

TOWARD FULL COMPLIANCE WITH THE PROVISIONS
OF THE AMERICANS WITH DISABILITIES ACT
IN THE CHRISTIAN REFORMED CHURCH IN NORTH AMERICA

A Report to Synod 1993

January 29, 1993

Revised
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The Committee on Disability Concerns

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Editor's note. In June 1993, the Synod of the Christian Reformed Church (CRC) in North America went on record to "heartily recommend full compliance with the provisions of the Americans with Disabilities Act (PL 101-336) and its accompanying regulations in all portions of the CRC located in the US and Canada."

Synod also accepted "in principle" a January 29, 1993, supplementary report prepared by the Committee on Disability Concerns (CDC) and instructed "CDC to review and revise the [report] to reflect the intent [of Synod's recommendation] as a tool in guiding the church and its agencies in implementing the provisions of the ADA." Synod also requested that "references to Christian schools and other non-CRC church agencies" be removed.

The report that follows reflects Synod's wishes and intent.

CONTENTS

EXECUTIVE SUMMARY

ACKNOWLEDGEMENTS

BACKGROUND	1
ADA as a Model for Other Nations	1
ADA's Exemption for Religious Organizations	3
ADA and the Church's Faith Commitment	3
Societal Consensus	6
PROPOSED POLICY	6
Applicability of Policy	7
FOUNDATIONS	7
PRINCIPLES, CONCEPTS, & STANDARDS UNDERGIRDING THE ADA	9
APPLICABILITY OF THE ADA TO THE CRC	12
Title I Employment	13
Size	14
Volunteers, unpaid leaders, and others	14
Timetable	14
Title II Public Services	15
Title III Public Accommodations	15
Size	17
Telecommunications	17
Timetable	18
Title IV Telecommunications	19

IMPLEMENTATION & TITLE V	19
Education	20
Interagency Implementation Task Force	21
Self-evaluation	21
Technical Assistance	21
Guideline Development	22
Financial Assistance for Small Churches	22
Dispute Resolution	23
Application to Synod and Classis	24
Monitoring of Implementation	24
IN CLOSING	25
REFERENCES	26

EXECUTIVE SUMMARY

The Committee on Disability Concerns (CDC) is pleased to submit to Synod its report calling for full compliance with the provisions of the Americans with Disabilities Act (ADA) of 1990 in the Christian Reformed Church (CRC) in North America. The purpose of the ADA is "to provide a clear and comprehensive mandate for the elimination of discrimination against individuals with disabilities" and to provide clear and consistent guidelines as to the levels of accommodation that both the private and public sectors are expected to provide people with disabilities in all spheres of public life.

Although the ADA is an American law, the CDC recommends that its provisions also serve as a framework for the CRC in Canada. Canadian disability rights legislation currently lacks the comprehensiveness of the ADA. However, the CDC, comprised of both Canadians and Americans, found that federal and provincial legislation is clearly moving in the direction of the ADA and includes many of the principles and concepts that govern the ADA.

Churches and religious organizations in the United States are largely, but not entirely, exempt from the ADA in deference to the historic separation of church and state in American public life. However, the American wing of the denomination must already comply with Title I of the Act which provides equal employment opportunities for people with disabilities. While the American church is largely exempt from most other ADA provisions, the report calls for full compliance with the provisions of the ADA in the life of the church, particularly ADA's Title III which addresses issues of architectural and programmatic accessibility.

Thus, if implemented, the ADA's provisions would serve as a *framework* in which the denomination would meet its obligations to members, worshipers, and others with disabilities. The ADA would also provide the standard by which people with disabilities could establish their need for accommodations.

CDC has determined that the US church's partial exemption from the ADA did not make the Act any less relevant to the life of the church. The report notes that "the principles and values that gave rise to the ADA are in accord with the principles and values that spring from the church's own faith commitment and belief system." The report observes that the church should not be held to a lower standard of accommodation than that of the secular world.

If adopted by Synod, the ADA framework would become effective in the CRC over a two- to four-year period except for the ADA's employment provisions which are already applicable under federal law in the United States. The ADA's provisions would become applicable to all CRC congregations, agencies, facilities, and to all programs supported by denominational quota.

The CDC found that, while the Act is not clear in all instances, "the ADA is generally straight forward, internally consistent, flexible, and quite forgiving to those entities that would face 'undue hardship' in attempting to comply with the Act." It is neither a "quota act" nor is it "affirmative action." Persons with disabilities who promoted the Act did not want to be perceived as less qualified or less worthy because of a quota or because they were given special consideration. They simply wanted the same opportunity to participate, to compete, and to contribute.

The report recommends several steps to facilitate smooth and timely compliance with provisions of the ADA in the CRC. These steps include an education program, the formation of an interagency implementation task force, agency and local church self-evaluation, the provision of technical assistance, financial assistance for small churches, and the development of guidelines when the law does not adequately address those issues that may be idiosyncratic to the CRC.

The report also anticipates that there may be times when disputes arise. The report encourages that these disputes be resolved through negotiation, arbitration, and through the existing grievance procedures of CRC agencies and organizations. When such mechanisms do not suffice, the report recommends that the CRC's Judicial Code (Article 30(c)) be used as a last resort.

Finally, the report recommends that CDC monitor the compliance with the provisions of the ADA in the CRC. The CDC is to prepare an interim report to Synod 1995 and a final report to Synod 1996 on progress related to the compliance with the ADA's provisions.

Full compliance with the provisions of the ADA in the CRC enables the church to tie into a set of accessibility standards that have developed over many years and are widely understood within the disability community and among professional groups such as architects and human resource professionals. CDC views the compliance with the ADA's provisions as an opportunity to advance significantly Synod's 1987 mandate to CDC calling for the elimination of "those barriers which hinder the full participation of persons who have disabilities in the life of the church . . ."

ACKNOWLEDGEMENTS

The Committee on Disability Concerns and its Subcommittee on the ADA wishes to thank all those in the CRC who provided careful review and detailed comments. In addition, the Committee wishes to acknowledge those from outside the CRC who also reviewed this report. In particular, the Committee acknowledges Ms. Ginny Thornburgh, Director of the National Organization on Disability's Religion and Disability Program in Washington, DC; Mr. Andrew Batavia, formerly White House Fellow in the Office of the Attorney General, U.S. Department of Justice; and Ms. Carolyn Gray, an attorney with the firm of Epstein, Becker, and Green, of Washington, DC. The views expressed in this document do not necessarily reflect the views of these individuals nor the views of the organization they represent.

Committee on Disability Concerns
Subcommittee on the ADA

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January 29, 1993



TOWARD FULL COMPLIANCE WITH PROVISIONS OF THE ADA IN THE CRC

This report calls for full compliance with provisions of the Americans with Disabilities Act (ADA) of 1990 (PL 101-336) in the Christian Reformed Church (CRC). The ADA is the most comprehensive national disability rights legislation of its kind in North America today.

This report summarizes the principles and concepts underlying the ADA, notes the requirements of the law and their possible implications for the CRC, outlines steps for compliance with provisions of the law in the CRC, proposes a timetable, notes the ecclesiastical procedures for appropriate resolution of potential disputes, and proposes ways of monitoring CRC progress in complying with the ADA's provisions.

The report proposes that provisions of the ADA serve as a guide for the CRC in both Canada and the United States until similar comprehensive legislation becomes available in Canada. At this time, comparable legislation in Canada exists in a much more fragmented form at both the federal and provincial levels.

BACKGROUND

The ADA was signed into law by the President of the United States on July 26, 1990. The ADA represents a new chapter in American public policy regarding the status and well-being of people with disabilities. The Act provides that people with disabilities will be afforded equal opportunity and access to employment, state and local government services, transportation, communication services, and to all public accommodations such as stores, restaurants, hotels, and health care facilities.

The principles and concepts that motivated the ADA will also be used in coming years as the standard by which American society measures all programs, policies, and services directed to people with disabilities (DeJong and Batavia, 1990a & 1990b). Thus, the ADA's impact is likely to be pervasive and will materially redefine the role of people with disabilities in American society.

ADA as a Model for Other Nations

Many other nations are looking to the ADA as a potential model for their own disability rights legislation. At the present time, Canada does not have comparable detailed disability rights legislation at the national level.¹ However, Canada or its individual provinces are expected to adopt comprehensive disability rights legislation comparable to the ADA (Black, 1992). In June 1992, the Canadian Parliament took a step in this direction when it adopted Bill C-78, an omnibus act amending several pieces of existing legislation affecting the lives of disabled people in areas such as elections, transportation, and immigration policy. Further legislation at the federal level is anticipated. In Ontario, for example, disability rights supporters are advocating an Ontarians with Disabilities Act modeled after the ADA.²

The applicability of the ADA to Canada proved to be a vexing issue for CDC. The Committee's chairperson and one-third of CDC's membership are Canadian. On the one hand, CDC wanted to be sensitive to the separate political identity which Canadian churches bring to the denomination. Also, CDC wanted to recognize the different approaches that Canada has taken to major social policy issues.³ On the other hand, the Committee believes that the CRC is one church undivided by national boundaries. Moreover, as noted above, Canadian legislation

¹Unlike the US Constitution, the Canadian Charter of Rights and Freedoms adopted in 1982 does not recognize people with disabilities (§15(2)) as a protected class and requires that the federal government take positive steps to assure the rights of people with disabilities. Moreover, in Canada, more of the responsibility for the well-being of individual citizens is delegated to provincial governments. Accordingly, one cannot ignore the potential role of individual provinces in spelling out the rights of people with disabilities.

²As of this writing, an equal rights bill, Bill C-79, is pending in the Ontario Parliament. People with disabilities are one of the groups recognized in the proposed legislation.

³For example, the ADA reflects the long-standing American commitment to individual betterment and individual civil rights while Canadian social policy has emphasized principles of social justice. As a result, Canadian social policy is inherently more redistributive as reflected, for example, in higher levels of funding for income and health care benefits for its citizens with disabilities. Nonetheless, leaders in the Canadian disability rights movement see ADA type legislation as an important complement to existing programs directed to the well-being of Canadians with disabilities.

at both the federal and provincial level are moving in the direction of the ADA. Finally, the principles and concepts that define the ADA are generalizable to other Western cultures such as Canada that value human freedoms, equal opportunity, and societal accommodation.

ADA's Exemption for Religious Organizations

Except for Title I, its employment provisions, the ADA specifically exempts religious organizations from its purview in deference to the American constitutional separation of church and state. Because this exemption hinges on a legal, not a moral, question, CDC feels that the CRC should give full consideration to the ADA and its implications for the life and governance of the church at both the local and denominational level. While the CRC in the US may be legally exempt from most of the Act's provisions, the principles and values that gave rise to the ADA are in accord with the principles and values that spring from the church's own faith commitment and belief system.

ADA and the Church's Faith Commitment

Complying with the appropriate provisions of the ADA as a framework for the conduct of the church's own affairs with respect to people with disabilities is very much in keeping with Synod's 1985 Resolution on Disabilities and with Synod's 1987 enlarged mandate to CDC calling for the elimination of "those barriers which hinder the full participation of persons who have disabilities in the life of the church . . ."

The motivation to include people with disabilities has its roots in Scripture where one can observe a noticeable progression in how people with disabilities are viewed: From a protected group at the margins of society in the Old Testament to the center of God's Kingdom in the New Testament. In the Old Testament, diseases and "defects" were symbols of spiritual problems and disqualified people from participating in some religious rites. However, the nation of Israel adopted special laws that protected disadvantaged and disabled people by prohibiting their mistreatment and by providing for their basic needs through tithing, gleaning, emancipation, and inheritance.

In the New Testament, disadvantaged and disabled people were central in

Jesus' ministry:

The spirit of the Lord is on me; therefore he has anointed me to preach good news to the poor. He has sent me to proclaim freedom for the prisoners and recovery of sight for the blind, to release the oppressed . . . Today this scripture is fulfilled in your hearing (Luke 4:18-21).

Likewise, when John the Baptist asked from prison, "Are you the one who was to come, or should we expect someone else" (Luke 7:19)? Jesus answered:

Go back and report to John what you have seen and heard: the blind receive sight, the lame walk, those who have leprosy are cured, and the deaf hear, the dead are raised and the good news is preached to the poor (Luke 7:22-23).

These words of Jesus, and many others like them throughout the entire New Testament, make it plain that people with diseases, disabilities, and disadvantages are not only included in, but are at the center of, his Kingdom. Those who want to serve in his Kingdom must concur with him in his purpose to incorporate people with disabilities into his kingdom service

In adopting the 1985 resolution, Synod specifically noted that people with disabilities are also a part of God's covenant community and that the inclusion of people with disabilities is in accord with the vision of I Corinthians 12 in which all persons in the covenant community are deemed members of one interdependent body.⁴

This vision of the covenant church community is reflected in the many efforts of the CRC to address the needs of persons with disabilities. Historically, the CRC community has helped to build one of the finest networks of private agencies and institutions in North America to address the needs of people with disabilities. This is reflected in CRC's long-standing support of outstanding organizations such as Pine Rest Hospital, Elim Christian School, the Eastern Children's Retreat, and other institutions directed to the well-being of people with disabilities. However, with the creation of CDC in the mid 1980s, the CRC

⁴The apostle Paul's use of the human body as a metaphor for the interdependent character of the Christian community has special irony for disabled persons who experience one or more limitations in various parts of the mind or body.

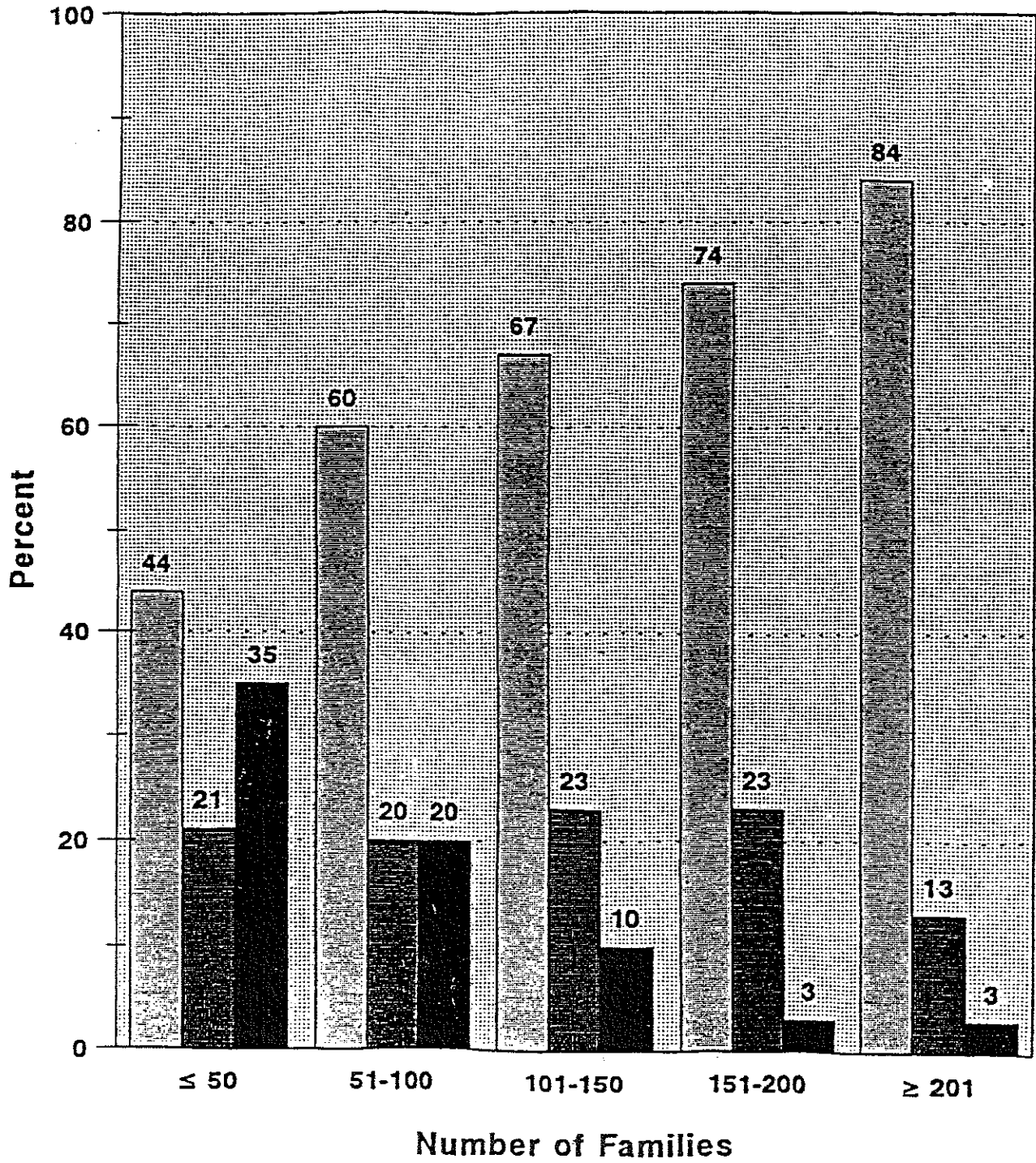
TABLE 1
Degree of Accessibility in the CRC
by Size of Congregation¹

Degree of Accessibility	Size of Congregation (in families)					Total (N=944)
	≤ 50 (N=386)	51-100 (N=261)	101-150 (N=163)	151-200 (N=96)	≥ 201 (N=38)	
Fully accessible	44%	60%	67%	74%	84%	57%
Partially accessible	21	20	23	23	13	21
Inaccessible	35	20	10	3	3	22
Total	100	100	100	100	100	100

¹Includes both organized (N=852) and emerging (N=92) congregations. Almost all emerging congregations are in the smallest family-size category (≤ 50 families).

Source: Self-report data as reported in the 1992 CRC *Yearbook*. Data for table compiled by Barbara Heerspink.

FIGURE 1
Degree of Accesssibility In CRC
by Size of Congregation (in Families)



□ Fully Acc. ▨ Partially Acc. ■ Inaccessible

signaled that its vision of the covenant community was incomplete and that it was time to mainstream people with disabilities into the everyday life of the church. This enlarged vision was also reflected in the development of the well-received Friendship Series, a Christian education curriculum directed to persons with intellectual impairments.

Progress has also been made at the local level. Based on self-report data from the annual CRC survey reported in the *1992 Yearbook*, 538 or 57% of the CRC's 944 congregations report that they are "fully accessible" and another 196 or 21% report that they are "partially accessible" meaning that some areas are accessible and that persons with mobility impairments are urged to call before coming. See Table 1 and Figure 1. It is not always easy for individual congregations to make an adequate self-assessment of these matters. For example, CDC has been advised of instances where churches report that they are fully accessible while they are carrying wheelchair-using members up stairs.⁵ Despite the progress already made, the CRC has a long way to go if it is to meet the expectations set by its own synodical resolutions.

By choosing to comply with provisions of the ADA the CRC will demonstrate its convictions not only about disabilities but also about society and government. By its voluntary compliance with appropriate provisions of this law, the CRC will indicate that it regards all legitimate government as being from God and for the good of all society. It will also indicate that it regards itself as a responsible participant in society, that is, as being in the world even though not of the world. If the CRC willingly applies to itself the same standards it proclaims and supports for the rest of society, it will powerfully reinforce its message about the supreme worth of all God's image bearers, no matter how disabled, and about the full range of privileges and responsibilities all of them have in his covenant community.

⁵People who use wheelchairs find it most unacceptable to be carried up or down stairs or anywhere else. Moreover, many who assist in such practices are often unfamiliar with the risks to the wheelchair user, to themselves, and to the wheelchair itself.

Societal Consensus

Finally, it should be noted that the passage of the ADA in the US Congress reflected a high level of consensus about the rights of disabled people in American society. In the US Senate the vote was 91-6 and in the US House of Representatives it was 337-28.⁶ A similar consensus is emerging in Canada and other Western societies. Should the CRC fail to accommodate people with disabilities as effectively as the surrounding society, it risks sending a powerful signal to persons with disabilities and to society at large that the church is not fully prepared to do what the larger society must do. This would be unfortunate given that these provisions are in accord with many of the values that motivate the CRC's commitment to church life and human rights issues.

RECOMMENDATION

CDC requests that Synod heartily recommend full compliance with the provisions of the ADA (P.L. 101-336) and its accompanying regulations in all portions of the CRC located in the US and Canada. As comprehensive disability rights legislation is adopted in Canada, local CRC congregations and facilities in Canada should be guided by such national and provincial disability rights laws. It is the hope of this report that ADA provisions will serve as a basic standard for the entire CRC of North America.

CDC recognizes that local CRC churches and congregations enjoy considerable freedom in organizing and managing their own affairs. It is not the

⁶Some have sought to undermine this consensus by arguing that organizations face large costs in hiring people with disabilities, in making their facilities accessible, and in litigating "frivolous" and expensive law suits springing from the Act. These claims are put forth by some organizations in the business of providing ADA compliance training to human resource managers, corporate attorneys, and others. These claims sometimes appear in their marketing brochures to induce companies to cough up large sums for seminar registration fees and training materials, some of which are free from the federal government.

CDC has examined the ADA at great length. The Committee finds that the ADA is straight forward, internally consistent, flexible, and quite forgiving to those entities that would face "undue hardship" in attempting to comply with the Act. While the size of the federal regulations implementing the ADA may appear intimidating at first blush, they too are remarkable in terms of their consistency and flexibility. Many of the regulations are in the form of guidelines.

intent of this report that the ADA provisions and regulations be applied without regard to local circumstances and needs. Instead, it is the intent of this report that the ADA's provisions should serve as a *framework* in which church agencies and local congregations can meet their obligations to people with disabilities and as a *framework* in which individual church members and others with disabilities can establish their need for accommodation.

Applicability

This recommendation is applicable to all CRC congregations, agencies, facilities, and all programs supported in whole or in part by denominational quota.⁷ They are also appropriate to facilities and programs owned, operated, or directly controlled by CRC congregations and agencies.

CRC facilities and programs located outside the US and Canada should be guided by the disability rights legislation, if any, in their host countries. In the absence of substantial disability rights legislation in the host country, CRC facilities and programs should be guided, to the extent feasible, by ADA provisions and regulations, taking into account local conditions and customs.

GROUNDS

1. Though American churches and religious organizations are largely exempt from the requirements of the ADA in keeping with the American tradition of separation of church and state, the principles underlying the ADA and the regulations implementing the ADA are as appropriate to the organized church as to the rest of society given the church's historic commitment to nondiscrimination, integration, and inclusivity. Since the CRC's commitment to these values stems from a higher authority, its willingness

⁷This includes Calvin College and Calvin Seminary. However, since Calvin College is a recipient of federal funds, it must already comply with the requirements of Section 504 of the 1973 Rehabilitation Act, a precursor to the ADA. Accordingly, this policy should also apply to Calvin college except in those instances where the policy may deviate from federal law. For example, the timetable for implementation of the ADA in the CRC lags the original ADA timetable by two to three years. However, Calvin College is required to comply with the original timetable specified under law.

to comply with the ADA provisions should be greater than that of the secular world.

2. This recommended full compliance is in harmony with the historic Christian faith which views all people, disabled and nondisabled alike, as image bearers of God and views the church as a covenant community of persons with mutual obligations toward one another. Moreover, this compliance is in accord with the Biblical charge to share the Good News with all people. The church cannot fulfill its Biblical mandates without making itself architecturally, intellectually, and programmatically accessible. Moreover, Scripture is replete with examples, concepts, and metaphors that speak to our need to break down barriers and incorporate people with disabilities into the life of the church. To be effective, the church must also find ways in which it can function and have meaning in the lives of people with disabilities.
3. The ADA and its accompanying regulations offer a set of national standards that will greatly facilitate making all institutions in our respective societies more accessible. By following these standards the CRC will be using standards and criteria, in areas such as employment and architecture, that have been carefully crafted and are becoming operational in the secular world. The church will be wise to guide itself by these regulations in furthering its goal to make church life more accessible to people with disabilities.
4. Full compliance with the provisions of the ADA is in accord with earlier Synodical statements and resolutions in 1985, 1986, and 1987 about the need for the church to respond to the needs and concerns of people with disabilities. These statements preceded the passage of the ADA in 1990 and thus did not take the ADA into account. Nevertheless, the provisions of the ADA will help the CRC implement Synod's 1985 Resolution on Disabilities.
5. Despite great strides made by many churches in recent years, many local CRC churches still remain inaccessible -- architecturally, programmatically, or attitudinally -- to persons with disabilities. Some churches and agencies consider themselves fully accessible, but are really

only marginally accessible or not accessible at all upon closer examination. Recommending compliance with these provisions will help churches become better informed and more accessible.

6. There is a high level of societal consensus about disability rights in the United States as reflected by the overwhelming bi-partisan support for the ADA in the US Congress, its enthusiastic embrace by the President, and vigorous implementation by the US Government. A similar consensus is emerging in Canada as reflected in its Charter of Rights and Freedoms and by proposed legislation. The church is in fundamental harmony with this consensus because the principles underlying such disability rights legislation are congruent with the church's own values and commitments.
7. Many people with disabilities in our respective nations remain unchurched. An accessible church, in the full sense of the term, will project a powerful message that people with disabilities have an integral place in the Body of Christ and in his Kingdom. Full compliance with ADA provisions will strengthen the church's outreach efforts to those who have traditionally been excluded, or made to feel excluded, from organized religion.

PRINCIPLES, CONCEPTS, STANDARDS UNDERGIRDING THE ADA

The ADA does not anticipate every possible contingency and, since churches are exempted as public accommodations, the ADA overlooks factors that are idiosyncratic to churches both as buildings and as institutions. However, the church in complying with this recommendation can adapt ADA provisions to its own life by using one or more of the five main principles or concepts that are either explicit or implicit in the ADA:

1. Person primary, disability secondary

This principle means that we consider the individual person as primary and the disability as only secondary.

2. **Equal opportunity**

This principle means that we structure our communal life in a way that allows people with disabilities to have the same choices other people have for personal development, economic well-being, independent living, and participation in institutions of their choice. In the church persons with disabilities should have the same opportunities for spiritual growth and development as persons without disabilities.

3. **Nondiscrimination, integration, and inclusivity**

This principle means that we do not discriminate on the basis of impairment or disability, that we integrate people with disabilities into the mainstream of our communal life, and that we view people with disabilities as integral to the well-being of our respective communities and organizations.⁸

4. **Accessibility and barrier-free environment**

This principle means that we make the building, environment and our programs barrier-free and accessible. It means that we make the architectural and organizational infrastructures that undergird our communal life inclusive.

5. **Reasonable accommodation**

This principle requires that an employer, provider, or organization makes accommodations in a timely fashion within the scope of existing resources.

In the ADA, reasonable accommodation is more than a guiding principle but is also a specific legal standard used in Title I, the Act's employment-related provisions, to define an employer's obligation to a job applicant or an employee

⁸This principle is also embraced in Canadian legislation. See for example, the Ontario Human Rights Code and similar legislation in other provinces.

with a disability. In Title I, the principle of reasonable accommodation is operationalized through the derivative concept of "undue hardship" which is defined as "an action requiring significant difficulty or expense" (§101(10)(a)). This concept recognizes that there may be a limit beyond which the cost of accommodation may significantly exceed the anticipated benefit and may result in economic distress for a given organization. See Chart 1.⁹

Very closely related to the terms "reasonable accommodation" and "undue hardship" are the terms "reasonable modification" and "undue burden." These terms are used in the ADA to outline the level of accommodation expected of state and local governments in Title II and the level of accommodation expected of private entities that provide public accommodations in Title III. "Reasonable modification" is also operationalized by the notion of "fundamental alteration." A public or private entity is not required to make changes in policies, procedures, or practices that "would fundamentally alter" the primary purpose of the program or the nature of the goods or services being rendered.

The US Congress decided that private entities would be subject to a lower standard of accommodation under Title III when removing barriers in *existing* facilities. Such barriers must be removed if doing so would be "readily achievable." The term "readily achievable" refers to those accommodations that are "easily accomplishable and able to be carried out without much difficulty and expense" (§301(9)).

In short, at the risk of some oversimplification, the ADA provides essentially two levels of accommodation. The first level is the reasonable accommodation or modification standard as operationalized through concepts such as undue hardship, undue burden, and fundamental alteration. The second level is the readily achievable standard. See Chart 1.

The ADA also recognizes that what constitutes a reasonable accommodation (or modification) or is readily achievable will depend on the size and resources of the affected organization that is expected to make the accommodation. Generally speaking, larger organizations with a larger resource

⁹The Ontario Human Rights Code also uses the same or similar concepts and terms such as "reasonable requirement" and "undue hardship."

Chart 1

Standards of Accommodation Required Under the ADA

Accommodation Standard	Definition or Source	Applicability
<p>Level I Reasonable accommodation</p> <p>undue hardship</p> <hr/> <p>Reasonable modification</p> <p>undue burden; undue financial and administrative burden</p> <p>fundamental alteration to policies, practices, or procedures</p>	<p>"...an action requiring significant difficulty or expense when considered in the light of factors set forth. . ." below. (§101(10)(a)(b))</p> <hr/> <p>Analogous to undue hardship. 28 CFR§35.150</p> <p>Modification required unless it "would fundamentally alter the nature of such goals, services, facilities, privileges, advantages, or accommodations." (§302(b)(2)(A)(ii)(iii))</p>	<p>Title I Employment</p> <hr/> <p>Title II State & Local Gov't</p> <p>Title II State & Local Gov't and Title III Public accommodations</p>
<p>Level II</p> <p>Readily achievable</p>	<p>"easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered. . ." are outlined below. (§301(4))</p>	<p>Title III Public accommodations (barrier removal in existing facilities)</p>
<p>Factors to be considered in determining whether an accommodation constitutes an "undue hardship" or is "readily achievable":</p> <ol style="list-style-type: none"> 1. "the nature and cost of the accommodation needed under this Act; 2. "the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility; 3. "the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and 4. "the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity." <p>Source: §101(10)(b) and §301(9)(A)(B)(C)(D)</p>		

base are expected to do more. In short, these standards are somewhat elastic and may vary somewhat with the circumstances of each organization. Moreover, they are likely to vary over time and become more defined as various disputes are resolved in our respective legal systems.

The principle of reasonable accommodation and its corollary concepts recognize that there are costs in making existing structures and organizations accessible to employees, patrons, customers, clients, and the general public. The principle recognizes that as a society we sometimes have to make difficult choices when weighing benefits and costs.

Claims of "undue hardship" and "not readily achievable" should not be made frivolously as excuses to avoid making needed accommodations. It should be noted that concepts such as "reasonable accommodation" and "readily achievable" shift the burden of proof from the person with a disability to the employer, provider, or organization to show that a particular accommodation is unusually burdensome or not readily achievable and beyond its resources, including the resources of a parent organization.

ADAPTING ADA PROVISIONS TO THE CRC

The ADA consists of five titles:

Title I	Employment
Title II	Public services rendered by state and local government and public transportation
Title III	Accommodations and services rendered to the public by private entities
Title IV	Telecommunications
Title V	Miscellaneous

As noted earlier, Title I is already applicable to churches and church agencies. Title II applies to public agencies at the state and local level and to public transportation, and has legal application to American CRC facilities only to the extent to which CRC facilities are used to render publicly funded services such as day care services. Title III has no legal application to the CRC but its provisions are the most relevant since churches are akin to organizations providing public accommodations. Title IV applies mainly to the telecommunications industry such as telephone companies. Title V includes several provisions related to the implementation of the ADA, and some of these can serve as a model for the CRC in its compliance with the ADA's provisions.

Title I Employment

Title I of the ADA provides for equal opportunity of employment for qualified persons with disabilities. If necessary, an employer shall make "reasonable accommodation" for an employee with a disability unless it should cause "undue hardship" for the employer (see earlier discussion on **PRINCIPLES, CONCEPTS, & STANDARDS UNDERGIRDING THE ADA**) or be a direct threat to the individual or to others. Title I also prescribes the terms under which an employer may inquire about the severity of a prospective employee's disability; excludes persons who engage in the illegal use of drugs; and describes the process for making reasonable accommodation.

Title I becomes effective in two stages. Starting July 26, 1992, Title I applies to all organizations with 25 or more employees. On July 26, 1994, Title I coverage threshold will drop and Title I will apply to all organizations with 15 or more employees.

Unlike other portions of the ADA, Title I *does* apply to religious organizations. Thus, Title I of the ADA is already applicable to the CRC in the US. The ADA does allow a religious organization to give preference in employment to individuals of a particular religion and "may require that all applicants and employees conform to the religious tenets of such organization" (§103(c)). "However, a religious entity may not discriminate against a qualified individual, who satisfies the permitted religious criteria, because of his or her disability" (29 CFR §1630.16 (a)).

CDC wishes to highlight three issues with respect to CRC compliance with Title I and adaptation of its provisions: (1) the size of the employing organization; (2) the nomination, election, and appointment of persons to church offices, teaching positions, leadership positions, and other unpaid positions; and (3) the timetable for implementation.

Size

As of July 26, 1994, Title I will apply to employers with 15 or more employees. Some denominational agencies in the US have 15 or more employees and thus do fall within the thresholds established by Title I. See Chart 2. Clearly, most local congregations have fewer than 15 employees and are therefore beyond the intended scope of Title I. This is not because they are religious entities but because as employers they are too small.

While most local churches are outside the thresholds set by Title I, CDC recommends that, in keeping with the spirit of full compliance, local churches identify, recruit, and hire persons with disabilities when employment opportunities become available.

Volunteers, unpaid leaders, and others

Much of a church's activity and governance is conducted by volunteers, unpaid leaders, and persons who receive compensation for their services in a capacity other than as an employee. While Title I does not address volunteers and unpaid leaders, CDC recommends that churches and church agencies identify, recruit, nominate or appoint qualified members with disabilities to leadership and volunteer positions at the local, classical, and denominational levels using the same "reasonable-accommodation" and "undue-hardship" standards that would apply in the case of paid employment.

Timetable

As noted above, the timetable for implementation of the ADA's employment provisions is spelled out in the Act. This applies to larger CRC entities in the US. (See Chart 2.) In the interest of developing a more uniform set of employment policies within CRC agencies in both Canada and the US, CDC

Chart 2

Effective Dates for Full Compliance
Within the Provisions of the ADA

ADA Provision or Proposed CRC Policy	Effective Dates in ADA	Proposed Effective Dates for CRC
<p>Title I Employment</p> <p>Employers ≥ 25 employees</p> <p>Employers ≥ 15 employees</p> <p>Persons in volunteer or unpaid positions</p>	<p>July 26, 1992</p> <p>July 26, 1994</p>	<p>July 26, 1992</p> <p>July 26, 1994</p> <p>July 26, 1995</p>
<p>Title II Public Service</p>	<p>January 26, 1992</p>	<p>January 26, 1992 (not Canada)</p>
<p>Title III Public Accommodations</p>	<p>January 26, 1992</p>	<p>January 26, 1995</p>
<p>Title IV Telecommunications</p>	<p>July 26, 1993</p>	<p>July 26, 1996</p>
<p>Proposed Self-evaluations by CRC agencies and churches</p>	<p>-----</p>	<p>January 26, 1995</p>
<p>CDC interim report to Synod</p> <p>CDC final report to Synod</p>	<p>-----</p> <p>-----</p>	<p>June 1995</p> <p>June 1996</p>

recommends (as suggested by the CRC Executive Director of Ministries) that the implementation dates in Canada and the US be concurrent and that agencies in Canada begin on July 26, 1994 with the 15-or-more employee threshold that becomes effective in the US on that date.

With respect to positions filled by persons serving in volunteer, unpaid, or another nonemployee capacity, CDC proposes January 26, 1995 as the target date for full compliance with the spirit of Title I in all churches and church-supported organizations in both the US and Canada.

Title II Public Services

This title applies mainly to state and local government and to public transportation and thus would appear to be beyond the concern of religious organizations. However, if a church facility provides a service, such as day care or a senior citizen service program paid with public funds, it does come under Title II of the ADA and must meet the "undue burden" standard of accommodation.

Title III Public Accommodations

This title prohibits discrimination on the part of private organizations that provide services or accommodations to the public. It covers entities such as transportation companies; lodging facilities; restaurants; public gathering places such as auditoriums and stadiums; retail stores; entities providing services such as banking, hair care, laundry, legal, and health care services; museums; libraries; parks; zoos; schools; social service organizations; and places of recreation. Title III exempts ". . . religious organizations or entities controlled by religious organizations, including places of worship" (§307).

Despite this exemption of religious organizations, CDC believes that significant portions of Title III remain very relevant to churches and church-related organizations and requests that synod recommend full compliance with its provisions. Like the entities enumerated above, churches and church-related organizations are public gathering places, provide health and social services, and

operate or support schools and places of recreation.

Title III defines discrimination to include the outright denial of participation; participation which results in unequal benefit; and participation which is different, separate, or not integrated unless there are compelling reasons to the contrary.

Title III calls for the removal of architectural barriers if "readily achievable" (see earlier discussion and Chart 1). Federal regulations implementing Title III are accompanied by a series of graphically-illustrated accessibility guidelines. These guidelines are based in large part on the time-honored guidelines developed by the American National Standards Institute (ANSI).¹⁰ Requirements with respect to barrier removal depend on whether the physical structure is new construction, a major renovation, or an existing structure.

Title III also calls for the provision of auxiliary aids and services to accommodate persons with hearing, vision, or speech impairments. Examples of auxiliary aids and services include qualified interpreters and readers, computer-aided transcription services, assistive listening headsets, television captioning and decoders, open and closed captioning, telecommunication devices for deaf persons (commonly known as TDDs),¹¹ video text displays, audio recordings, brailled materials, and large print materials (28 CFR §36.303). An auxiliary aid or service is to be provided unless it fundamentally alters the nature of the good or services being provided or results in an "undue burden" (see earlier discussion and Chart 1).

CDC wishes to highlight three issues with respect to the adaptation of Title III to the CRC: (1) size of the affected organization and (2) accommodations for people with hearing impairments (telecommunications), and (3) the time-table for

¹⁰In Canada, the *National Building Code* is the basis for architectural standards. Provincial and municipal requirements are loosely based on this building code. In Ontario, for example, architectural accessibility is addressed in §3.7 of the *Building Code*.

¹¹A TDD is a device with a keyboard that allows a person with a hearing or speech impairment to send and receive written messages using conventional telephone lines.

implementation.

Size

The ADA notes that the size of the affected organization is material to the expectations of what is readily achievable (§301(9)).¹² Similarly, in the case of churches, larger congregations and agencies are likely to have more members with disabilities or are likely to serve more persons with disabilities. They are also likely to have a larger resource base from which to make accommodations. Accordingly, CDC recommends that more should be expected of larger congregations and agencies. Smaller churches should comply with the provisions of the ADA as best they can.

Telecommunications

Telecommunications, particularly those that meet the needs of people with hearing impairments, are addressed in both Titles III and IV. Title IV requires the telecommunications industry to provide, throughout its service area, telecommunication relay services that will enable people with speech and hearing impairments who use TDDs, to relay their messages by voice, with the assistance of a relay operator, to their intended recipients. Title IV provides a 3-year period for the implementation of this requirement.

Title IV is aimed at the telecommunications industry, not at entities such as hotels, stores, theaters, banks, physician offices, or their functional equivalents such as churches. Earlier versions of the Act required that such entities use TDDs to facilitate communication; earlier versions did not require relay services. The abandonment of the TDD requirement and its replacement with the relay-service requirement was a concession to small businesses who considered the costs of TDDs too burdensome even though TDDs are relatively inexpensive.¹³

¹²Prior to its passage of the ADA, the US Congress carefully took into account the concerns of the small business community which had expressed numerous concerns about the requirements of the Act. In response, Congress crafted a number of requirements to take into account the needs and concerns of small businesses (Burgdorff, 1991).

¹³A good unit can be purchased for about \$200.

Title IV, Title III regulations (28 CFR §36.303(d)(2)) do not require an organization that provides a public accommodation also provide TDD services unless it offers its customers, clients, patients, or participants the opportunity to make outgoing telephone calls on more than an incidental basis. According to the US Department of Justice in its accompanying analysis of the regulations, this means that places such as retail stores, physician offices, and restaurants are not required to have TDDs since communication is facilitated through relay services authorized under Title IV. Places of lodging such as hotels and hospitals that ordinarily provide "nondisabled individuals the opportunity to make outgoing calls on more than an incidental convenience basis, must provide a TDD on request" (US Department of Justice, 1990:35567).

A church typically does not provide telephone services to members on more than an incidental convenience basis. Nonetheless, if the church is to communicate effectively with people who have significant hearing or speech impairments it will not be able to rely entirely on relay services which can have significant limitations.¹⁴ Accordingly, CDC recommends that larger church agencies and larger churches, those with more than 100 families, install TDDs, as they would facsimile machines or modems, as part of their everyday telecommunication capacity.¹⁵

Timetable

Title III became effective on January 26, 1992, 18 months following the enactment of the ADA. For purposes of CRC compliance, CDC recommends that churches and agencies try to have these provisions in effect by January 26, 1995 approximately 18 months following synod's action on this report.

¹⁴For example, relay services are sometimes backlogged, are often not fast enough to leave messages on answering machines, and are sometimes a barrier to confidential conversations.

¹⁵This recommendation is in more in keeping with federal regulations implementing Title II which extends the ADA to state and local government. In its analysis of federal regulations implementing Title II (28 CFR §35.161), the US Department of Justice (1991:35712) does not make the use of TDDs mandatory partly because of the availability of relay services under Title IV. However, it "encourages those entities that have extensive telephone contact with the public . . . to have TDD's to insure more immediate access."

Title IV Telecommunications

As noted in the discussion of telecommunications under Title III, Title IV is largely aimed at the telecommunications industry and therefore is not relevant to organizations such as churches. However, there is one small provision in Title IV (§402) which requires any television public service announcement produced with federal funds to include closed captioning. By analogy, CDC recommends that videos and television broadcasting material funded, in whole or in part, by the denomination or its churches, provide ways in which persons with hearing impairments can view the verbal content in video material.

Title IV is effective July 26, 1993, three years after the enactment of the ADA. CDC recommends that denominationally supported video material be made accessible to people with hearing impairments by July 26, 1996, approximately three years after synod's action on this report.

IMPLEMENTATION & TITLE V

Title V addresses several miscellaneous issues including issues of implementation. It addresses issues of interpretation, provides for the resolution of potential disparities within and between federal and state law, delegates various tasks to federal agencies for the implementation of the Act, extends coverage to the legislative branch of government, and provides for dispute resolution. While most of these provisions are specific to the manner in which the US government conducts the public's business, there are many analogs to the manner in which the church conducts its own affairs. In proposing compliance with the provisions of the ADA in the communal life of the church, we need to consider the following:

1. Educational opportunities for both clergy and laity;
2. Interagency capacity for implementation;
3. Self-evaluation by local churches;
4. Technical assistance to local churches and church agencies;

5. Guideline development to assist local churches and church agencies;
6. Financial assistance to small churches;
7. Mechanisms for the resolution of potential disputes;
8. Application to the legislative branch of ecclesiastical government, i.e., Synod; and
9. Monitoring of implementation of proposed policy.

Each of these items are considered below.

Education

Education is important for the church's compliance with the spirit and intent of ADA provisions and for the minimization of potential disputes. Given the recommended two to four-year window for compliance with these provisions in the CRC as outlined in this report (see Chart 2), there should be ample time to launch a vigorous educational effort outlining the rights and responsibilities of church members with disabilities and the rights and responsibilities of CRC churches and agencies.

The CDC recommends that overall leadership and coordination of the educational program rest with CDC and its staff. The CDC is prepared to develop an overall educational strategy, prepare and assemble the necessary educational materials, and to the extent possible, work through existing CRC agencies and ecclesiastical structures. CDC requests that CRC publications make its resources and periodicals readily available to CDC to assist in this campaign to help local churches comply with the provisions as outlined in this report. CDC may need temporary additional staff, in conducting the CRC's educational campaign for the implementation of the ADA.

Interagency Implementation Task Force

The CDC recommends that a CRC interagency task force be assembled to determine how best to facilitate the recommended compliance as described in this report within CRC agencies and institutions (including Calvin College and Calvin Seminary). The task force could be chaired by the Executive Director of Ministries or the CDC Director. CDC recommends that each CRC agency designate an implementation coordinator who will serve on the task force. This coordinator should be responsible for learning the appropriate provisions of the ADA and working with his or her respective agency or institution in complying with the provisions of the ADA as recommended in this report.

Self-evaluation

The CDC recommends that to achieve the recommended compliance with ADA provisions in the CRC, each agency and congregation should complete a self-evaluation report. The self-evaluation report should be based on a checklist to be developed by CDC and the interagency task force identified above. The self-evaluations should be completed by January 26, 1995. The completion of the self-evaluation checklist should include the participation of at least one person with a disability in each congregation and agency. If a qualified person with a disability is not immediately available from the ranks of an individual congregation or agency, the church or agency could seek assistance from a disabled person from outside its immediate membership or staff.

The federal government has found that agency self-evaluation has proven to be valuable in implementing the requirements of §504 of the 1973 Rehabilitation Act, the precursor to the ADA, and has therefore made it a requirement (28 CFR §35.105) for the implementation of ADA's Title II which extends the requirements of §504 to state and local governments.

Technical Assistance

Many congregations and CRC agencies will need technical assistance in complying with provisions of the ADA within their respective organizations. For example, matters relating to employment policy and architectural accessibility require explanation and assistance from persons informed about such matters.

Such technical assistance will be offered by CDC commensurate with the resources available to it. However, lay members (especially those with disabilities), architects, lawyers, and human resource managers, and others who are knowledgeable about the ADA, should be encouraged to identify themselves and make their expertise available to local churches and church agencies. CDC (and the proposed interagency task force) will develop a registry of such experts that can be made available to local churches and church agencies seeking technical assistance.

Guideline Development

In complying with the provisions of the ADA, there will be instances when the law or regulations may not be clear or may not apply well to the circumstances faced by local churches or church agencies. For such instances, the CDC, in collaboration with the proposed interagency task force, can be responsible for the development of guidelines that can be used by local churches and agencies in complying with ADA provisions.

Financial Assistance for Small Churches

According to the ADA, the size of an organization and its financial resources are material to determining what might constitute an "undue hardship" or what might be considered "readily achievable" when fulfilling its obligations ((§101 (10); §301 (9)). See earlier discussions and Chart 1. Similarly, smaller CRC churches often do not have adequate resources to provide the same level of accommodation as is often possible with larger churches that can spread the cost of an accommodation over a larger membership base.

When an organization is part of a larger entity, the law provides that the geographic, administrative, and fiscal relationship of the organization to the larger entity is material in determining whether an undue hardship exists or whether something is readily achievable (§101 (10)(B)(iv); §301 (9)(D)).¹⁶ In the case of the CRC it is difficult to ascertain the actual degree of administrative and fiscal separateness between local congregations, classis, and the denomination as a

¹⁶The corresponding regulations to these provisions in the Act include 29 CFR 1630.2(p)(2) and 28 CFR 36.104 respectively.

whole. Individual congregations are incorporated organizations run by councils elected from their respective memberships. This characterization would suggest that local congregations have a high level of independence from the larger denomination. However, local congregations are accountable to classis and the denomination. Moreover, smaller churches often receive financial assistance from the Home Mission Board or the denomination's Fund for Smaller Churches.

It is beyond the scope of this report to delineate the exact degree of responsibility that individual classes and the denomination have in making accommodations at the local level. Instead, CDC wishes to frame the matter positively and indicate that there is a larger principle at stake here, namely, that larger entities with larger resource bases should help facilitate the ability of smaller subentities in meeting their ADA responsibilities.

To this end, CDC and the above-referenced Interagency Task Force should identify and implement ways in which the denomination and classes can assist local congregations in financing and providing a more adequate level of accommodation for people with disabilities. For starters, the Fund for Smaller Churches and Church Loan Fund, which provides loans to churches for capital improvements, could be made available to support requests from local churches seeking to make their facilities more accessible to people with disabilities.

Dispute Resolution

Sound education, expert technical assistance, well-reasoned guidelines, and financial assistance will help make compliance with ADA provisions a cooperative venture involving members with and without disabilities and should make the process nonadversarial. However, should there be times when disputes arise, procedures will be needed for their *timely and expeditious* resolution. If this occurs such disputes should be resolved whenever possible through negotiation and arbitration.¹⁷ If not possible, the resolution of the dispute should be governed by

¹⁷This approach to dispute resolution is very much encouraged under §513 of the ADA:

. . . the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, minitrials, and arbitration is encourage to resolve disputes arising under this Act.

Article 30 of the Church Order and its various supplements. The Judicial Code (Article 30(c)) may be invoked should formal adjudication become necessary. In some instances, CRC institutions and agencies have their own grievance procedures, hearings-and-appeals processes, or judicial codes. In such instances, disputes should be resolved through these processes before Article 30 is invoked. None of these procedures, including Article 30, should be used to cause undue delay.

Furthermore, should disputes arise, it is advisable that members with disabilities be involved in the dispute resolution process and that, when resolution panels are convened under the auspices of local councils, classis, or Synod, or individual church agencies, there should be at least one panel member with a disability who is likely to have encountered barriers similar to the plaintiff. Members of CDC and its staff can be brought in as expert witnesses on behalf of either party to the dispute or on behalf of the panel seeking resolution of the dispute.

Application to Synod and Classis

The US Congress has sometimes exempted itself from its own laws.¹⁸ However, §509 of the ADA provides that provisions of the ADA are to apply to the legislative branch of government, i.e., Congress, as well. In keeping with this intent, CDC recommends that the provisions of the ADA should also be honored by Synod and individual classes when they conduct their business. This implies, for example, that meetings, including committee-level meetings, should be held in architecturally accessible facilities and that accommodation should be made for disabled persons who are synodical or classical representatives or who simply wish to observe synodical or classical proceedings.

Monitoring of Implementation

The CDC recommends that it be responsible for monitoring the recommended compliance with ADA provisions in the CRC. Such monitoring might include surveys as well as personal contacts. The CDC should prepare an

¹⁸Congress sometimes exempts itself from its own legislation in the interest of maintaining a clear separation of powers between the legislative and executive branches.

interim report to the 1995 Synod and a final report to Synod 1996 on progress in compliance with the ADA provisions. These reports should be based, in part, on the results of the self-evaluation checklist introduced above.

CDC plans to maintain an updated computer registry of all CRC churches and facilities noting the extent of their accessibility and overall compliance as outlined in this report. All churches and facilities should also be queried each year through the use of the annual survey conducted for the compilation of the denominational *Yearbook*. The current survey questionnaire should be upgraded to reflect more completely the church's or facility's overall state of accessibility. This information should be reflected in the denominational *Yearbook* and reported in CDC's annual report to Synod. They would serve as a basis for determining the denomination's overall degree of accessibility.

IN CLOSING

Synod's hearty recommendation of full compliance with the provisions of the ADA will go a long way in making the ministry of the CRC substantially more accessible to its members with disabilities and to persons who might otherwise be discouraged from looking to the CRC as their church home.

One noteworthy outcome of the ADA and its regulations has been the need to think carefully about how best to operationalize the Act's key principles and concepts through the development of uniform national architectural standards and other accessibility criteria. The ADA should not be viewed grudgingly as a secular imposition on church life but as a welcomed opportunity that will facilitate the accessibility of churches and agencies in keeping with a single set of standards that are widely understood. In recommending full compliance with ADA provisions as a benchmark for its own churches and agencies, the CRC will enhance opportunities for those individuals who previously were denied full benefit of church life.

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