty vessels, ready and available to receive*. Beautiful. Beautiful.

Dr. Shelly Ducatt currently serves as the Senior Associate Dean of students at Florida State University. Prior to that, Shelly was the associate director of student disability services at Texas Tech University. Shelly has worked in higher education for over 25 years. She has specialized in the areas of Disability Services for the past 15. Thank you Shelly.

Steven Jones is the senior ADA Architect at this date ADA Coordinator's Office. Mr. Jones provides technical assistance and training on issues of accessibility in the built environment to all State of Georgia entities. Local code enforcement officials, design professionals and property owners and the general public.

Mr. Jones also manages the statewide ADA facilities improvement in program which is a Georgia General Obligation Bond for state agencies to assist in program accessibility accommodations and their existing facilities.

To say our fearless leader is an understatement. Stacey Valrie Peace is the State ADA Coordinator office director. That is housed of course within the state financing investment commission. Stacey is responsible for developing and implementing programs and activities to advance and monitor agency compliance with the ADA statewide.

Stacey also serves at the ADA Coordinators Office for the state properties commission and the Georgia building authority. From 2014 to 2019 she served as the chair for the Georgia emergency preparedness coalition for individuals with disabilities and older adults.

With us again this year's Barry Taylor. He is the vice president for civil rights and systemic litigation Equip for Equality. He has worked there since 1996. At Equip for Equality he has overseen many individual and systemic disability discrimination cases. He is currently co-counsel in 6 class action cases. I do not know how you would keep all about straight!

Steven Wagner received his Bachelor of Arts degree from Buffalo State College and law degree from Emory University. In 2010, Steve became a trial attorney with the EEOC Atlanta district office. His practice involves advising investigators during investigations of charges of discrimination and representing the commission in litigation under the federal statutes. That the EEO enforces.

Rachel Weisberg is experience Disability Rights attorney who has represented hundreds of clients an individual and systemic discrimination cases. Rachel has developed and now manages the employment rights helpline which aims to expand employment opportunities by providing legal and practical advice to applicants and individuals with this.

Finally, as you all know, we are lucky to have John Wodatch. It is difficult for me to believe I am going to read this. Because I have never felt less accomplished in my life! John has authored the federal government's first comprehensive Disability Rights regulations . You might know that as the implementation of section 504 of the Rehabilitation Act.

He is one of the drafters of the ADA. He served at the Department of Justice chief technical expert during the writing and passage of that important legislation. He is the chief author of the Department of Justice ADA regulations. He created DOJ initial ADA technical assistance program and assembled the department’s ADA enforcement staff.

It is easy to say we have the godfather of the ADA here from 1990 to 2011, he served as the director and section chief overseeing all interpretation, technical assistance, and the enforcement of the ADA at the DOJ.

I want to say very quickly before we get into our discussion hearing from our panelists, it is a pure honor to be spending some time with all of you and learning from you. We will do our best and there will be lots of questions. We will be monitoring those as well as offering up some questions from the advanced speculation. Let us do that. Let us start with Mr. Wagoner.

This is an interesting one. Steve, can you talk about how employers are not required to provide personal devices such as personal computers as reasonable accommodation? Can you speak about that?

STEVE: Thank you for having me again this year. I enjoy being here and I am happy to be here. There are regulations on this issue within the CFR. There is also guidance at the EEOC published some years ago on accommodations. This is one of the categories and topics it covers. Look at why the person needs the piece of equipment. Is it to do the job and they need to provide it but if it is not to do the job and you do not.

It is kind of simplistic but think of examples of things like if somebody is visually impaired and they need special glasses. They use them and at home and at work they probably have to provide them themselves. If you provide everyone at your job site with a chair, this person has a disability and needs a special chair, you probably need to provide that chair. Looking at it holistically what does the person need the device for? To do the job or everyday life? If it is the latter you probably do not need to provide. Again there are examples in the regulations and also in the EEOC guidelines.

MODERATOR: Thank you Steven. Let us move on to Dr. Ducatt. This is interesting sense I worked on the campus of the University of Georgia. Shelly, how is and ADA Coordinators Office on a higher education campus different from a disability student services coordinator? How are they similar? How are they different and similar?

DR DUCATT: Great question. For some can possess they are not different at the same person. For the Disability Services provider, you are looking at the reasonable accommodation the student needs for the academic courses. You are working with faculty and staff to try to ensure the students have the same access to learn information as everybody else. You are there to work one-on-one on an individual basis with student in terms of their coursework. Making sure programs are accessible.

If there are student organizations do they have the same access? Different than the role as the ADA Coordinators Office, which is bigger and broader and deals with really ensuring that the University is looking at the larger issues that you know where your barriers are. They are working in conjunction when it is appropriate with the disability services coordinator. But it is bigger. It is a broader and more universal picture from my standpoint how we interpret those roles. They do cross over. But they are distinct and separate.

One area where it can get tricky is when you have a Disability Services director being also your ADA Coordinators Office . One somebody has a complaint and they file a complaint in the complaint is with the Disability Services office, what does your process say about who is then going to hear the complaint and how will it be handled?

Who is the appeal process for the complaint click that is an area I would caution people to look at if they Disability Services director is also the ADA Coordinators Office for students hopefully you have a different ADA Coordinators Office who might be handling faculty and staff so the policy can be adjusted to reflect who is going to hear and handle the complaint.

MODERATOR: Thank you Shelly. That is an important distinction. Maybe we will have time to talk about that a bit more but I think that conflict can be tricky one as you say. Thank you. John, please talk a little bit about reasonable modifications under Title II. Not providing benefits/services could be disability discrimination.

JOHN: I need all the assistance I can get on anything digital! Reasonable modification. I always think of it as the sleeping requirement of the ADA that people do not get enough attention to. It requires a modification of policies and practices where the modification is necessary to allow a person with a disability to participate. It can apply in a variety of ways. Something very small and simple or it can be a major change that affects a lot of people in the program.

In terms of the idea behind it is, policies and procedures that the University has or a county government has, any public or private entity has, that might have been developed for usual reasons having nothing to do with this but have the result in somebody with a disability not being able to participate, that means it must be change.

It has to be change unless it is a fundamental alteration. Interestingly enough, undue burden is not a defense to additional modification. It is the way the statute was written; it is a separate notion and not included in reasonable modification. It may be that the services that are being provided are done in such a manner that people with disabilities are being excluded or are being limited but it does not have to be an exclusion to trigger reasonable modification.

It may be that the services and the programs itself the activities, does not work for people with disabilities and therefore you need a change. The Supreme Court issue that looked at this was involved in a professional golf tour and whether a golfer who needed a golf cart to participate in a golf tournament whether it was a fundamental alteration or something the Supreme Court looked at reasonable accommodation and look at that and said, they basically did alteration fundamental alteration that allowed the golfer to participate in the program. Without that, he would not have been able to participate. I mentioned that because the Supreme Court is looking at this exact issue, reasonable modifications can run the gamut.

If we are talking about the college or university as a sports requirement would keep a blind person from participating, the example given is swimming with an electronic bidding system for the start, you need something else or change it or the person cannot participate. It is a factual kind of thing but it can bring about large changes in a program for that particular person or group of people.

MODERATOR: Thank you John. We are clarifying a few questions in the Q&A. We will get to those as we move along here. Stacey this is one of those real kind of large questions but I think it is an important one. What are the common errors or missteps that you see that State and Local Government entities often make when it comes to ADA compliance?

STACEY: I would say when it comes to ADA compliance but we see a lot in our office when providing guidance to other agencies or fielding questions that concern citizens, one of the primary things is not having an ADA public notice of agreement procedure. Or if they do have it, not having it somewhere where it is easily accessible. For an individual to be able to figure out who they need to talk to if they have ADA related issue.

Even I at the state ADA Coordinator's Office, we try to keep a pretty good list of the different agencies of ADA Coordinators Office and local entities . I have had my own share of challenges trying to figure out who that person is. By reviewing the website or even calling the office number and getting transferred to multiple people them trying to figure out who the person might be or how to get to them.

It is a common thing I find that having the ADA public notice of procedure readily available. Outlining who the ADA Coordinators Office is for the entity. Also as it relates to Title I, I would say I did not adequately train managers and supervisors. So they understand what the policies and procedures are within the entity. Regarding reasonable accommodation and employees needing assistance doing the essential functions of their job.

We get a lot of calls from HR department saying we just found out this manager has been providing accommodation to the employee for the last six months, now they are tired of doing it and they want to yank it and the employee is calling us and we had no idea it was happening. We do get a lot of that kind of thing those questions and concerns. When we are training agencies and local entities we let them know your agency or entity is only as strong as your weakest manager.

If you have somebody out there who does not know what he or she is supposed to be doing in their freewheeling it is tapping out accommodations without consulting HR or knowing the process, you put your whole agency at risk. Another thing I would say is not to review the job description to see if they outline the essential functions of a job. That is another big one. And lastly not training the employees of the entity about what is required for them as it relates to ADA.

Customer facing employees need to know how to handle and be equipped for modifications. Your manager or someone that has been promoted need to have a process that you train them on these things. If somebody comes in as a new employee they need to be trained. Not having a training schedule where you can make sure everybody is covered and know what they need to do in their ADA complaint is a biggie.

MODERATOR: Stacey that really resonates with me. I think the reason it does is almost everything you said there is about being intentional, right? Making sure it is a priority and we are keeping it on the radar and not an afterthought. So much of that can be remedied in that way. Thank you.

Anyone else want to comment on that? Any of the panelist’s common errors or missteps? Okay Mr. Jones and me. That is an old joke. 90s music, right? Mr. Jones when working on accessibility for parks, what do we do when a path of travel goes up a heel a hill that is too steep according to the ADA?

STEVE: You gave me a tough one to begin with! First I would like to go back to what Stacey was answering regarding errors and missteps. Especially regarding alterations. This was brought up yesterday not considering the path of travel obligation is a primary mistake or error. When James Terry brought that up he highlighted in bold it and made a big point of it. I think that is a concern relative to facilities.

In terms of parks and specifically a path of travel, as a path if it is prepared, there some accessibility requirements under program access. If it is prepared. If it is just someplace that someone goes, it is not group required unless there is a goal in the end. There is a reason to go up that path. It might become program access issue. There are federal requirements that are applicable if this is federal property or federal funded activity.

But under State and Local Government requirement, there is not any specific explicit requirements but the best practice would be to turn to those federal outdoor recreation guides that talk about trails. A trail is a very specific requirement in that it has a goal in mind. It has and you are trying to get from one place to another.

This is a prepared path so there is not much difference between the regular accessible allowed and the recreational pedestrian route. Offered in the federal guidelines. But again, there is not an explicit requirement for private entities. If anybody else wants to time and, I am more of a State and Local Government guy . If anybody wants to wait again I think I have covered it but there are a lot of details there that need to be covered by. I am willing to begin with whoever asked the question off-line.

MODERATOR: Thank you Steve. Other panelists is there anything you want to add there? All right please do so if there is a time delay. Sometimes I do not give people enough time to respond. We do have a question I think is also mirrored in the advanced questions. Let me see if I can get it correct. It has to do with work from home alternatives.

What advice can you share when dealing with departments who say there are no work from home alternatives based upon necessity or concern of granting it under reasonable accommodation because it can become a trend i.e., Everyone is going to want the accommodation. That is a good one. Who wants to take it? What advice would you give?

>>: I think it is very dangerous to have a per se rule and the ADA is all about individualized assessment. To say they are no work at home opportunities for particular departments is really leaving out that individualized assessment. I also think given we have a lot of people working at home with the pandemic with disabilities and otherwise, some of the things we thought were essential attendance requirements have gone out the window.

We have seen we can do things remotely. I think that heightens it even more. You need to be doing individualized assessment and it will be hard to show a new hardship undue hardship if you showed a past history of people being successful doing that.

Even though it is something that courts maybe were not approving as much before and finding it unreasonable in a lot of cases, I think we are starting to see and will continue to see courts being more receptive to that as a reasonable accommodation given the experience we have all been through over the last few years.

MODERATOR: Thank you. Rachel, would you like to add to that or maybe Steven?

RACHEL: The only thing I will add is following up on what Barry said if you look at how courts analyze deployment discrimination cases, especially those about reasonable accommodation that interactive process, so much of the case law really turns out the one who brought down the interactive process. So I really think one of the worst things an employer can do is just say no. Without analyzing it and without exploring all the alternatives.

I heard the advice once just never say no, at least to begin. You want to be sure you are going to the interactive process in good faith. I think that concept is applicable here although it is applicable to any accommodation. But I wanted to emphasize in addition to what Barry Taylor said, it does really play out in the Caselaw who the entity is saying absolutely no we will not talk about it.

BARRY: I can time and I think for the employer or somebody in HR I think a big key in this area is having a good job description. Fair and accurate job description of what essential functions really are. This is really part of the job. We had a case here pretty COVID where there were 2 women who were very disabled and could not leave their houses. They worked at a call center and their supervisors gave advice to the call center people.

What they found is there was a lag because they work from home from people giving advice. People would call with questions and they wanted answers now so they change the job to say you must come in because we want you walking around doing your job . It is needed by your employee and CSR person.

They documented how the complaints went down and the errors went down everything went down once the process began. We were able to change their job description and justify the change in the job description with some real data showing this job really needed to be done in person.

As Rachel said, it is flexible. Do not have knee-jerk reactions – you cannot work from home. Rely on the job description and think what are the essential functions of the job? What comes up a lot also is all or nothing either work in the office or at home. There can be something in the middle. Come into the office but we will do this for you. Think of other solutions to the issue that has come up.

As Rachel said, how does it break down and you blame each other but as both sides try to work out a solution, lots of times they will find something to be it is part-time in the office or maybe a different office located away from certain people or whatever it might be.

These are things that think about when dealing with work from home issue which existed pretty COVID. Like the other person said 20 years ago courts were saying no. You must be in person but that has all changed. It was changing before COVID was more computer respite COVID accelerated that.

MODERATOR: Thank you. It certainly strikes me again that we are talking about being intentional . I don't know, aware and awake, right? I love that about not saying no first Rachel that is good for all kinds of human interactions!

Let us get back to Shelly. This is also a philosophical kind of intentional question. How does a higher and institution begin making that cultural shift? Needed in order to move more in the direction of meaningful and sustainable changes around accessible and inclusive experiences for students, faculty, and staff.

I will just add that has become even more important as we have increased as a country our inclusive postsecondary programs in many and I think were up to 300+ universities now. We would love to hear Shelly, your viewpoint on that.

SHELLY: Sure. I think it comes from intentionality of the institution. I think the institution has to be leading the way. From starting when I first got here I thought these are beautiful banners we have along the academic way, the main pathway every person who comes to look at the institution will walk during their visitation. I was like are we representing people of all abilities in just the banners?

What are we showing people about being inclusive just as a visual? What is happening on the brochures and websites and marketing when people come from orientation session, we have interpreters at every session? Or is there a 10-day process we have to go through? How are we putting forward and accommodating people when they come to campus to visit?

I think part of it is the intentionality and institution is showing from the minute somebody start interacting with the institution. Then it must go deep and it has to be how we are training the faculty, how are we talking about inclusive design of the course from the get-go? You are not going to win over everyone.

You just are not but you are going to have faculty who are like yes, I want to do that. I want to make sure I have universal design in every course I am teaching. I understand it starts from the beginning. Can you help me design this? What are some tips and who else can you bring in from your campus in terms of your office of distance learning? Maybe people have really dug into this topic.

How are we really putting forth the information? So people know sometimes people do not know. So they do not know if it is inclusive now that can easily have a few switches that can help. This is what ADA Coordinators Office but also the disability staff and friends of. The friend you have made on campus and the partners you have when they see something they say something.

We added a button and we have are reporting system on campus and people can put everything in there from Title IX violations to students of concern. We have ADA for classes as a button. If it is an online class or academic issue and we also have accessibility button. It is right on them. Any person or family member or friend or guest or student or faculty member can say I was in this building and the button it does not work or I was walking down something block the sidewalk.

Everyone is involved in ensuring that the campus is accessible to everyone. I really think it has to be institutional wide. One of the first things I did when I got to for the state was you must become friends with the Provost. Become friends with the faculty Senate. Become friends with the facility people.

Who do you know and who can you talk to who understands where you are coming from and that you are really just trying to ensure everyone feel welcome and included in everything is accessible as we can make it. You will make a lot of friends and help a lot of people understand. They are part of the solution for everyone.

MODERATOR: Shelly you gave me goosebumps. I think you addressed a meaningful and sustainable in that question. We know, right, that kind of cultural shift has to involve compassion . Right? It has to involve lived experience. A quick example. Just this past week, somebody told me, we are not going to teach mental health first aid as regularly as we teach regular first aid on campus because it bums people out. What? What are you talking about? I do believe the shift is so important when it is guided by lived experience. Thank you Shelly.

All right. Let us keep it going. Steven Wagner back to you. Is very similar to the Title II question for Stacey. And again anybody can time and after Steven but what are the most common mistakes that you have encountered that employers make when reviewing reasonable accommodation? We talked about that a little but what are some common ones?

STEVE: Part of it and I think someone touched on earlier not having your managers trained as to what to do when somebody asked for one. Not being able to identify when being asked for one. We have argued in court that there is no magic word required to request accommodation of the ADA.

The managers really need to be tuned is this person asking me for accommodation or help for their work? What else happens is sometimes those people make their own decisions and hope to get away with it. Having some kind of centralized employees place for people to consider accommodations where they can handle it appropriately and consistently. 3, handle it to the point where the company is buying into the process.

The issues we see are ours when mid-level people have not been trained properly on ADA and does not want to deal with it and ignores it or do something wrong. The company does not know about it and this person goes without accommodation or the wrong one. The other thing that we see is employers who do not really understand the scope of the ADA.

 Some people think it is just to perform their jobs. They forget about all the other parts of employment. If you provide a lunchroom for employees, people with disabilities need access to the lunchroom to provided jam you have to provide access. Take a very narrow focus of what the responsibilities of the ADA are and focus just on the job.

Another good example is access to a building. I had a case litigated a few years ago whether woman could not use a revolving door because of PTSD issues can all she wanted to use with the non-revolving door right next door and it took her six months and a lawsuit before she could use the other door.

That does not have to do with your job is what they said yes it does because he has to get to her job. Understand the scope of the ADA and not take a top-down approach from the company. Being sure issues are addressed and received and processed in a timely manner.

MODERATOR: Thank you Steve. Other panelists would you like to comment on this question? Most common mistakes that we see with employers in reasonable accommodations?

RACHEL: I do not know if I am adding but to add a few comments to what Steven just said, first of all, we talked a lot about that case. About the individual with a revolving door. I think it brings out so many interesting points and it is fun to see that was your case. It brings out the point that Barry and I talked about a bit in our presentation.

When you look at the ADA you know you need to provide a reasonable accommodation not only to let somebody do the essential functions of their job but also to be able to access the application process and be able to access the benefits and privileges of employment.

That is something I think a lot of employers miss. I have personally seen a lot of reasonable accommodation forms where an employee is forced to say what essential function they cannot perform. A lot of times clients will come to us and say but I can do them I just need a service animal so if I have a seizure at work I am alerted. Or this will prevent me from having a PTSD episode.

They cannot fill out the form but they are still entitled to reasonable accommodation, right click under benefits and privileges of employment. Consistent to what Steven was saying just a broader approach. The second point I want to make about the importance of having some sort of centralized system is another huge issue we see the transition between supervisors.

 I know I am not alone because we have all seen this kind of situation where somebody has accommodation in everything is going fine and then suddenly new supervisor comes in and they are like what accommodation?

We will not provide this in this is unreasonable and we will not do it anymore. We get so many calls about that and that is something that can be easily prevented had somebody gone through the official channel as Stacey was referencing. Those are a few additional points.

BARRY: Remember the confidentiality requirements when people disclose disability and asking for accommodation and how you are mandated to keep that confidential and keep the information separate from other personnel files and only people who need to know should have access to the information because the country people appear the other thing is remembering reasonable accommodation is not just for employers and employees but also applicants.

 People need to have equal access to the application process and whether or not that means your application is online that is accessible for people who use screen readers, or you have a process where a person can as for an interpreter if their death. Really checking on how you’re posting things and being sure they are accessible. Also job notices.

Do you need reasonable accommodation to have equal access to the application process or interview process? This is how you do it. I think that is complying with the law but it also goes to the cultural issues that Shelly was talking about. In that you are showing this is an important value of your organization. I think hopefully, that would attract people with disabilities to your organization and enhance the diversity we all want to promote.

MODERATOR: Thank you panelists. Thank you. We have questions in the live Q&A which I will get to but I want to go back to John. From your earlier session there were some unanswered questions. Let me do this one.

Are people with the risk of COVID complications entitled to appear remotely in court and definitely indefinitely or/forever to increase risk of COVID complications or poor outcomes due to an underlying condition, even though we are no longer in the state of emergency . The person reworded it and said in other words, can we ever require attorneys or parties to come back to court in person.

>>: We are talking about a person who is a person from a disability. That was not clear at the beginning of that. Someone who is at risk of COVID complications. I am not sure that the fines for me a person who has a disability. Somebody who has long COVID or somebody who has COVID. I would have to get to that situation first. Also you are dealing with judges that is a difficult part of this particular scenario that you are talking about.

I do think the fact that the emergency order is changing is irrelevant. If you have a person going back to basics, you have a person with a disability who because of their disability cannot appear in court. That is really the heart of what we are talking about. Judges from my personal experience no matter what that person is look unkindly at these requests from my experience whether or not the law would require that.

Keep in mind, we are talking about at least in terms of the ADA about state court or local courts that are covered by the ADA . Federal courts are not, per se. But I think it is a difficult situation. There may be ways to do it. We have dealt with this early on with people with environmental illness. Being able to prove there were random ramifications to them appearing in court. Certainly if we are talking about an attorney, I think it is a very difficult situation to deal with.

You are really talking about, if you are talking about witnesses in criminal trials, you have constitutional obligations. This is a sticky wicket with a lot but I think the tendency would be to try to find ways and accommodations that work so the limited implications for the person with the disability but made ways for them to participate in person as much as possible.

I do not know if others have had recent issues with that on the panel. You have a long way to go to find the problem that the symptoms of the disability are such that they cannot appear in person is pretty hard to get over that hump to get to the ability to participate remotely.

MODERATOR: Thank you John. We go back to Shelly and Stacey. Shelly Charles has asked the question and it is a follow-up saying I work as an ADA Coordinators Office for the vocational rehabilitation program and my state. One thing I try to emphasize to counselors is to ensure they and the clients explore the specific policies of disability student services of each college or university they are considering . The question is will we ever see better conformance of policies among universities?

SHELLY: My answer is no. 1 real-life experience. A few days ago I asked a friend of a friend because when you know when you do this work friends connect their friends to you for answers. The son was having a hard time choosing between some amazing offers from institutions but he has significant disabilities that will need to be accommodated with that question.

My advice was heavy onto the institution website and looked at their Disability Services page? How easy was it to find? Once you found out what was actually on it? Is there good information or a lot of information or does it seem easy? Lastly, I was like what is the tone of the information on there?

The tone of the page will tell you the tone of the institution in terms of approach of accommodating and the breadth and depth of what is offered should be out there if they want you to see it. I think every school has a different tolerance for if you do not like it. Some kind of approach depends on who your legal counsel is and what their philosophy is.

I think you will find institutions are following the letter of the law, right? I think it is everything beyond that that will tell you what the students’ experience at institution is going to feel like . Thank you for the work you do with vocational rehab because a lot of times all the gaps of things we cannot provide that a student needs we have rehab in our disability services office once a week because the work you do is really critical to students being successful postsecondary. Thank you.

MODERATOR: Thank you Shelly and well said. Stacey this is a question about being intentional. As I Title II entity who should I have on my ADA compliance team and there are some examples. The agency head CFO, HR, legal, etc. What are the viewpoints there Stacey?

STACEY: As Steven and Shelly both talked about start from the top down. If you can get your agency entity head or his or her designee in the room with the when having those ADA compliance team meetings I think it is important.

You said previously they set the tone for how things will be handled in the culture of the agency or the entity. I agree with the CFO and the procurement people they need to be somebody from procurement and HR and legal. If you have department heads from different departments can somebody represent all the different functions within the entity .

The facility services people need to be there print you need to have someone that had something to do with client facing like customer service department. Client facing department you need to have somebody from there. Also do not forget about the people you actually serve.

If you can have an advisory board with clients and customers with disabilities you can say this has been my experience and maybe they will not be on the team meeting everyday but have somebody you can go to a group of people that have disabilities that are your clients that can give you feedback on their experiences with their agency or entity that is helpful.

They are the ones you will need to be able to say these are my issues and I have been to your facility and this is what I find a problem with. Those people are the ones you need to tap into when looking at having a compliant network of people in your agency or organization.

MODERATOR: Thank you Stacey.

STACEY: Did I leave out HR? Also HR. Most definitely HR!

MODERATOR: I think you got that in there. I am always surprised at how little time people give lived experience and so much about truly involving people can prevent so much miscommunication and misapplication. Thank you.

We are going to go to Rachel this is a longer question but I think it is particularly since we are right here in Georgia most of us who are thinking through these things, as recently here in Atlanta an individual who is blind got stuck at a major hotel chain elevator.

They were unable to call for help due to the elevator button not having braille. We also heard a few new laws regarding the theory that hotels have violated the ADA. By failing to disclose sufficient information about their accessible rooms and accessibility features on their reservation’s website.

The question is are you familiar with any of these current cases regarding these issues and could you share case outcomes as well? That is where that is for Barry and Rachel.

RACHEL: Let us see which one of us speak first! Barry?

BARRY: As far as the first one with the buttons, I have not really seen lawsuits on that. That a such a basic requirement that I really go into any hotels anymore that do not have that. It would be interesting to see if that is actually turning into litigation or not.

RACHEL: The only thing I will add on the first is that I have not seen this particular case but I think there has been a lot of cases about emergency preparedness kinds of situations. This is kind of like an interesting intersection between architectural requirements in elevators and effective communication and emergency preparedness and why things are so important and how terrifying it can be for someone stuck in an elevator. I have not seen a specific case but it will be interesting to bring along the other principles into it.

BARRY: As far as the hotel reservations and website and things like that, are you talking about the website itself being inaccessible? There have been tons of cases on the issue . I know there was a recent case I saw about raising concerns about proper information about accessibility websites. But if I remember correctly that case turned less on the requirement to and more that the person had standing to bring the suit.

Not to get to legally technical here but a lot of Title III cases are dismissed because the person with a disability cannot show they cannot be going to that place in the future or they have a future injury because of it. Damages under Title III, you must show there some ability in the future injury.

One of the things that complicates the standing issue even more is if the person who is the plaintiff is a tester. They are not intending to go to these places at all but trying to find out if places are doing what is required. Using litigation as a means to address that. I think that or something continuing to evolve with respect to the law there as well. Those are my initial thoughts. Rachel or John might have thoughts on this as well please jump in.

RACHEL: One thing I will add is the case Barry is talking about whether someone has legal standing to bring a case was the Supreme Court there was a petition that went up to the Supreme Court and the Supreme Court has agreed to hear the case. It is called Loeffler. Something recently done that has not been decided by the Supreme Court as Barry said it is less about merit and more about the standing issue.

MODERATOR: Thank you Rachel and Barry.

>>: The lack of braille on the buttons I am not sure how that translated into the discrimination . Was there a phone? What else is required to be in an elevator was there or not that is interesting to me. The other issue you raised is the lack of information by hotels about the accessible features of the accessible rooms are.

Who has it in house and transmitted is an area ripe for lawsuits I would think. There have been settlements that the Department of Justice did on these issues. Because dealing with allowing a person with a disability to look at the website or look at the information or call and ask someone who has the information and what it is very important part of being able to have access to the hotel rooms.

What features there are let alone having in place the systems that would lock in the reservation for that person. I know some of the disability rights groups are looking at the issue about the reservation systems. I think there are probably some private attorneys who are looking into the issue as a source of future litigation.

MODERATOR: Thank you John. While we have you done, there is a question around undue burden. The question is the factors that go into determining if a request is an undue burden and the need to look for alternatives if a request is determined to be an undue burden. Just us about that and give us some guidance regarding the requirement of undue burden.

JOHN: Certainly it is a starting point establishing undue burden for many institutions will be very difficult. You must look at the resources and institution has that can be used for this. You must look broadly at the institution. You cannot say a college the English department does not have the resources for something. That is not how the ADA works or Section 504. That is a parallel consideration.

You would look at all the resources that can be brought to bear. I think it is very difficult for any entity to establish it is an undue burden. There are processes in the regulations that require the decision to be made by the head of the entity that it be in writing and alternatives be considered. I think if you are talking about a very small entity, that is when it might come up.

But I think in most cases it is very difficult for me to see an institution is going to be able to make an undue burden claim they can successfully any public entity or state and entity or college or university are going to have a variety of resources that are available to them that can be used. We must think broadly about them.

MODERATOR: Thank you John. Panelists there is a question right around 4 PM in the Q&A. It has to do with I think some stories we have seen recently in mainstream media. The question is around people bringing their pets into public places .

Some people believe it is getting worse. When questioned they think they can lie about the animal being a service animal. The question is that maybe this is for the entire panel, do you see the Department of Justice at some point moving to a universal certification to authenticate service animals?

JOHN: I have not been part of the Department of Justice since 2011 but I cannot imagine that happening because I do not see the wherewithal for that moving in that direction. It is funny. I do not know if there is a greater incident of this now than before. I am not familiar. There are a lot of people who use emotional support animals and there is a lot of evidence showing that they can gain a lot from being with their emotional support animal.

Clearly these are not covered by the ADA under the 2010 regulations with the Department of Justice. Of course, the ADA does not require them but it does not mean a public entity or private entity could not decide to allow them. There is evidence in the healthcare area showing that people with access to their pets for emotional support animals heal more quickly.

Some hospitals and some areas move toward allowing emotional support of animals with persons in the hospital because they see the results in terms of healthcare equity initiatives. But I do not see that happening. There are too many impediments.

There is no entity that can do that and I do not think the ADA is a vehicle for establishing control over state government and how they choose to follow the spirit it is a vehicle for saying thou shalt not discriminate. That is different than setting in place standards like independent lab with established standards for a building. The ADA I think is not the right vehicle for that.

MODERATOR: Thank you John. Back to Mr. Jones as we come up on the last half-hour the last 25 minutes I guess. Can you discuss the common facility access issues you have encountered with correctional environments? There is a follow-up question to that but go-ahead Steven.

STEVE: The thing I see with correctional facilities in Georgia is the first step of understanding the population. To have a very good understanding of population but literally, in a physical environment, they are not responding to that . They will assign individuals to locations they do not have proper accommodations for.

Whether it be individuals in wheelchairs or not they are not compliant with the standards or whatever the case may be. That can be confusing at times especially since in Georgia most facilities were built prior to the ADA.

Beyond that there has been a lot of money spent to improve that. The other issue that goes back to is the scoping requirement and the standards in the regulations define it clearer as of 3% requirement not 10% requirement for cell. I literally spoke yesterday about a design professional to clarify the detail in a new facility being addressed here in Georgia.

That 3% versus 2% is constantly an issue that has come up in Georgia. The efficiency of their in the is a big expense. But they are working that way and we are making progress toward it. In addition there are exceptions. They can be used in environments like a dorm if a dorm is not accommodating the individual in a wheelchair.

It does not have to be accessible but yet the warden or whoever else assigned individuals with wheelchairs and other needs to those dorms even though the requirements are more specifically in design and better defined they still are not fully compliant. A regular understanding of what the physical environment is and how they respond to it with their operations or not responding to it in their operations.

MODERATOR: Thank you Steven. This is for Barry and Rachel and John and Stacey. Are you aware of any ADA related training classes geared specifically for corrections and law enforcement?

BARRY: Rachel and I did a seminar that talked about the policing side as well as the correction side. That involved a lot of recent cases and analysis there. We can coordinate with you and Staci on getting that as a resource for people if they want to access that link.

STACEY: I am not sure what is available but they might want to look up the national Center criminal justice disability. They may have some training opportunities or webinars or things on the website that could be useful. I know in Georgia we have peace Officer standards and training Council so there may be another option here in Georgia for police officers and peace officer training involving ADA.

Then the last place I would have people look at is the national ADA Center. They may have training available that speak about law enforcement and ADA compliance as well. Those are the things that would help off the top of the head. If you want to assist with difficult for resources we will see what we can find if you contact our office.

MODERATOR: Thank you Stacey. Mr. Wagner, there is a question here around workers with mental health disabilities. I want to be sure I get it right. How should employers handle situations where due to mental health disabilities or limitations employees are requesting to work remotely but the symptoms of the conditions are not impacting work performance? It is back to the working remotely issue.

>>: It is dangerous to assume the mental health condition is not impacting the work performance. The employee can adapt themselves to perform at a high level. Does not mean it is not affecting him it just means adapting to it in some way. I think it goes back to basic principles first. Individualized assessment assuming that they have a mental health disability, walking through the process.

What does the job description say? Does the person need to be there? Is there some mid-level accommodation available that would allow the company or employer to be comfortable with how the job is being performed but also consider what the person with a disability needs? I should probably add this to the thing’s employers did wrong.

The same case I had with a revolving door, mental disabilities and things that you cannot see, employer struggle with it. Disabilities you can see our easy. We had a case of a woman with a walker and they let her use a non-revolving door because she had a walker but the person without the walker did not get it.

The focus should come away from the type of disability and look at what the person needs. Why do they need to work from home? Is that something that can be accommodated in the job as it exists? If not maybe we can look at different accommodations like job reassignment . Going back to basic principles, being treated like any other kind of disability and do not make assumptions just because they are performing at a high level it is not affecting the job at all.

MODERATOR: Thank you Steven Wagner. This one is interesting to me. I love employment! This question is an employment favor individuals with disabilities for certain jobs? Especially if an employer wants to hire a person with an intellectual or developmental disability and not hire a nondisabled individual, can the employer do that?

>>: Absolutely the person without a disability is not covered by the ADA. It is generally true. You can promote and hire disabled individuals. That person who is hired or who is not hired because the person with a disability was hired would not have a claim.

MODERATOR: Back to you Shelly. We are speeding up and trying to cover as much as possible. This one is a little lengthy Dr. Ducatt but often times the transition from high school to college can create barriers for students with disabilities.

One issue is the disconnect between documentation requirements and the K-12 and higher education systems. Can you speak a little bit about how students with disabilities and their families can prepare for this transition and how Disability Services offices on college and university campuses can assist them to make the transition as smooth as possible?

SHELLY: Hopefully the staff in the Disability Services offices understand the difference between K-12 and postsecondary. That is a great place for any director or ADA coordinator to make sure that is understood. That is just something with stuff that I have been on that we spent time understanding the nuances the difference between ADA and others. That is what people are used to.

The other thing people need to recognize off the bat is students coming to college today even when I first started Disability Services 100 years ago, they know what their rights are. They understand how their accommodations work. So they bring with them an expectation and thoughts and ideas about what it is going to be a lot for them.

How it is going to work? One of the first things that need to happen is when students come from orientation and hopefully they meet with disabilities staff to talk about accommodation and how they are going to work at the institution, some of the differences are talked about. Starting the conversation it is also individual, what accommodations did you use in K-12?

What accommodations did you find more helpful? Which did you have that you did not really use? What are you concerned about are worried about here at our institution? You have that conversation then help them see which accommodations will be in place to help them but the things they are concerned about and how you can put those in place and how those accommodations work in higher education. That might be different.

Are they prepared to say this might feel a bit different or implemented differently? One of the biggest things when I talk to families at orientation is I say, we need to be clear if you need services, if your student needs services, your student is to come to the office of accessibility services and request services.

We love family members and welcome you. We hope you help your students find our office. But we need to meet with them to talk about what they need and what their experience has been and how we can help them. Really get started visitation days and do you know guidance counselors in K-12 and are you talking to them about information they should be sharing?

Then it begins the moment the student hits your campus, can you articulate upfront this is going to be change and what changes like and how you can have them navigate that and what they can expect or not expect. If you are upfront and make it clear as possible it really helps. But they will not automatically understand what is going to be different or why. I hope that answer the question.

MODERATOR: Thank you Shelly. Mr. Jones back to you. I do not know if you have seen this but we would love any tips for doing the self-evaluation and transition plan for huge statewide agency . Over 80 parks and facilities. Tips for doing the self-evaluation and transition planning.

STEVE: That is a very detailed question. Our office would love to engage with you on that and help you with it. Specifically, specifically relative to answering the question, to understand your programs and services is certainly the first step you need to do to understand what those are. Understanding what the limitations are and specifically looking at your facilities in those locations where the programs and services are offered and seeing what limitations to access at those facilities are.

Lastly, understanding who your customer is. The question addressed to me earlier is corrections understanding the customer you can speak that way is something you can do a good job at. Understanding who they have to deal with is part of how they best manage them. That is critical for anyone. No matter what the limitation is. Parks need to be understood. There are many details related to that. On both sides, program services and facilities and location. Call us up and we will begin with you.

MODERATOR: A follow-up to that and that is me adding on, are there examples for all of our panelists of an entity that has done that really well by embracing in the early part of self-evaluation the transition planning live experience? Are there good examples of making sure that is at the forefront? Does anyone want to comment?

>>: The State of Georgia Department of Natural Resources has done an extra excellent job of identifying all kinds of different facilities you can imagine having a variety of activities. They have done a very good and detailed job of evaluating the facilities and their programs. Whether they translated it to a transition plan I have not seen it but I heard it is working. They are getting funding because they have identified the issues.

The legislature is very supportive of that. I think they must have done a good job of transition planning as well. Certainly they evaluated very good what they had. Earlier we had a presentation where they were sharing but was very defensible because they had done the self-evaluation and transition plan and that is a positive that is significant. The Department of Justice or a civil suit comes into play, they are very defensible having done that evaluation.

>>: May I add something. I know James Terry, who was a panelist on other issues at this conference has been working on a project to develop a system for people, a template to use for self-evaluation especially for large institutions. I am not sure where that is but it is in the development stage and is way beyond the development stage. But I think it would be a useful tool for anyone to use. What I can say is that I can try to find out and provide information to Stacey that we can provide to people for this conference.

MODERATOR: Thank you. You may not believe it, but we have at least by what I can tell and I will ask our behind-the-scenes folks to correct me if I am wrong in the Q&A, we have run through if not all of our questions, pretty close. We only have about 8 minutes left. Stacey how would you like to use these 8 minutes my friend?

STACEY: I would love for our panelists to any parting advice or guidance or one tip you wish everyone knew or wanted to share . I am welcome to open the floor and let them share their knowledge that they think they want to impart before they leave the conference.

MODERATOR: I love it let us do it please time and when ready any panelist.

>>: Parting advice and words of wisdom? Anything we have not covered which is a lot. Take it away.

STACEY: What I want to share with people in Georgia is if you are not sure and you have questions if it is gray and you need help, reach out and ask . We are here and there are other agencies besides this office that are here to help you. Do not sit in the dark and twiddling your thumbs or sit on it and let it fester.

The longer you wait the worse it will get. Especially if someone is making a complainer asking for accommodation and you just do not respond. Eventually that can turn into that person filing a charge with the EEOC or a complaint with the DOJ.

Be proactive and ask for specific things. In terms of our office we are not an enforcement agency. There is no danger to come to our office if you need help. I do not have to report to someone that you are not doing X or you may have a complaint. We are here to assist you. There is really no loss in reaching out for assistance in trying to get advice and guidance if needed. With that I will go on mute and let the next person speak.

STEVE: What Stacey was saying, our office can help with any design issues in any specific concerns you might have. That was my focus and I want to offer that to anyone who has a question . I am here to help and I am motivated by that. I want to help in any way possible. The one parting piece of advice is to use what is called the curb or curve. The sooner the better if you engage sooner the better off everyone will be. Thank you.

>>: The world we live in is changing how we interact with one another and it is very much done digitally with webs and apps. Make them accessible. If they are not accessible in all the particulars of the program activity covered by Title II or Title III, you will be in trouble at some point and you are denying people a wide range of people with disabilities the opportunity to participate easily. Do what you can and find the experts and make your websites and apps accessible.

STEVEN: The website for individuals with disabilities I encourage you to look at has a lot of really good information. It is the most recent up-to-date Q&A and it has been a long time since we updated it. It is worth a look.

RACHEL: The ADA is the floor not the ceiling. We want to look at how we have our programs and employment and services and we want to do that with an eye toward full inclusion as opposed to just meeting the legal requirements. Full inclusion.

BARRY: Spent a lot of time working on community integration issues and we have not talked about that much today. Since Georgia is the site of the Olmstead decision, people have the most integrated setting, the exciting thing about that decision is it applies in many different areas. I think people think it was just about people and institutions in the community but it applies to many different things including in Georgia implied in the educational context.

People who could not come back to school because of concerns about COVID and lack of masking, that was potentially an Olmstead violation which I think was not necessarily on the radio print. We see it apply to a lot of context in correctional facilities and Parks and Recreation and foster care. In all kinds of ways even for people living in the community and those community settings, home Olmstead has been applied. The importance of integrating that concept in all your programs and activities.

MODERATOR: Shelly you have some parting words?

SHELLY: Rachel really spoke to me with this is the floor. I think it strikes me that a lot of people who interact with daily are angry and higher education. Whether it is an upset student or family member or faculty member. Remembering it really comes from not knowing all the information so our world is our role is to help them understand what the situation is and how we can get to a yes.

I think we really work every day to help everybody get to a yes with where we can make the accommodation request and whatever is happening in the course or situation work for everybody. Once people realize you are there to help them figure out where the yes is, everybody calms down and it is much better situations.

MODERATOR: Thank you Shelly. While once again, I have felt like I have learned and really just inspired and renewed. I will turn it over to Stacey for parting words.

STACEY: Thank you so much Doug. Thank you to our panelists in our amazing moderator Doug Crandell. I want to thank everybody behind the scenes and you have been amazing this week behind the scenes team. I want to thank the collaborative partners the National Association of ADA Coordinators has been so generous in providing input. Thank you for joining the conference today.

Thank you to all board members for having faith in our office to collaborate with us and get the conference done successfully executed. Thank you to my office team. We are small but mighty! I want to really thank them for all of their support and with that, our closing comments will come from Dr. Shelly Ducatt. Thank you all. I hope this has been helpful.

 Informative and engaging. We will be sharing the recording of the archive recording from all of the sessions on our office website and I am sure if NAADAC would like to do the same that would not be a problem with us . As well we will share all of the accessible PDF versions of the PowerPoint presentations. We will send out an email to all of the registrants when those things are available online with links to where you can access them. I will turn it over to Dr. Ducatt for parting words.

DR DUCATT: On behalf of NAADAC I want to thank Stacey and her amazing team for allowing us to collaborate on this conference. I want to take a slight moment to publicly thank a member of our NAADAC board who really helped merge this partnership. With Stacey and her team and he put in a lot of work and I want to thank him for that.

From NAADAC, we look forward to this partnership continuing for future conferences. We are grateful to have been able to participate and we hope all of you as participants enjoyed it and took new knowledge away from the past 3 days. Our work is so important.

I think the hope that all of us here have is within both of these organizations that you will take what you learn here and go back home to your work and you will continue to advance the ADA with this new knowledge . Hopefully some reinvigoration for the work you are doing daily. And other work is not always easy but it remains incredibly important. Thank you to each of you for attending.

Session Ended.

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