

## Expanding Opportunity in the Community for People with Disabilities



Individuals with disabilities have long faced great barriers to full participation in civic life. The Division has made protecting the rights of people with disabilities a top priority by enforcing the Americans with Disabilities Act (ADA), the historic law prohibiting discrimination on the basis of disability in more than seven million places of public accommodation nationwide – including hotels, restaurants, retail stores, theaters, health care facilities, and parks and places of recreation – as well in all operations of state and local governments. Our aggressive enforcement of the ADA touches the lives of individuals with disabilities and their families in a wide variety of ways.

**ENFORCING THE LAW:** In the past four years, the Division has achieved results for people with disabilities in over 1,600 actions under the ADA, including lawsuits, settlement agreements, and successful mediations.

### *Eliminating Barriers to Places of Public Accommodation for People with Disabilities*

Discrimination by public accommodations against people with disabilities remains far too prevalent. Inaccessible facilities, discriminatory policies, and prejudicial attitudes can prevent a person with a disability from taking a bus, shopping for groceries or clothing, getting medical care or exercise, seeing a movie or exhibit, having dinner at a restaurant, or getting a hotel room. Every day, the Division challenges the unnecessary barriers thrown in the way of people with disabilities who are just trying to live their lives.

**Wells Fargo:** In 2011 the Division entered into a comprehensive settlement agreement with Wells Fargo & Company, which owns or operates almost 10,000 retail stores and 12,000 ATMs throughout the United States. The complaint alleged that Wells Fargo would not do business with people with hearing and speech

disabilities over the phone using a telecommunications relay service. Instead, the individuals were directed to call a TTY/TDD line that asked them to leave a message, which frequently went unanswered. The Division also found that Wells Fargo failed to provide financial documents in alternate formats, such as Braille or large print, to people who are blind or have low vision; failed to provide appropriate auxiliary aids and services for in-person meetings with individuals who are deaf; and failed to remove barriers to access for individuals with mobility disabilities. Under the agreement, Wells Fargo will pay up to \$16 million to compensate individuals who experienced discrimination, as well as \$1 million in charitable donations to non-profit organizations that will assist veterans with disabilities.

**Hilton Hotels:** The Division has also challenged unlawful barriers in places of public accommodation that restrict people with disabilities' freedom to travel. For travelers with disabilities, finding a suitable hotel can be extremely difficult because of the lack of accessible guest rooms. Inaccessible bathrooms and showers can render a hotel useless for potential guests who use wheelchairs or other mobility devices. In November 2010, the Division reached an agreement to resolve multiple

complaints of discrimination by Hilton Worldwide, Inc., one of the world's largest hotel chains. This comprehensive agreement covers 2,200 hotels that Hilton owns, manages, or franchises nationwide. It requires Hilton to train employees on the ADA, designate an ADA contact person at each hotel, and modify its reservations system to ensure that individuals with disabilities can get accessibility information when reserving by telephone or online.

**DEVELOPING THE LAW:** In July 2010, the Division published four Advance Notices of Proposed Rulemaking addressing potential new rules under the ADA. The potential new rules address websites of public accommodations and public entities; captioning and audio description of movies in theaters; furniture and equipment (such as hotel beds, kiosks, and medical equipment); and next generation 9-1-1 systems.

In September 2010, the Division published revised final regulations implementing the ADA for Title II, covering state and local government services, and Title III, covering public accommodations and commercial facilities. The regulations were the culmination of a six-year process to address needs that have arisen over the 20-year history of the ADA, and contain new and updated requirements, including the 2010 Standards for Accessible Design. As part of this regulatory process, the Division sought extensive public comment and held a public hearing. During the comment period, we received and reviewed over 4,435 written public comments.

### *Expanding Opportunities for People with Disabilities to Live and Participate in Their Own Communities*

*The Division has enforced 44 Olmstead matters in 23 states on behalf of children and adults with physical, mental, and developmental disabilities who are in or at-risk of entering segregated settings, including state-run and private institutions, nursing homes, board and care homes, and sheltered workshops. We have reached statewide settlement agreements, filed litigation, and had an active statement of interest practice in private litigation.*

Ensuring that people with disabilities have the opportunity to live and participate in their communities is at the heart of the Division's disability enforcement mission. In 2009, the Division launched an aggressive effort to enforce the Supreme Court's decision in *Olmstead v. L.C.*, a ruling recognizing that people's civil rights are violated under the ADA when they are unnecessarily segregated from the rest of society. Under *Olmstead*, states are required to eliminate unnecessary segregation of persons with disabilities and to ensure that persons with disabilities receive services in the most integrated setting appropriate to their needs.

The goal of the Division's *Olmstead* enforcement work is to offer people with disabilities opportunities to live life to their fullest potential. Through this work, we have provided people with disabilities opportunities for true integration, independence, choice, and self-determination in all aspects of life, including where they live, spend their days, work, or participate in their communities. We have also ensured that individuals have access to the quality support and services that they need to lead successful lives in the community. As a result of our efforts, tens of thousands of people with disabilities across the country have the opportunity to live and participate in their communities.

Collaboration with a range of stakeholders and federal partners has been critical to the success of our *Olmstead* enforcement. Engagement with people with disabilities and their families, disability advocates, and other community stakeholders has informed all aspects of our work and has helped us develop sustainable remedies that address the concerns and priorities of each individual community. Public education about *Olmstead* has also been important. In 2011, we issued the Division's first *Olmstead* guidance and launched a website dedicated to the Division's *Olmstead* work ([www.ada.gov/olmstead](http://www.ada.gov/olmstead)). In addition, we have worked closely with federal partners in the United States Departments of Health and Human Services, Housing, Education, and Labor, recognizing that access to healthcare services, housing, education, and employment are critical to making *Olmstead* a reality for people with disabilities.

**Virginia:** The Division has reached a number of settlement agreements that transform states' disability service systems from ones overly-reliant on institutional care to ones focused on providing quality community services and supports. In 2012, for example, we reached an agreement with the Commonwealth of Virginia to provide a range of critical



**COMMUNICATING THE LAW:** An Accessibility Specialist on the Division's ADA Information Line. In the past four years, Division staff helped more than 200,000 people who called our ADA Information Line to learn how the ADA applies to them. In Fiscal Year 2012, the Division answered more than 60,000 calls, the highest volume of calls since the Information Line was created in 1993. The ADA website received almost 12 million hits the same year.

community services – including Medicaid-funded healthcare services, crisis services, housing, and employment supports – to more than 5,000 individuals with intellectual and developmental disabilities in institutional settings or languishing on long waitlists for community services.

**Other examples:** The same year, the Division reached an agreement with North Carolina to provide integrated community housing and community supports to 3,000 people with mental illness in or at-risk of entering large, congregate adult homes. We also reached an agreement with Delaware in 2011 to provide essential community services and integrated housing to more than 3,000 people in or at-risk of entering the state's public and private psychiatric hospitals.

### Stefon's Story

Stefon is an 18-year-old with a profound intellectual disability and visual, orthopedic, and language disabilities. Although his support needs are serious, they are all being addressed well in the community. Stefon graduated from his local high school, attended his senior prom, and has won national praise for his participation in Special Olympics. He lives at home with those who love and support him. As his mother said, "Stefon is living a meaningful and rich life even though he has profound and multiple disabilities. Receiving [community services] literally changed our lives. . . My son's life is significant; he has affected the lives of many people that he has encountered in the community."



Nothing in the ADA or the integration mandate is limited to residential settings. The Division has expanded its *Olmstead* work to look beyond just *where* people live to examine *how* people live. Simply moving someone from an institution to a community-based residence does not achieve community integration if that person is still denied meaningful integrated ways to spend his days and is denied the opportunity to work in his community. In 2012,

the Division issued a letter finding that Oregon violated the ADA by its overreliance on segregated "sheltered workshops" to provide employment services to people with intellectual and developmental disabilities who could, and want to, work in integrated employment. The Division also filed two statements of interest in private litigation in Oregon challenging segregated employment.

### *Expanding Opportunities for Civic Access*

Citizen participation in all aspects of government – from accessing services, to volunteering in programs, to serving on boards and commissions, to running for elected office – not only enhances our communities, but defines who we are as a country. Ensuring that people with disabilities can participate in all aspects of community life remains a priority for the Division's ADA work. Project Civic Access is a wide-ranging Department effort to ensure that counties, cities, towns, and villages comply with the ADA by eliminating physical and communication barriers that prevent people with disabilities from participating fully in community life. Most importantly, these communities have indicated a willingness to effect changes to make their programs and services accessible to persons with disabilities.

In the last four years, the Division has reached Project Civic Access agreements with 42 communities of all sizes throughout the country.

***Kansas City, Missouri:*** In July 2012, the Division entered into an agreement with Kansas City, Missouri, to improve access to all aspects of civic life for people with disabilities. Approximately 85,000 residents of the city have a disability. And now, as a result of the agreement we reached, people with disabilities living in or visiting Kansas City will be able to participate more fully in all aspects of community life. Our agreement requires Kansas City to make physical modifications to facilities so that parking, routes into buildings, entrances, assembly areas, restrooms, service counters, and drinking fountains are



accessible to people with disabilities. Other provisions address effective telephone and web communication, grievance procedures, polling places, emergency management

policies, sidewalks, and domestic violence programs. The Kansas City agreement marked the 200th settlement reached under Project Civic Access since 1999.

*"We are committed to helping every resident fully participate in all Kansas City has to offer. Our city has historically been a leader on issues of inclusion and equal access, and I am proud we are once again demonstrating that commitment. This agreement will ensure that the city of Kansas City can be explored and enjoyed, traversed and traveled by everyone."*

-Kansas City Mayor Sly James

### *Ensuring Equal Access to New and Emerging Technology*

The explosion of new technology has dramatically changed the way America communicates, learns, and conducts business. But for too many people with disabilities, the benefits of this technology revolution remain beyond their reach. Many websites of public accommodations and public entities are inaccessible to people with vision or hearing disabilities. Because websites are a primary means of accessing all types of goods, entertainment, and government services, this lack of access threatens to exclude people with disabilities from modern society. Similarly, devices like electronic book (e-book) readers, whether used as textbooks in a classroom or to take out books from a local library, can be completely unusable by someone who is blind because accessible features they need, such as text-to-speech functions or menus and controls accessible by audio or tactile means, are not available on the device.

Websites and digital technologies can be built or modified to be accessible, much like including ramps on buildings, but too few entities are including available accessibility features in their technology. The Division is working to ensure that people with disabilities are not left behind as new technology continues to emerge. For example, in January 2010, we reached a settlement with Arizona State University, which distributed e-readers through a pilot program that were inaccessible to many

students with vision disabilities. The agreement required the University to deploy only e-reader devices that allow blind individuals to acquire the same information and enjoy the same services that the e-book reading device offers sighted individuals with substantially equivalent ease of use.

In August 2012, the Division and the National Federation of the Blind entered into a settlement agreement with the Sacramento Public Library to resolve a complaint that the library's use of Barnes & Noble NOOK e-readers in its e-reader lending program discriminated against individuals who are blind or have other vision disabilities. In addition to print books, the library offers an e-reader lending program that allows library patrons to check out a NOOK and take it home with them. However, NOOKs do not have accessible features such as text-to-speech functions or the ability to access menus through audio or tactile options. Under the terms of the settlement, the Library will not acquire any inaccessible additional e-book readers for patron use. The library also agreed to acquire several additional e-readers that are accessible to persons with disabilities, and to train its staff on the requirements of the ADA. As a result of this settlement, the Library's e-book lending program is accessible to patrons who are blind or have other vision disabilities.

## Mediation Tools: The ADA Mediation Program

The Division uses many problem-solving tools beyond litigation. For example, in addition to the Division's ADA Information Line, the Division offers a unique mediation program to help resolve complaints under the Americans with Disabilities Act. Through this program, specially trained private mediators help parties resolve complaints referred by the Division. The program successfully resolves all types of cases – from service animals to sign language interpreters to transportation to physical access – and address barriers in facilities ranging from homeless shelters to hospitals to hotels and retail stores. In the last four years, the ADA Mediation Program has completed over 1200 mediations, 36% more than in the previous four years. Each year, 74%-81% of the mediations are successful at resolving the dispute.

### *Ensuring Equal Opportunities for Workers and Applicants with Disabilities*

More students with disabilities are earning high school and college diplomas than ever before. Like everyone else, these students wish to find a job in the field they worked so hard to master. But for workers with disabilities, barriers to becoming employed, staying employed, and earning the same benefits and privileges offered to all employees persist. Vestiges of long outdated attitudes and stereotypes still keep qualified people with disabilities unemployed, as do inaccessible workplaces or failure to provide reasonable accommodations. Over the last four years, the Division has continued to work to break down legal and attitudinal barriers to ensure that applicants and employees with disabilities are treated fairly and provided equal opportunity to succeed in the workplace.

*Ventura County, California:* In July 2010, the Division entered into an agreement with Ventura County, California, resolving our lawsuit alleging that the county had discriminated against a woman who applied for a position as a children's social service worker. Because the woman is deaf, Ventura County did not believe that she was qualified for this position, even though she had been successfully working as a children's social worker in Los Angeles County

for 10 years. Under the terms of the agreement, the county adopted an employment policy prohibiting discrimination and explicitly acknowledging that reasonable accommodations for an employee may include providing a qualified sign language interpreter. The county also paid the victim \$45,000 in compensatory damages.

*Baltimore County, Maryland:* In August, 2012, the Division reached an agreement with Baltimore County, Maryland to address a different kind of employment discrimination. The Division found that Baltimore County required its employees to submit to unnecessary, intrusive, and non-job-related medical examinations that did not test their ability to do their jobs, and automatically disqualified applicants with Type 1 diabetes from Emergency Medical Technician (EMT) positions. As a result of the county's discriminatory policies and practices, its employees – including veteran police officers, firefighters, and EMTs who were qualified and able to work – were denied employment and were forced into career-ending, involuntary retirement. Our agreement required Baltimore County to pay \$475,000 to the victims, adopt new policies and procedures regarding the administration

Our agreement required Baltimore County to pay \$475,000 to the victims, adopt new policies and procedures regarding the administration of medical examinations and inquiries to its employees, and stop automatically

excluding job applicants with Type 1 Diabetes from EMT jobs. As a result of this agreement, public service employees with disabilities who are able to work will be allowed to do so.

### *Ensuring Access to Housing for Individuals with Disabilities*

Persons with disabilities who seek housing often face discrimination in the form of illegal physical barriers, as well as stereotypes and prejudice. To eliminate barriers and combat discrimination, the Fair Housing Act requires that certain multi-family housing built since 1991 be designed and constructed with basic features that allow access by persons with physical disabilities. The Act also forbids local governments and housing providers from discriminating on the basis of disability, and requires them to make reasonable accommodations to their policies and practices to allow people with disabilities access to housing. The Division vigorously enforces all of these statutory provisions.

*JPI Construction, LP:* In June 2012, the Division, with help from the U.S. Attorney's Office in the Northern District of Texas, obtained the largest monetary settlement in a fair housing accessibility case, including the largest civil penalty ever in any Fair Housing Act case. The \$10.5 million monetary settlement resolved a case against JPI Construction, LP, the developer of more than 200 multi-family housing complexes nationwide. The Division alleged that JPI committed serious violations of the Fair Housing Act by failing to make many of these complexes accessible to people with disabilities. Ground-floor apartments and common-use areas lacked accessible sidewalks,

and other sidewalks contained stairs, slopes, and abrupt level changes that made it difficult for people who use wheelchairs or walkers to use them. JPI agreed not only to pay into an accessibility fund to provide retrofits at properties it built, but also to take steps to increase the stock of accessible housing in the communities where these properties are located.

*Polk County, Florida:* The Fair Housing Act also protects individuals with disabilities from zoning practices and other regulations that hinder their housing choices or restrict them from certain parts of a community. In October 2010, the Division resolved a lawsuit alleging that Polk County, Florida violated the Fair Housing Act when it denied New Life Outreach Ministries the right to operate a faith-based transitional residency program in Lakeland, Florida. The residency program was intended to help homeless men with disabilities, including those in recovery from drug and alcohol abuse. Under the consent decree, the county paid \$280,000 to New Life, \$80,000 to individuals who were forced to relocate from New Life's property as a result of the county's conduct, and a \$40,000 civil penalty. The consent decree also prohibits the county from further discrimination and requires county employees who have responsibilities related to zoning and land use to receive fair housing training.

### *Expanding Opportunities for Students with Disabilities*

For students with disabilities, all too frequently the door to education is not fully open. Students with disabilities continue to

face barriers that make it impossible for them to learn, to be in the same classroom as their friends, or to participate in all that today's

schools have to offer. In some cases, they confront discrimination that endangers their health and safety, including harassment or dangerous restraint and seclusion practices. The Division has worked aggressively over the past four years to protect the rights of students with disabilities so that all of America's students have equal access to the resources and opportunities they need to learn.

***Nobel Learning Communities:*** In January 2011, the Division entered into a settlement agreement with Nobel Learning Communities, Inc. (NLC), a private, for-profit company that operates a network of more than 180 pre-schools, elementary schools, and secondary schools throughout the country. Our lawsuit alleged that NLC violated the Americans with Disabilities Act (ADA) by excluding children with disabilities, including children with autism spectrum disorders, Down Syndrome, ADHD, and global developmental delays. Under the agreement, NLC will implement and publicize a policy that prohibits discrimination on the basis of disability and require its schools to provide reasonable modifications for children with disabilities nationwide; train regional executives, principals, and assistant principals on the policy; appoint an ADA compliance officer to oversee compliance with the policy; and pay a total of \$215,000 in compensatory damages to families who complained of discrimination.

***Nashville, Tennessee:*** Our work under other non-discrimination statutes also benefits students with disabilities. After intervening in a case of a boy with disabilities who was sexually assaulted by another student while riding on a school bus operated by the Nashville Public School District in Tennessee, the Division negotiated a comprehensive consent decree with the district in 2010. The consent decree required the school district to take substantial steps to enhance the security of students with disabilities on its buses. Through the consent



### Realizing Equal Opportunity for All Students

Over the last four years the Division has achieved unprecedented success in realizing equal opportunity for all students, including pursuing relief in and through:

***43 Desegregation Cases*** integrating faculties, expanding student access to advanced courses, eliminating race-based extra-curricular activities, halting segregative transfers of students among schools, disrupting the school-to-prison pipeline, opening magnet schools, and ending single-race schools.

***16 English Language Learner Agreements*** providing for fair and equal access to all students, regardless of their English language ability, a four-fold increase over the previous four years.

***10 Student Harassment Agreements*** to end and prevent discrimination against students on the basis of race, color, national origin, religion, sex, or disability.

***18 Disability Cases*** since March 2011 alone, ensuring equal access to education for students with disabilities.

*The determination of students targeted for discrimination to stand up for themselves and other students inspires hope and reaffirms our commitment to expand educational opportunities for all students.*



decree, the district agreed to staff bus monitors to assist drivers on all buses; implement comprehensive screening procedures to ensure that students with disabilities are not assigned to buses where they will be at risk of harassment; expedite the investigation of suspected acts of sexual harassment involving students with disabilities; and ensure open lines of communication between transportation officials and school-based personnel. The district also agreed to pay the boy's family \$1.475 million as part of the settlement.

*Other examples:* The Division is working to ensure that students with disabilities can pursue higher education. For example, we have worked to address barriers posed by inaccessible standardized tests. The ADA requires testing providers to offer tests such as those related to higher education admissions and licensing in ways that "best ensure" that the test measures knowledge or skill, and not disability. In 2012, we intervened in ongoing litigation challenging the Law School Admissions Council's alleged failure to provide

testing accommodations where needed so that the Law School Admissions Test meets the ADA standard.

In addition, the Division has filed several statements of interest and amicus briefs in private litigation challenging elementary, secondary, and higher education schools that demand unfettered discretion to decide what accommodations to provide or permit for students. For example, the Division successfully challenged a medical school's refusal to allow a student to use oral interpreters for clinical classes, even at his own expense. The Division also successfully defended the constitutionality of a regulation under the Individuals with Disabilities Education Act that requires school districts to provide parents with an independent education evaluation at public expense under appropriate circumstances. The 11th Circuit Court of Appeals agreed with the Division and upheld the longstanding regulation, thereby preserving one of parents' key rights under the law.