How does the ADA apply to Tribal Nations and what resources are available within Region 8?

Rocky Mountain ADA Center, Region 8

June 2019

Executive Summary

Native Americans have the highest rate of disability among all American ethnicities and racial groups. Practical considerations, as well as differing cultural viewpoints on disability, complicate this problem. Non-tribal members that guide and develop tribal disability policies should identify key tribal leaders, pursue tribal authorization, and utilize tribal member focus groups to highlight local disability needs.

Tribal sovereignty renders the Americans with Disabilities Act of 1990 ("ADA") largely inapplicable to Tribal Nations. Under Title I, Tribal governments are specifically excluded as an employer. However, private employers operating within reservations are not excluded as employers. Additionally, employment and Indian law experts generally agree that Title II is not applicable. Finally, Title III is applicable, but private individuals may not bring suit against Tribal Nations unless the Tribe has expressly waived their sovereign immunity.

Even though the ADA is generally inapplicable, other disability legislation and resources exist for tribal members, such as the Individuals with Educational Disabilities Act ("IDEA") and Every Student Succeeds Act ("ESSA"). The report appendices included here contain disability resources available within individual Tribes located in Region 8 of the Rocky Mountain region, national Native American disability organizations, federal disability agencies, and national disability organizations.

Tribal Barriers to Disability Services

Tribal Nations have the highest rate of disability among all American ethnicities and racial classifications. Approximately 3 in 10 American Indians or Alaskan Natives have a disability, while 1 in 4 African-Americans and 1 in 5 Caucasian Americans are reported to have disabilities.

Tribal and Western cultures do not necessarily align on the concept of disability. The ADA defines "disability" as a recorded physical or mental impairment that substantially limits major life activities by an individual regarded as having that impairment.² On the other hand, tribes

¹ Centers for Disease Control and Prevention, *Adults with Disabilities: Ethnicity and Race* (August 9, 2018), https://perma.cc/2768-G8EE.

² 42 U.S.C. § 12102(1) (2019).

treat life, health, wellness, and disability in differing ways, with many tribes accepting and tolerating the disabling characteristics of an individual.³

Practical considerations negatively affect tribal members with disabilities: disjointed coordination among federal and tribal agencies; limited knowledge or understanding of tribal communities; limited enforcement of laws protecting people with disabilities on tribal lands; and limited local tribal planning to protect and support people with disabilities.⁴ More specifically, transportation is hindered by general remoteness, limited public transportation services, lack of accessibility, and lack of licensed drivers.⁵ Likewise, housing and facility services are frustrated by building and modification costs, limited program funding, administrative backlog for grants and protocol, and limited awareness of universal design feasibility.⁶

For future policy formulation, this resource recommends the Tribal Disability Actualization Process, endorsed by the National Congress of American Indians in 1994, which considers disability legislation and policy formulation. The process identifies key tribal leadership, pursues tribal authorization, holds Tribal member focus groups to develop disability legislation, and helps guide the development and implementation of disability policies within Tribal Nations.

Legal Background

Americans with Disabilities Act

Federal law recognizes tribal sovereignty and immunity to encourage self-sufficiency and economic development.⁸ Tribal Nations are, for the most part, largely exempt from the ADA. On the other hand, the Oglala Sioux Tribe of South Dakota, for example, passed the ADA as written in 1994.⁹ Oglala Sioux Tribe is not bound in a similar fashion as states and local governments. Instead, the tribal government implements and enforces the ADA independently like the federal government.

³ Kathy Dwyer, LaDonna Fowler, et. al., Community Development by American Indian Tribes: Five Case Studies of Establishing Policy for Tribal Members with Disabilities 196, 200, Journal of the Community Development Society (Vol 31, No. 2 2000).

⁴ National Council on Disability, *People with Disabilities on Tribal Lands: Education, Health Care, Vocational Rehabilitation, and Independent Living* 1, 7-8 (August 1, 2003).

⁵ National Council on Disability, *Understanding Disabilities In American Indian & Alaska Native Communities: Toolkit Guide*, 111 (August 1, 2003).

⁶ *Id.*, at 93.

⁷ Dwyer, *supra* note 3, at 197.

⁸ Oklahoma Tax Comm'n v. Potawatomi Tribe, 498 U.S. 505, 510–11 (1991).

⁹ Ordinance No. 94-07 of the Oglala Sioux Tribal Council of the Oglala Sioux Tribe (Aug. 23, 1994).

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Under Title I, "covered entities" cannot discriminate against workers with disabilities in employment. ¹⁰ Indian Tribes are explicitly excluded from the definition of "employers." ¹¹ Title I does not exclude private employers located within Indian Country. The ADA requires Title I complaints to be filed with the Equal Employment Opportunity Commission. Varying between individual tribes, tribal law may permit legal remedies for disability discrimination in tribal governments. Tribal members should consult tribal laws of their individual tribe on whether legal remedies for disability discrimination are available.

Title II prohibits disability discrimination in public services.¹² The term "public entity" means any State or local government; and any department, agency, special purpose district, or other instrumentality of a State(s) or local government.¹³ Tribal governments are not specifically mentioned, and employment and Indian law experts agree that it is doubtful Title II is applicable to Tribal Nations.¹⁴

Title III requires public accommodations to be accessible to individuals with disabilities. ¹⁵ Certain private entities (*e.g.*, places of lodging, restaurants, places of entertainment, public gatherings, etc.) are considered public accommodations if they affect interstate commerce. ¹⁶

In *Florida Paraplegic Ass'n v. Miccosukee Tribe of Indians*, ¹⁷ the 11th Circuit Court of Appeals held that Title III applies to Tribal Nations. ¹⁸ In *Miccosukee*, two disability associations brought suit alleging a Tribal owned restaurant and entertainment facility failed to be accessible as a public accommodation to people with disabilities. ¹⁹ The court reiterated that generally applicable laws apply to all persons, including Indians and their property interests. ²⁰ It is further understood that generally applicable laws do not apply to Tribal Nations if their application would 1)

¹⁰ 42 U.S.C. § 12112(a).

¹¹ 42 U.S.C. § 12111(5)(B)(i); *Charland v. Little Six Inc.*, 198 F.3d 249 (8th Cir. 1999) (alleged disability discrimination against tribal owned casino dismissed due to lack of subject matter jurisdiction).

^{12 42} U.S.C. § 12132.

¹³ 42 U.S.C. § 12131(1)(a)-(b).

¹⁴ Gregory S. Arnold, *Employment Law in Indian Country: Finding the Private-Action Jurisdictional Hook is Not Easy*, THE FEDERAL LAWYER 4 (April 2015), https://perma.cc/R7UY-H7QU. However, *Olmstead v. L.C.*, 527 U.S. 581 (1999) held that states must help to provide the least most restrictive services, such as home- or community-based care, for people with disabilities. The tribal application is unclear.

^{15 42} U.S.C. § 12182.

¹⁶ 42 U.S.C. § 12181(7).

¹⁷ 166 F.3d 1126 (11th Cir. 1999).

¹⁸ *Miccosukee*, at 1129–30.

¹⁹ *Miccosukee*, at 1127.

²⁰ Federal Power Comm'n v. Tuscarora Indian Nation, 362 US 99, 120 (1960).

abrogate rights guaranteed under an Indian Treaty, 2) interfere with purely intramural matters touching exclusive rights of self-government, or 3) contradict Congressional intent.²¹ In *Miccosukee*, Title III was applicable because no treaty was relevant to the case, the Miccosukee owned business did not fall under "exclusive rights of self-government" because they were operating in interstate commerce, and evidence showed Congress intended for Title III to be generally applicable.²² *Miccosukee*, the leading case on ADA's applicability to Tribal Nations has been positively cited by circuit courts within the region of Rocky Mountain ADA Center.²³

However, Tribal Nations are immune to private Title III suits.²⁴ Tribal Nations are subject to suits if the tribe waived sovereign immunity or Congress expressly abrogates it.²⁵ This is a result of conflicting public policy priorities between tribal sovereignty and civil rights guaranteed to all people with disabilities. A law can be applicable, like Title III here, yet have no means available for enforcing remedies.²⁶ Currently, the only remedy available would be for the United States Attorney General to compel tribal compliance.²⁷

Individuals with Educational Disabilities Act²⁸

IDEA makes available free public education to eligible children with disabilities, and IDEA governs how states and public agencies provide early intervention, special education, and related services to children. IDEA authorizes formula grants to states to support special education and early intervention services, as well as discretionary grants to state educational agencies, higher education institutions, and non-profit organizations to support such things as research, technical assistance, and information centers.

Every Student Succeeds Act²⁹

ESSA benefits tribes by: requiring states to consult with tribes in developing state plans for grants; requiring states to intervene in the least-well performing schools, which is significant for

²¹ Donovan v. Coeur d'Alene Tribal Farm, 751 F.2d 1113, 1116 (9th Cir. 1985).

²² *Miccosukee*, at 1129-30.

²³ United States v. Santee Sioux Tribe, 254 F.3d 728, 737 (8th Cir. 2001); Solis v. Matheson, 563 F.3d 425, 433 (9th Cir. 2009); NLRB v. Pueblo of San Juan, 276 F.3d 1186, 1199 (10th Cir. 2002).

²⁴ Miccosukee, at 1134.

²⁵ Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978).

²⁶ Kiowa Tribe v. Manufacturing Technologies, Inc., 523 U.S. 751, 755 (1998); see generally Marbury v. Madison, 5 U.S. 137 (1803).

²⁷ *Miccosukee*. at 1134–35.

²⁸ 20 U.S.C. § 1400 et seq.

²⁹ 20 U.S.C. § 1001 et seq.

schools with high Native populations; requiring only 1% of students to be given alternative achievement tests, which is significant due to an overrepresentation of Native youths in special education; allowing the Bureau of Indian Education to apply for discretionary funding, which was originally only available to states; and increasing community involvement.³⁰

Rehabilitation Act of 1973³¹

The Rehabilitation Act prohibits disability discrimination in programs operated by federal agencies, such as federal employment or receiving federal funds. Employment discrimination follows the same standards as Title I of the ADA. Section 121 of the Rehabilitation Act authorizes tribal grants for vocational rehabilitation services.

Appendix I: Tribal and State Tribal Agencies Resources

Below is a non-exhaustive list of disability services offered by various tribes, organized by State. Consult individual tribes for specific services.

Colorado

SOUTHERN UTE INDIAN TRIBE OF THE SOUTHERN UTE RESERVATION
P.O. Box 737
356 Ouray Drive,
Ignacio, CO 81137
(970) 463-0100
https://www.southernute-nsn.gov/

Southern Ute Tribal Services – <u>Elder Services Program</u> Gloria Frost, Director

³⁰ See Tanya H. Lee, 9 Ways the New Education Law Is a Win for Indian Country, INDIAN COUNTRY TODAY (Feb. 1, 2016), https://perma.cc/6BSE-BRT4; Erin Haynes, ESSA and Native American, Alaska Native, and Native Hawai'ian Students, American Institutes for Research (Apr. 13, 2016), https://perma.cc/ESA5-58A9.

^{31 29} U.S.C. § 701 et seq.

(970) 563-0156

Southern Ute Tribal Services – <u>Vocational Rehabilitation Program</u>
Bobbie Rosa, Program Manager
(970) 563-4730
(970) 563-4840

Southern Ute Tribal Services – <u>Social Services Division</u>
Mary Ann Carter, Director
(970)-563-2331

Southern Ute Education Department Special Education Advocate (970) 563-0237, ext. 2790 or (970) 563-2790

UTE MOUNTAIN UTE TRIBE
124 Mike Wash Rd.
Towaoc, CO 81334
(970) 565-3751
http://www.utemountainutetribe.com/

COLORADO COMMISSION OF INDIAN AFFAIRS
Office of the Lt. Governor
130 State Capitol, CO 80203
https://www.colorado.gov/pacific/ccia

Montana

ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION
501 Medicine Bear Road
P.O. Box 1027
Poplar, MT 59255
(406) 768-2300
http://www.fortpecktribes.org/index.html

<u>Vocational Rehabilitation</u>
Wilfred (Max) Bear, Director

(406) 768-2300

BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION OF MONTANA
640 All Chiefs Road
Browning, MT 59417
(406) 338-7521
http://blackfeetnation.com/

Blackfeet Early Childhood Center
Minnetta Armstrong, BECC Director
(406) 338-7370
contactus@inaksim.com

Blackfeet Housing Authority
(406) 338-5031
contactus@blackfeethousing.org

FORT BELKNAP INDIAN COMMUNITY OF THE FORT BELKNAP RESERVATION OF MONTANA
656 Agency Main St.
Harlem, MT 59526
(406) 353-2205
https://ftbelknap.org/

Vocational Rehabilitation Program
Jim Fox, Director
(406) 353-8404
E-mail – bigsmoke 53@yahoo.com

Housing Authority
John Allen, Executive Director
jallen@fbtha.org
(406) 353-2601

Transportation
C. "John" Healy, Sr., Director
jhealy@ftbelknap.org
(406) 353-2447, ext. 103

CHIPPEWA CREE TRIBE ROCKY BOY'S INDIAN RESERVATION

96 Clinic Road North Box Elder, MT 59521 (406) 395-5705

http://www.chippewacree-nsn.gov

CONFEDERATED SALISH & KOOTENAI TRIBES OF THE FLATHEAD RESERVATION
P.O. Box 278
Pablo, MT 59855
http://www.csktribes.org/

Crow Agency
Bureau of Indian Affairs
P.O. Box 69
Crow Agency, MT 59022
(406) 638-2672

http://www.crow-nsn.gov/

NORTHERN CHEYENNE TRIBE 600 Cheyenne Ave Littlewolf Capital Building P.O. Box 128 Lame Deer, MT 59043 (406) 477-6284

http://www.cheyennenation.com/

MONTANA GOVERNOR'S OFFICE OF INDIAN AFFAIRS
State Capitol Building, Room 202
P.O. Box 200801
Helena, MT 59620
http://tribalnations.mt.gov/

North Dakota

Spirit Lake Tribe

P.O. Box 359 Fort Totten, ND 58335 (701) 766-4221 http://www.spiritlakenation.com/

Early Childhood Tracking Beverly Graywater, Director (701) 776-1248

SLT Vocational Rehabilitation Project
Marshall Longie, Project Director
mjlongie@gondtc.com
(701) 766-4446

Spirit Lake Senior Services
Heather Lawrence, Director
(701) 766-1296

Spirit Lake Housing Management Elaine Robinson, Acting Director (701) 766-1817

THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION
404 Frontage Road
New Town, ND 58763
(701) 627-4781
https://www.mhanation.com/

Infant & Toddler CHILD Program
Kimberly A Dickens, B.S., M.S., Director
(701) 627-2458

MHA Educational Department
Ruth Hall, PhD, Education Director
(701) 627-4113

Vocational Rehabilitation Program

Jamie L. Big Crow-Hall, Director (701) 627-2994

Fort Berthold Housing Authority (701) 627-3802

Home Health Care
Gabriell Petri, BSN, RN, CDE
(701) 627-8784

Tribal Health Administration Red Fox Sanchez, Director (701) 627-6616

Housing Services
Lawrence Baker, Director
(701) 627-3832

STANDING ROCK SIOUX TRIBE
P.O. Box D, Building #1
North Standing Rock Ave.
Fort Yates, ND 58538
(701) 854-8500
info@standingrock.org
https://www.standingrock.org/

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS
4180 Highway 281
Belcourt, ND 58316
(701) 477-2600
https://tmchippewa.com/

NORTH DAKOTA INDIAN AFFAIRS COMMISSION
State Capitol Building
600 East Boulevard Avenue
1st Floor Judicial Wing – Room #117
Bismarck, ND 58505
(701) 328-2428
http://indianaffairs.nd.gov/

South Dakota

CROW CREEK SIOUX TRIBE OF THE CROW CREEK RESERVATION
100 Samboy Drive
Fort Thompson, SD 57339
(605) 245-2311

http://www.crowcreekconnections.org/

Crow Creek Housing Authority (605) 245-2250

Family Enrichment Program Lynn Harrison (605) 245-2755

OGLALA SIOUX TRIBE
107 W Main St.
P.O. Box 2070
Pine Ridge, SD 57770
https://www.oglalalakotanation.info

Special Education Elizabeth Belt ebelt@oglala.org (605) 867-5712

Vocational Rehabilitation Roberta Ecoffey robertaecoffey@yahoo.com (605) 867-2798

Child Care Development Frances Big Crow pigeon_jack@hotmail.com (605) 867-1744

Health Education Karen Red Star karenredstar@gmail.com (605) 867-2067

Native Healing Program
Stanley LaRoque
stanley@nativehealingprogram.net
(605) 342-8925

Transportation
Dave Kelly
ostroads@hotmail.com
(605) 867-5376

ROSEBUD SIOUX TRIBE OF THE ROSEBUD INDIAN RESERVATION Mission, SD (605) 747-2381

https://www.rosebudsiouxtribe-nsn.gov/

Native American Advocacy Program

Marla C. Bull Bear, M.A., Executive Director
(605) 775-2147

SISSETON-WAHPETON OYATE OF THE LAKE TRAVERSE RESERVATION
12554 BIA HWY 711
Agency Village, SD 57262
(605) 698-3911
https://www.swo-nsn.gov

Early Childhood Intervention
Sonya Magot, Program Manager
sonyam@swo-nsn.gov
(605) 698-4400

CHEYENNE RIVER SIOUX TRIBE P.O. Box 590 Eagle Butte, SD 57625 https://sioux.org/home.html

P.O. Box 283
603 W. Broad Avenue
Flandreau, SD 57028
https://santeesioux.com/

Lower Brule Sioux Tribe
187 Oyate Circle
Lower Brule, SD 57548
(605) 473-5561
https://www.lowerbrulesiouxtribe.com/

YANKTON SIOUX TRIBE P.O. Box 1153 Wagner, SD 57380 (605) 384-3641

Utah

NAVAJO NATION
P.O. Box 9000
Window Rock, AZ 85515
(928) 871-6000

https://www.navajo-nsn.gov

Navajo Nation Office of Special Education & Rehabilitation Services

Treva M. Roanhorse, Director Includes Early Childhood Intervention, Vocational Rehabilitation, Navajo-ABLE, and Navajo Nation Trust Fund for Handicapped Services and Independent Living Services

NORTHWESTERN BAND OF SHOSHONE NATION
707 North Main Street
Brigham City, UT 84302
(435) 734-0424
https://www.nwbshoshone.com

NWB Shoshone Housing Authority

Cale Worley (435) 723-3014 housing@nwbshoshone.com

PAIUTE INDIAN TRIBE OF UTAH
440 North Paiute Drive
Cedar City, UT
(435) 586-1112
https://www.utahpaiutes.org

Paiute Indian Tribe of Utah: Housing Authority

Betty Cuch, Chairwoman (435) 586-1122

Four Points Health

Tyler Goddard, LCSW, Health Director (800) 658-5340

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION
6964 East 1000 South
Fort Duchesne, UT 84026

Northern Ute Nation Transit

Jeromy Groves, Transit Coordinator

Joshua Thornton, JD/MPA and Martin E. Blair, PhD. Rural Institute for Inclusive Communities, University of Montana, Missoula.

Prepared for the Rocky Mountain ADA Center. Colorado Springs, CO.

(435) 725-4924

SKULL VALLEY BAND OF GOSHUTE 1198 N Main St Tooele, UT 84074 (435) 882-4532

CONFEDERATED TRIBES OF GOSHUTE HC 61 Box 6104 195 Tribal Center Road Ibapah, UT 84034

UTAH DIVISION OF INDIAN AFFAIRS 300 South Rio Grande Street Salt Lake City, UT 84101 (801) 245-7208 http://indian.utah.gov

Wyoming

SHOSHONE TRIBE OF THE WIND RIVER RESERVATION
#14 North Fork Road
Fort Washakie, WY 82514
(307) 332-3532
https://www.easternshoshone.org

Early Intervention Program
Laurene Hines, Director
(307) 332-3516
lhines@easternshoshone.org

Elderly Assistance Alicia Cook, Director (307) 335-2073 acook@easternshoshone.org

NORTHERN ARAPAHO TRIBE 533 Ethete Rd #8480 Ethete, WY 82520 (307) 332-6120 http://northernarapaho.com/wp/

Appendix II: Additional Resources

I.

II.

NATIONAL NATIVE AMERICAN DISABILITY ORGANIZATIONS

Intertribal Deaf Council

Consortia of Administrators for Native American Rehabilitation

National Rural Transit Assistance Program: Tribal Transit

Native American Disability Law Center

National American Indian Housing Council

American Indian Higher Education Consortium

National Congress of American Indians

National Indian Council on Aging

National Indian Education Association

National Indian Health Board

Federal Disability Agencies

Indian Health Services

Billings Area: Supports Tribes in Montana and Wyoming Great Plains Area: Supports Tribes in North Dakota and South Dakota

Albuquerque Area: Supports Tribes in Colorado Phoenix Area: Supports Tribes in Utah

Medicaid,¹ Coverage varies by State:
Colorado

¹ At a minimum, the Federal government requires states to cover: 1) families with children who meet the Aid to Families with Dependent Children (AFDC) requirements in place on July 16, 1996; 2) poverty-level pregnant women and children; and 3) people with disabilities enrolled in Supplemental Security Income. National Council on Disability, *Understanding Disabilities In American Indian & Alaska Native Communities: Toolkit Guide*, 14 (August 1, 2003).

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Montana
North Dakota
South Dakota
Utah
Wyoming

Social Security

National Council on Disability

United States Department of Justice

Equal Employment Opportunity Commission

United States Department of Interior

United States Department of Labor:
Office of Disability Employment Policy

United States Department of Health and Human Services:

Centers for Medicare and Medicaid Services

Temporary Assistance for Needy Families

Administration for Native Americans

United States Department of Housing and Urban Development:

<u>Public and Indian Housing</u>

United States Department of Education:

Office of Special Education Rehabilitation Services
Rehabilitation Services Administration
Office of Indian Education Programs

United States Department of Agriculture:
Rural Utilities Services

United States Department of Commerce: Minority Business Development Agency

NATIONAL DISABILITY ORGANIZATIONS

Described and Captioned Media Program

Joshua Thornton, JD/MPA and Martin E. Blair, PhD. Rural Institute for Inclusive Communities, University of Montana, Missoula.

III.

National Rural Transit Assistance Program

Community Transportation Association of America

National Youth Leadership Network

American Association of People with Disabilities

Association of Programs in Rural Independent Living

Council of State Administrators of Vocational Rehabilitation

Institute for Community Inclusion

Job Accommodation Network

National Council on Independent Living

The Arc

World Institute on Disability