



Stuttering Discrimination Under the Law: Here's a look at how the law applies.

[Charles Weiner, JD](#); [John A. Tetnowski, PhD, CCC-SLP](#)

Article Information

Speech, Voice & Prosodic Disorders / Fluency Disorders / Regulatory, Legislative & Advocacy / Features

Features | July 01, 2016

## Stuttering Discrimination Under the Law: Here's a look at how the law applies.

The ASHA Leader, July 2016, Vol. 21, 52-57. doi:10.1044/leader.FTR2.21072016.52

Does stuttering qualify as a disability in the courts? If a person who stutters faces job discrimination, does the law offer protection?

These are questions asked by many speech-language pathologists and people who stutter. And the answers are “sometimes” and “depending.” Although the questions are addressed mostly in employment disputes, they may also come up in the areas of education and public accommodations. Legal issues may arise for the more than 3 million Americans who stutter because they are subject to negative stereotypes, negative attitudes and discrimination.

Educators, peers and employers may perceive them as shy, nervous, anxious, withdrawn, self-conscious, tense, less competent, introverted and insecure (see sources). One study by Joseph Klein and Stephen Hood of the University of South Alabama indicated that [70](#)

percent of respondents who stutter believed they had decreased opportunities to be hired or promoted compared with nonstutterers; more than a third reported that stuttering interferes with job performance.

Given these attitudes and stereotypes, it is little wonder that there are several cases in which the courts have interpreted disability discrimination laws in the context of stuttering. We'll consider several of these cases to see how the law may apply and offer protection. The cases are drawn from and will be further explored in a seminar we're leading at the November 2016 ASHA Convention in Philadelphia.

Does the law consider stuttering a disability, and, as such, is it protected? The answers are “sometimes” and “depending.”

## **Disability under ADA**

As SLPs well know, the Americans With Disabilities Act (ADA) is the most comprehensive law addressing the rights of people with disabilities. Under ADA—signed into law in 1990 and amended in 2008 to provide greater disability protections—it is unlawful to discriminate against people with disabilities in areas such as employment, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting and access to public services.

ADA is concerned with impairments that are “substantially” limiting. It defines *disability* as a person who has (a) a physical or mental impairment that *substantially limits one or more major life activities*; (b) a person who has a record of such impairment; or (c) a person who is regarded as having such an impairment (emphasis added). Accordingly, the definitions contained in the ADA strongly suggest that stuttering is a disability: It may impair one's ability to speak, communicate and work. However, a review of the case law demonstrates how the courts have construed these issues.

To establish protection under ADA, one must demonstrate that stuttering is substantially impairing. To demonstrate this in a case based on discrimination, a person who stutters should demonstrate the physical, emotional and perceptual aspects of the disorder.

## **Case samples: Pre-2008 amendments**

Several cases involving stuttering decided prior to the 2008 ADA amendments concluded that stuttering was not a disability. Although the facts and allegations differed in each case, the common rationale for each court's conclusion was that the plaintiff failed to claim that stuttering was either significant or substantial.

In one of these cases, *Saulter v. Hutchinson*, the plaintiff filed several discrimination claims, including an ADA claim for wrongful discharge from her employment as an environmental technician for a state government environmental agency, on the basis that she stuttered.

She testified at her deposition that she had a speech impediment that occurred on occasion. However, she also stated that her speech impediment had never caused her a problem and it had not affected her job performance. She also testified that she worked as a teacher and a radio and television personality, and was active in theater productions. In granting summary judgment, the court concluded that plaintiff's testimony refuted any claim that she had a disability.

In *Zhong v. Tallahatchie Hospital & Extended Care Facility*, a terminated employee filed several discrimination claims, including one under the ADA for alleged employment termination from his job as a medical technologist at a hospital due to his stuttering. The court dismissed the plaintiff's ADA claim on summary judgment after the plaintiff testified during a deposition that his stuttering "was very mild, very, very mild" and occurred "[o]nly occasionally." The court concluded that based on the plaintiff's own testimony, the plaintiff's stuttering did not substantially limit his ability to speak or work.

Through amendments to the ADA, courts have been more inclusive in their consideration of discrimination claims based on stuttering.

### **Case samples: Post-2008 amendments**

After the ADA was amended in 2008, several cases produced different results. In *Andresen v. Fuddruckers, Inc.*, the plaintiff alleged that she was fired from her food-preparation job because she stuttered. Unlike the previous cases, there was considerable evidence regarding the nature and condition of her stuttering. According to depositions and expert reports, the plaintiff's stuttering was severe. Further, speaking was difficult for her and often caused her frustration, stress and embarrassment.

The plaintiff asserted that people had difficulty understanding her, that she avoided speaking certain words that she avoided speaking to strangers, and that in conversations she often responded with nods or gestures. She also explained that she encountered an excess build-up of saliva when stuttering, which she corrected by swallowing frequently. She had worked at Fuddruckers for 16 years in various jobs.

When new management took over the restaurant, they required her to wear a mask during food preparation purportedly due to her "problem with over-salivation." However, she was instructed not to wear the mask during clean-up because management did not want customers seeing her wear the mask. The plaintiff was terminated in part because she purportedly did not wear her mask at required times. The court denied the defendant's motion to dismiss the case and held that there were sufficient facts to support the plaintiff's claim of discrimination based on stuttering.

The court noted: "Andresen has proffered sufficient evidence to create a genuine issue of fact as to whether her stuttering constitutes a 'disability' under the ADA. First, there is no

dispute that speaking is a major life activity under the ADA. Second, Andresen has stated that her stuttering has caused her significant problems with communication throughout her life and she has submitted evidence indicating that her stuttering has significantly impacted her life activities.”

Additionally, the court noted that the SLP who evaluated the plaintiff opined that her stutter was severe and substantially limited her oral communication. The court further noted that prior case law addressing stuttering in the context of the ADA supports that stuttering, if substantially limiting, can constitute a disability under the ADA.

In *Medvic v. Compass Sign Co., LLC*, a case involving an employment discrimination claim by a sheet-metal mechanic, the court found that the plaintiff’s stuttering could be found to substantially limit him in the major life activity of communicating. Although the court indicated that “a medical diagnosis is not enough,” and that “the plaintiff must produce individualized evidence showing that their limitation has substantially affected them in their own experience,” the court concluded that the plaintiff satisfied this standard based on evidence that the plaintiff’s stuttering kept him from communicating his thoughts to others for minutes at a time and impeded his social life.

Applying the ADA, the court stated: “Our analysis ... has been altered by the ADA Amendments Act of 2008, which rejected the ‘permanent’ and ‘long term’ requirement embodied in the original Act and stated that ‘*episodic or in remission*’ fits within the definition of disability if it would substantially limit when active” [emphasis added]. Here, there is evidence from which a jury could conclude that when the plaintiff’s stutter is active, it substantially limits his ability to communicate, sometimes rendering him totally incapable of communicating at all. This actual impact, which may be episodic, is also lifelong.

Recognition that stuttering can be a disability may afford people who stutter greater protection from discrimination.

### **‘Substantially impairing’**

To establish protection under ADA, one must demonstrate that stuttering is substantially impairing. To demonstrate this in a case based on discrimination, a person who stutters should demonstrate the physical (for example, repetition, prolongations, blocks and difficulty speaking), emotional (for example, avoidance of words and situations) and perceptual (for example, others get impatient or finish words or sentences) aspects of the disorder.

Through the amendments to the ADA, courts have been more inclusive in their consideration of discrimination claims based on stuttering. Accordingly, recognition that stuttering can be a disability may afford people who stutter greater protection from discrimination.

## Sources

Dorsey, M., & Guenther, R. K. (2000). Attitudes of professors and students toward college students who stutter. *Journal of Fluency Disorders*, 25, 77–83. [\[Article\]](#)

Hurst, M. I., & Cooper, E. B. (1983). Employers' attitudes toward stuttering. *Journal of Fluency Disorders*, 8, 1–12. [\[Article\]](#)

Klein, J. F., & Hood, S. B. (2004). The impact of stuttering on employment opportunities and job performance. *Journal of Fluency Disorders*, 29, 255–273. [\[Article\]](#) [\[PubMed\]](#)

Lass, N. J., Ruscello, D. M., Schmitt, J. F., Pannbacker, M. D., Kiser, A.M., Mussa, A.M., & Lockhart, P. (1994). School administrators' perception of people who stutter. *Language, Speech, and Hearing Services in Schools*, 25, 90–93. [\[Article\]](#)

Lass, N. J., Ruscello, D. M., Schmitt, J. F., Pannbacker, M. D., Orlando, M. B., Dean, K. A., ... Bradshaw, K. H. (1992). Teachers' perceptions of stutterers. *Language, Speech, and Hearing Services in Schools*, 23, 78–81. [\[Article\]](#)

Woods, C. L., & Williams, D. E. (1976). Traits attributed to stuttering normally fluent male. *Journal of Speech and Hearing Research*, 19, 276–278.

Charles Weiner, JD, is a disability rights attorney in the Philadelphia area. [charles@charlesweinerlaw.com](mailto:charles@charlesweinerlaw.com)

John A. Tetnowski, PhD, CCC-SLP, is the Ben Blanco Endowed Professor in Communicative Disorders at the University of Louisiana-Lafayette. He is a board-certified specialist in fluency disorders and serves on the coordinating committee of ASHA Special Interest Group 4, Fluency and Fluency Disorders. [jxt1435@louisiana.edu](mailto:jxt1435@louisiana.edu)  
*Watch the [ASHA Convention website](#) for information on the time and location of the session on disabilities law and communication disorders.*

© 2016 American Speech-Language-Hearing Association