

CHAPTER 2 – THE CONSTITUTION



OVERVIEW

Government of the United States is a limited government and has only that authority that is conveyed to it by specific provisions of the U.S. Constitution, the Commerce Clause, the Spending Clause, and the Fourteenth Amendment. The IDEA and RA are spending clause statutes and contain provisions on civil rights concepts.

Where a state's conduct toward an individual with a disability is an intentional violation of one of these provisions, both the Fourteenth Amendment and Title II of the ADA have been violated.

OBJECTIVES

After completing this chapter, students will be able to:

1. Understand the basic principles of the constitution.
2. Identify and describe the statutory measures that protect individuals with disabilities.
3. Compare and contrast substantive and procedural due process procedures.
4. Describe the concept of Equal Protection as it applies to individuals with disabilities.

LECTURE GUIDELINES – CHAPTER 2 The Constitution

A. Basic Principles

The federal legal rights of individuals with disabilities are found in or derived from the Constitution and statutes enacted by Congress in accordance with the constitution's provisions of the commerce Clause, Spending Clause and Fourteenth Amendment

B. Statutory Measures

Congress enacted three key statutes to protect individuals with disabilities; the Rehabilitation Act of 1973 (RA), the Individuals with Disabilities Education Act (IDEA), and the Americans with Disabilities Act of 1990 (ADA)

Have small groups provide examples where children and adults with disabilities have been affected under each statute below.

1. RA - Made discrimination unlawful in employment, and activities funded by federal subsidies or grants.
2. IDEA - Provides a free appropriate public education (FAPE) to students with disabilities.
3. ADA - Protects disabled individuals employed in the private sector or in public services, accommodations and transportation.
4. Equal Protection
 - a. There is no fundamental constitutional right to either education or employment.
 - b. When education or employment is denied because of intentional and unjustified discrimination, the Constitution becomes involved.
 - c. State sovereign immunity prohibits private parties' ability to sue governments unless a specific provision of the Constitution permits it or a state has agreed that it can be sued.
 - d. There are three standards of judicial review: strict scrutiny, intermediate scrutiny, and rational basis,
 - e. Rational basis is the standard of review for the disability area. Statutes that require that people with disabilities be treated differently from other people are valid if they have a rational basis.
5. Describe the fundamental rights of individuals with disabilities.
6. Explain the case of *Alexander v. Sandoval*, 532 U.S. 275 and its applicability to suits by private individuals.

PRACTICE QUESTIONS

1. What are the three relevant constitutional provisions and what powers do they have?
2. Federal statute that prohibits discrimination but no not provide specific funds for the activities mandated by them
 - a. Americans with disabilities act of 1990
 - b. Rehabilitation act of 1973
 - c. Individuals with disabilities act (idea)
 - d. A& B

3. Made discrimination against individuals with disabilities unlawful activities funded by federal subsidies or grants.
 - a. Americans with disabilities act of 1990
 - b. Rehabilitation act of 1973
 - c. Individuals with disabilities act (idea)
 - d. A & B
4. Extended the concept of “section 504” to virtually all places of public accommodations
 - a. Americans with Disabilities Act of 1990
 - b. Rehabilitation Act of 1973
 - c. Individuals with Disabilities Act (IDEA)
 - d. None of the above
5. Describe a situation where the reconstruction Civil Rights acts are applicable in disability law areas.

Match the opinions in column A with the description in column B that best describes each.

COLUMN A	COLUMN B
6. 5 th Amendment	a. contains prohibitions against deprivation of “life, liberty, or property” without due process of law
7. Substantive due process	b. requirement that the government may not take Life, liberty, property without using fair Procedures
8. Due process protection	c. denies an individual of one or more of their fundamental rights
9. Procedural due process	d. right to have access to courts
10. 14 th Amendment	e. applies to federal government

11. ADA case involving the issue of physical access by persons with paraplegia to the courts
 - a. Bradley v Arkansas dept of education (8th cir. 1999)
 - b. Tennessee v lane 541 U.S. 509
 - c. Board of Education v. Rowley 458 U.S. 176
 - d. Clyde k. V Puyallup school district no 3 (9th cir. 1994)
12. How are the ADA and RA alike?
13. Find the case of Kimel v. Florida Bd. Of Regents 528.U.S. 62 (2000). Describe the facts and decision of the court.
14. What is the status of regulations issued under the RA/ADA?

15. What fundamental rights must be established in order to establish a violation of the Fourteenth Amendment?

ANSWERS

1. The Commerce Clause, Spending Clause, and Fourteenth Amendment
2. d
3. b
4. a
5. Any violations of constitutional rights or some federal laws would be the best answer.
6. e
7. c
8. d
9. b
10. e
11. b
12. They contain similar language and are interpreted in the same way (pg. 16)
13. Sovereign Immunity
14. The regulation incorporates the IDEA requirement of FAPE for children with disabilities into the RA/ADA requirements.
15. The fundamental rights that must be violated include: The Right of Freedom, The right to be free from cruel and unusual punishment, the Right to a Meaningful Access to Public Education.