

PacRim2020: Inclusion through Access to Justice

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Recommended Citation

Guthrey, A. (2020). PacRim2020: Inclusion through Access to Justice. *Pacific Rim International Conference on Disability and Diversity Conference Proceedings*. Honolulu, Hawai'i: Center on Disability Studies, University of Hawai'i at Mānoa.



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PacRim2020: Inclusion through Access to Justice

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Abstract: During the PacRim 2020 Conference, the Disability Information Network presented a program describing barriers that people with disabilities face in accessing justice through the traditional court system; discussing alternate strategies to address the problem, such as administrative complaints to federal agencies, and the use of state and local advocacy systems.

Keywords: Inclusion; Advocacy; Justice

Knowledge Focus: Advocacy/Activism Focus

Topic Area: Inclusion

Background

People with disabilities have been historically excluded from the mainstream of American society (Rhim, Sutter, & Campbell, 2017; U.S. Dept. of Education, Office for Civil Rights [OCR], 1999). The right to be included in all aspects of community living is a relatively recent phenomenon. The Education for All Handicapped Children Act was passed in the United States in 1975, but with many public school buildings still not physically accessible, many students with physical disabilities remain on the outside (Rhim et al., 2017; U.S. Dept. of Education, Office for Civil Rights [OCR], 2011; Zimmerman, 2018). An even larger number of children with developmental disabilities are denied full inclusion in their schools (OCR, 2011; Rhim et al., 2017; Zimmerman, 2018).

In the community at large, the Americans with Disabilities Act, signed into law in 1990, sought to make buildings, programs and services open and available to all. That dream has also not yet been realized (U.S. Dept. of Justice Civil Rights Division [DOJ], 2012). Housing is an even greater issue, with a lack of integration and financial support, and opposition from some communities (DOJ, 2012). In employment, the most recent figures from the Bureau of Labor Statistics show that approximately 70% of non-disabled workers have jobs. For the disabled, that number is 20% (U.S. Dept. Of Labor, Bureau of Labor Statistics [DOL], 2020, Table A).

Since *Self-Advocacy* efforts have gained momentum, many people with disabilities have learned to advocate for themselves; and, recognition and enforcement of civil rights for people with disabilities has increased in the past decade (OCR, 1999). The Center for Excellence in Disabilities at West Virginia University defines *Self-Advocacy* as including “understanding your strengths and needs, identifying your personal goals, knowing your legal rights and responsibilities, and communicating these to others” (West Virginia University Center for Excellence in Disabilities [WVU-CED], 2020, para. 2). Unfortunately, access to courts and lawyers who enforce those rights is limited.

The thesis of the Disability Information Network's PacRim2020 presentation was that when people with disabilities are connected to resources which can increase enforcement of their civil rights, as well as rights to services and benefits, opportunities for inclusion are increased.

Traditional Access: Attorneys and Courtrooms

In the United States, grievances can be addressed in the standardized state and federal court systems, with representation by a licensed attorney; but, for many people this is not a realistic option. Hiring an attorney can be expensive, and it is often difficult to find someone who knows the disability community and its issues well enough to provide the best representation. Using the court system can also be time consuming and delays are inevitable.

To address some of these issues, the U.S. Congress established Protection and Advocacy Systems which function at the state level to help protect the rights of the disabled through direct legal representation (Developmental Disabilities Assistance and Bill of Rights Act of 2000). However, the most recent data available from 2015 shows that the system assisted approximately 17,500 people with intellectual or developmental disabilities nationwide (Administration for Community Living, 2017), while sources estimate there are roughly 7-8 million people with ID/DD disabilities in the United States, with an additional 30 million people directly affected by someone with ID/DD (Empower-WNY, 2016). These numbers show how few people with disabilities can be directly assisted in their fight for justice and inclusion by these Protection and Advocacy systems. There are also an increasing number of private non-profits and legal aid societies, but those resources are limited as well, and members of the disabled community don't always know how to access them.

In our PacRim2020 presentation, participants shared their frustration with finding and retaining private lawyers with the skill and desire to help the disability community. One participant from American Samoa described a very difficult situation. She told our group that there were only 13 attorneys in the islands, and it was nearly impossible to find legal assistance. She was concerned about the lack of justice for people with disabilities in the islands, but also about the fact that many native islanders were leaving to seek out a more inclusive and just environment, leading to a cultural crisis.

We discussed some options to address this problem. First, we talked about using attorneys from outside Samoa. Most courts now allow telephone appearances, which makes it possible for people with disabilities to seek counsel outside of the jurisdiction in which they live. Second, the internet should be used to its maximum extent. All of the Protection and Advocacy systems in the United States have websites which are open to the public, with an extensive library of publications. California's Protection and Advocacy system, Disability Rights California (DRC), was cited as an example. DRC has published 29 self-advocacy publications which are available in 12 languages (Disability Rights California, 2020). These materials cover issues from abuse and neglect, special education, the Americans with Disabilities Act (1990),

social security and voting. Because many of the laws which impact people with disabilities are federal, they apply to all Americans, so these publications can be used for guidance throughout the country. They can be used for self-advocacy, as well as for educating attorneys who are willing to represent people with disabilities, but need mentoring or assistance with these issues.

Finally, and maybe most importantly, we discussed the use of administrative complaints. (see below). In an area like American Samoa, this system can provide vital assistance to people with disabilities by giving them immediate access to assistance.

Non-Traditional Access: Administrative Complaints

There are paths to inclusion through enforcement of disability rights without hiring a private lawyer. Many of the conference participants were interested in the use of administrative complaints. All state and federal agencies should have an accessible complaint process on their websites to allow for self-advocacy. These government agencies review and investigate potential violations of state and federal civil rights laws, including fair housing, education, and the Americans with Disabilities Act. These avenues are available online at no cost and can be accessed by self-advocates, caregivers, professionals and anyone interested in justice.

During the presentation, we studied a complaint to the United States Department of Education's Office of Civil Rights (OCR) from filing to resolution. To begin, participants were shown how to access the U.S. Department of Education's website homepage at www.ed.gov (U.S. Dept. of Education [DOE], n.d.). From there, we clicked on the link at the bottom of the page for "Civil Rights" (DOE, n.d.). This brings up the page for the "Office of Civil Rights," or OCR; under "Know Your Rights," click on "OCR Complaint Process" (U.S. Dept. of Education, [DOE], 2020).

At this point there are links to assist with the filing and processing of complaints, including a guide to the types of complaints which are accepted and the subject matter covered, including disability discrimination. If it is not clear whether a particular grievance should be filed with the Department of Education, there is a convenient assessment system at <https://ocras.ed.gov/welcome-to-the-ocr-complaint-assessment-system> (U.S. Dept. of Education, Office for Civil Rights [OCR]. (n.d.). By answering a few relevant questions, the system can determine whether that complaint belongs with the Department of Education or another agency. If a different agency is more appropriate, you will be directed to that website. Complaints can be filed online through an online form, by email, by regular mail by printing out the form, by fax, or by letter which includes all the necessary information. There is also a hotline to report discrimination at 1-800-421-3481. Federal Relay Service numbers can be found at www2.ed.gov/about/contacts/gen/index.html#frs (U.S. Dept. of Education [DOE], 2019). OCR provides language assistance at www2.ed.gov/about/offices/list/ocr/docs/howto-index.html (DOE, 2020).

Non-Traditional Access: Administrative Complaints (cont.)

OCR provides information and other support services—known as technical assistance—to schools and colleges, as well as to community, student and parent groups. The aid that OCR gives to educational institutions helps them comply with federal civil rights requirements, while the assistance given to students and others informs them of their rights under those civil rights laws. OCR offices provide technical assistance through a variety of methods that include on-site consultations, conferences, training, community meetings, and published materials (U.S. Dept. of Education, Office for Civil Rights [OCR], 2020). Technical assistance can be accessed by calling the hotline noted above, or by contacting your local enforcement office, which can be found with the “contact us” link (OCR, 2020).

Once a complaint has been filed, it is reviewed and assigned to an investigator if there is sufficient cause and there are no barriers to the claim, such as lateness. (A complaint must be filed within 180 days of the event, 60 days after a local internal review, or later if good cause is established.) The agency will conduct an investigation, do interviews, conduct legal research if necessary, and form conclusions. The investigator will contact the person who filed the complaint, who can participate in the investigation by providing documents or other evidence; however, a complainant cannot dictate the terms of any settlement the OCR enters into with a covered organization and will not receive financial damages. After the OCR investigation is concluded, though, a lawsuit can still be filed if one chooses and there are no other legal barriers such as timing.

There are a number of important advantages which make filing a complaint with a state or federal agency a good alternative to hiring an attorney to bring a traditional lawsuit. In our example, we looked at a complaint against a school district for failure to have an accessible bathroom at a school site. The first advantage is that *anyone* can file a complaint with the Department of Education. You do not need to be the victim of discrimination, but may complain on behalf of another person or group. This can be very helpful when individuals are afraid to file on their own behalf due to fear of retaliation. It's worth noting that retaliation against anyone filing a claim of discrimination is itself a violation of federal law and can be the subject of another complaint.

A second advantage is that complaints may be filed anonymously. This would be possible in our example because whether or not a bathroom meets ADA guidelines is an objective issue that can be investigated by taking measurements and checking compliance with the ADA, without necessarily considering individual facts. In some cases, the OCR will not be able to fully analyze the claim without knowing the identity of the victim so that the facts can be fully investigated. OCR will discuss this with the complainant when the investigation begins.

Most importantly for many people with disabilities is that the federal agencies will process a complaint at no charge. No payment of any kind is required and there are fewer delays involved than with traditional litigation. OCR investigators are licensed attorneys who specialize in discrimination issues and are, therefore, more versed in discrimination law than most attorneys.

Some PacRim participants expressed skepticism about administrative complaints because they had used an internal review system in the past for agencies such as schools. They found that the schools were not responsive to their grievances, and they were not able to obtain acceptable resolutions of their issues from a state or local agency. In response, it was pointed out that if a state or local agency is funded in any way by a federal agency, it is subject to federal law and the oversight of that agency. This means that a complaint can be filed directly with the federal government without filing first with the state, or it can be filed with the federal agency after a state or local agency fails to provide adequate resolution of a claim.

Some participants were surprised to learn the scope of federal oversight. Nearly every public agency we can think of, and many private businesses, take money from the federal government, bringing that establishment within the purview of the federal department distributing the money (Federal Funding Accountability and Transparency Act of 2006; Grants.gov, n.d.). In the case of the Department of Education, for example, this can be a startling number of organizations. It seems obvious that OCR would accept complaints against education agencies, vocational schools, primary and secondary schools, colleges, etc; but OCR also has jurisdiction over libraries, museums, non-profits and for profit organizations which receive Department of Education funds. PBS audiences will recognize the voice over and banner which reads: “Funding for [this program] is provided by a Ready to Learn Grant from the Department of Education” (WGBH Kids & Atomic Cartoons, n.d., para. 2). This would mean that the business which creates a PBS program with a grant from the Department of Education is subject to the laws and regulations of that department, and must refrain from discriminating against people with disabilities and others.

One final aspect of filing complaints instead of lawsuits is that we gain an avenue to present our issues in a less threatening way and to interact with, and teach, members of the community who may have the power to help us.

Think Outside Disability

Comments on our presentation showed that participants found value in “thinking outside disability.” There are many programs that address issues that affect all members of society, not just people with disabilities. These resources should be used whenever possible. For example, if a person with a disability feels that she has been discriminated against when looking for housing, she could seek help from a disability services agency. However, she could also seek help from

agencies and programs that address housing issues in general, such as the federal Department of Housing and Urban Development, or state Fair Housing Act organizations.

Some state courts provide free legal clinics and assistance with forms for family law, landlord/tenant and other common subjects. Veterans with disabilities have access to the resources of the Veterans Administration as well as private programs such as the National Coalition for Homeless Veterans which provides a list of Stand Down programs on its website at nchv.org/index.php/service/service/stand_down (National Coalition for Homeless Veterans, n.d.). The Wounded Warrior Project helps veterans with a wide array of programs, from stress recovery to physical health and wellness, and helping veterans get the government benefits to which they are entitled, see www.woundedwarriorproject.org (Wounded Warrior Project, n.d.). Healthcare issues can be addressed by the state or federal Ombudsman for Healthcare. By using some of these alternate sources, we may have more success in securing the assistance we need to enforce our civil rights while relieving some of the stress on the disability services agencies.

Conclusion

Access to justice is important for everyone in the community, not just for Self-Advocates. Anyone who lives, works or plays with people with disabilities can be an asset to the Self-Advocacy movement when they are informed about the choices and paths to justice. Knowing our rights and calling for change is so important to gain full inclusion in society. Knowing how to access systems and supports that will enforce those rights is critical to that change. All people should continue to be educated about these paths to inclusion.

Author



Areta Guthrey has been an attorney for 35 years. She was practicing law in a large firm when her first child was born with microcephaly in 1995. Ms. Guthrey saw firsthand the need for better services and for enforcement of the rights of people with disabilities. She has been an advocate for more than 20 years and founded the Disability Information Network in 2019, a forum for sharing tools for advocacy within our social service and legal systems.

Author Note

Areta Guthrey is an attorney and Executive Director of the Disability Information Network. The preceding is a summary of the presentation given on March 2, 2020 at the 35th Annual International Conference on Disability and Diversity in Honolulu, Hawaii.

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