

Written Testimony Phoebe Ball, Disability Policy Counsel
House Committee on Education and Labor
Before the Select Committee on the Modernization of Congress
Re: Making the House More Accessible to the Disability Community
U.S. House of Representatives
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Good morning Chairman Kilmer, Vice Chair Timmons and distinguished members of the Committee, thank you for having me here today to offer my perspective on the accessibility of Congress. I am a wheelchair user who has worked as Disability Counsel for the Committee on Education and Labor for about a year and a half. Before that, I worked as the legislative affairs specialist for the National Council on Disability for five years. Although much of my tenure as staff for the Committee has been during the pandemic where I've been working from home, I have spent a great deal of time navigating the halls of Congress and the House and Senate office buildings. In addition to my experiences as a wheelchair user, I also have several hidden disabilities that both inform my work and occasionally necessitate accommodations to enable me to succeed in my work.

As a disabled woman who has been engaged in disability rights work for more than two decades, it's important for me to take this opportunity in this very public forum, to talk about the fact that disability is central to my identity, and that it matters how we discuss disability as we are doing here to today. Euphemisms such as "differently abled" or "special needs" are both inaccurate and uncomfortable—I'm a disabled woman and the word "disabled" is an important identifier that defines me as much as my gender, my race or any other central part of my identity. You may also notice that I don't stick to "person-first" language which until fairly recently has been the way polite people talk about disability. Many of us in the disability community have moved away from always using that language to describe ourselves and each other, because it implies that disability is appended to the person in an incidental way when for many of us it is central to our identity. While there are different views on how to talk about disability even within the disability community, a good rule of thumb is to avoid euphemisms and listen to people with disabilities themselves and follow their cues.

Given that the oldest of the Congressional office buildings were built more than 80 years before the passage of the Americans with Disabilities Act, there are some challenges to navigating the spaces where I spend my day when I'm not relegated to my home office because of a global pandemic. However, even before my first day of work for the Committee, I was answering questions about the width and height of my chair to ensure that my office, my desk, and even the common spaces I would need to navigate were accessible to me. Although there are still challenges to navigating a wheelchair through the old buildings on the Hill, the fact that my supervisors on the Committee had the forethought to consult with the Architect of the Capitol about my needs in terms of accessibility and to make changes to ensure access, was a clear signal that the Committee valued me as an employee and it also signaled a willingness to work with me to ensure access and provide accommodations I might need to perform the essential functions of my job or to enjoy the benefits or privileges of my employment on an equal basis with my coworkers.

Although my most obvious disability is using a wheelchair, that is probably the disability that complicates my working life the least—partly because of the long history of Congress passing laws that require the removal of architectural barriers to access by people with disabilities, starting with the Architectural Barriers Act of 1968.¹ There are some short-cuts in the Congressional office buildings that I can't take--particularly the escalators--and while the subway is neat, it is only partially accessible, but for the most part getting around is not a big problem for me personally. However, little things can get in the way and a simple act of leaving out a chair at the end of an aisle can make room for a person in a wheelchair without the fuss of moving furniture. Additionally, the Committee has one of the relatively few offices on the Hill that has an automatic door opener, and sometimes it even works. However, much as I appreciate the elegance and antiquity of old buildings, many of the hearing rooms and many offices have double doors that are only wide enough for a wheelchair when both are open, and opening both requires an able-bodied person or two to work several latches in order to provide access to a person in a wheelchair. Where possible, doors should be altered to comply with Access Board requirements so that a person in a wheelchair or who has other disabilities can open the door without assistance either using an automatic button or door pulls that can be operated with a loose grip or closed fist and not requiring more than 5 pounds of pressure to open.²

Where changing these doors is cost-prohibitive or potentially damaging to the historic nature of these buildings, ensuring that staff are trained in how to open doors and also have enough training in “disability etiquette” not to display overt panic when a person in a wheelchair or any other disability seeks entrance to an office can go a long way towards providing disabled members of the public with access to Congressional offices. Whenever possible, staff should avoid opening doors in such a way that the person in a wheelchair has to enter the room under an arm—no matter how tall the staff person is, that's just awkward.

In addition to physical access, there are improvements that could be made in terms of access to people with sensory disabilities, including members of the blind and Deaf communities. One simple thing that I don't actually have because it does not seem to be standard feature of Congressional business cards, although it should be, is key information in braille on business cards. Even if you never hand your card to a blind person who uses braille, having braille on your business card sends an important message that you want information provided by your office to be accessible to everyone. Braille business cards make a strong positive statement about the staff person whose name is on the card and the office and Member they represent. Improving access to hearings, mark ups, briefings and other public events through the provision of real-time captioning and ASL interpreters for attendees, who may be staff with disabilities or members of the general public, would ensure compliance with the Americans with Disabilities Act.³ Beyond basic compliance issues, these measures would encourage participation in these important Democratic processes by members of the Deaf community and the disability community at large. Additionally, captioning makes it easier for everyone to understand everything that is said at

¹ 90 P.L. 480, 82 Stat. 718

² <https://www.access-board.gov/aba/guides/chapter-4-entrances-doors-and-gates/>

³ 2 U.S.C.S. § 1311 *See also* 28 CFR §36.303

these events. Finally, such steps would establish an atmosphere of access and welcoming to the disability community in general. Although I spectacularly failed at mastering ASL as my foreign language in college and had to switch to something else to preserve my GPA, when I see that interpreters have been provided, I understand that access is a priority and I appreciate it as a member of the disability community.

As all of our lives have moved online during the pandemic, the paramount importance of online access has become increasingly clear. The ADA and Rehabilitation Act provided accessibility standards for physical government spaces, and in 1998, Congress amended the Rehabilitation Act of 1973 by adding Section 508 which specifically required federal agencies to make their electronic and information technology accessible to people with disabilities. It has never been more critical for Congressional offices and Committees to ensure that websites and all of the content on them or linked to them meets the Electronic and Information Technology Accessibility Standards promulgated by the Architectural and Transportation Barriers Compliance Board⁴, pursuant to section 508 of the Rehabilitation Act of 1973,⁵ and the Web Content Accessibility Guidelines 2.1, as promulgated by the World Wide Web Consortium.⁶ Additionally, when creating online content for social media platforms, “alt-text” descriptions for the blind and captioning of any streaming content are critical ways to ensure access.

In some ways, the things I’ve outlined so far are the “low hanging fruit” of ensuring accessibility and reasonable accommodations in the workplace. Although I’ve referred to my physical disability and the fact that I use a wheelchair because I was born with Spina Bifida, I actually have numerous other less obvious disabilities, some of which are not directly related to Spina Bifida. In addition to using a wheelchair, I am a below knee amputee. I was also born with hydrocephalous—water on the brain—which means I have a shunt that removes spinal fluid from my brain. Although the exact connection to hydrocephalous is unclear, it’s likely that it explains why I was diagnosed with a severe math learning disability in college and why my sense of time and direction are both terrible. This propensity to get lost and not be on time has posed some unique challenges for me as a staffer, especially before the pandemic. Finally, Spina Bifida is commonly associated with a loss of bladder and bowel control, so I have a cecostomy tube which enables me to manage my bowel incontinence but also means that my morning routine takes an extra 45 minutes to sometimes several hours longer than most people. I also have a urostomy because my bladder was removed following stage 3 bladder cancer a few years ago. Perhaps unsurprisingly given the relatively recent cancer diagnosis being immediately followed by a global pandemic and subsequent lock down in relative isolation with only my teenaged daughter for company, I’ve recently been diagnosed with depression and started taking an anti-depressant.

Although I personally have not needed to formalize an accommodation for each of these hidden disabilities, each may be a disability covered under the Americans with Disabilities Act (ADA)

⁴ 36 C.F.R. part 1194

⁵ 29 U.S.C. § 794d

⁶ <https://www.w3.org/TR/WCAG21/>

to the same extent as my use of a wheelchair, although the disability is not as obvious and neither is the accommodation in some cases. As a 47 year old woman with a law degree and decades of experience working in the field of disability, it is pretty easy for me to talk about these disabilities with my employer and make sure that we begin the interactive process to develop an accommodation. However, most of my colleagues are younger and just beginning their careers. Although they may have an impairment that limits a major life activity, they may not think of their impairment as a disability or understand their rights under the ADA. Even if they know they have a right to an accommodation, they may not know what accommodation they need or how to approach their supervisor with such a request. Especially with the increases in anxiety, depression and substance abuse disorders that have occurred during the pandemic, it is going to be up to Members, staff directors, and others in supervisory roles to understand when they need to commence the interactive process to determine whether a staff member may be entitled to an accommodation.

The Job Accommodation or JAN is an excellent resource for managers and staff alike. This federally-funded resource provides information about workplace accommodations and how to ensure that employees with disabilities receive effective accommodations that will enable them to succeed in their jobs. According to JAN, when the need for a particular accommodation is not obvious, managers should engage in the following steps to ensure that employees get the accommodations they need.

1. **Recognizing the Request for an Accommodation:** although employees may not invoke the ADA or ask for a reasonable accommodation specifically, in response to any indication that an employee is having a problem related to a medical condition, the supervisor should consider whether the employee is making a request for reasonable accommodation under the ADA.
2. **Gathering Information:** once an accommodation request has been made, the supervisor should gather information necessary to process the request, including documentation of the disability and need for accommodation if these are not obvious. However, it's important to only request medical documentation that may be necessary to determine whether the employee has a disability and needs an accommodation. Employers are not entitled to the employee's entire medical or mental health history just because they request an accommodation.
3. **Exploring Accommodation Options:** once the disability and how it may be causing a challenge at work is identified, employers should be ready to explore accommodation options. Although the employee may be the best source of information, it may make sense to loop a medical professional into the conversation. In some cases, the Architect of the Capitol can be a great source of information as can resources such as the Office of Congressional Workplace Rights and the Office of Congressional Accessibility Services. Finally, the JAN website contains a great deal of information regarding specific accommodations and they have consultants available to provide detailed suggestions.
4. **Choosing an Accommodation:** once the available accommodations have been explored, the employer chooses an accommodation among any equally effective alternatives, although this should be done in consultation with the employee. However, the process doesn't conclude once an accommodation is in place; accommodations can and should be

periodically reviewed to determine if they are effective and whether there may be other alternatives that would be preferable.

5. **Implementation:** once an accommodation has been chosen, it needs to be implemented. Equipment that is part of an accommodation may need to be installed and the employee trained in its use. Accommodations involving a schedule or policy change may need to be communicated to others who need to assist with implementation. If the accommodation is a reassignment to a new position, the employee may need time to acclimate to the new position.
6. **Monitoring:** as noted above, an important part of the interactive process is monitoring whether the accommodation continues to be effective and whether there have been changes in the workplace or the employee's disability that merit a change in the accommodation.⁷

It's hard for me to gauge whether employees have sufficient access to information about their rights to accommodation and whether managers have sufficient training to engage in the interactive process outlined above, especially since the majority of my time working for the Committee has been during the pandemic where I've been working from home. However, I suspect that more could be done to ensure that managers are trained in the steps outlined above and that staff could be better informed about their right to ask for reasonable accommodations.

For me personally, working from home has ameliorated some of the issues for which I may have needed an accommodation during normal times. For example, I occasionally experience problems with my urostomy that necessitate, to be frank, a shower and a change of clothes. This doesn't happen often, but if I'm already home when it does, the degree to which it interrupts my schedule and ability to work is obviously less than if I needed to address the situation while in the workplace. As we transition back to working in-person following this pandemic, some of us with newly acquired disabilities related to "long-haul" Covid-19 or mental health issues related to the trauma that we've all experienced to varying degrees, we should take this opportunity to examine these processes and make sure that Congress is a welcoming and accessible place that is able to accommodate employees with disabilities, if for no other reason than to benefit fully from the talents and perspective these employees bring to the table.

Congress is a high-pressure environment where the needs of the American people must come first. The ADA doesn't require a fundamental alteration of this dynamic. However, it does require supervisors to have enough understanding of disabilities, especially ones that may be less obvious, such as learning disabilities and psychiatric disabilities, to engage in the interactive process so that staff feel comfortable discussing these disabilities, knowing they will get the accommodations they need. Failing to do so may not only violate anti-discrimination law, but it also adds unnecessary stress and difficulty that will inevitably increase the level of burn-out and high turn-over that have consistently made it difficult to recruit and retain a diverse Congressional staff workforce. The mission of this Committee is more important than ever as we

⁷ <https://askjan.org/topics/interactive.cfm>

consider whether we are just going to return to business as usual following this pandemic or commit ourselves to making the “people’s house” work better for everyone.