

United States of America

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1. Founded in 1979, DREDF is a leading national disability rights law and policy center dedicated to advancing the civil and human rights of people with disabilities through legal advocacy, training, education, and public policy and legislative development.

I. EXECUTIVE SUMMARY

2. This report presents information about the state of human rights for people with disabilities in the United States related to employment, housing, and primary and secondary education. Because the United States does not fully recognize economic and social rights, the report begins with a discussion of the nexus between poverty and disability, and poverty, disability and race. Extensive poverty among people with disabilities is a fundamental structural and human rights problem that, along with disability discrimination and prejudice, contributes significantly to a range of ongoing social inequities including low rates of employment, inadequate access to safe and affordable housing, and abuse and poor educational outcomes for some children and youth with disabilities, especially members of racial and ethnic minority groups.

II. CURRENT NORMATIVE AND INSTITUTIONAL FRAMEWORK FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

3. The United States has adopted the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT), and the International Convention on the Elimination of Racial Discrimination (CERD). The United States has signed, but not yet ratified the Convention on the Rights of the Child (CRC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These instruments each have been interpreted to cover and include the human rights of children and adults with disabilities. In 2009, The United States recently signed the Convention on the Rights of Persons with Disabilities (CRPD), which sets forth specific and detailed state obligations with respect to individuals with disabilities.

III. ACHIEVEMENTS, CHALLENGES AND CONSTRAINTS

A. United States Disability Rights Laws

4. The United States has enacted significant federal legislation over the past thirty years that is intended to protect the civil rights of individuals with disabilities. Most notable are the 1990 Americans with Disabilities Act (ADA), Section 504 of the 1973 Rehabilitation Act, the 1988 Fair Housing Amendments Act, the Developmental Disabilities Assistance and Bill of Rights Act, and the Individuals with Disabilities Education Act (IDEA). In addition, many states have similar or even stronger laws.¹
5. These laws have unquestionably improved the lives of people with disabilities.

However, weak federal civil rights implementation and enforcement, along with additional, significant legal and structural problems such as the absence of economic and social rights, institutional racism, and disability prejudice result in ongoing, and in some cases, intransigent gaps in human rights for people with disabilities.

B. Intersection of Disability, Poverty and Race

6. Disability status is both a cause and an outcome of poverty, thus disability and poverty in the United States are inextricably entwined. Disability can lead to job and income loss, homelessness, and needless institutionalization. Many people who have disabilities experience limited opportunities to develop work-related skills, acquire an education and obtain employment. Children living in poverty have a greater vulnerability to conditions highly predictive of disability status.ⁱⁱ Once a child living in poverty acquires a disability, their life options are significantly restricted. According to a recent report, “As disability policy stands today, a child with significant disabilities born in the United States in 2007 has little chance of gaining access to assets and escaping poverty.”ⁱⁱⁱ
7. For people with disabilities, the rate of poverty is between two to three times the rate for people who do not have disabilities. About half of all working-age adults who experience poverty have a disability. Moreover, almost two-thirds of adults experiencing long-term poverty also have a disability. Poverty limits access to adequate and effective healthcare and disease prevention services, and increases the probability of living in neighborhoods that contribute to poor health or of being homeless.^{iv} The health care system in the US further exacerbates the connection between poverty and disability because health care is largely treated as a commodity and is therefore unaffordable for many people with disabilities.^v Recent research indicates that rates of uninsurance can be as high as 28 percent for people with certain conditions such as mental health disabilities.^{vi}
8. In the United States an estimated 54.4 million (18.7 percent) people have some level of disability, and 35.0 million (12.0 percent) have a severe disability.^{vii} The incidence of disability is significantly higher among working-age African Americans (17 percent) and among Native Americans (22.5 percent) as compared with 12.6 percent among whites.^{viii}
9. According to a recent report, “People with disabilities account for a larger share of those experiencing income poverty than people in any single minority or ethnic group (or, in fact, all minority ethnic and racial groups combined)...”^{ix} Race and disability therefore are overlapping identities that are both related to systemic inequality.
10. The United Nations General Assembly has repeatedly reaffirmed that extreme poverty and exclusion from society constitute a violation of human dignity. Consequently, persons living in extreme poverty are fully entitled to demand that policies and programs at the national and international level aimed at the eradication of extreme poverty should be drawn up and effectively implemented in accordance with the principles of human rights.^x

C. Housing and People with Disabilities

11. Federal implementation and enforcement of legislation prohibiting housing discrimination has been consistently inadequate with large complaint backlogs. Among housing discrimination complaints filed with the Department of Housing and Urban Development, 41 percent involve disability discrimination. Moreover, other laws that establish funding for various housing programs (e.g., tenant-based housing assistance, public housing, and subsidized multifamily housing), do not begin to adequately address the increasing inequity between housing costs, the low-income status of many people with disabilities, and the lack of safe, accessible, affordable housing.
12. National housing survey estimates suggest that about 35.1 million households have one or more person with a disability, which is about 32 percent of the households in the United States in 2007. Among these households, 65% are likely to be low-income as compared with 36 percent of households without someone with a disability. Among the low income households, nearly 2.5 times are more likely to be extremely low income. This means that these households earn less than 30 percent of the median income, which places them near or at the poverty level.^{xi}
13. An estimated 14.4 million households with at least one person with a disability cannot afford their housing—this is 41 percent of all households with disabilities. The greatest need therefore is for affordable housing and rent-subsidies.
14. Poverty and low-income status of people with disabilities are key barriers to acquiring housing. High rates of homelessness evidence the need for affordable housing. The most recent data suggests that, at a minimum, 43 percent of homeless adults (about 421,246 people) who stayed in a shelter have a self-reported disability. Moreover, a recent report determined that nearly 6 million households in the United States have worst-case housing needs, that is, “Unassisted renters with very low incomes who have one of two ‘priority problems’ either paying more than half of their income for housing (‘severe rent burden’) or living in severely substandard housing.”^{xii}

D. Employment and People with Disabilities

15. Recent research indicates that the employment rate of working-age people with disabilities was 36.9 percent as compared with a 79.7 percent employment rate for working-age people without disabilities for the same period.^{xiii}
16. The low rate of employment of people with disabilities is rooted in complex historical problems and systemic barriers including lack of access to education and training, disability stigma, and widespread exclusion from participation in community life. However, national surveys of employers find that the greatest barriers to people with disabilities finding employment is discrimination, prejudice, or employer reluctance to hire. A recent review of empirical studies of wage differentials concluded that one significant reason why people with disabilities earn lower wages than non-disabled workers can be attributed to disability-related discrimination.^{xiv} Furthermore,

individuals who receive financial support from a broad range of Federal programs may face loss of income, housing, and medical care if they attempt to work or build their assets.

E. Education and Children with Disabilities

17. While approximately six million children with disabilities have benefited from the Individuals with Disabilities Education Act (IDEA), all children do not experience the benefits equally. Many children with disabilities still encounter extensive violations of their educational rights that affect every aspect of their lives. Specifically, racial and ethnic minority students, and particularly those who are African American, frequently experience educational disparities involving over-representation and misclassification, inadequate services, unnecessary isolation from children who do not have disabilities, and low-quality curriculum and instruction. Research suggests that unconscious racial bias, stereotypes, and other race-linked factors have a significant impact on the patterns of identification, placement, and quality of services for minority children, and particularly for African American children.^{xv}

1. Overrepresentation in Juvenile Justice Systems

18. The educational system is failing children and youth with emotional disturbance and specific learning disabilities as evidenced by the fact that 70 percent of children in the juvenile justice system are reported to have these disabilities. Moreover, children with such disabilities are three times more likely to be arrested before leaving school when compared to all other students. For children with emotional disturbance and learning disabilities who drop out of school, 73 percent are arrested within five years and they are twice as likely to live in a correctional facility, halfway house, drug treatment center, or "on the street" after leaving school, when compared to students with other disabilities.^{xvi}

2. Use of Restraint and Seclusion for Children with Disabilities by Primary and Secondary Schools

19. A 2009 report revealed that elementary and secondary students with disabilities in every region in the country were being injured and even killed by being abusively restrained and secluded at the hands of school staff. "The report revealed that many children – even very young children – were being isolated, battered and bound, often without their parent's permission and without notice."^{xvii} Restraint and exclusion were often used as a disciplinary measure, despite the consensus that these practices have no therapeutic benefit. At the time the report was released, there were no federal laws to prevent or reduce restraint or seclusion of school children. Moreover, almost half of the states had no laws or policies, and existing state laws varied widely and often were inadequate.
20. In response to the national outcry, the United States General Accounting Office (GAO) issued a report in 2009 on selected cases of death and abuse at public and private schools and treatment centers. It reported hundreds of cases of alleged abuse and death related to the use of these methods on school children during the past two decades.^{xviii}

21. Subsequently, three states, Minnesota, Missouri, and California took legislative action. However, many states still have no restrictions on seclusion and restraint in schools, including Alabama, Alaska, Arizona, District of Columbia, Georgia, Idaho, Indiana, Louisiana, Mississippi, Nebraska, New Jersey, Ohio, Oklahoma, South Carolina, South Dakota, West Virginia and Wyoming.
22. Federal minimum standards are needed so that school children are protected from abusive seclusion and restraint practices, regardless of where they live. In 2010, two federal bills were introduced: HR 4247 and S. 2860, if enacted, would prevent and reduce the use of physical restraint and seclusion in schools.

IV. RECOMMENDATIONS

23. Congress should make appropriate changes in federal legislation pertaining to Social Security, Medicaid, savings, asset building, and the relevant aspects of the federal tax code to address work and asset-building disincentives in order to provide tools that may begin to reverse widespread poverty in the disability community.
24. The Administration should: 1) develop an Executive order calling for all agencies to identify policy barriers to income generation, and 2) facilitate a consistent, coordinated, and comprehensive approach to advance opportunities for full community participation and economic self-sufficiency as a means to eradicate poverty among people with disabilities.
25. Congress and the Administration should: 1) call for a moratorium on demolition of public housing until accessible, affordable replacement units are ensured, 2) substantially increase rent subsidies, known as Housing Choice Vouchers, 3) fully fund the National Housing Trust Fund, 4) pass HR 1675, the Frank Melville Supportive Housing Investment Act, which would increase supportive housing, 5) substantially increase targeted housing for very low income people with disabilities, 6) significantly step up enforcement of disability rights laws related to housing, and 7) enact the Community Choice Act, which will help fund homes of their own for institutionalized people with disabilities and ward off unnecessary institutionalization for those living in the community who need assistance to live independently.
26. Congress and the Administration should: 1) approve full funding for implementation of the educational rights established by the Individuals with Disabilities Education Act, 2) Direct the U.S. Department of Education's Office for Civil Rights to significantly step up monitoring of state IDEA compliance activities, 3) establish new mechanisms, including increasing legal resources to aid children and parents to exercise their education rights, 4) enact HR 4247 and S. 2860 to prevent and reduce the use of physical restraint and seclusion in schools, 5) call for full enforcement of Section 504, the ADA, and other disability rights laws as they relate to primary and secondary education and to the rights of children who are incarcerated in the juvenile justice system.

Endnotes

ⁱ For example, the California Fair Employment and Housing Act [Cal. Gov. Code § 12940] contains a broader definition of disability than the Americans with Disabilities Act (ADA) with respect to prohibited discrimination in employment.

ⁱⁱ Jennifer Pokempner and Dorothy E. Roberts, “Poverty, Welfare Reform, and the Meaning of Disability,” *Ohio State Law Journal*, Vol. 62, p. 4 (2001).

ⁱⁱⁱ National Council on Disability, *The State of 21st Century Financial Incentives for Americans with Disabilities*, (Washington, DC: NCD, August 11, 2008), p. 7.

^{iv} Shawn Fremsted, “Half in Ten: Why Taking Disability into Account is Essential to Reducing Income Poverty and Expanding Economic Inclusion,” Center for Economic and Policy Research, (2009), p. 3.

^v Pokempner and Roberts, *Ohio State Law Journal*.

^{vi} National Council on Disability, *The Current State of Health Care for People with Disabilities*, (Washington, DC: NCD, September 30, 2009), p. 40.

^{vii} Matthew Brault, “Americans with Disabilities: 2005,” *Current Population Reports* (Washington, DC: U.S. Census Bureau, 2008), p. 3.

^{viii} J. Waldrop and S. M. Stern, *Disability Status: 2000—Census 2000 Brief* (Washington, DC: U.S. Bureau of the Census), p. 2.

^{ix} Fremsted, “Half in Ten,” p. 3.

^x U. N. General Assembly, 58th Session, *Implementation of Existing Human Rights Norms and Standards in the Context of the Fight Against Extreme Poverty*, Report of the Human Rights Council, Sub-Commission on the Promotion and Protection of Human Rights, Agenda Item 4, 21, August 2006, p. 6.

^{xi} National Council on Disability, *The State of Housing in America in the 21st Century: A Disability Perspective*, (Washington, DC: NCD, January 19, 2010), p. 29.

^{xii} U.S. Department of Housing and Urban Development, *Affordable Housing Needs 2005: Report to Congress* (Washington, DC: HUD, May 2007).

^{xiii} W. Erickson, and C. Lee, *2007 Disability Status Report: The United States* (Ithaca, NY: Cornell University Rehabilitation Research and Training Center on Disability Demographics and Statistics, 2008).

^{xiv} National Council on Disability, *Empowerment for Americans with Disabilities: Breaking Barriers to Careers and Full Employment* (Washington, DC: NCD, October 1, 2007), p. 20.

^{xv} Daniel J. Losen and Gary Orfield, Eds., Introduction to *Racial Inequity in Special Education*, (Cambridge: Harvard Education Press, 2002), p. xv.

^{xvi} Jim Comstock-Galagan and Rhonda Brownstein, “Stopping the Schoolhouse to Jailhouse Pipeline by Enforcing Federal Special Education Law,” Southern Disability Law Center and Southern Poverty Law Center
<http://www.splcenter.org/sites/default/files/legacy/images/dynamic/main/SpecialEducationLaw.pdf> (Accessed on April 16, 2010).

^{xvii} National Disability Rights Network, *School is Not Supposed to Hurt: Update on Progress in 2009 to Prevent and Reduce Restraint and Seclusion in Schools* (Washington, DC: January, 2010), p. 5.

^{xviii} Ibid. p. 9.